

FEDERAL ACQUISITION CIRCULAR

April 22, 2008

Number 2005-25

Federal Acquisition Circular (FAC) 2005-25 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-25 are effective April 22, 2008, except for Items IV, V, and VI which are effective May 22, 2008.

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FAC 2005-25 LIST of SUBJECTS

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FAC 2005-25 SUMMARY of ITEMS

Federal Acquisition Circular (FAC) 2005-25 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Federal Procurement Data System Reporting (FAR Case 2004-038) (Interim)

This interim rule amends the Federal Acquisition Regulation (FAR) Subpart 4.6 to revise the process for reporting contract actions to the Federal Procurement Data System (FPDS). The rule will allow agencies to obtain Federal procurement reports as well as several workload reports designed specifically for first-line supervisors through FPDS. The use of the Federal reports will alleviate the need for individual agencies to collect, verify, and distribute statistics for a host of requirements such as the Small Business Goaling Report (SBGR), the Performance-Based Acquisition (PBA) report, the Central Contractor Registration (CCR), and the Resource Conservation and Recovery Act (RCRA) Report. The rule provides questions and answers to facilitate the public's understanding of the changes proposed in the interim for reporting contract actions under FAR Subpart 4.6.

Replacement pages: 1.1-3 and 1.1-4; 2.1-3 thru 2.1-6; Part 4 TOC pp. 4-1 and 4-2; 4.6-1 thru 4.6-4 (4.6-3 and 4.6-4 added); 4.8-5 and 4.8-6; 12.3-1 and 12.3-2; 52.2-9 and 52.2-10; 52.2-27 and 52.2-28; and Matrix pp. 52.3-3 and 52.3-4.

Item II—Electronic Subcontracting Reporting System (eSRS) (FAR Case 2005-040) (Interim)

This interim rule amends the Federal Acquisition Regulation to require that small business subcontract reports be submitted using the Electronic Subcontracting Reporting System (eSRS), rather than Standard Form 294 - Subcontract Report for Individual Contracts and Standard Form 295 - Summary Subcontract Report. The eSRS is a web-based system managed by the Integrated Acquisition Environment. The eSRS is intended to streamline the small business subcontracting program reporting process and provide the data to agencies in a manner that will enable them to more effectively manage the program.

Replacement pages: 1.1-3 thru 1.1-6; 4.4-1 and 4.4-2; 19.7-1 thru 19.7-10 (19.7-9 and 19.7-10 added); 52.2-39 and 52.2-40; 52.2-93 thru 52.2-96.2 (52.2-96.1 and 52.2-96.2 added); 52.2-101 and 52.2-102; Part 53 TOC pp. 53-1 and 53-2; 53.2-3 and 53.2-4; and 53.3-47 thru 53.3-52 (53.3-52.1 and 53.3-52.2 removed).

Item III—Revisions to the Defense Priorities and Allocations System (DPAS) (FAR Case 2006-033)

This final rule amends the language in the Federal Acquisition Regulation (FAR) to reflect the President's delegation of the Defense Production Act's priorities and allocations authorities in Executive Order 12919, and the current provisions of the Defense Priorities and Allocations System (DPAS) regulations of the Department of Commerce outlined in 15 CFR Part 700.

FAR changes incorporated in parts 2, 11, 18, 52, and 53 benefit both the Government and industry in the receiving of timely and proper delivery of industrial resources. Contracting officers should take notice of the changes in the FAR especially the changes to the Standard Form (SF) 26, Award/Contract and SF 1447, Solicitation/Contract, and use the revised SF 26 and SF 1447 that reflects the 15 CFR 700 citation and 2007 date change.

This interim rule adjusts the thresholds for application of the World Trade Organization Government Procurement Agreement and the other Free Trade Agreements as determined by the United States Trade Representative, according to a formula set forth in the agreements.

Replacement pages: 2.1-9 and 2.1-10; 11.6-1 and 11.6-2; 18.1-1 and 18.1-2; Part 52 TOC pp. 52-1 and 52-2; 52.2-25 and 52.2-26; Matrix pp. 52.3-5 and 52.3-6; 53.2-1 and 53.2-2; 53.3-13 and 53.3-14; and 53.3-159 and 53.3-160.

Item IV—Use of Products Containing Recovered Materials in Service and Construction Contracts (FAR Case 2005-039)

This final rule amends the Federal Acquisition Regulation (FAR) to clarify language within the FAR regarding the use of products containing recovered materials, pursuant to the Resource Conservation and Recovery Act of 1976, and Executive Order 13101 "Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition." The rule also prescribes a new clause for use in service or construction contracts, to ensure that contractors deliver and make maximum use of products containing recovered material.

Replacement pages: 4.12-1 and 4.12-2; 12.3-1 and 12.3-2; 13.1-3 and 13.1-4; 23.1-1 and 23.1-2; 23.4-1 and 23.4-2; Part 52 TOC pp. 52-3 thru 52-10 (52-9 and 52-10 added); 52.2-39 and 52.2-40; 52.2-133 thru 52.2-136; and 52.2-138.1 and 52.2-138.2.

**Item V—Representations and Certifications - Tax Delinquencies
(FAR Case 2006-011)**

This final rule amends the Federal Acquisition Regulation (FAR) to add conditions regarding refusal to pay delinquent Federal taxes to standards of contractor responsibility, causes for suspension and debarment, and the certifications regarding debarment, suspension, and proposed debarment. The changes are intended to add clarity regarding the specific circumstances under which tax delinquencies are so serious that suspension or debarment should be considered. The changes originated in response to a request from the Senate Permanent Subcommittee on Investigations.

Replacement pages: 4.12-1 and 4.12-2; Part 9 TOC pp. 9-1 and 9-2; 9.1-1 thru 9.1-6 (9.1-5 and 9.1-6 added); 9.4-3 thru 9.4-8; Part 52 TOC pp. 52-1 and 52-2; 52.2-19 thru 52.2-20.2 (52.2-20.1 and 52.2-20.2 added); 52.2-29 thru 52.2-34.4 (52.2-34.3 and 52.2-34.4 added); and Matrix pp. 52.3-5 and 52.3-6.

Item VI—Enhanced Access for Small Business (FAR Case 2006-031)

This final rule creates a different, higher dollar ceiling enabling small businesses to use the small claims procedure for appealing a contracting officer's final decision. Section 857 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub.L. 109-364) changed the ceiling under the Contract Disputes Act from \$50,000 or less to \$150,000 or less for small businesses. The ceiling remains at \$50,000 or less for other types of businesses. The change to 41 U.S.C. 608 is a ceiling change only.

Replacement pages: 33.2-1 thru 33.2-4.

Item VII—Technical Amendment

An editorial change is made at FAR 1.603-1.

Replacement pages: 1.6-1 and 1.6-2.

FAC 2005-25 FILING INSTRUCTIONS

NOTE: The FAR is now segmented by subparts. The FAR page numbers reflect FAR Subparts. For example, "1.6-1" is page one of Subpart 1.6, and "2.1-2" is page two of Subpart 2.1.

Remove Pages

1.1-3 thru 1.1-6
1.6-1 and 1.6-2
2.1-3 thru 2.1-6
2.1-9 and 2.1-10

TOC Part 4
pp. 4-1 and 4-2
4.4-1 and 4.4-2
4.6-1 and 4.6-2
4.8-5 and 4.8-6

11.6-1 and 11.6-2

12.3-1 and 12.3-2

18.1-1 and 18.1-2

19.7-1 thru 19.7-8

Part 52 TOC
pp. 52-1 and 52-2
52.2-9 and 52.2-10
52.2-25 thru 52.2-28
52.2-39 and 52.2-40
52.2-93 thru 52.2-96
52.2-101 and 52.2-102

Matrix
pp. 52.3-3 thru 52.3-6

Part 53 TOC
pp. 53-1 and 53-2
53.2-1 thru 53.2-4
53.3-13 and 53.3-14
53.3-47 thru 53.3-52.2
53.3-159 and 53.3-160

Insert Pages

1.1-3 thru 1.1-6
1.6-1 and 1.6-2
2.1-3 thru 2.1-6
2.1-9 and 2.1-10

TOC Part 4
pp. 4-1 and 4-2
4.4-1 and 4.4-2
4.6-1 thru 4.6-4
4.8-5 and 4.8-6

11.6-1 and 11.6-2

12.3-1 and 12.3-2

18.1-1 and 18.1-2

19.7-1 thru 19.7-10

Part 52 TOC
pp. 52-1 and 52-2
52.2-9 and 52.2-10
52.2-25 thru 52.2-28
52.2-39 and 52.2-40
52.2-93 thru 52.2-96.2
52.2-101 and 52.2-102

Matrix
pp. 52.3-3 thru 52.3-6

Part 53 TOC
pp. 53-1 and 53-2
53.2-1 thru 53.2-4
53.3-13 and 53.3-14
53.3-47 thru 53.3-52
53.3-159 and 53.3-160

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1.104 Applicability.

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

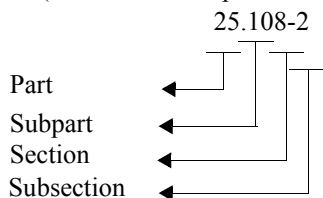
1.105 Issuance.

1.105-1 Publication and code arrangement.

- (a) The FAR is published in—
 - (1) The daily issue of the *Federal Register*;
 - (2) Cumulated form in the *Code of Federal Regulations* (CFR); and
 - (3) A separate loose-leaf edition.
- (b) The FAR is issued as Chapter 1 of Title 48, CFR. Subsequent chapters are reserved for agency acquisition regulations that implement or supplement the FAR (see [Subpart 1.3](#)). The CFR Staff will assign chapter numbers to requesting agencies.
- (c) Each numbered unit or segment (*e.g.*, part, subpart, section, etc.) of an agency acquisition regulation that is codified in the CFR shall begin with the chapter number. However, the chapter number assigned to the FAR will not be included in the numbered units or segments of the FAR.

1.105-2 Arrangement of regulations.

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



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

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

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

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

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

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

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

1.105-3 Copies.

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

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

1.106 OMB approval under the Paperwork Reduction Act.

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

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

FAR segment	OMB Control Number	FAR segment	OMB Control Number
14.407	9000-0038	50	9000-0029
14.5	9000-0041	51.1	9000-0031
15.2	9000-0037	51.2	9000-0032
15.209	9000-0034	52.203-2	9000-0018
15.4	9000-0013	52.203-7	9000-0091
15.404-1(f)	9000-0080	52.204-3	9000-0097
14.407-2	9000-0078	52.204-6	9000-0145
15.408	9000-0115	52.204-7	9000-0159
19.7	9000-0006 and	52.207-3	9000-0114
	9000-0007	52.208-8	9000-0113
19.12	9000-0150	52.208-9	9000-0113
22.103	9000-0065	52.209-1(b)	9000-0020
22.8	1215-0072	52.209-1(c)	9000-0083
22.11	9000-0066	52.209-5	9000-0094
22.13	1215-0072	52.209-6	9000-0094
22.14	1215-0072	52.211-8	9000-0043
23.602	9000-0107	52.211-9	9000-0043
23.9	9000-0139	52.212-1(k)	9000-0159
27.3	9000-0095	52.212-3	9000-0136
27.4	9000-0090	52.212-4(t)	9000-0159
28.1	9000-0045	52.214-14	9000-0047
28.2	9000-0045	52.214-15	9000-0044
29.304	9000-0059	52.214-16	9000-0044
30.6	9000-0129	52.214-21	9000-0039
31.205-46	9000-0079	52.214-26	9000-0034
31.205-46(a)(3)	9000-0088	52.214-28	9000-0013
32	9000-0035	52.215-2	9000-0034
32.000	9000-0138	52.215-1(c)(2)(iv)	9000-0048
32.1	9000-0070 and	52.215-1(d)	9000-0044
	9000-0138	52.215-6	9000-0047
32.2	9000-0138	52.215-9	9000-0078
32.4	9000-0073	52.215-12	9000-0013
32.5	9000-0010 and	52.215-13	9000-0013
	9000-0138	52.215-14	9000-0080
32.7	9000-0074	52.215-19	9000-0115
32.9	9000-0102	52.215-20	9000-0013
32.10	9000-0138	52.215-21	9000-0013
33	9000-0035	52.216-2	9000-0068
34.1	9000-0133	52.216-3	9000-0068
36.213-2	9000-0037	52.216-4	9000-0068
36.603	9000-0157	52.216-5	9000-0071
41.202(c)	9000-0125	52.216-6	9000-0071
42.7	9000-0013	52.216-7	9000-0069
42.12	9000-0076	52.216-10	9000-0067
42.13	9000-0076	52.216-15	9000-0069
45	9000-0075	52.216-16	9000-0067
46	9000-0077	52.216-17	9000-0067
47	9000-0061	52.219-9	9000-0067
47.208	9000-0056		9000-0006 and
48	9000-0027	52.219-10	9000-0007
49	9000-0028	52.219-19	9000-0006
			9000-0100

FAC 2005–21 NOVEMBER 7, 2007

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

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

1.107 Certifications.

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

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

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

1.108 FAR conventions.

The following conventions provide guidance for interpreting the FAR:

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

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

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

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

1.601 General.

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

(b) Agency heads may mutually agree to—

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

1.602 Contracting officers.

1.602-1 Authority.

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

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

1.602-2 Responsibilities.

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

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

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

1.602-3 Ratification of unauthorized commitments.

(a) *Definitions.*

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

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

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

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

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

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

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

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

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

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

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

1.603 Selection, appointment, and termination of appointment.

1.603-1 General.

Subsection 414(4) of Title 41, United States Code, requires agency heads to establish and maintain a procurement career management program and a system for the selection, appointment, and termination of appointment of contracting officers. Agency heads or their designees may select and appoint contracting officers and terminate their appointments. These selections and appointments shall be consistent with Office of Federal Procurement Policy's (OFPP) standards for skill-based training in performing contracting and purchasing duties as published in OFPP Policy Letter No. 05-01, Developing and Managing the Acquisition Workforce, April 15, 2005.

1.603-2 Selection.

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

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

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

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

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

(e) Satisfactory completion of acquisition training courses.

1.603-3 Appointment.

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

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

1.603-4 Termination.

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

(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.

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

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

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

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

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

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

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

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

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

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

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

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

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

“Commercial item” means—

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

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

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

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

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

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

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

percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Contract administration office” means an office that performs—

- (1) Assigned postaward functions related to the administration of contracts; and
- (2) Assigned preaward functions.

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

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

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

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

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

“Contracting officer” means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer. “Administrative contracting officer (ACO)” refers to a contracting officer who is administering contracts. “Termination contracting officer (TCO)” refers to a contracting officer who is settling terminated contracts. A single contracting officer may be responsible for duties in any or all of these areas. Reference in this regulation (48 CFR Chapter 1) to administrative contracting officer or termination contracting officer does not—

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

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

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

“Cost or pricing data” ([10 U.S.C. 2306a\(h\)\(1\)](#) and [41 U.S.C. 254b](#)) means all facts that, as of the date of price agreement or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are data requiring certification in accordance with [15.406-2](#). Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor’s judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as—

- (1) Vendor quotations;
- (2) Nonrecurring costs;
- (3) Information on changes in production methods and in production or purchasing volume;
- (4) Data supporting projections of business prospects and objectives and related operations costs;
- (5) Unit-cost trends such as those associated with labor efficiency;
- (6) Make-or-buy decisions;
- (7) Estimated resources to attain business goals; and
- (8) Information on management decisions that could have a significant bearing on costs.

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

- (1) Are realistic for the work to be performed;
 - (2) Reflect a clear understanding of the requirements;
- and
- (3) Are consistent with the various elements of the offeror’s technical proposal.

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

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

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

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

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

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

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

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

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

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

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

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

“Drug-free workplace” means the site(s) for the performance of work done by the contractor in connection with a specific contract where employees of the contractor are pro-

hibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

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

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

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

“Electronic commerce” means electronic techniques for accomplishing business transactions including electronic mail or messaging, World Wide Web technology, electronic bulletin boards, purchase cards, electronic funds transfer, and electronic data interchange.

“Electronic data interchange (EDI)” means a technique for electronically transferring and storing formatted information between computers utilizing established and published formats and codes, as authorized by the applicable Federal Information Processing Standards.

“Electronic Funds Transfer (EFT)” means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes Automated Clearing House transfers, Fedwire transfers, and transfers made at automatic teller machines and point-of-sale terminals. For purposes of compliance with [31 U.S.C. 3332](#) and implementing regulations at 31 CFR Part 208, the term “electronic funds transfer” includes a Governmentwide commercial purchase card transaction.

“End product” means supplies delivered under a line item of a Government contract, except for use in [Part 25](#) and the associated clauses at [52.225-1](#), [52.225-3](#), and [52.225-5](#), see the definitions in [25.003](#), [52.225-1\(a\)](#), [52.225-3\(a\)](#), and [52.225-5\(a\)](#).

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

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

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

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

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

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

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

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

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

“Labor surplus area concern” means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

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

“Major system” means that combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware,

equipment, software, or any combination thereof, but exclude construction or other improvements to real property. A system is a major system if—

(1) The Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than \$173.5 million or the eventual total expenditure for the acquisition exceeds \$814.5 million;

(2) A civilian agency is responsible for the system and total expenditures for the system are estimated to exceed \$1.8 million or the dollar threshold for a “major system” established by the agency pursuant to Office of Management and Budget Circular A-109, entitled “Major System Acquisitions,” whichever is greater; or

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

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

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

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

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

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

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

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

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

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

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

(ii) \$25,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.

“Minority Institution” means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 ([20 U.S.C. 1067k](#)), including a Hispanic-serving institution of higher education, as defined in Section 316(b)(1) of the Act ([20 U.S.C. 1101a](#)).

“Multi-agency contract (MAC)” means a task-order or delivery-order contract established by one agency for use by Government agencies to obtain supplies and services, consistent with the Economy Act (see [17.500\(b\)](#)). Multi-agency contracts include contracts for information technology established pursuant to [40 U.S.C. 11314\(a\)\(2\)](#).

“Must” (see “shall”).

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

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

“Nondevelopmental item” means—

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

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

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

“Novation agreement” means a legal instrument—

(1) Executed by the—

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

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

“Offer” means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers

called “bids” or “sealed bids”; responses to requests for proposals (negotiation) are offers called “proposals”; however, responses to requests for quotations (simplified acquisition) are “quotations,” not offers. For unsolicited proposals, see [Subpart 15.6](#).

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

“Offeror” means offeror or bidder.

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

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

“Outlying areas” means—

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

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

“Overtime premium” means the difference between the contractor’s regular rate of pay to an employee for the shift involved and the higher rate paid for overtime. It does not include shift premium, *i.e.*, the difference between the contractor’s regular rate of pay to an employee and the higher rate paid for extra-pay-shift work.

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

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

PART 4—ADMINISTRATIVE MATTERS

<p><i>Sec.</i> 4.000</p> <p style="padding-left: 40px;">Subpart 4.1—Contract Execution</p> <p>4.101 Contracting officer’s signature. 4.102 Contractor’s signature. 4.103 Contract clause.</p> <p style="padding-left: 40px;">Subpart 4.2—Contract Distribution</p> <p>4.201 Procedures. 4.202 Agency distribution requirements. 4.203 Taxpayer identification information.</p> <p style="padding-left: 40px;">Subpart 4.3—Paper Documents</p> <p>4.300 Scope of subpart. 4.301 Definition. 4.302 Policy. 4.303 Contract clause.</p> <p style="padding-left: 40px;">Subpart 4.4—Safeguarding Classified Information Within Industry</p> <p>4.401 [Reserved] 4.402 General. 4.403 Responsibilities of contracting officers. 4.404 Contract clause.</p> <p style="padding-left: 40px;">Subpart 4.5—Electronic Commerce in Contracting</p> <p>4.500 Scope of subpart. 4.501 [Reserved] 4.502 Policy.</p> <p style="padding-left: 40px;">Subpart 4.6—Contract Reporting</p> <p>4.600 Scope of subpart. 4.601 Definitions. 4.602 General. 4.603 Policy. 4.604 Responsibilities. 4.605 Procedures. 4.606 Reporting Data. 4.607 Solicitation Provisions.</p> <p style="padding-left: 40px;">Subpart 4.7—Contractor Records Retention</p> <p>4.700 Scope of subpart. 4.701 Purpose. 4.702 Applicability. 4.703 Policy. 4.704 Calculation of retention periods. 4.705 Specific retention periods. 4.705-1 Financial and cost accounting records. 4.705-2 Pay administration records. 4.705-3 Acquisition and supply records.</p>	<p>Subpart 4.8—Government Contract Files</p> <p>4.800 Scope of subpart. 4.801 General. 4.802 Contract files. 4.803 Contents of contract files. 4.804 Closeout of contract files. 4.804-1 Closeout by the office administering the contract. 4.804-2 Closeout of the contracting office files if another office administers the contract. 4.804-3 Closeout of paying office contract files. 4.804-4 Physically completed contracts. 4.804-5 Procedures for closing out contract files. 4.805 Storage, handling, and disposal of contract files.</p> <p style="padding-left: 40px;">Subpart 4.9—Taxpayer Identification Number Information</p> <p>4.900 Scope of subpart. 4.901 Definition. 4.902 General. 4.903 Reporting contract information to the IRS. 4.904 Reporting payment information to the IRS. 4.905 Solicitation provision.</p> <p style="padding-left: 40px;">Subpart 4.10—Contract Line Items</p> <p>4.1001 Policy.</p> <p style="padding-left: 40px;">Subpart 4.11—Central Contractor Registration</p> <p>4.1100 Scope. 4.1101 Definition. 4.1102 Policy. 4.1103 Procedures. 4.1104 Solicitation provision and contract clauses.</p> <p style="padding-left: 40px;">Subpart 4.12—Representations and Certifications</p> <p>4.1200 Scope. 4.1201 Policy. 4.1202 Solicitation provision and contract clause.</p> <p style="padding-left: 40px;">Subpart 4.13—Personal Identity Verification</p> <p>4.1300 Scope of subpart. 4.1301 Policy. 4.1302 Acquisition of approved products and services for personal identity verification. 4.1303 Contract clause.</p> <p style="padding-left: 40px;">Subpart 4.14—Reporting Subcontract Awards</p> <p>4.1400 Scope of subpart. 4.1401 Contract clause.</p>
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Subpart 4.4—Safeguarding Classified Information Within Industry

4.401 [Reserved]

4.402 General.

(a) Executive Order 12829, January 6, 1993 (58 FR 3479, January 8, 1993), entitled “National Industrial Security Program” (NISP), establishes a program to safeguard Federal Government classified information that is released to contractors, licensees, and grantees of the United States Government. Executive Order 12829 amends Executive Order 10865, February 20, 1960 (25 FR 1583, February 25, 1960), entitled “Safeguarding Classified Information Within Industry,” as amended by Executive Order 10909, January 17, 1961 (26 FR 508, January 20, 1961).

(b) The National Industrial Security Program Operating Manual (NISPOM) incorporates the requirements of these Executive orders. The Secretary of Defense, in consultation with all affected agencies and with the concurrence of the Secretary of Energy, the Chairman of the Nuclear Regulatory Commission, and the Director of Central Intelligence, is responsible for issuance and maintenance of this Manual. The following DoD publications implement the program:

(1) National Industrial Security Program Operating Manual (NISPOM) (DoD 5220.22-M).

(2) Industrial Security Regulation (DoD 5220.22-R).

(c) Procedures for the protection of information relating to foreign classified contracts awarded to U.S. industry, and instructions for the protection of U.S. information relating to classified contracts awarded to foreign firms, are prescribed in Chapter 10 of the NISPOM.

(d) [Part 27](#)—Patents, Data, and Copyrights, contains policy and procedures for safeguarding classified information in patent applications and patents.

4.403 Responsibilities of contracting officers.

(a) *Presolicitation phase.* Contracting officers shall review all proposed solicitations to determine whether access to classified information may be required by offerors, or by a contractor during contract performance.

(1) If access to classified information of another agency may be required, the contracting officer shall—

(i) Determine if the agency is covered by the NISP; and

(ii) Follow that agency’s procedures for determining the security clearances of firms to be solicited.

(2) If the classified information required is from the contracting officer’s agency, the contracting officer shall follow agency procedures.

(b) *Solicitation phase.* Contracting officers shall—

(1) Ensure that the classified acquisition is conducted as required by the NISP or agency procedures, as appropriate; and

(2) Include—

(i) An appropriate Security Requirements clause in the solicitation (see [4.404](#)); and

(ii) As appropriate, in solicitations and contracts when the contract may require access to classified information, a requirement for security safeguards in addition to those provided in the clause ([52.204-2](#), Security Requirements).

(c) *Award phase.* Contracting officers shall inform contractors and subcontractors of the security classifications and requirements assigned to the various documents, materials, tasks, subcontracts, and components of the classified contract as follows:

(1) Agencies covered by the NISP shall use the Contract Security Classification Specification, [DD Form 254](#). The contracting officer, or authorized representative, is the approving official for the form and shall ensure that it is prepared and distributed in accordance with the Industrial Security Regulation.

(2) Contracting officers in agencies not covered by the NISP shall follow agency procedures.

4.404 Contract clause.

(a) The contracting officer shall insert the clause at [52.204-2](#), Security Requirements, in solicitations and contracts when the contract may require access to classified information, unless the conditions specified in paragraph (d) of this section apply.

(b) If a cost contract (see [16.302](#)) for research and development with an educational institution is contemplated, the contracting officer shall use the clause with its Alternate I.

(c) If a construction or architect-engineer contract where employee identification is required for security reasons is contemplated, the contracting officer shall use the clause with its Alternate II.

(d) If the contracting agency is not covered by the NISP and has prescribed a clause and alternates that are substantially the same as those at [52.204-2](#), the contracting officer shall use the agency-prescribed clause as required by agency procedures.

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Subpart 4.6—Contract Reporting

4.600 Scope of subpart.

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

4.601 Definitions.

As used in this subpart—

“*Assisted acquisition*” means a contract, delivery or task order awarded by a servicing agency on behalf of a requesting agency. The agency providing the assistance may also administer the contract action.

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

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

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

“*Direct acquisition*” means an order awarded directly by the requesting agency against the servicing agency’s contract. In a direct acquisition, the servicing agency awards and administers the contract but does not participate in the placement of an order.

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

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

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

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

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

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

4.602 General.

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

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

(2) A means of measuring and assessing the effect of Federal contracting on the Nation’s economy and the extent to which small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, women-owned small business concerns, and nonprofit agencies operating under the Javits-Wagner-O’Day Act, are sharing in Federal contracts; and

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

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

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

(1) A complete list of departments, agencies, and other entities that submit data to the FPDS;

(2) Technical and end-user guidance;

(3) A computer-based tutorial; and

(4) Information concerning reports not generated in FPDS.

4.603 Policy.

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

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

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

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

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

4.604 Responsibilities.

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

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

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

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

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

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

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

4.605 Procedures.

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

(b) *Data Universal Numbering System (DUNS)*. The contracting officer must identify and report a DUNS number (Contractor Identification Number) for the successful offeror on a contract action. The DUNS number reported must identify the successful offeror's name and address as stated in the offer and resultant contract, and as registered in the Central Contractor Registration (CCR) database in accordance with the clause at [52.204-7](#), Central Contractor Registration. The

contracting officer must ask the offeror to provide its DUNS number by using either the provision at [52.204-6](#), Data Universal Numbering System (DUNS) Number, the clause at [52.204-7](#), Central Contractor Registration, or the provision at [52.212-1](#), Instructions to Offerors—Commercial Items.

(1) Notwithstanding the inclusion of the provision at [52.204-6](#) in the associated solicitation or except as provided in paragraph (b)(2) of this section, the contracting officer shall use one of the generic DUNS numbers identified in CCR to report corresponding contract actions if the contract action is—

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

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

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

(iv) For classified or national security.

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

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

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

4.606 Reporting Data.

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

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

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

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

(1) Government-wide acquisition contracts.

(2) Multi-agency contracts.

(B) GSA Federal supply schedules.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Grants and entitlement actions.

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

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

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

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

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

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

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

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

4.607 Solicitation Provisions.

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

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

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

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

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

(2) Exceed the simplified acquisition threshold; and

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

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Document	Retention Period
<p>(9) Data submitted to the Federal Procurement Data System (FPDS). Electronic data file maintained by fiscal year, containing unclassified records of all procurements other than simplified acquisitions, and information required under 4.603.</p>	<p>5 years after submittal to FPDS.</p>
<p>(10) Investigations, cases pending or in litigation (including protests), or similar matters.</p>	<p>Until final clearance or settlement, or, if related to a document identified in (b)(1) - (9), for the retention period specified for the related document, whichever is later.</p>

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Subpart 11.6—Priorities and Allocations

11.600 Scope of subpart.

This subpart implements the Defense Priorities and Allocations System (DPAS), a Department of Commerce regulation in support of approved national defense, emergency preparedness, and energy programs (see 15 CFR part 700).

11.601 Definitions.

As used in this subpart—

“Approved program” means a program determined as necessary or appropriate for priorities and allocations support to promote the national defense by the Secretary of Defense, the Secretary of Energy, or the Secretary of Homeland Security, under the authority of the Defense Production Act, the Stafford Act, and Executive Order 12919, or the Selective Service Act and related statutes and Executive Order 12742.

“Delegate Agency” means a Government agency authorized by delegation from the Department of Commerce to place priority ratings on contracts or orders needed to support approved programs.

“National defense” means programs for military and energy production or construction, military assistance to any foreign nation, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act ([42 U.S.C. 5195 et seq.](#)) and critical infrastructure protection and restoration. ([50 U.S.C. App. § 2152](#)).

“Rated order” means a prime contract, a subcontract, or a purchase order in support of an approved program issued in accordance with the provisions of the DPAS regulation (15 CFR part 700).

11.602 General.

(a) Under Title I of the Defense Production Act of 1950 ([50 U.S.C. App. 2061](#), *et seq.*), the President is authorized to require preferential acceptance and performance of contracts and orders supporting certain approved national defense and energy programs and to allocate materials, services, and facilities in such a manner as to promote these approved programs.

(b) The President delegated the priorities and allocations authorities of the Defense Production Act in Executive Order 12919. As part of that delegation, the President designated the Secretary of Commerce to administer the DPAS. For more information, check the DPAS website at: www.bis.doc.gov/dpas.

11.603 Procedures.

(a) There are two levels of priority for rated orders established by the DPAS, identified by the rating symbols “DO” and “DX”. All DO rated orders have equal priority with each other and take preference over unrated orders. All DX rated

orders have equal priority with each other and take preference over DO rated and unrated orders (see 15 CFR 700.11). The DPAS regulation contains provisions concerning the elements of a rated order (see 15 CFR 700.12); acceptance and rejection of rated orders (see 15 CFR 700.13); preferential scheduling (see 15 CFR 700.14); extension of priority ratings (flowdown) (see 15 CFR 700.15); changes or cancellations of priority ratings and rated orders (see 15 CFR 700.16); use of rated orders (see 15 CFR 700.17); and limitations on placing rated orders (see 15 CFR 700.18).

(b) The Delegate Agencies have been given authority by the Department of Commerce to place rated orders in support of approved programs (see Schedule I of the DPAS). Other U.S. Government agencies, Canada, and foreign nations may apply for priority rating authority.

(c) Rated orders shall be placed in accordance with the provisions of the DPAS.

(d) Agency heads shall ensure compliance with the DPAS by contracting activities within their agencies.

(e) Agency heads shall provide contracting activities with specific guidance on the issuance of rated orders in support of approved agency programs, including the general limitations and jurisdictional limitations on placing rated orders (see 15 CFR 700.18 and Executive Order 12919).

(f) Contracting officers shall follow agency procedural instructions concerning the use of rated orders in support of approved agency programs.

(g) Contracting officers, contractors, or subcontractors at any tier, that experience difficulty placing rated orders, obtaining timely delivery under rated orders, locating a contractor or supplier to fill a rated order, ensuring that rated orders receive preferential treatment by contractors or suppliers, or require rating authority for items not automatically ratable under the DPAS, should promptly seek special priorities assistance in accordance with agency procedures (see 15 CFR 700.50-700.55 and 700.80).

(h) The Department of Commerce may take specific official actions (Ratings Authorizations, Directives, Letters of Understanding, Administrative Subpoenas, Demands for Information, and Inspection Authorizations) to implement or enforce the provisions of the DPAS (see 15 CFR 700.60-700.71).

(i) Contracting officers shall report promptly any violations of the DPAS in accordance with agency procedures to the Office of Strategic Industries and Economic Security, U.S. Department of Commerce, Room 3876, Washington, DC 20230, Ref: DPAS; telephone: (202) 482-3634 or fax: (202) 482-5650.

11.604 Solicitation provision and contract clause.

(a) Contracting officers shall insert the provision at [52.211-14](#), Notice of Priority Rating for National Defense,

Emergency Preparedness, and Energy Program Use, in solicitations when the contract to be awarded will be a rated order.

(b) Contracting officers shall insert the clause at [52.211-15](#), Defense Priority and Allocation Requirements, in contracts that are rated orders.

Subpart 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

12.300 Scope of subpart.

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

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

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

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

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

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

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

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

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

(4) *The clause at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.* This clause incorporates by reference only

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

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

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

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

(d) *Other required provisions and clauses.* (1) Notwithstanding prescriptions contained elsewhere in the FAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part shall be revised, as necessary, to reflect the applicability of statutes and executive orders to the acquisition of commercial items.

(2) Insert the clause at [52.225-19](#), Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, as prescribed in [25.301-4](#).

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

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

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

(3) The contracting officer may use the provisions and clauses contained in [Part 23](#) regarding the use of recovered

material and biobased products when appropriate for the item being acquired.

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

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

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

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

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

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

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

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

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

12.303 Contract format.

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

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

18.000 Scope of part.

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

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

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

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

18.001 Definition.

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

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

Subpart 18.1—Available Acquisition Flexibilities

18.101 General.

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

18.102 Central contractor registration.

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

18.103 Synopses of proposed contract actions.

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

18.104 Unusual and compelling urgency.

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

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

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

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

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

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

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

18.108 Qualifications requirements.

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

18.109 Priorities and allocations.

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

18.110 Soliciting from a single source.

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

18.111 Oral requests for proposals.

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

18.112 Letter contracts.

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

18.113 Interagency acquisitions under the Economy Act.

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

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

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

18.115 HUBZone sole source awards.

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

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

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

18.117 Overtime approvals.

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

18.118 Trade agreements.

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

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

Requirement to obtain authorization prior to use of patented technology may be waived in circumstances of extreme urgency or national emergency. (See [27.204-1](#).)

18.120 Bid guarantees.

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

18.121 Advance payments.

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

18.122 Assignment of claims.

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

18.123 Electronic funds transfer.

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

18.124 Protest to GAO.

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

18.125 Contractor rent-free use of Government property.

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

18.126 Extraordinary contractual actions.

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

(a) Amending contracts without consideration (see [50.103-2\(a\)](#));

(b) Correcting or mitigating mistakes in a contract (see [50.103-2\(b\)](#)); and

(c) Formalizing informal commitments (See [50.103-2\(c\)](#)).

Subpart 19.7—The Small Business Subcontracting Program

19.701 Definitions.

As used in this subpart—

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended ([43 U.S.C. 1601](#), *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at [43 U.S.C. 1626\(e\)\(1\)](#). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of [43 U.S.C. 1626\(e\)\(2\)](#).

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

“Electronic Subcontracting Reporting System (eSRS)” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting.

“Failure to make a good faith effort to comply with the subcontracting plan” means willful or intentional failure to perform in accordance with the requirements of the subcontracting plan, or willful or intentional action to frustrate the plan.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act ([43 U.S.C.A. 1601](#) *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with [25 U.S.C. 1452\(c\)](#). This definition also includes Indian-owned economic enterprises that meet the requirements of [25 U.S.C. 1452\(e\)](#).

“Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for supplies and/or services required for performance of the contract, contract modification, or subcontract.

19.702 Statutory requirements.

Any contractor receiving a contract for more than the simplified acquisition threshold must agree in the contract that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(a) Except as stated in paragraph (b) of this section, Section 8(d) of the Small Business Act ([15 U.S.C. 637\(d\)](#)) imposes the following requirements regarding subcontracting with small businesses and small business subcontracting plans:

(1) In negotiated acquisitions, each solicitation of offers to perform a contract or contract modification, that individually is expected to exceed \$550,000 (\$1,000,000 for construction) and that has subcontracting possibilities, shall require the apparently successful offeror to submit an acceptable subcontracting plan. If the apparently successful offeror fails to negotiate a subcontracting plan acceptable to the contracting officer within the time limit prescribed by the contracting officer, the offeror will be ineligible for award.

(2) In sealed bidding acquisitions, each invitation for bids to perform a contract or contract modification, that individually is expected to exceed \$550,000 (\$1,000,000 for construction) and that has subcontracting possibilities, shall require the bidder selected for award to submit a subcontracting plan. If the selected bidder fails to submit a plan within the time limit prescribed by the contracting officer, the bidder will be ineligible for award.

(b) Subcontracting plans (see paragraphs (a)(1) and (2) of this section) are not required—

(1) From small business concerns;

(2) For personal services contracts;

(3) For contracts or contract modifications that will be performed entirely outside of the United States and its outlying areas; or

(4) For modifications to contracts within the general scope of the contract that do not contain the clause at [52.219-8](#), Utilization of Small Business Concerns (or equivalent prior clauses; *e.g.*, contracts awarded before the enactment of Public Law 95-507).

(c) As stated in [15 U.S.C. 637\(d\)\(8\)](#), any contractor or subcontractor failing to comply in good faith with the requirements of the subcontracting plan is in material breach of its contract. Further, [15 U.S.C. 637\(d\)\(4\)\(F\)](#) directs that a con-

tractor's failure to make a good faith effort to comply with the requirements of the subcontracting plan shall result in the imposition of liquidated damages.

(d) As authorized by [15 U.S.C. 637\(d\)\(11\)](#), certain costs incurred by a mentor firm in providing developmental assistance to a protégé firm under the Department of Defense Pilot Mentor-Protégé Program, may be credited as if they were subcontract awards to a protégé firm for the purpose of determining whether the mentor firm attains the applicable goals under any subcontracting plan entered into with any executive agency. However, the mentor-protégé agreement must have been approved by the Director, Small and Disadvantaged Business Utilization of the cognizant DoD military department or defense agency, before developmental assistance costs may be credited against subcontract goals. A list of approved agreements may be obtained at http://www.acq.osd.mil/sadbu/mentor_protége/ or by calling (703) 588-8631.

19.703 Eligibility requirements for participating in the program.

(a) Except as provided in paragraph (c) of this section to be eligible as a subcontractor under the program, a concern must represent itself as a small business, veteran-owned small business, service-disabled veteran-owned small business, HUB-Zone small business, small disadvantaged business, or woman-owned small business concern.

(1) To represent itself as a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, or woman-owned small business concern, a concern must meet the appropriate definition (see [2.101](#) and [19.001](#)).

(2) In connection with a subcontract, or a requirement for which the apparently successful offeror received an evaluation credit for proposing one or more SDB subcontractors, the contracting officer or the SBA may protest the disadvantaged status of a proposed subcontractor. Such protests will be processed in accordance with 13 CFR 124.1015 through 124.1022. Other interested parties may submit information to the contracting officer or the SBA in an effort to persuade the contracting officer or the SBA to initiate a protest. Such protests, in order to be considered timely, must be submitted to the SBA prior to completion of performance by the intended subcontractor.

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status as a small business, veteran-owned small business, service-disabled veteran-owned small business, or a woman-owned small business concern. The clause at [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, requires the contractor to obtain representations of small disadvantaged status from subcontractors through use of a provision substan-

tially the same as paragraph (b)(1)(i) of the provision at [52.219-22](#), Small Disadvantaged Business Status. The clause requires the contractor to confirm that a subcontractor representing itself as a small disadvantaged business concern is identified by SBA as a small disadvantaged business concern by accessing SBA's database (PRO-Net) or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility. The contractor, the contracting officer, or any other interested party can challenge a subcontractor's size status representation by filing a protest, in accordance with 13 CFR 121.1601 through 121.1608. Protests challenging a subcontractor's small disadvantaged business representation must be filed in accordance with 13 CFR 124.1015 through 124.1022.

(c)(1) In accordance with [43 U.S.C. 1626](#), the following procedures apply:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate contractor is the contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each contractor. The sum of the amounts designated to various contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the contracting officer, the prime contractor, and the subcontractors in between the prime contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the contracting officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated contractor.

(2) A contractor acting in good faith may rely on the written representation of an ANC or an Indian tribe as to the status of the ANC or Indian tribe unless an interested party challenges its status or the contracting officer has independent reason to question its status. In the event of a challenge of a representation of an ANC or Indian tribe, the interested parties shall follow the procedures at [26.103\(b\)](#) through (e).

(d)(1) The contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting the SBA. Options for contacting the SBA include—

(i) HUBZone web page at http://dsbs.sba.gov/dsbs/dsp_searchhubzone.cfm;

(ii) In writing to the—

AA/HUB,
U.S. Small Business Administration,
409 3rd Street, S.W.,
Washington DC 20416; or

(iii) E-mail at hubzone@sba.gov.

(2) Protests challenging HUBZone small business concern size status must be filed in accordance with 13 CFR 121.411.

19.704 Subcontracting plan requirements.

(a) Each subcontracting plan required under 19.702(a)(1) and (2) must include—

(1) Separate percentage goals for using small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes) and women-owned small business concerns as subcontractors;

(2) A statement of the total dollars planned to be subcontracted and a statement of the total dollars planned to be subcontracted to small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes) and women-owned small business concerns;

(3) A description of the principal types of supplies and services to be subcontracted and an identification of types planned for subcontracting to small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes), and women-owned small business concerns;

(4) A description of the method used to develop the subcontracting goals;

(5) A description of the method used to identify potential sources for solicitation purposes;

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business

(including ANCs and Indian tribes), and women-owned small business concerns;

(7) The name of an individual employed by the offeror who will administer the offeror’s subcontracting program, and a description of the duties of the individual;

(8) A description of the efforts the offeror will make to ensure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts;

(9) Assurances that the offeror will include the clause at 52.219-8, Utilization of Small Business Concerns (see 19.708(a)), in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$550,000 (\$1,000,000 for construction) to adopt a plan that complies with the requirements of the clause at 52.219-9, Small Business Subcontracting Plan (see 19.708(b));

(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit the Individual Subcontract Report (ISR), and the Summary Subcontract Report (SSR) using the Electronic Subcontracting Reporting System (eSRS) (<http://www.esrs.gov>), following the instructions in the eSRS;

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using the eSRS;

(v) Provide its prime contract number and its DUNS number and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their reports; and

(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number and its own DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror’s efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and to award subcontracts to them.

(b) Contractors may establish, on a plant or division-wide basis, a master plan (see [19.701](#)) that contains all the elements required by the clause at [52.219-9](#), Small Business Subcontracting Plan, except goals. Master plans shall be effective for a 3-year period after approval by the contracting officer; however, it is incumbent upon contractors to maintain and update master plans. Changes required to update master plans are not effective until approved by the contracting officer. A master plan, when incorporated in an individual plan, shall apply to that contract throughout the life of the contract.

(c) For multiyear contracts or contracts containing options, the cumulative value of the basic contract and all options is considered in determining whether a subcontracting plan is necessary (see [19.705-2\(a\)](#)). If a plan is necessary and the offeror is submitting an individual contract plan, the plan shall contain all the elements required by paragraph (a) of this section and shall contain separate statements and goals for the basic contract and for each option.

(d) A commercial plan (as defined in [19.701](#)) is the preferred type of subcontracting plan for contractors furnishing commercial items. Once a contractor's commercial plan has been approved, the Government shall not require another subcontracting plan from the same contractor while the plan remains in effect, as long as the product or service being provided by the contractor continues to meet the definition of a commercial item. The contractor shall—

(1) Submit the commercial plan to either the first contracting officer awarding a contract subject to the plan during the contractor's fiscal year, or, if the contractor has ongoing contracts with commercial plans, to the contracting officer responsible for the contract with the latest completion date. The contracting officer shall negotiate the commercial plan for the Government. The approved commercial plan shall remain in effect during the contractor's fiscal year for all Government contracts in effect during that period;

(2) Submit a new commercial plan, 30 working days before the end of the Contractor's fiscal year, to the contracting officer responsible for the uncompleted Government contract with the latest completion date. The contractor must provide to each contracting officer responsible for an ongoing contract subject to the plan, the identity of the contracting officer that will be negotiating the new plan;

(3) When the new commercial plan is approved, provide a copy of the approved plan to each contracting officer responsible for an ongoing contract that is subject to the plan; and

(4) Comply with the reporting requirements stated in paragraph (a)(10) of this section by submitting one SSR in eSRS, for all contracts covered by its commercial plan. This report will be acknowledged or rejected in eSRS by the contracting officer who approved the plan. The report shall be submitted within 30 days after the end of the Government's fiscal year.

19.705 Responsibilities of the contracting officer under the subcontracting assistance program.

19.705-1 General support of the program.

The contracting officer may encourage the development of increased subcontracting opportunities in negotiated acquisition by providing monetary incentives such as payments based on actual subcontracting achievement or award-fee contracting (see the clause at [52.219-10](#), Incentive Subcontracting Program, and [19.708\(c\)](#)). This subsection does not apply to SDB subcontracting (see [19.1203](#)). When using any contractual incentive provision based upon rewarding the contractor monetarily for exceeding goals in the subcontracting plan, the contracting officer must ensure that (a) the goals are realistic and (b) any rewards for exceeding the goals are commensurate with the efforts the contractor would not have otherwise expended. Incentive provisions should normally be negotiated after reaching final agreement with the contractor on the subcontracting plan.

19.705-2 Determining the need for a subcontracting plan.

The contracting officer must take the following actions to determine whether a proposed contractual action requires a subcontracting plan:

(a) Determine whether the proposed contractual action will meet the dollar threshold in [19.702\(a\)\(1\)](#) or (2). If the action includes options or similar provisions, include their value in determining whether the threshold is met.

(b) Determine whether subcontracting possibilities exist by considering relevant factors such as—

(1) Whether firms engaged in the business of furnishing the types of items to be acquired customarily contract for performance of part of the work or maintain sufficient in-house capability to perform the work; and

(2) Whether there are likely to be product prequalification requirements.

(c) If it is determined that there are no subcontracting possibilities, the determination must be approved at a level above the contracting officer and placed in the contract file.

(d) In solicitations for negotiated acquisitions, the contracting officer may require the submission of subcontracting plans with initial offers, or at any other time prior to award. In determining when subcontracting plans should be required, as well as when and with whom plans should be negotiated, the contracting officer must consider the integrity of the competitive process, the goal of affording maximum practicable opportunity for small business, veteran-owned small business, service-disabled veteran-owned small business, HUB-Zone small business, small disadvantaged business, and women-owned small business concerns to participate, and the burden placed on offerors.

(e) A contract may have no more than one plan. When a modification meets the criteria in [19.702](#) for a plan, or an

option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

19.705-3 Preparing the solicitation.

The contracting officer shall provide the Small Business Administration's (SBA's) procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) a reasonable period of time to review any solicitation requiring submission of a subcontracting plan and to submit advisory findings before the solicitation is issued.

19.705-4 Reviewing the subcontracting plan.

The contracting officer must review the subcontracting plan for adequacy, ensuring that the required information, goals, and assurances are included (see [19.704](#)).

(a) No detailed standards apply to every subcontracting plan. Instead, the contracting officer must consider each plan in terms of the circumstances of the particular acquisition, including—

- (1) Previous involvement of small business concerns as prime contractors or subcontractors in similar acquisitions;
- (2) Proven methods of involving small business concerns as subcontractors in similar acquisitions; and
- (3) The relative success of methods the contractor intends to use to meet the goals and requirements of the plan, as evidenced by records maintained by contractors.

(b) If, under a sealed bid solicitation, a bidder submits a plan that does not cover each of the 11 required elements (see [19.704](#)), the contracting officer shall advise the bidder of the deficiency and request submission of a revised plan by a specific date. If the bidder does not submit a plan that incorporates the required elements within the time allotted, the bidder shall be ineligible for award. If the plan, although responsive, evidences the bidder's intention not to comply with its obligations under the clause at [52.219-8](#), Utilization of Small Business Concerns, the contracting officer may find the bidder nonresponsible.

(c) In negotiated acquisitions, the contracting officer shall determine whether the plan is acceptable based on the negotiation of each of the 11 elements of the plan (see [19.704](#)). Subcontracting goals should be set at a level that the parties reasonably expect can result from the offeror expending good faith efforts to use small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors to the maximum practicable extent. The contracting officer shall take particular care to ensure that the offeror has not submitted unreasonably low goals to minimize exposure to liquidated damages and to avoid the administrative burden of substantiating good faith efforts. Additionally, particular attention should be paid to the identification of steps that, if taken,

would be considered a good faith effort. No goal should be negotiated upward if it is apparent that a higher goal will significantly increase the Government's cost or seriously impede the attainment of acquisition objectives. An incentive subcontracting clause (see [52.219-10](#), Incentive Subcontracting Program), may be used when additional and unique contract effort, such as providing technical assistance, could significantly increase subcontract awards to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, or women-owned small business concerns.

(d) In determining the acceptability of a proposed subcontracting plan, the contracting officer should take the following actions:

(1) Obtain information available from the cognizant contract administration office, as provided for in [19.706\(a\)](#), and evaluate the offeror's past performance in awarding subcontracts for the same or similar products or services to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If information is not available on a specific type of product or service, evaluate the offeror's overall past performance and consider the performance of other contractors on similar efforts.

(2) In accordance with [15 U.S.C. 637\(d\)\(4\)\(F\)\(iii\)](#), ensure that the goals offered are attainable in relation to—

(i) The subcontracting opportunities available to the contractor, commensurate with the efficient and economical performance of the contract;

(ii) The pool of eligible subcontractors available to fulfill the subcontracting opportunities; and

(iii) The actual performance of such contractor in fulfilling the subcontracting goals specified in prior plans.

(3) Ensure that the subcontracting goals are consistent with the offeror's cost or pricing data or information other than cost or pricing data.

(4) Evaluate the offeror's make-or-buy policy or program to ensure that it does not conflict with the offeror's proposed subcontracting plan and is in the Government's interest. If the contract involves products or services that are particularly specialized or not generally available in the commercial market, consider the offeror's current capacity to perform the work and the possibility of reduced subcontracting opportunities.

(5) Evaluate subcontracting potential, considering the offeror's make-or-buy policies or programs, the nature of the supplies or services to be subcontracted, the known availability of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in the geographical area where the

work will be performed, and the potential contractor's long-standing contractual relationship with its suppliers.

(6) Advise the offeror of available sources of information on potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors, as well as any specific concerns known to be potential subcontractors. If the offeror's proposed goals are questionable, the contracting officer must emphasize that the information should be used to develop realistic and acceptable goals.

(7) Obtain advice and recommendations from the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) and the agency small business specialist.

19.705-5 Awards involving subcontracting plans.

(a) In making an award that requires a subcontracting plan, the contracting officer shall be responsible for the following:

(1) Consider the contractor's compliance with the subcontracting plans submitted on previous contracts as a factor in determining contractor responsibility.

(2) Assure that a subcontracting plan was submitted when required.

(3) Notify the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) of the opportunity to review the proposed contract (including the plan and supporting documentation). The notice shall be issued in sufficient time to provide the representative a reasonable time to review the material and submit advisory recommendations to the contracting officer. Failure of the representative to respond in a reasonable period of time shall not delay contract award.

(4) Determine any fee that may be payable if an incentive is used in conjunction with the subcontracting plan.

(5) Ensure that an acceptable plan is incorporated into and made a material part of the contract.

(b) Letter contracts and similar undefinitized instruments, which would otherwise meet the requirements of [19.702\(a\)\(1\)](#) and (2), shall contain at least a preliminary basic plan addressing the requirements of [19.704](#) and in such cases require the negotiation of the final plan within 90 days after award or before definitization, whichever occurs first.

19.705-6 Postaward responsibilities of the contracting officer.

After a contract or contract modification containing a subcontracting plan is awarded, the contracting officer who approved the plan is responsible for the following:

(a) Notifying the SBA of the award by sending a copy of the award document to the Area Director, Office of Government Contracting, in the SBA area office where the contract will be performed.

(b) Forwarding a copy of each commercial plan and any associated approvals to the Area Director, Office of Government Contracting, in the SBA area office where the contractor's headquarters is located.

(c) Giving to the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) a copy of—

(1) Any subcontracting plan submitted in response to a sealed bid solicitation; and

(2) The final negotiated subcontracting plan that was incorporated into a negotiated contract or contract modification.

(d) Notifying the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) of the opportunity to review subcontracting plans in connection with contract modifications.

(e) Forwarding a copy of each plan, or a determination that there is no requirement for a subcontracting plan, to the cognizant contract administration office.

(f) Initiating action to assess liquidated damages in accordance with [19.705-7](#) upon a recommendation by the administrative contracting officer or receipt of other reliable evidence to indicate that such action is warranted.

(g) Taking action to enforce the terms of the contract upon receipt of a notice under [19.706\(f\)](#).

(h) Acknowledging receipt of or rejecting the ISR and the SSR in the eSRS. Acknowledging receipt does not mean acceptance or approval of the report. The report shall be rejected if it is not adequately completed. Failure to meet the goals of the subcontracting plan is not a valid reason for rejecting the report.

19.705-7 Liquidated damages.

(a) Maximum practicable utilization of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors in Government contracts is a matter of national interest with both social and economic benefits. When a contractor fails to make a good faith effort to comply with a subcontracting plan, these objectives are not achieved, and [15 U.S.C. 637\(d\)\(4\)\(F\)](#) directs that liquidated damages shall be paid by the contractor.

(b) The amount of damages attributable to the contractor's failure to comply shall be an amount equal to the actual dollar amount by which the contractor failed to achieve each subcontracting goal.

(c) If, at completion of the basic contract or any option, or in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, a contractor has failed to meet its subcontracting goals, the contracting officer shall review all available information for an indication that the contractor has not made a good faith effort to comply with the plan. If no

such indication is found, the contracting officer shall document the file accordingly. If the contracting officer decides in accordance with paragraph (d) of this subsection that the contractor failed to make a good faith effort to comply with its subcontracting plan, the contracting officer shall give the contractor written notice specifying the failure, advising the contractor of the possibility that the contractor may have to pay to the Government liquidated damages, and providing a period of 15 working days (or longer period as necessary) within which to respond. The notice shall give the contractor an opportunity to demonstrate what good faith efforts have been made before the contracting officer issues the final decision, and shall further state that failure of the contractor to respond may be taken as an admission that no valid explanation exists.

(d) In determining whether a contractor failed to make a good faith effort to comply with its subcontracting plan, a contracting officer must look to the totality of the contractor's actions, consistent with the information and assurances provided in its plan. The fact that the contractor failed to meet its subcontracting goals does not, in and of itself, constitute a failure to make a good faith effort. For example, notwithstanding a contractor's diligent effort to identify and solicit offers from small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, factors such as unavailability of anticipated sources or unreasonable prices may frustrate achievement of the contractor's goals. However, when considered in the context of the contractor's total effort in accordance with its plan, the following, though not all inclusive, may be considered as indicators of a failure to make a good faith effort: a failure to attempt to identify, contact, solicit, or consider for contract award small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns; a failure to designate and maintain a company official to administer the subcontracting program and monitor and enforce compliance with the plan; a failure to submit the ISR, or the SSR, using the eSRS, or as provided in agency regulations; a failure to maintain records or otherwise demonstrate procedures adopted to comply with the plan; or the adoption of company policies or procedures that have as their objectives the frustration of the objectives of the plan.

(e) If, after consideration of all the pertinent data, the contracting officer finds that the contractor failed to make a good faith effort to comply with its subcontracting plan, the contracting officer shall issue a final decision to the contractor to that effect and require the payment of liquidated damages in an amount stated. The contracting officer's final decision shall state that the contractor has the right to appeal under the clause in the contract entitled Disputes.

(f) With respect to commercial plans approved under the clause at [52.219-9](#), Small Business Subcontracting Plan, the contracting officer that approved the plan shall—

(1) Perform the functions of the contracting officer under this subsection on behalf of all agencies with contracts covered by the commercial plan;

(2) Determine whether or not the goals in the commercial plan were achieved and, if they were not achieved, review all available information for an indication that the contractor has not made a good faith effort to comply with the plan, and document the results of the review;

(3) If a determination is made to assess liquidated damages, in order to calculate and assess the amount of damages, the contracting officer shall ask the contractor to provide—

(i) Contract numbers for the Government contracts subject to the plan;

(ii) The total Government sales during the contractor's fiscal year; and

(iii) The amount of payments made under the Government contracts subject to that plan that contributed to the contractor's total sales during the contractor's fiscal year; and

(4) When appropriate, assess liquidated damages on the Government's behalf, based on the pro rata share of subcontracting attributable to the Government contracts. For example: The contractor's total actual sales were \$50 million and its actual subcontracting was \$20 million. The Government's total payments under contracts subject to the plan contributing to the contractor's total sales were \$5 million, which accounted for 10 percent of the contractor's total sales. Therefore, the pro rata share of subcontracting attributable to the Government contracts would be 10 percent of \$20 million, or \$2 million. To continue the example, if the contractor failed to achieve its small business goal by 1 percent, the liquidated damages would be calculated as 1 percent of \$2 million, or \$20,000. The contracting officer shall make similar calculations for each category of small business where the contractor failed to achieve its goal and the sum of the dollars for all of the categories equals the amount of the liquidated damages to be assessed. A copy of the contracting officer's final decision assessing liquidated damages shall be provided to other contracting officers with contracts subject to the commercial plan.

(g) Liquidated damages shall be in addition to any other remedies that Government may have.

(h) Every contracting officer with a contract that is subject to a commercial plan shall include in the contract file a copy of the approved plan and a copy of the final decision assessing liquidating damages, if applicable.

19.706 Responsibilities of the cognizant administrative contracting officer.

The administrative contracting officer is responsible for assisting in evaluating subcontracting plans, and for monitoring, evaluating, and documenting contractor performance under the clause prescribed in [19.708\(b\)](#) and any subcontracting plan included in the contract. The contract administration

office shall provide the necessary information and advice to support the contracting officer, as appropriate, by furnishing—

(a) Documentation on the contractor's performance and compliance with subcontracting plans under previous contracts;

(b) Information on the extent to which the contractor is meeting the plan's goals for subcontracting with eligible small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns;

(c) Information on whether the contractor's efforts to ensure the participation of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns are in accordance with its subcontracting plan;

(d) Information on whether the contractor is requiring its subcontractors to adopt similar subcontracting plans;

(e) Immediate notice if, during performance, the contractor is failing to meet its commitments under the clause prescribed in [19.708\(b\)](#) or the subcontracting plan;

(f) Immediate notice and rationale if, during performance, the contractor is failing to comply in good faith with the subcontracting plan; and

(g) Immediate notice that performance under a contract is complete, that the goals were or were not met, and, if not met, whether there is any indication of a lack of a good faith effort to comply with the subcontracting plan.

19.707 The Small Business Administration's role in carrying out the program.

(a) Under the program, the SBA may—

(1) Assist both Government agencies and contractors in carrying out their responsibilities with regard to subcontracting plans;

(2) Review (within 5 working days) any solicitation that meets the dollar threshold in [19.702\(a\)\(1\)](#) or (2) before the solicitation is issued;

(3) Review (within 5 working days) before execution any negotiated contractual document requiring a subcontracting plan, including the plan itself, and submit recommendations to the contracting officer, which shall be advisory in nature; and

(4) Evaluate compliance with subcontracting plans, either on a contract-by-contract basis, or, in the case of contractors having multiple contracts, on an aggregate basis.

(b) The SBA is not authorized to—

(1) Prescribe the extent to which any contractor or subcontractor shall subcontract,

(2) Specify concerns to which subcontracts will be awarded, or

(3) Exercise any authority regarding the administration of individual prime contracts or subcontracts.

19.708 Contract clauses.

(a) Insert the clause at [52.219-8](#), Utilization of Small Business Concerns, in solicitations and contracts when the contract amount is expected to exceed the simplified acquisition threshold unless—

(1) A personal services contract is contemplated (see [37.104](#)); or

(2) The contract, together with all of its subcontracts, will be performed entirely outside of the United States and its outlying areas.

(b)(1) Insert the clause at [52.219-9](#), Small Business Subcontracting Plan, in solicitations and contracts that offer subcontracting possibilities, are expected to exceed \$550,000 (\$1,000,000 for construction of any public facility), and are required to include the clause at [52.219-8](#), Utilization of Small Business Concerns, unless the acquisition is set aside or is to be accomplished under the 8(a) program. When contracting by sealed bidding rather than by negotiation, the contracting officer shall use the clause with its Alternate I. When contracting by negotiation, and subcontracting plans are required with initial proposals as provided for in [19.705-2\(d\)](#), the contracting officer shall use the clause with its Alternate II.

(2) Insert the clause at [52.219-16](#), Liquidated Damages—Subcontracting Plan, in all solicitations and contracts containing the clause at [52.219-9](#), Small Business Subcontracting Plan, or the clause with its Alternate I or II.

(c)(1) The contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause substantially the same as the clause at [52.219-10](#), Incentive Subcontracting Program, when a subcontracting plan is required (see [19.702](#)), and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, and women-owned small business concerns, and is commensurate with the efficient and economical performance of the contract; unless the conditions in paragraph (c)(3) of this section are applicable. The contracting officer may vary the terms of the clause as specified in paragraph (c)(2) of this section.

(2) Various approaches may be used in the development of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, and women-owned small business concerns' subcontracting incentives. They can take many forms, from a fully quantified schedule of payments based on actual subcontract achievement to an award-fee approach employing subjective evaluation criteria (see paragraph (c)(3) of this section). The incentive should not reward the contractor for

results other than those that are attributable to the contractor's efforts under the incentive subcontracting program.

(3) As specified in paragraph (c)(2) of this section, the contracting officer may include small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, and women-owned small

business subcontracting as one of the factors to be considered in determining the award fee in a cost-plus-award-fee contract; in such cases, however, the contracting officer shall not use the clause at [52.219-10](#), Incentive Subcontracting Program.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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- Subpart 52.1—Instructions for Using Provisions and Clauses**
- 52.100 Scope of subpart.
- 52.101 Using Part 52.
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- Subpart 52.2—Text of Provisions and Clauses**
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- 52.203-2 Certificate of Independent Price Determination.
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- 52.203-5 Covenant Against Contingent Fees.
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(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

(b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.

(c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

(End of clause)

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

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

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

(a) *Definition.* “Women-owned business concern,” as used in this provision, means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

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

(End of provision)

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

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

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

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

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

(1) An offeror may obtain a DUNS number—

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

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

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

(i) Company legal business name.

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

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

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

(v) Company telephone number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

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

(End of provision)

52.204-7 Central Contractor Registration.

As prescribed in 4.1104, use the following clause:

CENTRAL CONTRACTOR REGISTRATION (APR 2008)

(a) Definitions. As used in this clause—

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

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

“Data Universal Numbering System +4 (DUNS+4) number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern.

(D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at [Subpart 32.11](#)) for the same concern.

“Registered in the CCR database” means that—

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

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

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

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

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

(1) An offeror may obtain a DUNS number—

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

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

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

(i) Company legal business.

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

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

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

(v) Company Telephone Number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

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

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

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

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

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

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

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR [Subpart 32.8](#), Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor’s CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the “Suspension of payment” paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the

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

(c) The Contractor will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the Contractor as defined in the Default—Fixed-Price Supply and Service clause in this contract.

(End of clause)

52.211-12 Liquidated Damages—Construction.

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

LIQUIDATED DAMAGES—CONSTRUCTION (SEPT 2000)

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of _____ [*Contracting Officer insert amount*] for each calendar day of delay until the work is completed or accepted.

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

(End of clause)

52.211-13 Time Extensions.

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

TIME EXTENSIONS (SEPT 2000)

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

(End of clause)

52.211-14 Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use.

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

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

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

(End of provision)

52.211-15 Defense Priority and Allocation Requirements.

As prescribed in [11.604](#)(b), insert the following clause:

DEFENSE PRIORITY AND ALLOCATION REQUIREMENT (APR 2008)

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

(End of clause)

52.211-16 Variation in Quantity.

As prescribed in [11.703](#)(a), insert the following clause:

VARIATION IN QUANTITY (APR 1984)

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

(b) The permissible variation shall be limited to:

___ Percent increase [*Contracting Officer insert percentage*]

___ Percent decrease [*Contracting Officer insert percentage*]

This increase or decrease shall apply to _____.*

(End of clause)

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

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

(End of clause)

52.211-17 Delivery of Excess Quantities.

As prescribed in [11.703](#)(b), insert the following clause:

DELIVERY OF EXCESS QUANTITIES (SEPT 1989)

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

(End of clause)

52.211-18 Variation in Estimated Quantity.

As prescribed in [11.703\(c\)](#), insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated that authorizes a variation in the estimated quantity of unit-priced items:

VARIATION IN ESTIMATED QUANTITY (APR 1984)

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

(End of clause)

52.212-1 Instructions to Offerors—Commercial Items.

As prescribed in [12.301\(b\)\(1\)](#), insert the following provision:

INSTRUCTIONS TO OFFERORS—COMMERCIAL ITEMS
(APR 2008)

(a) *North American Industry Classification System (NAICS) code and small business size standard.* The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet ([SF 1449](#)). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) *Submission of offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the [SF 1449](#), letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show—

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt of offers;
- (3) The name, address, and telephone number of the offeror;
- (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
- (5) Terms of any express warranty;
- (6) Price and any discount terms;
- (7) “Remit to” address, if different than mailing address;
- (8) A completed copy of the representations and certifications at FAR [52.212-3](#) (see FAR [52.212-3\(l\)](#)) for those representations and certifications that the offeror shall complete electronically);
- (9) Acknowledgment of Solicitation Amendments;
- (10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and
- (11) If the offer is not submitted on the [SF 1449](#), include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) *Period for acceptance of offers.* The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) *Product samples.* When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender’s request and expense, unless they are destroyed during preaward testing.

(e) *Multiple offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) *Late submissions, modifications, revisions, and withdrawals of offers.* (1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government’s control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation

on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(g) *Contract award (not applicable to Invitation for Bids)*. The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) *Multiple awards*. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) *Availability of requirements documents cited in the solicitation*. (1)(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to—

GSA Federal Supply Service Specifications Section
Suite 8100
470 East L'Enfant Plaza, SW
Washington, DC 20407

Telephone (202) 619-8925
Facsimile (202) 619-8978.

(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.

(2) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST web-sites:

(i) ASSIST (<http://assist.daps.dla.mil>).

(ii) Quick Search (<http://assist.daps.dla.mil/quicksearch>).

(iii) ASSISTdocs.com (<http://assistdocs.com>).

(3) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by—

(i) Using the ASSIST Shopping Wizard (<http://assist.daps.dla.mil/wizard>);

(ii) Phoning the DoDSSP Customer Service Desk (215) 697-2179, Mon-Fri, 0730 to 1600 EST; or

(iii) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.

(4) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(j) *Data Universal Numbering System (DUNS) Number*. (Applies to all offers exceeding \$3,000, and offers of \$3,000 or less if the solicitation requires the Contractor to be registered in the Central Contractor Registration (CCR) database.) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS+4" followed by the DUNS or DUNS+4 number that identifies the offeror's name and address. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR [Subpart 32.11](#)) for the same concern. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. An offeror within the United States may contact Dun and Bradstreet by calling 1-866-705-5711 or via the internet at <http://fedgov.dnb.com/webform>. An offeror located outside the United States must contact the local Dun and Bradstreet office for a DUNS number. The offeror should indicate that it is an offeror for a Government contract when contacting the local Dun and Bradstreet office.

(k) *Central Contractor Registration*. Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance and through final payment of any contract resulting from this solicitation. If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror. Offerors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

(9) *Discount*. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(l) *Termination for the Government's convenience*. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

As prescribed in [12.301\(b\)\(4\)](#), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (APR 2008)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(2) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78)

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

(1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) ([41 U.S.C. 253g](#) and [10 U.S.C. 2402](#)).

(2) [52.219-3](#), Notice of Total HUBZone Set-Aside (JAN 1999) ([15 U.S.C. 657a](#)).

(3) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JULY 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).

(4) [Reserved]

(5)(i) [52.219-6](#), Notice of Total Small Business Set-Aside (JUNE 2003) ([15 U.S.C. 644](#)).

(ii) Alternate I (OCT 1995) of [52.219-6](#).

(iii) Alternate II (MAR 2004) of [52.219-6](#).

(6)(i) [52.219-7](#), Notice of Partial Small Business Set-Aside (JUNE 2003) ([15 U.S.C. 644](#)).

(ii) Alternate I (OCT 1995) of [52.219-7](#).

(iii) Alternate II (MAR 2004) of [52.219-7](#).

(7) [52.219-8](#), Utilization of Small Business Concerns (MAY 2004) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).

(8)(i) [52.219-9](#), Small Business Subcontracting Plan (APR 2008) ([15 U.S.C. 637\(d\)\(4\)](#)).

(ii) Alternate I (OCT 2001) of [52.219-9](#).

(iii) Alternate II (OCT 2001) of [52.219-9](#).

(9) [52.219-14](#), Limitations on Subcontracting (DEC 1996) ([15 U.S.C. 637\(a\)\(14\)](#)).

(10) [52.219-16](#), Liquidated Damages—Subcontracting Plan (JAN 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).

(11)(i) [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (SEPT 2005) ([10 U.S.C. 2323](#)) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

(ii) Alternate I (JUNE 2003) of [52.219-23](#).

(12) [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (APR 2008) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).

(13) [52.219-26](#), Small Disadvantaged Business Participation Program—Incentive Subcontracting (OCT 2000) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).

(14) [52.219-27](#), Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (MAY 2004) ([15 U.S.C. 657 f](#)).

(15) [52.219-28](#), Post Award Small Business Program Rerepresentation (JUNE 2007) ([15 U.S.C. 632\(a\)\(2\)](#)).

(16) [52.222-3](#), Convict Labor (JUNE 2003) (E.O. 11755).

(17) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (FEB 2008) (E.O. 13126).

(18) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999).

(19) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

(20) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)).

— (21) [52.222-36](#), Affirmative Action for Workers with Disabilities (JUN 1998) ([29 U.S.C. 793](#)).

— (22) [52.222-37](#), Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)).

— (23) [52.222-39](#), Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).

— (24)(i) [52.222-50](#), Combating Trafficking in Persons (AUG 2007) (Applies to all contracts).

— (ii) Alternate I (AUG 2007) of [52.222-50](#).

— (25)(i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Products (AUG 2000) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)).

— (ii) Alternate I (AUG 2000) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)).

— (26) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)).

— (27)(i) [52.223-16](#), IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007) (E.O. 13423).

— (ii) Alternate I (DEC 2007) of [52.223-16](#).

— (28) [52.225-1](#), Buy American Act—Supplies (JUNE 2003) ([41 U.S.C. 10a-10d](#)).

— (29)(i) [52.225-3](#), Buy American Act—Free Trade Agreements—Israeli Trade Act (AUG 2007) ([41 U.S.C. 10a-10d](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, Pub. L 108-77, 108-78, 108-286, 109-53 and 109-169).

— (ii) Alternate I (JAN 2004) of [52.225-3](#).

— (iii) Alternate II (JAN 2004) of [52.225-3](#).

— (30) [52.225-5](#), Trade Agreements (NOV 2007) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).

— (31) [52.225-13](#), Restrictions on Certain Foreign Purchases (FEB 2006) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

— (32) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (NOV 2007) ([42 U.S.C. 5150](#)).

— (33) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) ([42 U.S.C. 5150](#)).

— (34) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (FEB 2002) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

— (35) [52.232-30](#), Installment Payments for Commercial Items (OCT 1995) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

— (36) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003) ([31 U.S.C. 3332](#)).

— (37) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999) ([31 U.S.C. 3332](#)).

— (38) [52.232-36](#), Payment by Third Party (MAY 1999) ([31 U.S.C. 3332](#)).

— (39) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ([5 U.S.C. 552a](#)).

— (40)(i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).

— (ii) Alternate I (Apr 2003) of [52.247-64](#).

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [*Contracting Officer check as appropriate.*]

— (1) [52.222-41](#), Service Contract Act of 1965 (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

— (2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (MAY 1989) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

— (3) [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (NOV 2006) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

— (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (FEB 2002) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

— (5) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

— (6) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

— (7) [52.237-11](#), Accepting and Dispensing of \$1 Coin (AUG 2007) ([31 U.S.C. 5112\(p\)\(1\)](#)).

(d) *Comptroller General Examination of Record*. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at [52.215-2](#), Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR [Subpart 4.7](#), Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to

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

“Small business concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Small disadvantaged business concern” means a small business concern that represents, as part of its offer that—

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

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

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

(4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

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

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

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

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

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

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

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(End of clause)

52.219-9 Small Business Subcontracting Plan.

As prescribed in [19.708\(b\)](#), insert the following clause:

SMALL BUSINESS SUBCONTRACTING PLAN (APR 2008)

(a) This clause does not apply to small business concerns.

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

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or

Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended ([43 U.S.C. 1601](#), *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at [43 U.S.C. 1626\(e\)\(1\)](#). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of [43 U.S.C. 1626\(e\)\(2\)](#).

“Commercial item” means a product or service that satisfies the definition of commercial item in section [2.101](#) of the Federal Acquisition Regulation.

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

“Electronic Subcontracting Reporting System (eSRS)” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act ([43 U.S.C.A. 1601](#) *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with [25 U.S.C. 1452\(c\)](#). This definition also includes Indian-owned economic enterprises that meet the requirements of [25 U.S.C. 1452\(e\)](#).

“Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business,

service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with [43 U.S.C. 1626](#):

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

(i) Small business concerns (including ANC and Indian tribes);

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns (including ANC and Indian tribes); and

(vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled “Utilization of Small Business Concerns” in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$550,000 (\$1,000,000 for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(v) Provide its prime contract number, its DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their reports; and

(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror’s efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to

them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (*e.g.*, CCR), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating—

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through—

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program’s requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and

delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues

to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one plan. When a modification meets the criteria in [19.702](#) for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at [52.244-6](#), Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with—

(1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe.

(1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan and shall be submitted to the Administrative Contracting Officer (ACO) or Contracting Officer, if no ACO is assigned.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting

activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR [19.704\(c\)](#), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(iii) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) SSR. (i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$550,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(iii) All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(End of clause)

Alternate I (Oct 2001). When contracting by sealed bidding rather than by negotiation, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

Alternate II (Oct 2001). As prescribed in [19.708\(b\)\(1\)](#), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUB-

Zone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business,

and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the

Alternate I (Oct 1998). As prescribed in [19.308\(b\)](#), add the following paragraph (b)(3) to the basic provision:

(3) *Address.* The offeror represents that its address is, is not in a region for which a small disadvantaged business procurement mechanism is authorized and its address has not changed since its certification as a small disadvantaged business concern or submission of its application for certification. The list of authorized small disadvantaged business procurement mechanisms and regions is posted at <http://www.arnet.gov/References/sbadjustments.htm>. The offeror shall use the list in effect on the date of this solicitation. “Address,” as used in this provision, means the address of the offeror as listed on the Small Business Administration’s register of small disadvantaged business concerns or the address on the completed application that the concern has submitted to the Small Business Administration or a Private Certifier in accordance with 13 CFR Part 124, subpart B. For joint ventures, “address” refers to the address of the small disadvantaged business concern that is participating in the joint venture.

52.219-23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

As prescribed in [19.1104](#), insert the following clause:

NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS (SEPT 2005)

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

“Small disadvantaged business concern” means an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition; and either—

(1) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR Part 124, subpart B; and

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

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

(iii) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net).

(2) It has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR Part 124, subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted. In this case, in order to receive the benefit of a price evaluation adjustment, an offeror must receive certification as

a small disadvantaged business concern by the Small Business Administration prior to contract award; or

(3) Is a joint venture as defined in 13 CFR 124.1002(f).

“Historically black college or university” means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense (DoD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

“Minority institution” means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 ([20 U.S.C. 1067k](#), including a Hispanic-serving institution of higher education, as defined in Section 316(b)(1) of the Act ([20 U.S.C. 1101a](#))).

(b) *Evaluation adjustment.* (1) The Contracting Officer will evaluate offers by adding a factor of ____ [*Contracting Officer insert the percentage*] percent to the price of all offers, except—

(i) Offers from small disadvantaged business concerns that have not waived the adjustment; and

(ii) An otherwise successful offer from a historically black college or university or minority institution.

(2) The Contracting Officer will apply the factor to a line item or a group of line items on which award may be made. The Contracting Officer will apply other evaluation factors described in the solicitation before application of the factor. The factor may not be applied if using the adjustment would cause the contract award to be made at a price that exceeds the fair market price by more than the factor in paragraph (b)(1) of this clause.

(c) *Waiver of evaluation adjustment.* A small disadvantaged business concern may elect to waive the adjustment, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply to offers that waive the adjustment.

____ Offeror elects to waive the adjustment.

(d) *Agreements.* (1) A small disadvantaged business concern, that did not waive the adjustment, agrees that in performance of the contract, in the case of a contract for—

(i) Services, except construction, at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern;

(ii) Supplies (other than procurement from a non-manufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern;

(iii) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern; or

(iv) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(2) A small disadvantaged business concern submitting an offer in its own name shall furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States or its outlying areas. This paragraph does not apply to construction or service contracts.

(End of clause)

Alternate I (June 2003). As prescribed in [19.1104](#), substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause:

(2) A small disadvantaged business concern submitting an offer in its own name shall furnish in performing this contract only end items manufactured or produced by small business concerns in the United States or its outlying areas. This paragraph does not apply to construction or service contracts.

Alternate II (Oct 1998) As prescribed in [19.1104](#), substitute the following paragraph (b)(1)(i) for paragraph (b)(1)(i) of the basic clause:

(i) Offers from small disadvantaged business concerns, that have not waived the adjustment, whose address is in a region for which an evaluation adjustment is authorized;

52.219-24 Small Disadvantaged Business Participation Program—Targets.

As prescribed in [19.1204](#)(a), insert a provision substantially the same as the following:

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—TARGETS (OCT 2000)

(a) This solicitation contains a source selection factor or subfactor related to the participation of small disadvantaged business (SDB) concerns in the contract. Credit under that evaluation factor or subfactor is not available to an SDB concern that qualifies for a price evaluation adjustment under the clause at FAR [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, unless the SDB concern specifically waives the price evaluation adjustment.

(b) In order to receive credit under the source selection factor or subfactor, the offeror must provide, with its offer, targets, expressed as dollars and percentages of total contract value, for SDB participation in any of the North American Industry Classification System (NAICS) Industry Subsectors as determined by the Department of Commerce. The targets

may provide for participation by a prime contractor, joint venture partner, teaming arrangement member, or subcontractor; however, the targets for subcontractors must be listed separately.

(End of provision)

52.219-25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.

As prescribed in [19.1204](#)(b), insert the following clause:

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—DISADVANTAGED STATUS AND REPORTING (APR 2008)

(a) *Disadvantaged status for joint venture partners, team members, and subcontractors.* This clause addresses disadvantaged status for joint venture partners, teaming arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor shall obtain representations of small disadvantaged status from joint venture partners, teaming arrangement members, and subcontractors through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR [52.219-22](#), Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern is a small disadvantaged business concern certified by the Small Business Administration by using the Central Contractor Registration database or by contacting the SBA’s Office of Small Disadvantaged Business Certification and Eligibility.

(b) *Reporting requirement.* If this contract contains SDB participation targets, the Contractor shall report on the participation of SDB concerns at contract completion, or as otherwise provided in this contract. Reporting may be on [Optional Form 312](#), Small Disadvantaged Business Participation Report, in the Contractor’s own format providing the same information, or accomplished through using the Electronic Subcontracting Reporting System’s Small Disadvantaged Business Participation Report. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small Business Subcontracting Plan, reports shall be submitted with the final Individual Subcontract Report at the completion of the contract.

(End of clause)

52.301 Solicitation provisions and contract clauses (Matrix).

KEY:	
<u>Type of Contract:</u>	
P or C	= Provision or Clause
IBR	= Is Incorporation by Reference Authorized? (See FAR 52.102)
UCF	= Uniform Contract Format Section, when Applicable
FP SUP	= Fixed-Price Supply
CR SUP	= Cost-Reimbursement Supply
FP R&D	= Fixed-Price Research & Development
CR R&D	= Cost Reimbursement Research & Development
FP SVC	= Fixed-Price Service
CR SVC	= Cost Reimbursement Service
FP CON	= Fixed-Price Construction
CR CON	= Cost Reimbursement Construction
T&M LH	= Time & Material/Labor Hours
LMV	= Leasing of Motor Vehicles
COM SVC	= Communication Services
DDR	= Dismantling, Demolition, or Removal of Improvements
A&E	= Architect-Engineering
FAC	= Facilities
IND DEL	= Indefinite Delivery
TRN	= Transportation
SAP	= Simplified Acquisition Procedures (excluding micro-purchase)
UTL SVC	= Utility Services
CI	= Commercial Items
<u>Contract Purpose:</u>	
R	= Required
A	= Required when Applicable
O	= Optional
✓	= Revision

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
52.202-1 Definitions.	2.201	C	Yes	I	R	R	A	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	
52.203-2 Certificate of Independent Price Determination.	3.103-1	P	No	K	A		A		A		A			A	A	A	A	A	A	A		A	
52.203-3 Gratuities.	3.202	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.203-5 Covenant Against Contingent Fees.	3.404	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R	
52.203-6 Restrictions on Subcontractor Sales to the Government.	3.503-2	C	Yes	I	R	R			R	R									R			R	
Alternate I	3.503-2	C	Yes																				R
52.203-7 Anti-Kickback Procedures.	3.502-3	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R	
52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity.	3.104-9(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.203-10 Price or Fee Adjustment for Illegal or Improper Activity.	3.104-9(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.	3.808(a)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.203-12 Limitation on Payments to Influence Certain Federal Transactions.	3.808(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.203-13 Contractor Code of Business Ethics and Conduct.	3.1004(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	

PROVISION OR CLAUSE	PRESCRIBED IN	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																					
		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.203-14 Display of Hotline Poster(s).	3.1004(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.204-1 Approval of Contract.	4.103	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-2 Security Requirements.	4.404(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	4.404(b)	C	Yes	I					A														
Alternate II	4.404(c)	C	Yes	I						A	A						A	A					
52.204-3 Taxpayer Identification.	4.905	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-4 Printed or Copied Double-Sided on Recycled Paper.	4.303	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A
52.204-5 Women-Owned Business (Other Than Small Business)	4.607(b)✓	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.204-6 Data Universal Numbering System (DUNS) Number.	4.607(a)✓	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-7 Central Contractor Registration.	4.1104	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-8 Annual Representations and Certifications	4.1202	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-9 Personal Identity Verification of Contractor Personnel.	4.1303	C	Yes	I	A	A	A	A	A	A	A	A		A	A	A	A	A	A	A	A	A	A
52.204-10 Reporting Subcontract Awards	4.1401(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		A	
52.207-1 Notice of Standard Competition.	7.305(a)	P	Yes	L	A		A		A		A			A	A	A				A			
52.207-2 Notice of Streamlined Competition.	7.305(b)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A		A	
52.207-3 Right of First Refusal of Employment.	7.305(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A		A	
52.207-4 Economic Purchase Quantity—Supplies.	7.203	P	No	K	A	A													A		A		
52.207-5 Option to Purchase Equipment.	7.404	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.208-4 Vehicle Lease Payments.	8.1104(a)	C	Yes	I										A							A		
52.208-5 Condition of Leased Vehicles.	8.1104(b)	C	Yes	I										A							A		
52.208-6 Marking of Leased Vehicles.	8.1104(c)	C	Yes	I										A							A		
52.208-7 Tagging of Leased Vehicles.	8.1104(d)	C	Yes	I										A							A		
52.208-8 Required Sources for Helium and Helium Usage Data.	8.505	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.208-9 Contractor Use of Mandatory Sources of Supply or Services.	8.004	C	Yes	I	A	A														A		A	
52.209-1 Qualification Requirements.	9.206-2	C	No	I	A	A			A	A				A						A		A	
52.209-3 First Article Approval—Contractor Testing.	9.308-1(a)(1) and (b)(1)	C	Yes	I	A	O								A						A		A	
Alternate I	9.308-1(a)(2) and (b)(2)	C	Yes	I	A	O								A						A		A	
Alternate II	9.308-2(a)(3) and (b)(3)	C	Yes	I	A	O								A						A		A	

PROVISION OR CLAUSE	PRESCRIBED IN	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																					
		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.209-4 First Article Approval—Government Testing.	9.308-2 (a)(1) and (b)(1)	C	Yes	I	A	O								A					A		A		
Alternate I	9.308-2 (a)(1) and (b)(2)	C	Yes	I	A	O								A					A		A		
Alternate II	9.308-2 (a)(1) and (b)(3)	C	Yes	I	A	O								A					A		A		
52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.	9.409 (a)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.	9.409 (b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.211-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29.	11.204 (a)	P	No	L	A	A	A	A	A	A	A			A	A				A	A		A	
52.211-2 Availability of Specifications, Standards, and Data Item Descriptions Listed in the Acquisition Streamlining and Standardization Information System (ASSIST).	11.204 (b)	P	No	L	A	A	A	A	A	A	A			A	A				A	A		A	
52.211-3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.	11.204 (c)	P	No	L	A	A	A	A	A	A	A			A	A				A	A		A	
52.211-4 Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Index Descriptions.	11.204 (d)	P	No	L	A	A	A	A	A	A	A			A	A				A	A	A	A	
52.211-5 Material Requirements.	11.304	C	Yes	I	R	R																A	
52.211-6 Brand Name or Equal.	11.107 (a)	P	Yes	L	A	A														A		A	
52.211-7 Alternatives to Government-Unique Standards.	11.107 (b)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.211-8 Time of Delivery.	11.404 (a)(2)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate I	11.404 (a)(2)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate II	11.404 (a)(2)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate III	11.404 (a)(2)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O

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
52.211-9 Desired and Required Time of Delivery.	11.404(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	
Alternate I	11.404(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	
Alternate II	11.404(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	
Alternate III	11.404(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	
52.211-10 Commencement, Prosecution, and Completion of Work.	11.404(b)	C	Yes							R													
Alternate I	11.404(b)	C	Yes							R													
52.211-11 Liquidated Damages—Supplies, Services, or Research and Development.	11.503(a)	C	Yes	F	O		O		O					O							O	O	
52.211-12 Liquidated Damages—Construction.	11.503(b)	C	Yes							O	O										O		
52.211-13 Time Extensions.	11.503(c)	C	Yes							A	A										A		
52.211-14 Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use. ✓	11.604(a)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.211-15 Defense Priority and Allocation Requirements.	11.604(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.211-16 Variation in Quantity.	11.703(a)	C	Yes	F	A			A						A						A	A		
52.211-17 Delivery of Excess Quantities.	11.703(b)	C	Yes	F	O									O						O	O		
52.211-18 Variation in Estimated Quantity.	11.703(c)	C	Yes							A											A		
52.212-1 Instructions to Offerors—Commercial Items.	12.301(b)(1)	P	Yes	NA	A		A		A		A			A	A	A	A	A	A	A	A	R	
52.212-2 Evaluation—Commercial Items.	12.301(c)(1)	P	No	NA	O		O		O		O			O	O	O	O	O	O	O	O	O	
52.212-3 Offeror Representations and Certifications—Commercial Items.	12.301(b)(2)	P	No	NA	A		A		A		A			A	A	A	A	A	A	A	A	R	
Alternate I	12.301(b)(2)	P	No	NA	A		A		A		A			A	A	A	A	A	A	A	A	A	
Alternate II	12.301(b)(2)	P	No	NA	A		A		A		A			A	A	A	A	A	A	A	A	A	
52.212-4 Contract Terms and Conditions—Commercial Items.	12.301(b)(3)	C	Yes	NA	A		A		A		A			A	A	A	A	A	A	A	A	R	
Alternate I	12.301(b)(3)	C	Yes	NA									A									A	
52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items	12.301(b)(4)	C	No	NA	A		A		A		A			A	A	A	A	A	A	A	A	R	
Alternate I	12.301(b)(4)	C	No	NA	A		A		A		A			A	A	A	A	A	A	A	A	R	
52.213-1 Fast Payment Procedure.	13.404	C	Yes		A									A						A	A		
52.213-2 Invoices.	13.302-5(b)	C	Yes																		A		
52.213-3 Notice to Supplier.	13.302-5(c)	C	Yes																		A		

PART 53—FORMS

Sec.

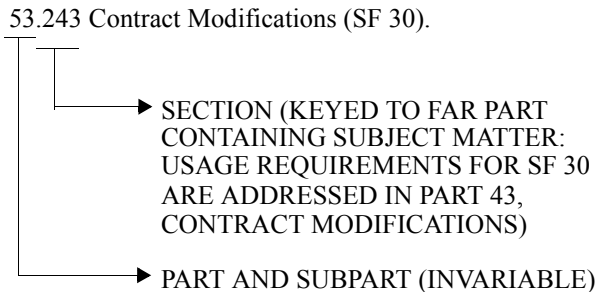
53.000	Scope of part.	53.221	[Reserved]
53.001	Definitions.	53.222	Application of labor laws to Government acquisitions (SF's 308, 1093, 1413, 1444, 1445, 1446, WH-347).
Subpart 53.1—General			
53.100	Scope of subpart.	53.223	[Reserved]
53.101	Requirements for use of forms.	53.224	[Reserved]
53.102	Current editions.	53.225	[Reserved]
53.103	Exceptions.	53.226	[Reserved]
53.104	Overprinting.	53.227	[Reserved]
53.105	Computer generation.	53.228	Bonds and insurance.
53.106	Special construction and printing.	53.229	Taxes (SF's 1094, 1094-A).
53.107	Obtaining forms.	53.230	[Reserved]
53.108	Recommendations concerning forms.	53.231	[Reserved]
53.109	Forms prescribed by other regulations.	53.232	Contract financing (SF 1443).
53.110	Continuation sheets.	53.233	[Reserved]
53.111	Contract clause.	53.234	[Reserved]
Subpart 53.2—Prescription of Forms			
53.200	Scope of subpart.	53.235	Research and development contracting (SF 298).
53.201	Federal acquisition system.	53.236	Construction and architect-engineer contracts.
53.201-1	Contracting authority and responsibilities (SF 1402).	53.236-1	Construction.
53.202	[Reserved]	53.236-2	Architect-engineer services (SF's 252, 330, and 1421).
53.203	[Reserved]	53.237	[Reserved]
53.204	Administrative matters.	53.238	[Reserved]
53.204-1	Safeguarding classified information within industry (DD Form 254, DD Form 441).	53.239	[Reserved]
53.204-2	[Reserved]	53.240	[Reserved]
53.205	Publicizing contract actions.	53.241	[Reserved]
53.205-1	Paid advertisements.	53.242	Contract administration.
53.206	[Reserved]	53.242-1	Novation and change-of-name agreements (SF 30).
53.207	[Reserved]	53.243	Contract modifications (SF 30).
53.208	[Reserved]	53.244	[Reserved]
53.209	Contractor qualifications.	53.245	Government property.
53.209-1	Responsible prospective contractors.	53.246	[Reserved]
53.210	[Reserved]	53.247	Transportation (U.S. Commercial Bill of Lading).
53.211	[Reserved]	53.248	[Reserved]
53.212	Acquisition of commercial items.	53.249	Termination of contracts.
53.213	Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348).	53.250	[Reserved]
53.214	Sealed bidding.	53.251	Contractor use of Government supply sources (OF 347).
53.215	Contracting by negotiation.	Subpart 53.3—Illustration of Forms	
53.215-1	Solicitation and receipt of proposals.	53.300	Scope of subpart.
53.216	Types of contracts.	53.301	Standard forms.
53.216-1	Delivery orders and orders under basic ordering agreements (OF 347).	53.302	Optional forms.
53.217	[Reserved]	53.303	Agency forms.
53.218	[Reserved]	53.301-18	SF 18, Request for Quotation.
53.219	Small business programs.	53.301-24	SF 24, Bid Bond.
53.220	[Reserved]	53.301-25	SF 25, Performance Bond.
		53.301-25-A	SF 25-A, Payment Bond.

53.301-25-B	SF 25-B, Continuation Sheet (For SF's 24, 25, and 25-A).	53.301-1094	SF 1094, U.S. Tax Exemption Form.
53.301-26	SF 26, Award/Contract.	53.301-1094A	SF 1094A, Tax Exemption Forms Accountability Record.
53.301-28	SF 28, Affidavit of Individual Surety.	53.301-1165	SF 1165, Receipt for Cash—Subvoucher.
53.301-30	SF 30, Amendment of Solicitation/Modification of Contract.	53.301-1402	SF 1402, Certificate of Appointment.
53.301-33	SF 33, Solicitation, Offer and Award.	53.301-1403	SF 1403, Preaward Survey of Prospective Contractor (General).
53.301-34	SF 34, Annual Bid Bond.	53.301-1404	SF 1404, Preaward Survey of Prospective Contractor—Technical.
53.301-35	SF 35, Annual Performance Bond.	53.301-1405	SF 1405, Preaward Survey of Prospective Contractor—Production.
53.301-44	SF 44, Purchase Order—Invoice—Voucher.	53.301-1406	SF 1406, Preaward Survey of Prospective Contractor—Quality Assurance.
53.301-120	SF 120, Report of Excess Personal Property.	53.301-1407	SF 1407, Preaward Survey of Prospective Contractor—Financial Capability.
53.301-120-A	SF 120-A, Continuation Sheet (Report of Excess Personal Property).	53.301-1408	SF 1408, Preaward Survey of Prospective Contractor—Accounting System.
53.301-126	SF 126, Report of Personal Property for Sale.	53.301-1409	SF 1409, Abstract of Offers.
53.301-126-A	SF 126-A, Report of Personal Property for Sale (Continuation Sheet).	53.301-1410	SF 1410, Abstract of Offers—Continuation.
53.301-252	SF 252, Architect-Engineer Contract.	53.301-1413	SF 1413, Statement and Acknowledgment.
53.301-273	SF 273, Reinsurance Agreement for a Miller Act Performance Bond.	53.301-1414	SF 1414, Consent of Surety.
53.301-274	SF 274, Reinsurance Agreement for a Miller Act Payment Bond.	53.301-1415	SF 1415, Consent of Surety and Increase of Penalty.
53.301-275	SF 275, Reinsurance Agreement in Favor of the United States.	53.301-1416	SF 1416, Payment Bond for Other Than Construction Contracts.
53.301-298	SF 298, Report Documentation Page.	53.301-1418	SF 1418, Performance Bond for Other Than Construction Contracts.
53.301-308	SF 308, Request for Wage Determination and Response to Request.	53.301-1420	SF 1420, Performance Evaluation—Construction Contracts.
53.301-330	Architect-Engineer Qualifications.	53.301-1421	SF 1421, Performance Evaluation (Architect-Engineer).
53.301-1034	SF 1034, Public Voucher for Purchases and Services Other Than Personal.	53.301-1423	SF 1423, Inventory Verification Survey.
53.301-1034A	SF 1034A, Public Voucher for Purchases and Services Other Than Personal—Memorandum Copy.	53.301-1424	SF 1424, Inventory Disposal Report.
53.301-1035	SF 1035, Public Voucher for Purchases and Services Other Than Personal, Continuation Sheet.	53.301-1427	SF 1427, Inventory Schedule A—Continuation Sheet (Metals in Mill Product Form).
53.301-1035A	SF 1035A, Public Voucher for Purchases and Services Other Than Personal—Memorandum, Continuation Sheet.	53.301-1428	SF 1428, Inventory Schedule.
53.301-1093	SF 1093, Schedule of Withholdings Under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act).	53.301-1429	SF 1429, Inventory Schedule—Continuation Sheet.
		53.301-1435	SF 1435, Settlement Proposal (Inventory Basis).
		53.301-1436	SF 1436, Settlement Proposal (Total Cost Basis).

Subpart 53.2—Prescription of Forms

53.200 Scope of subpart.

This subpart prescribes standard forms and references optional forms and agency-prescribed forms for use in acquisition. Consistent with the approach used in [Subpart 52.2](#), this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the FAR in which the form usage requirements are addressed. For example, forms addressed in FAR [Part 14](#), Sealed Bidding, are treated in this subpart in section [53.214](#), Sealed Bidding; forms addressed in FAR [Part 43](#), Contract Modifications, are treated in this subpart in section [53.243](#), Contract modifications. The following example illustrates how the subjects are keyed to the parts in which they are addressed:



53.201 Federal acquisition system.

53.201-1 Contracting authority and responsibilities (SF 1402).

[SF 1402](#) (10/83), *Certificate of Appointment*. [SF 1402](#) is prescribed for use in appointing contracting officers, as specified in [1.603-3](#).

53.202 [Reserved]

53.203 [Reserved]

53.204 Administrative matters.

53.204-1 Safeguarding classified information within industry (DD Form 254, DD Form 441).

The following forms, which are prescribed by the Department of Defense, shall be used by agencies covered by the Defense Industrial Security Program if contractor access to classified information is required, as specified in [Subpart 4.4](#) and the clause at [52.204-2](#):

- (a) [DD Form 254](#) (*Department of Defense (DoD)*), *Contract Security Classification Specification*. (See [4.403](#)(c)(1).)
- (b) [DD Form 441](#) (*DoD*), *Security Agreement*. (See paragraph (b) of the clause at [52.204-2](#).)

53.204-2 [Reserved]

53.205 Publicizing contract actions.

53.205-1 Paid advertisements.

[SF 1449](#), prescribed in [53.212](#), shall be used to place orders for paid advertisements as specified in [5.503](#).

53.206 [Reserved]

53.207 [Reserved]

53.208 [Reserved]

53.209 Contractor qualifications.

53.209-1 Responsible prospective contractors.

The following forms are prescribed for use in conducting preaward surveys of prospective contractors, as specified in [9.106-1](#), [9.106-2](#), and [9.106-4](#):

- (a) [SF 1403](#) (Rev. 9/88), *Preaward Survey of Prospective Contractor (General)*. [SF 1403](#) is authorized for local reproduction.
- (b) [SF 1404](#) (Rev. 9/88), *Preaward Survey of Prospective Contractor—Technical*. [SF 1404](#) is authorized for local reproduction.
- (c) [SF 1405](#) (Rev. 9/88), *Preaward Survey of Prospective Contractor—Production*. [SF 1405](#) is authorized for local reproduction.
- (d) [SF 1406](#) (Rev. 11/97), *Preaward Survey of Prospective Contractor—Quality Assurance*. [SF 1406](#) is authorized for local reproduction.
- (e) [SF 1407](#) (Rev. 9/88), *Preaward Survey of Prospective Contractor—Financial Capability*. [SF 1407](#) is authorized for local reproduction.
- (f) [SF 1408](#) (Rev. 9/88), *Preaward Survey of Prospective Contractor—Accounting System*. [SF 1408](#) is authorized for local reproduction.

53.210 [Reserved]

53.211 [Reserved]

53.212 Acquisition of commercial items.

[SF 1449](#) (Rev. 3/2005), *Solicitation/Contract/Order for Commercial Items*. [SF 1449](#) is prescribed for use in solicitations and contracts for commercial items. Agencies may prescribe additional detailed instructions for use of the form.

53.213 Simplified acquisition procedures (SF’s 18, 30, 44, 1165, 1449, and OF’s 336, 347, and 348).

The following forms are prescribed as stated in this section for use in simplified acquisition procedures, orders under

existing contracts or agreements, and orders from required sources of supplies and services:

(a) [SF 18](#) (Rev. 6/95), *Request for Quotations*, or [SF 1449](#) (Rev. 3/2005), *Solicitation/Contract/Order for Commercial Items*. [SF 18](#) is prescribed for use in obtaining price, cost, delivery, and related information from suppliers as specified in [13.307](#)(b). [SF 1449](#), as prescribed in [53.212](#), or other agency forms/automated formats, may also be used to obtain price, cost, delivery, and related information from suppliers as specified in [13.307](#)(b).

(b) [SF 30](#) (Rev. 10/83), *Amendment of Solicitation/Modification of Contract*. [SF 30](#), prescribed in [53.243](#), may be used for modifying purchase orders, as specified in [13.307](#)(c)(3).

(c) [SF 44](#) (Rev. 10/83), *Purchase Order Invoice Voucher*. [SF 44](#) is prescribed for use in simplified acquisition procedures, as specified in [13.306](#).

(d) [SF 1165](#) (6/83 Ed.), *Receipt for Cash-Subvoucher*. [SF 1165](#) (GAO) may be used for imprest fund purchases, as specified in [13.307](#)(e).

(e) [OF 336](#) (4/86 Ed.), *Continuation Sheet*. [OF 336](#), prescribed in [53.214](#)(h), may be used as a continuation sheet in solicitations, as specified in [13.307](#)(c)(1).

(f) [SF 1449](#), (Rev. 3/2005) *Solicitation/Contract/Order for Commercial Items* prescribed in [53.212](#), [OF 347](#) (Rev. 4/06), *Order for Supplies or Services*, and [OF 348](#) (Rev. 4/06), *Order for Supplies or Services—Schedule Continuation*. [SF 1449](#), [OF](#)'s [347](#) and [348](#) (or approved agency forms/automated formats) may be used as follows:

(1) To accomplish acquisitions under simplified acquisition procedures, as specified in [13.307](#).

(2) To establish blanket purchase agreements (BPA's), as specified in [13.303-2](#), and to make purchases under BPA's, as specified in [13.303-5](#).

(3) To issue orders under basic ordering agreements, as specified in [16.703](#)(d)(2)(i).

(4) As otherwise specified in this chapter (e.g., see [5.503](#)(a)(2), [8.406-1](#), [36.701](#)(b), and [51.102](#)(e)(3)(ii)).

53.214 Sealed bidding.

The following forms are prescribed for use in contracting by sealed bidding (except for construction and architect-engineer services):

(a) [SF 26](#) (4/08), *Award/Contract*. [SF 26](#) is prescribed for use in awarding sealed bid contracts for supplies or services in which bids were obtained on [SF 33](#), *Solicitation, Offer and Award*, as specified in [14.408-1](#)(d)(1). Pending issuance of a new edition of the form, the reference in “block 1” should be amended to read “15 CFR 700.”

(b) [SF 30](#), *Amendment of Solicitation/Modification of Contract*. [SF 30](#), prescribed in [53.243](#), shall be used in amending invitations for bids, as specified in [14.208](#)(a).

(c) [SF 33](#) (Rev. 9/97), *Solicitation, Offer and Award*. [SF 33](#) is prescribed for use in soliciting bids for supplies or services

and for awarding the contracts that result from the bids, as specified in [14.201-2](#)(a)(1), unless award is accomplished by [SF 26](#).

(d) [SF 1447](#) (4/08), *Solicitation/Contract*. [SF 1447](#) is prescribed for use in soliciting supplies or services and for awarding contracts that result from the bids. It shall be used when the simplified contract format is used (see [14.201-9](#)) and may be used in place of the [SF 26](#) or [SF 33](#) with other solicitations and awards. Agencies may prescribe additional detailed instructions for use of the form.

(e) [Reserved]

(f) [SF 1409](#) (Rev. 9/88), *Abstract of Offers*, and [SF 1410](#) (9/88), *Abstract of Offers—Continuation*. [SF 1409](#) and [SF 1410](#) are prescribed for use in recording bids, as specified in [14.403](#)(a).

(g) [OF 17](#) (Rev. 12/93), *Offer Label*. [OF 17](#) may be furnished with each invitation for bids to facilitate identification and handling of bids, as specified in [14.202-3](#)(b).

(h) [OF 336](#) (Rev. 3/86), *Continuation Sheet*. [OF 336](#) may be used as a continuation sheet in solicitations, as specified in [14.201-2](#)(b).

53.215 Contracting by negotiation.

53.215-1 Solicitation and receipt of proposals.

The following forms are prescribed, as stated in the following paragraphs, for use in contracting by negotiation (except for construction, architect-engineer services, or acquisitions made using simplified acquisition procedures):

(a) [SF 26](#) (4/08), *Award/Contract*. [SF 26](#), prescribed in [53.214](#)(a), may be used in entering into negotiated contracts in which the signature of both parties on a single document is appropriate, as specified in [15.509](#).

(b) [SF 30](#) (Rev. 10/83), *Amendment of Solicitation/Modification of Contract*. [SF 30](#), prescribed in [53.243](#), may be used for amending requests for proposals and for amending requests for information, as specified in [15.210](#)(b).

(c) [SF 33](#) (Rev. 9/97), *Solicitation, Offer and Award*. [SF 33](#), prescribed in [53.214](#)(c), may be used in connection with the solicitation and award of negotiated contracts. Award of such contracts may be made by either [OF 307](#), [SF 33](#), or [SF 26](#), as specified in [53.214](#)(c) and [15.509](#).

(d) [OF 17](#) (Rev. 12/93), *Offer Label*. [OF 17](#) may be furnished with each request for proposals to facilitate identification and handling of proposals, as specified in [15.210](#)(c).

(e) [OF 307](#) (Rev. 9/97), *Contract Award*. [OF 307](#) may be used to award negotiated contracts as specified in [15.509](#).

(f) [OF 308](#) (Rev. 9/97), *Solicitation and Offer-Negotiated Acquisition*. [OF 308](#) may be used to support solicitation of negotiated contracts as specified in [15.210](#)(a). Award of such contracts may be made by [OF 307](#), as specified in [15.509](#).

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

53.223 [Reserved]

53.216 Types of contracts.

53.224 [Reserved]

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

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

53.225 [Reserved]

53.226 [Reserved]

53.227 [Reserved]

53.217 [Reserved]

53.228 Bonds and insurance.

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

53.218 [Reserved]

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

53.219 Small business programs.

The following form may be used in reporting small disadvantaged business contracting data: [OF 312](#) (10/00), *Small Disadvantaged Business Participation Report*. (See [Subpart 19.12](#).)

(b) [SF 25](#) (Rev. 5/96) *Performance Bond*. (See [28.106-1](#)(b).) [SF 25](#) is authorized for local reproduction.

(c) [SF 25A](#) (Rev. 10/98) *Payment Bond*. (See [28.106-1](#)(c).) [SF 25A](#) is authorized for local reproduction.

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

53.220 [Reserved]

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

53.221 [Reserved]

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

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

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

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

(h) [SF 273](#) (Rev. 10/98) *Reinsurance Agreement for a Miller Act Performance Bond*. (See [28.106-1](#)(h) and [28.202-1](#)(a)(4).) [SF 273](#) is authorized for local reproduction.

(a) [Reserved]

(b) [Reserved]

(c) [SF 308](#) (DOL) (5/85 Ed.), *Request for Determination and Response to Request*. (See [22.404-3](#)(a) and (b).)

(d) [SF 1093](#) (GAO) (10/71 Ed.), *Schedule of Withholdings under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act*. (See [22.406-9](#)(c)(1).)

(e) [SF 1413](#) (Rev. 7/2005), *Statement and Acknowledgment*. [SF 1413](#) is prescribed for use in obtaining contractor acknowledgment of inclusion of required clauses in subcontracts, as specified in [22.406-5](#).

(f) [SF 1444](#) (10/87 Ed.), *Request for Authorization of Additional Classification and Rate*. (See [22.406-3](#)(a) and [22.1019](#).)

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

(h) [SF 1446](#) (10/87 Ed.), *Labor Standards Investigation Summary Sheet*. (See [22.406-8](#)(d).)

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

(i) [SF 274](#) (Rev. 10/98) *Reinsurance Agreement for a Miller Act Payment Bond*. (See [28.106-1](#)(i) and [28.202-1](#)(a)(4).) [SF 274](#) is authorized for local reproduction.

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

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

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

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

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

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

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

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

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

53.230 [Reserved]

53.231 [Reserved]

53.232 Contract financing (SF 1443).

[SF 1443](#) (10/82), *Contractor's Request for Progress Payment*. [SF 1443](#) is prescribed for use in obtaining contractors' requests for progress payments, as specified in [32.503-1](#).

53.233 [Reserved]

53.234 [Reserved]

53.235 Research and development contracting (SF 298).

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

53.236 Construction and architect-engineer contracts.

53.236-1 Construction.

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

(a) [SF 1420](#) (10/83 Ed.), *Performance Evaluation—Construction Contracts*. [SF 1420](#) is prescribed for use in evaluating and reporting on the performance of construction contractors within approved dollar thresholds and as otherwise specified in [36.701](#)(d).

(b) [Reserved]

(c) [Reserved]

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

(1) Construction, alteration, or repair; or

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

(e) [OF 347](#) (Rev. 3/2005), *Order for Supplies or Services*. [OF 347](#), prescribed in [53.213](#)(f) (or an approved agency form), may be used for contracts under the simplified acquisition threshold for—

(1) Construction, alteration, or repair; or

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

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

53.236-2 Architect-engineer services (SF's 252, 330, and 1421).

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

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

(b) [SF 330](#) (6/04), *Architect-Engineer Qualifications*. [SF 330](#) is prescribed for use in obtaining information from architect-engineer firms regarding their professional qualifications, as specified in [36.702](#)(b)(1) and (b)(2).

(c) [SF 1421](#) (10/83 Ed.), *Performance Evaluation (Architect-Engineer)*. [SF 1421](#) is prescribed for use in evaluating and reporting on the performance of architect-engineer contractors within approved dollar thresholds and as otherwise specified in [36.702](#)(c).

53.237 [Reserved]

53.238 [Reserved]

53.239 [Reserved]

53.240 [Reserved]

53.241 [Reserved]

Standard Form 26

AWARD/CONTRACT		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING	PAGE OF PAGES		
2. CONTRACT (Proc. Inst. Ident.) NO.		3. EFFECTIVE DATE		4. REQUISITION/PURCHASE REQUEST/PROJECT NO.			
5. ISSUED BY		CODE	6. ADMINISTERED BY (If other than Item 5)		CODE		
7. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)		8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input type="checkbox"/> OTHER (See below)					
		9. DISCOUNT FOR PROMPT PAYMENT					
CODE		FACILITY CODE		10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN			
11. SHIP TO/MARK FOR		CODE	12. PAYMENT WILL BE MADE BY		CODE		
13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c) () <input type="checkbox"/> 41 U.S.C. 253(c) ()		14. ACCOUNTING AND APPROPRIATION DATA					
15A. ITEM NO.	15B. SUPPLIES/SERVICES		15C. QUANTITY	15D. UNIT	15E. UNIT PRICE		
15G. TOTAL AMOUNT OF CONTRACT					\$		
16. TABLE OF CONTENTS							
(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS		PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING		PART IV - REPRESENTATIONS AND INSTRUCTIONS			
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD	
	H	SPECIAL CONTRACT REQUIREMENTS					
CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE							
17. <input type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)				18. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____, including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the terms listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.			
19A. NAME AND TITLE OF SIGNER (Type or Print)				20A. NAME OF CONTRACTING OFFICER			
19B. NAME OF CONTRACTOR		19C. DATE SIGNED		20B. UNITED STATES OF AMERICA		20C. DATE SIGNED	
BY _____ (Signature of person authorized to sign)				BY _____ (Signature of Contracting Officer)			
AUTHORIZED FOR LOCAL REPRODUCTION Previous edition is usable				STANDARD FORM 26 (REV. 4/2008) Prescribed by GSA - FAR (48 CFR) 53.214(a)			

Standard Form 294

[Standard Form 294 has been removed.]

Standard Form 295

[Standard Form 295 has been removed.]

Standard Form 295

[Standard Form 295 has been removed.]

Standard Form 1447

SOLICITATION/CONTRACT BIDDER/OFFEROR TO COMPLETE BLOCKS 11, 13, 15, 21, 22, & 27			1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING	PAGE OF
2. CONTRACT NO.		3. AWARD/EFFECTIVE DATE	4. SOLICITATION NUMBER		5. SOLICITATION TYPE <input type="checkbox"/> SEALED BIDS (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	
7. ISSUED BY			CODE	8. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: % FOR: <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> EMERGING SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8(A)		
9. (AGENCY USE) NO COLLECT CALLS						
10. ITEMS TO BE PURCHASED (BRIEF DESCRIPTION) <input type="checkbox"/> SUPPLIES <input type="checkbox"/> SERVICES						
11. IF OFFER IS ACCEPTED BY THE GOVERNMENT WITHIN _____ CALENDAR DAYS (60 CALENDAR DAYS UNLESS OFFEROR INSERTS A DIFFERENT PERIOD) FROM THE DATE SET FORTH IN BLOCK 9 ABOVE, THE CONTRACTOR AGREES TO HOLD ITS OFFERED PRICES FIRM FOR THE ITEMS SOLICITED HEREIN AND TO ACCEPT ANY RESULTING CONTRACT SUBJECT TO THE TERMS AND CONDITIONS STATED HEREIN.				12. ADMINISTERED BY		
13. CONTRACTOR OFFEROR				CODE	FACILITY CODE	
TELEPHONE NUMBER _____ DUNS NUMBER _____ <input type="checkbox"/> CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER				14. PAYMENT WILL BE MADE BY		
15. PROMPT PAYMENT DISCOUNT				16. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION <input type="checkbox"/> 10 U.S.C. 2304 <input type="checkbox"/> 41 U.S.C. 253		
17. ITEM NO.	18. SCHEDULE OF SUPPLIES/SERVICES	19. QUANTITY	20. UNIT	21. UNIT PRICE	22. AMOUNT	
23. ACCOUNTING AND APPROPRIATION DATA					24. TOTAL AWARD AMOUNT (FOR GOVERNMENT USE ONLY)	
25. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY CONTINUATION SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.				26. AWARD OF CONTRACT: YOUR OFFER ON SOLICITATION NUMBER SHOWN IN BLOCK 4 INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:		
27. SIGNATURE OF OFFEROR/CONTRACTOR				28. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)		
NAME AND TITLE OF SIGNER (TYPE OR PRINT)			DATE SIGNED	NAME OF CONTRACTING OFFICER		DATE SIGNED
AUTHORIZED FOR LOCAL REPRODUCTION PREVIOUS EDITION NOT USABLE				STANDARD FORM 1447 (REV. 4/2008) Prescribed by GSA - FAR (48 CFR) 53.214(d)		

Standard Form 1447 (Back)

NO RESPONSE FOR REASONS CHECKED	
CANNOT COMPLY WITH SPECIFICATIONS	CANNOT MEET DELIVERY REQUIREMENT
UNABLE TO IDENTIFY THE ITEM(S)	DO NOT REGULARLY MANUFACTURE OR SELL THE TYPE OF ITEMS INVOLVED
OTHER (<i>Specify</i>)	
WE DO	WE DO NOT, DESIRE TO BE RETAINED ON THE MAILING LIST FOR FUTURE PROCUREMENT OF THE TYPE OF ITEMS INVOLVED
NAME AND ADDRESS OF FIRM (<i>Include Zip Code</i>)	
SIGNATURE	
TYPE OR PRINT NAME AND TITLE OF SIGNER	
<p>FROM:</p> <p style="text-align: center;">TO:</p> <p>SOLICITATION NO. _____</p> <p>DATE AND LOCAL TIME _____</p> <p style="text-align: right;">AFFIX STAMP HERE</p>	

FAC 2005-25 FILING INSTRUCTIONS

NOTE: The following pages reflect FAR final rule amendments.
Please do not file until their effective date of
May 22, 2008.

Remove Pages

4.12-1 and 4.12-2

TOC Part 9

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Subpart 4.12—Representations and Certifications

4.1200 Scope.

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

- (a) Eliminate the administrative burden for contractors of submitting the same information to various contracting offices; and
- (b) Establish a common source for this information to procurement offices across the Government.

4.1201 Policy.

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

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

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

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

4.1202 Solicitation provision and contract clause.

Except for commercial item solicitations issued under FAR [Part 12](#), insert in solicitations the provision at [52.204-8](#), Annual Representations and Certifications. When the clause

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

- (a) [52.203-2](#), Certificate of Independent Price Determination.
- (b) [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.
- (c) [52.204-3](#), Taxpayer Identification.
- (d) [52.204-5](#), Women-Owned Business (Other Than Small Business).
- (e) [52.209-5](#), Certification Regarding Responsibility Matters.
- (f) [52.214-14](#), Place of Performance—Sealed Bidding.
- (g) [52.215-6](#), Place of Performance.
- (h) [52.219-1](#), Small Business Program Representations (Basic & Alternate I).
- (i) [52.219-2](#), Equal Low Bids.
- (j) [52.219-19](#), Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.
- (k) [52.219-21](#), Small Business Size Representation for Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program.
- (l) [52.219-22](#), Small Disadvantaged Business Status (Basic & Alternate I).
- (m) [52.222-18](#), Certification Regarding Knowledge of Child Labor for Listed End Products.
- (n) [52.222-22](#), Previous Contracts and Compliance Reports.
- (o) [52.222-25](#), Affirmative Action Compliance.
- (p) [52.222-38](#), Compliance with Veterans’ Employment Reporting Requirements.
- (q) [52.222-48](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.
- (r) [52.223-1](#), Biobased Product Certification.
- (s) [52.223-4](#), Recovered Material Certification.
- (t) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Items (Alternate I only).
- (u) [52.223-13](#), Certification of Toxic Chemical Release Reporting.
- (v) [52.225-2](#), Buy American Act Certificate.
- (w) [52.225-4](#), Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate (Basic, Alternate I & II).
- (x) [52.225-6](#), Trade Agreements Certificate.
- (y) [52.226-2](#), Historically Black College or University and Minority Institution Representation.
- (z) [52.227-6](#), Royalty Information (Basic & Alternate I).
- (aa) [52.227-15](#), Representation of Limited Rights Data and Restricted Computer Software.

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PART 9—CONTRACTOR QUALIFICATIONS

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

Subpart 9.1—Responsible Prospective Contractors

9.100 Scope of subpart.

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

9.101 Definition.

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

9.102 Applicability.

(a) This subpart applies to all proposed contracts with any prospective contractor that is located—

- (1) In the United States or its outlying areas; or
- (2) Elsewhere, unless application of the subpart would be inconsistent with the laws or customs where the contractor is located.

(b) This subpart does not apply to proposed contracts with—

- (1) Foreign, State, or local governments;
- (2) Other U.S. Government agencies or their instrumentalities; or
- (3) Agencies for the blind or other severely handicapped (see [Subpart 8.7](#)).

9.103 Policy.

(a) Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only.

(b) No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility. In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility. If the prospective contractor is a small business concern, the contracting officer shall comply with [Subpart 19.6](#), Certificates of Competency and Determinations of Responsibility. (If Section 8(a) of the Small Business Act ([15 U.S.C. 637](#)) applies, see [Subpart 19.8](#).)

(c) The award of a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory perfor-

mance resulting in additional contractual or administrative costs. While it is important that Government purchases be made at the lowest price, this does not require an award to a supplier solely because that supplier submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.

9.104 Standards.**9.104-1 General standards.**

To be determined responsible, a prospective contractor must—

(a) Have adequate financial resources to perform the contract, or the ability to obtain them (see [9.104-3\(a\)](#));

(b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;

(c) Have a satisfactory performance record (see [9.104-3\(b\)](#) and [Subpart 42.15](#)). A prospective contractor shall not be determined responsible or nonresponsible solely on the basis of a lack of relevant performance history, except as provided in [9.104-2](#);

(d) Have a satisfactory record of integrity and business ethics.

(e) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors). (See [9.104-3\(a\)](#).)

(f) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them (see [9.104-3\(a\)](#)); and

(g) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

9.104-2 Special standards.

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

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

9.104-3 Application of standards.

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

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

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

(d) *Small business concerns.* (1) If a small business concern's offer that would otherwise be accepted is to be rejected because of a determination of nonresponsibility, the contracting officer shall refer the matter to the Small Business Administration, which will decide whether or not to issue a Certificate of Competency (see [Subpart 19.6](#)).

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

9.104-4 Subcontractor responsibility.

(a) Generally, prospective prime contractors are responsible for determining the responsibility of their prospective sub-

contractors (but see [9.405](#) and [9.405-2](#) regarding debarred, ineligible, or suspended firms). Determinations of prospective subcontractor responsibility may affect the Government's determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

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

9.104-5 Certification regarding responsibility matters.

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

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

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

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

9.104-6 Solicitation provision.

The contracting officer shall insert the provision at [52.209-5](#), Certification Regarding Responsibility Matters, in solicitations where the contract value is expected to exceed the simplified acquisition threshold.

9.105 Procedures**9.105-1 Obtaining information.**

(a) Before making a determination of responsibility, the contracting officer shall possess or obtain information sufficient to be satisfied that a prospective contractor currently meets the applicable standards in [9.104](#).

(b)(1) Generally, the contracting officer shall obtain information regarding the responsibility of prospective contractors, including requesting preaward surveys when necessary

(see [9.106](#)), promptly after a bid opening or receipt of offers. However, in negotiated contracting, especially when research and development is involved, the contracting officer may obtain this information before issuing the request for proposals. Requests for information shall ordinarily be limited to information concerning—

- (i) The low bidder; or
- (ii) Those offerors in range for award.

(2) Preaward surveys shall be managed and conducted by the surveying activity.

(i) If the surveying activity is a contract administration office—

(A) That office shall advise the contracting officer on prospective contractors' financial competence and credit needs; and

(B) The administrative contracting officer shall obtain from the auditor any information required concerning the adequacy of prospective contractors' accounting systems and these systems' suitability for use in administering the proposed type of contract.

(ii) If the surveying activity is not a contract administration office, the contracting officer shall obtain from the auditor any information required concerning prospective contractors' financial competence and credit needs, the adequacy of their accounting systems, and these systems' suitability for use in administering the proposed type of contract.

(3) Information on financial resources and performance capability shall be obtained or updated on as current a basis as is feasible up to the date of award.

(c) In making the determination of responsibility (see [9.104-1\(c\)](#)), the contracting officer shall consider relevant past performance information (see [Subpart 42.15](#)). In addition, the contracting officer should use the following sources of information to support such determinations:

(1) The Excluded Parties List System maintained in accordance with [Subpart 9.4](#).

(2) Records and experience data, including verifiable knowledge of personnel within the contracting office, audit offices, contract administration offices, and other contracting offices.

(3) The prospective contractor-including bid or proposal information (including the certification at [52.209-5](#) or [52.212-3\(h\)](#) (see [9.104-5](#))), questionnaire replies, financial data, information on production equipment, and personnel information.

(4) Commercial sources of supplier information of a type offered to buyers in the private sector.

(5) Preaward survey reports (see [9.106](#)).

(6) Other sources such as publications; suppliers, subcontractors, and customers of the prospective contractor; financial institutions; Government agencies; and business and trade associations.

(7) If the contract is for construction, the contracting officer may consider performance evaluation reports (see [36.201\(c\)\(2\)](#)).

(d) Contracting offices and cognizant contract administration offices that become aware of circumstances casting doubt on a contractor's ability to perform contracts successfully shall promptly exchange relevant information.

9.105-2 Determinations and documentation.

(a) *Determinations.* (1) The contracting officer's signing of a contract constitutes a determination that the prospective contractor is responsible with respect to that contract. When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be non-responsible, the contracting officer shall make, sign, and place in the contract file a determination of nonresponsibility, which shall state the basis for the determination.

(2) If the contracting officer determines and documents that a responsive small business lacks certain elements of responsibility, the contracting officer shall comply with the procedures in [Subpart 19.6](#). When a certificate of competency is issued for a small business concern (see [Subpart 19.6](#)), the contracting officer may accept the factors covered by the certificate without further inquiry.

(b) *Support documentation.* Documents and reports supporting a determination of responsibility or nonresponsibility, including any preaward survey reports and any applicable Certificate of Competency, must be included in the contract file.

9.105-3 Disclosure of preaward information.

(a) Except as provided in [Subpart 24.2](#), Freedom of Information Act, information (including the preaward survey report) accumulated for purposes of determining the responsibility of a prospective contractor shall not be released or disclosed outside the Government.

(b) The contracting officer may discuss preaward survey information with the prospective contractor before determining responsibility. After award, the contracting officer or, if it is appropriate, the head of the surveying activity or a designee may discuss the findings of the preaward survey with the company surveyed.

(c) Preaward survey information may contain proprietary or source selection information and should be marked with the appropriate legend and protected accordingly (see [3.104-4](#)).

9.106 Preaward surveys.

9.106-1 Conditions for preaward surveys.

(a) A preaward survey is normally required only when the information on hand or readily available to the contracting officer, including information from commercial sources, is not sufficient to make a determination regarding responsibil-

ity. In addition, if the contemplated contract will have a fixed price at or below the simplified acquisition threshold or will involve the acquisition of commercial items (see [Part 12](#)), the contracting officer should not request a preaward survey unless circumstances justify its cost.

(b) When a cognizant contract administration office becomes aware of a prospective award to a contractor about which unfavorable information exists and no preaward survey has been requested, it shall promptly obtain and transmit details to the contracting officer.

(c) Before beginning a preaward survey, the surveying activity shall ascertain whether the prospective contractor is debarred, suspended, or ineligible (see [Subpart 9.4](#)). If the prospective contractor is debarred, suspended, or ineligible, the surveying activity shall advise the contracting officer promptly and not proceed with the preaward survey unless specifically requested to do so by the contracting officer.

9.106-2 Requests for preaward surveys.

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

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

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

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

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

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

9.106-3 Interagency preaward surveys.

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

9.106-4 Reports.

(a) The surveying activity shall complete the applicable parts of [SF 1403](#), Preaward Survey of Prospective Contractor (General); [SF 1404](#), Preaward Survey of Prospective Contractor—Technical; [SF 1405](#), Preaward Survey of Prospective Contractor—Production; [SF 1406](#), Preaward Survey of Prospective Contractor—Quality Assurance; [SF 1407](#), Preaward Survey of Prospective Contractor—Financial Capability; and [SF 1408](#), Preaward Survey of Prospective Contractor—

Accounting System; and provide a narrative discussion sufficient to support both the evaluation ratings and the recommendations.

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

(c) When a preaward survey discloses previous unsatisfactory performance, the surveying activity shall specify the extent to which the prospective contractor plans, or has taken, corrective action. Lack of evidence that past failure to meet contractual requirements was the prospective contractor's fault does not necessarily indicate satisfactory performance. The narrative shall report any persistent pattern of need for costly and burdensome Government assistance (e.g., engineering, inspection, or testing) provided in the Government's interest but not contractually required.

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

9.107 Surveys of nonprofit agencies serving people who are blind or have other severe disabilities under the Javits-Wagner-O'Day (JWOD) Program.

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

(b) The contracting office, upon request from the Committee, shall request a capability survey from the activity responsible for performing preaward surveys, or notify the Committee that the JWOD participating nonprofit agency is capable, with supporting rationale, and that the survey is waived. The capability survey will focus on the technical and production capabilities and applicable preaward survey ele-

ments to furnish specific supplies or services being considered for addition to the Procurement List.

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

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

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

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

9.405-1 Continuation of current contracts.

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

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

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

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

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

9.405-2 Restrictions on subcontracting.

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

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

entering into such subcontract. The notice must provide the following:

(1) The name of the subcontractor;

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

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

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

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

9.406 Debarment.

9.406-1 General.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Specifically named; and

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

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

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

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

9.406-2 Causes for debarment.

The debarring official may debar—

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

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

(i) Obtaining;

(ii) Attempting to obtain; or

(iii) Performing a public contract or subcontract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(2) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(B) *Examples.* (1) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(2) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(3) *The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159.* The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(4) *The taxpayer has filed for bankruptcy protection.* The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(2) A contractor, based on a determination by the Secretary of Homeland Security or the Attorney General of the United States, that the contractor is not in compliance with Immigration and Nationality Act employment provisions (see Executive Order 12989, as amended by Executive Order 13286). Such determination is not reviewable in the debarment proceedings.

(c) A contractor or subcontractor based on any other cause of so serious or compelling a nature that it affects the present responsibility of the contractor or subcontractor.

9.406-3 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to

the debarring official of matters appropriate for that official's consideration.

(b) *Decisionmaking process.* (1) Agencies shall establish procedures governing the debarment decisionmaking process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(2) In actions not based upon a conviction or civil judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, agencies shall also—

(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of proposal to debar.* A notice of proposed debarment shall be issued by the debarring official advising the contractor and any specifically named affiliates, by certified mail, return receipt requested—

(1) That debarment is being considered;

(2) Of the reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under [9.406-2](#) for proposing debarment;

(4) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;

(5) Of the agency's procedures governing debarment decisionmaking;

(6) Of the effect of the issuance of the notice of proposed debarment; and

(7) Of the potential effect of an actual debarment.

(d) *Debarring official's decision.* (1) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the contractor. If no suspension is in effect, the decision shall be made within 30 working days after receipt of any information and argument submitted by the contractor, unless the debarring official extends this period for good cause.

(2)(i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared. The debarring official shall base the deci-

sion on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(ii) The debarring official may refer matters involving disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(iii) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(3) In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence.

(e) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice by certified mail, return receipt requested—

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective throughout the executive branch of the Government unless the head of an agency or a designee makes the statement called for by [9.406-1\(c\)](#).

(2) If debarment is not imposed, the debarring official shall promptly notify the contractor and any affiliates involved, by certified mail, return receipt requested.

9.406-4 Period of debarment.

(a)(1) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, debarment should not exceed 3 years, except that—

(i) Debarment for violation of the provisions of the Drug-Free Workplace Act of 1988 (see [23.506](#)) may be for a period not to exceed 5 years; and

(ii) Debarments under [9.406-2\(b\)\(2\)](#) shall be for one year unless extended pursuant to paragraph (b) of this subsection.

(2) If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend the debarment for an additional period, if that official determines that an extension is necessary to protect the Government's interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. Debarments under [9.406-2\(b\)\(2\)](#) may be extended for additional periods of one year if the Secretary of Homeland Security or the Attorney General determines that the contractor continues to be in violation of the employment

provisions of the Immigration and Nationality Act. If debarment for an additional period is determined to be necessary, the procedures of [9.406-3](#) shall be followed to extend the debarment.

(c) The debarring official may reduce the period or extent of debarment, upon the contractor's request, supported by documentation, for reasons such as—

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

9.406-5 Scope of debarment.

(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.

(c) The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

9.407 Suspension.

9.407-1 General.

(a) The suspending official may, in the public interest, suspend a contractor for any of the causes in [9.407-2](#), using the procedures in [9.407-3](#).

(b)(1) Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, agencies should consider how much information is available, how credible it is given the circumstances, whether or not

important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as contracts, inspection reports, and correspondence.

(2) The existence of a cause for suspension does not necessarily require that the contractor be suspended. The suspending official should consider the seriousness of the contractor's acts or omissions and may, but is not required to, consider remedial measures or mitigating factors, such as those set forth in [9.406-1\(a\)](#). A contractor has the burden of promptly presenting to the suspending official evidence of remedial measures or mitigating factors when it has reason to know that a cause for suspension exists. The existence or non-existence of any remedial measures or mitigating factors is not necessarily determinative of a contractor's present responsibility.

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

(1) Specifically named; and

(2) Given written notice of the suspension and an opportunity to respond (see [9.407-3\(c\)](#)).

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

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

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

9.407-2 Causes for suspension.

(a) The suspending official may suspend a contractor suspected, upon adequate evidence, of—

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

(i) Obtaining;

(ii) Attempting to obtain; or

(iii) Performing a public contract or subcontract.

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

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

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

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

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

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

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

(7) Delinquent Federal taxes in an amount that exceeds \$3,000. See the criteria at [9.406-2\(b\)\(1\)\(v\)](#) for determination of when taxes are delinquent; or

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

(b) Indictment for any of the causes in paragraph (a) of this section constitutes adequate evidence for suspension.

(c) The suspending official may upon adequate evidence also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

9.407-3 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the suspending official of matters appropriate for that official's consideration.

(b) *Decisionmaking process.* (1) Agencies shall establish procedures governing the suspension decisionmaking process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity, following the imposition of suspension, to submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(2) In actions not based on an indictment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of Department of Justice

advice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, agencies shall also—

(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of suspension.* When a contractor and any specifically named affiliates are suspended, they shall be immediately advised by certified mail, return receipt requested—

(1) That they have been suspended and that the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities—

(i) Of a serious nature in business dealings with the Government or

(ii) Seriously reflecting on the propriety of further Government dealings with the contractor—any such irregularities shall be described in terms sufficient to place the contractor on notice without disclosing the Government's evidence;

(2) That the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;

(3) Of the cause(s) relied upon under [9.407-2](#) for imposing suspension;

(4) Of the effect of the suspension;

(5) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over the material facts; and

(6) That additional proceedings to determine disputed material facts will be conducted unless—

(i) The action is based on an indictment; or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(d) *Suspending official's decision.* (1) In actions—

(i) Based on an indictment;

(ii) In which the contractor's submission does not raise a genuine dispute over material facts; or

(iii) In which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official's decision shall be based on all the information in the administrative record, including any submission made by the contractor.

(2)(i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact

shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(ii) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(iii) The suspending official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(3) The suspending official may modify or terminate the suspension or leave it in force (for example, see [9.406-4\(c\)](#) for the reasons for reducing the period or extent of debarment). However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of—

(i) Suspension by any other agency; or

(ii) Debarment by any agency.

(4) Prompt written notice of the suspending official's decision shall be sent to the contractor and any affiliates involved, by certified mail, return receipt requested.

9.407-4 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal proceedings, unless sooner terminated by the suspending official or as provided in this subsection.

(b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of the proposed termination of the suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

9.407-5 Scope of suspension.

The scope of suspension shall be the same as that for debarment (see [9.406-5](#)), except that the procedures of [9.407-3](#) shall be used in imposing suspension.

9.408 [Reserved]

9.409 Contract clause.

The contracting officer shall insert the clause at [52.209-6](#), Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, in solicitations and contracts where the contract value exceeds \$30,000.

Subpart 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

12.300 Scope of subpart.

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

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

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

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

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

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

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

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

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

(4) *The clause at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.* This clause incorporates by reference only

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

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

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

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

(d) *Other required provisions and clauses.* (1) Notwithstanding prescriptions contained elsewhere in the FAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part shall be revised, as necessary, to reflect the applicability of statutes and executive orders to the acquisition of commercial items.

(2) Insert the clause at [52.225-19](#), Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, as prescribed in [25.301-4](#).

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

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

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

(3) The contracting officer may use the provisions and clauses contained in [Part 23](#) regarding the use of products

containing recovered materials and biobased products when appropriate for the item being acquired.

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

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

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

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

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

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

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

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

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

12.303 Contract format.

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

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

cable provision of law not included on the list set forth in paragraph (a) of this section unless the FAR Council has already determined in writing that the law is applicable. The Administrator, OFPP, will include the law on the list in paragraph (a) of this section unless the FAR Council makes a determination that it is applicable within 60 days of receiving the petition.

13.006 Inapplicable provisions and clauses.

While certain statutes still apply, pursuant to Public Law 103-355, the following provisions and clauses are inapplicable to contracts and subcontracts at or below the simplified acquisition threshold:

- (a) [52.203-5](#), Covenant Against Contingent Fees.
- (b) [52.203-6](#), Restrictions on Subcontractor Sales to the Government.
- (c) [52.203-7](#), Anti-Kickback Procedures.
- (d) [52.215-2](#), Audits and Records—Negotiation.
- (e) [52.222-4](#), Contract Work Hours and Safety Standards Act—Overtime Compensation.
- (f) [52.223-6](#), Drug-Free Workplace, except for individuals.
- (g) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Items.

Subpart 13.1—Procedures

13.101 General.

- (a) In making purchases, contracting officers shall—
 - (1) Comply with the policy in [7.202](#) relating to economic purchase quantities, when practicable;
 - (2) Satisfy the procedures described in [Subpart 19.6](#) with respect to Certificates of Competency before rejecting a quotation, oral or written, from a small business concern determined to be nonresponsible (see [Subpart 9.1](#)); and
 - (3) Provide for the inspection of supplies or services as prescribed in [46.404](#).
- (b) In making purchases, contracting officers should—
 - (1) Include related items (such as small hardware items or spare parts for vehicles) in one solicitation and make award on an “all-or-none” or “multiple award” basis provided suppliers are so advised when quotations or offers are requested;
 - (2) Incorporate provisions and clauses by reference in solicitations and in awards under requests for quotations, provided the requirements in [52.102](#) are satisfied;
 - (3) Make maximum effort to obtain trade and prompt payment discounts (see [14.408-3](#)). Prompt payment discounts shall not be considered in the evaluation of quotations; and
 - (4) Use bulk funding to the maximum extent practicable. Bulk funding is a system whereby the contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligational

authority on each purchase document. Bulk funding is particularly appropriate if numerous purchases using the same type of funds are to be made during a given period.

13.102 Source list.

(a) Contracting officers should use the Central Contractor Registration database (see [Subpart 4.11](#)) at <http://www.ccr.gov> as their primary sources of vendor information. Offices maintaining additional vendor source files or listings should identify the status of each source (when the status is made known to the contracting office) in the following categories:

- (1) Small business.
- (2) Small disadvantaged business.
- (3) Women-owned small business.
- (4) HUBZone small business.
- (5) Service-disabled veteran-owned small business.
- (6) Veteran-owned small business.

(b) The status information may be used as the basis to ensure that small business concerns are provided the maximum practicable opportunities to respond to solicitations issued using simplified acquisition procedures.

13.103 Use of standing price quotations.

Authorized individuals do not have to obtain individual quotations for each purchase. Standing price quotations may be used if—

- (a) The pricing information is current; and
- (b) The Government obtains the benefit of maximum discounts before award.

13.104 Promoting competition.

The contracting officer must promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most advantageous to the Government, considering the administrative cost of the purchase.

- (a) The contracting officer must not—
 - (1) Solicit quotations based on personal preference; or
 - (2) Restrict solicitation to suppliers of well-known and widely distributed makes or brands.
- (b) If using simplified acquisition procedures and not providing access to the notice of proposed contract action and solicitation information through the Governmentwide point of entry (GPE), maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources within the local trade area. Unless the contract action requires synopsis pursuant to [5.101](#) and an exception under [5.202](#) is not applicable, consider solicitation of at least three sources to promote competition to the maximum extent practicable. Whenever practicable, request quotations or offers from two sources not included in the previous solicitation.

13.105 Synopsis and posting requirements.

(a) The contracting officer must comply with the public display and synopsis requirements of [5.101](#) and [5.203](#) unless an exception in [5.202](#) applies.

(1)(i) FACNET is used for an acquisition at or below the simplified acquisition threshold; or

(ii) The GPE is used at or below the simplified acquisition threshold for providing widespread public notice of acquisition opportunities and offerors are provided a means of responding to the solicitation electronically; or

(2) An exception in [5.202](#) applies.

(b) When acquiring commercial items or supplies or services procured in accordance with 12.102(f)(1), the contracting officer may use a combined synopsis and solicitation. In these cases, a separate solicitation is not required. The contracting officer must include enough information to permit suppliers to develop quotations or offers.

(c) See [5.102\(a\)\(6\)](#) for the requirement to post a brand name justification or documentation required by [13.106-1\(b\)](#) or [13.501](#).

13.106 Soliciting competition, evaluation of quotations or offers, award and documentation.**13.106-1 Soliciting competition.**

(a) *Considerations.* In soliciting competition, the contracting officer shall consider the guidance in [13.104](#) and the following before requesting quotations or offers:

(1)(i) The nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive.

(ii) An electronic commerce method that employs widespread electronic public notice is not available; and

(iii) The urgency of the proposed purchase.

(iv) The dollar value of the proposed purchase.

(v) Past experience concerning specific dealers' prices.

(2) When soliciting quotations or offers, the contracting officer shall notify potential quoters or offerors of the basis on which award will be made (price alone or price and other factors, *e.g.*, past performance and quality). Contracting officers are encouraged to use best value. Solicitations are not required to state the relative importance assigned to each evaluation factor and subfactor, nor are they required to include subfactors.

(b) *Soliciting from a single source.* (1) For purchases not exceeding the simplified acquisition threshold, contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available (*e.g.*, urgency, exclusive licensing agreements, brand name or industrial mobilization).

(2) For sole source (including brand name) acquisitions of commercial items in excess of the simplified acquisition

threshold conducted pursuant to [Subpart 13.5](#) the requirements at 13.501(a) apply.

(3) See [5.102\(a\)\(6\)](#) for the requirement to post the brand name justification or documentation.

(c) *Soliciting orally.* (1) The contracting officer shall solicit quotations orally to the maximum extent practicable, if—

(i) The acquisition does not exceed the simplified acquisition threshold;

(ii) Oral solicitation is more efficient than soliciting through available electronic commerce alternatives; and

(iii) Notice is not required under [5.101](#).

(2) However, an oral solicitation may not be practicable for contract actions exceeding \$30,000 unless covered by an exception in [5.202](#).

(d) *Written solicitations.* If obtaining electronic or oral quotations is uneconomical or impracticable, the contracting officer should issue paper solicitations for contract actions likely to exceed \$30,000. The contracting officer shall issue a written solicitation for construction requirements exceeding \$2,000.

(e) *Use of options.* Options may be included in solicitations, provided the requirements of [Subpart 17.2](#) are met and the aggregate value of the acquisition and all options does not exceed the dollar threshold for use of simplified acquisition procedures.

(f) *Inquiries.* An agency should respond to inquiries received through any medium (including electronic commerce) if doing so would not interfere with the efficient conduct of the acquisition.

13.106-2 Evaluation of quotations or offers.

(a) *General.* (1) The contracting officer shall evaluate quotations or offers—

(i) In an impartial manner; and

(ii) Inclusive of transportation charges from the shipping point of the supplier to the delivery destination.

(2) Quotations or offers shall be evaluated on the basis established in the solicitation.

(3) All quotations or offers shall be considered (see paragraph (b) of this subsection).

(b) *Evaluation procedures.* (1) The contracting officer has broad discretion in fashioning suitable evaluation procedures. The procedures prescribed in [Parts 14](#) and [15](#) are not mandatory. At the contracting officer's discretion, one or more, but not necessarily all, of the evaluation procedures in [Part 14](#) or [15](#) may be used.

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

(3) If using price and other factors, ensure that quotations or offers can be evaluated in an efficient and minimally

23.000 Scope.

This part prescribes acquisition policies and procedures supporting the Government’s program for ensuring a drug-free workplace and for protecting and improving the quality of the environment by—

- (a) Controlling pollution;
- (b) Managing energy and water use in Government facilities efficiently;
- (c) Using renewable energy and renewable energy technologies;

(d) Acquiring energy-efficient and water-efficient products and services, environmentally preferable products, products containing recovered materials, and biobased products; and

- (e) Requiring contractors to identify hazardous materials.

23.001 Definition.

“Toxic chemical,” as used in this part, means a chemical or chemical category listed in 40 CFR 372.65.

Subpart 23.1—[Reserved]

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Subpart 23.4—Use of Recovered Materials and Biobased Products

23.400 Scope of subpart.

(a) The procedures in this subpart apply to all agency acquisitions of an Environmental Protection Agency (EPA) or United States Department of Agriculture (USDA)-designated item, if—

(1) The price of the designated item exceeds \$10,000; or

(2) The aggregate amount paid for designated items, or for functionally equivalent designated items, in the preceding fiscal year was \$10,000 or more.

(b) While micro-purchases are included in determining the aggregate amount paid under paragraph (a)(2) of this section, it is not recommended that an agency track micro-purchases when—

(1) The agency anticipates the aggregate amount paid will exceed \$10,000; or

(2) The agency intends to establish or continue an affirmative procurement program in the following fiscal year.

23.401 Definitions.

As used in this subpart—

(a) “EPA-designated item” means a product that is or can be made with recovered material—

(1) That is listed by EPA in a procurement guideline (40 CFR part 247); and

(2) For which EPA has provided purchasing recommendations in a related Recovered Materials Advisory Notice (RMAN) (available at <http://www.epa.gov/epaoswer/non-hw/procure/backgrnd.htm>).

(b) “USDA-designated item” means a generic grouping of products that are or can be made with biobased materials—

(1) That is listed by USDA in a procurement guideline (7 CFR part 2902, subpart B); and

(2) For which USDA has provided purchasing recommendations.

23.402 Authorities.

(a) The Resource Conservation and Recovery Act of 1976 (RCRA), [42 U.S.C. 6962](#).

(b) The Farm Security and Rural Investment Act of 2002 (FSRIA), [7 U.S.C. 8102](#).

(c) Executive Order 13101 of September 14, 1998, Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition.

(d) The Energy Policy Act of 2005, Public Law 109-58.

23.403 Policy.

Government policy on the use of products containing recovered materials and biobased products considers cost, availability of competition, and performance. Agencies shall assure the use of products containing recovered materials and

biobased products to the maximum extent practicable without jeopardizing the intended use of the product while maintaining a satisfactory level of competition at a reasonable price. Such products shall meet the reasonable performance standards of the agency and be acquired competitively, in a cost-effective manner. Except as provided at FAR [23.404\(b\)](#), virgin material shall not be required by the solicitation (see [11.302](#)).

23.404 Agency affirmative procurement programs.

(a) An agency must establish an affirmative procurement program for EPA and USDA-designated items if the agency’s purchases of designated items exceed the threshold set forth in [23.400](#).

(1) Agencies have a period of 1 year to revise their procurement program(s) after the designation of any new item by EPA or USDA.

(2) Technical or requirements personnel and procurement personnel are responsible for the preparation, implementation, and monitoring of affirmative procurement programs.

(3) Agency affirmative procurement programs must include—

(i) A recovered materials and biobased products preference program;

(ii) An agency promotion program;

(iii) For EPA-designated items only, a program for requiring reasonable estimates, certification, and verification of recovered material used in the performance of contracts. Both the recovered material content and biobased programs require preaward certification that the products meet EPA or USDA recommendations. A second certification is required at contract completion for recovered material content; and

(iv) Annual review and monitoring of the effectiveness of the program.

(b) “Exemptions”. (1) Agency affirmative procurement programs must require that 100 percent of purchases of EPA or USDA-designated items contain recovered material or biobased content, respectively, unless the item cannot be acquired—

(i) Competitively within a reasonable time frame;

(ii) Meeting reasonable performance standards; or

(iii) At a reasonable price.

(2) EPA and USDA may provide categorical exemptions for items that they designate, when procured for a specific purpose. For example, some USDA-designated items such as mobile equipment hydraulic fluids, diesel fuel additives, and penetrating lubricants (see 7 CFR 2902.10 *et seq.*) are excluded from the preferred procurement requirement for the application of the USDA-designated item to one or both of the following:

(i) Spacecraft system and launch support equipment.

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

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

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

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

(i) Highest percent of recovered materials practicable; or

(ii) Minimum content standards in accordance with EPA's Recovered Materials Advisory Notices; and

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

(i) The highest percentage of biobased material practicable; or

(ii) USDA's recommended minimum contents standards.

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

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

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

23.405 Procedures.

(a) *Designated items and procurement guidelines.*

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

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

services that could include supplies that contain biobased material.

(b) *Procurement exemptions.* (1) Once an item has been designated by either EPA or USDA, agencies shall purchase conforming products unless an exemption applies (see [23.404\(b\)](#)).

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

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

23.406 Solicitation provisions and contract clauses.

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

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

(2) Include the clause at [52.223-2](#).

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

(c) Insert the provision at [52.223-4](#), Recovered Material Certification, in solicitations that—

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

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

(d) Insert the clause at [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-designated Items, in solicitations and contracts exceeding \$100,000 that are for, or specify the use of, EPA-designated items containing recovered materials. If technical personnel advise that estimates can be verified, use the clause with its Alternate I.

(e) Insert the clause at [52.223-17](#), Affirmative Procurement of EPA-designated Items in Service and Construction Contracts, in service or construction solicitations and contracts unless the contract will not involve the use of EPA-designated items.

Subpart 33.2—Disputes and Appeals

33.201 Definitions.

As used in this subpart—

“Accrual of a claim” means the date when all events, that fix the alleged liability of either the Government or the contractor and permit assertion of the claim, were known or should have been known. For liability to be fixed, some injury must have occurred. However, monetary damages need not have been incurred.

“Alternative dispute resolution (ADR)” means any type of procedure or combination of procedures voluntarily used to resolve issues in controversy. These procedures may include, but are not limited to, conciliation, facilitation, mediation, fact-finding, minitrials, arbitration, and use of ombudsmen.

“Defective certification” means a certificate which alters or otherwise deviates from the language in [33.207\(c\)](#) or which is not executed by a person duly authorized to bind the contractor with respect to the claim. Failure to certify shall not be deemed to be a defective certification.

“Issue in controversy” means a material disagreement between the Government and the contractor that—

- (1) May result in a claim; or
- (2) Is all or part of an existing claim.

“Misrepresentation of fact” means a false statement of substantive fact, or any conduct which leads to the belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

33.202 Contract Disputes Act of 1978.

The Contract Disputes Act of 1978, as amended ([41 U.S.C. 601-613](#)) (the Act), establishes procedures and requirements for asserting and resolving claims subject to the Act. In addition, the Act provides for—

- (a) The payment of interest on contractor claims;
- (b) Certification of contractor claims; and
- (c) A civil penalty for contractor claims that are fraudulent or based on a misrepresentation of fact.

33.203 Applicability.

(a) Except as specified in paragraph (b) of this section, this part applies to any express or implied contract covered by the Federal Acquisition Regulation.

(b) This subpart does not apply to any contract with—

- (1) A foreign government or agency of that government, or
- (2) An international organization or a subsidiary body of that organization, if the agency head determines that the application of the Act to the contract would not be in the public interest.

(c) This part applies to all disputes with respect to contracting officer decisions on matters “arising under” or “relating to” a contract. Agency Boards of Contract Appeals (BCA’s)

authorized under the Act continue to have all of the authority they possessed before the Act with respect to disputes arising under a contract, as well as authority to decide disputes relating to a contract. The clause at [52.233-1](#), Disputes, recognizes the “all disputes” authority established by the Act and states certain requirements and limitations of the Act for the guidance of contractors and contracting agencies. The clause is not intended to affect the rights and obligations of the parties as provided by the Act or to constrain the authority of the statutory agency BCA’s in the handling and deciding of contractor appeals under the Act.

33.204 Policy.

The Government’s policy is to try to resolve all contractual issues in controversy by mutual agreement at the contracting officer’s level. Reasonable efforts should be made to resolve controversies prior to the submission of a claim. Agencies are encouraged to use ADR procedures to the maximum extent practicable. Certain factors, however, may make the use of ADR inappropriate (see [5 U.S.C. 572\(b\)](#)). Except for arbitration conducted pursuant to the Administrative Dispute Resolution Act (ADRA), ([5 U.S.C. 571](#), *et seq.*) agencies have authority which is separate from that provided by the ADRA to use ADR procedures to resolve issues in controversy. Agencies may also elect to proceed under the authority and requirements of the ADRA.

33.205 Relationship of the Act to Pub. L. 85-804.

(a) Requests for relief under Public Law 85-804 ([50 U.S.C. 1431-1435](#)) are not claims within the Contract Disputes Act of 1978 or the Disputes clause at [52.233-1](#), Disputes, and shall be processed under [Subpart 50.1](#), Extraordinary Contractual Actions. However, relief formerly available only under Public Law 85-804; *i.e.*, legal entitlement to rescission or reformation for mutual mistake, is now available within the authority of the contracting officer under the Contract Disputes Act of 1978 and the Disputes clause. In case of a question whether the contracting officer has authority to settle or decide specific types of claims, the contracting officer should seek legal advice.

(b) A contractor’s allegation that it is entitled to rescission or reformation of its contract in order to correct or mitigate the effect of a mistake shall be treated as a claim under the Act. A contract may be reformed or rescinded by the contracting officer if the contractor would be entitled to such remedy or relief under the law of Federal contracts. Due to the complex legal issues likely to be associated with allegations of legal entitlement, contracting officers shall make written decisions, prepared with the advice and assistance of legal counsel, either granting or denying relief in whole or in part.

(c) A claim that is either denied or not approved in its entirety under paragraph (b) of this section may be cognizable as a request for relief under Public Law 85-804 as imple-

mented by [Subpart 50.1](#). However, the claim must first be submitted to the contracting officer for consideration under the Contract Disputes Act of 1978 because the claim is not cognizable under Public Law 85-804, as implemented by [Subpart 50.1](#), unless other legal authority in the agency concerned is determined to be lacking or inadequate.

33.206 Initiation of a claim.

(a) Contractor claims shall be submitted, in writing, to the contracting officer for a decision within 6 years after accrual of a claim, unless the contracting parties agreed to a shorter time period. This 6-year time period does not apply to contracts awarded prior to October 1, 1995. The contracting officer shall document the contract file with evidence of the date of receipt of any submission from the contractor deemed to be a claim by the contracting officer.

(b) The contracting officer shall issue a written decision on any Government claim initiated against a contractor within 6 years after accrual of the claim, unless the contracting parties agreed to a shorter time period. The 6-year period shall not apply to contracts awarded prior to October 1, 1995, or to a Government claim based on a contractor claim involving fraud.

33.207 Contractor certification.

(a) Contractors shall provide the certification specified in paragraph (c) of this section when submitting any claim exceeding \$100,000.

(b) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(c) The certification shall state as follows:

I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the contractor.

(d) The aggregate amount of both increased and decreased costs shall be used in determining when the dollar thresholds requiring certification are met (see example in [15.403-4\(a\)\(1\)\(iii\)](#) regarding cost or pricing data).

(e) The certification may be executed by any person duly authorized to bind the contractor with respect to the claim.

(f) A defective certification shall not deprive a court or an agency BCA of jurisdiction over that claim. Prior to the entry of a final judgment by a court or a decision by an agency BCA, however, the court or agency BCA shall require a defective certification to be corrected.

33.208 Interest on claims.

(a) The Government shall pay interest on a contractor's claim on the amount found due and unpaid from the date that—

(1) The contracting officer receives the claim (certified if required by [33.207\(a\)](#)); or

(2) Payment otherwise would be due, if that date is later, until the date of payment.

(b) Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the contracting officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. (See [32.614](#) for the right of the Government to collect interest on its claims against a contractor.)

(c) With regard to claims having defective certifications, interest shall be paid from either the date that the contracting officer initially receives the claim or October 29, 1992, whichever is later. However, if a contractor has provided a proper certificate prior to October 29, 1992, after submission of a defective certificate, interest shall be paid from the date of receipt by the Government of a proper certificate.

33.209 Suspected fraudulent claims.

If the contractor is unable to support any part of the claim and there is evidence that the inability is attributable to misrepresentation of fact or to fraud on the part of the contractor, the contracting officer shall refer the matter to the agency official responsible for investigating fraud.

33.210 Contracting officer's authority.

Except as provided in this section, contracting officers are authorized, within any specific limitations of their warrants, to decide or resolve all claims arising under or relating to a contract subject to the Act. In accordance with agency policies and [33.214](#), contracting officers are authorized to use ADR procedures to resolve claims. The authority to decide or resolve claims does not extend to—

(a) A claim or dispute for penalties or forfeitures prescribed by statute or regulation that another Federal agency is specifically authorized to administer, settle, or determine; or

(b) The settlement, compromise, payment, or adjustment of any claim involving fraud.

33.211 Contracting officer's decision.

(a) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the contracting officer shall—

(1) Review the facts pertinent to the claim;

(2) Secure assistance from legal and other advisors;

(3) Coordinate with the contract administration officer or contracting office, as appropriate; and

(4) Prepare a written decision that shall include—

- (i) A description of the claim or dispute;
- (ii) A reference to the pertinent contract terms;
- (iii) A statement of the factual areas of agreement and disagreement;
- (iv) A statement of the contracting officer's decision, with supporting rationale;
- (v) Paragraphs substantially as follows:

“This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number.

With regard to appeals to the agency board of contract appeals, you may, solely at your election, proceed under the board's—

- (1) Small claim procedure for claims of \$50,000 or less or, in the case of a small business concern (as defined in the Small Business Act and regulations under that Act), \$150,000 or less; or
- (2) Accelerated procedure for claims of \$100,000 or less.

Instead of appealing to the agency board of contract appeals, you may bring an action directly in the United States Court of Federal Claims (except as provided in the Contract Disputes Act of 1978, [41 U.S.C. 603](#), regarding Maritime Contracts) within 12 months of the date you receive this decision”; and

- (vi) Demand for payment prepared in accordance with [32.610\(b\)](#) in all cases where the decision results in a finding that the contractor is indebted to the Government.

(b) The contracting officer shall furnish a copy of the decision to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. This requirement shall apply to decisions on claims initiated by or against the contractor.

(c) The contracting officer shall issue the decision within the following statutory time limitations:

- (1) For claims of \$100,000 or less, 60 days after receiving a written request from the contractor that a decision be rendered within that period, or within a reasonable time after receipt of the claim if the contractor does not make such a request.
- (2) For claims over \$100,000, 60 days after receiving a certified claim; provided, however, that if a decision will not be issued within 60 days, the contracting officer shall notify the contractor, within that period, of the time within which a decision will be issued.

(d) The contracting officer shall issue a decision within a reasonable time, taking into account—

- (1) The size and complexity of the claim;
- (2) The adequacy of the contractor's supporting data; and
- (3) Any other relevant factors.

(e) The contracting officer shall have no obligation to render a final decision on any claim exceeding \$100,000 which contains a defective certification, if within 60 days after receipt of the claim, the contracting officer notifies the contractor, in writing, of the reasons why any attempted certification was found to be defective.

(f) In the event of undue delay by the contracting officer in rendering a decision on a claim, the contractor may request the tribunal concerned to direct the contracting officer to issue a decision in a specified time period determined by the tribunal.

(g) Any failure of the contracting officer to issue a decision within the required time periods will be deemed a decision by the contracting officer denying the claim and will authorize the contractor to file an appeal or suit on the claim.

(h) The amount determined payable under the decision, less any portion already paid, should be paid, if otherwise proper, without awaiting contractor action concerning appeal. Such payment shall be without prejudice to the rights of either party.

33.212 Contracting officer's duties upon appeal.

To the extent permitted by any agency procedures controlling contacts with agency BCA personnel, the contracting officer shall provide data, documentation, information, and support as may be required by the agency BCA for use on a pending appeal from the contracting officer's decision.

33.213 Obligation to continue performance.

(a) In general, before passage of the Act, the obligation to continue performance applied only to claims arising under a contract. However, the Act, at [41 U.S.C. 605\(b\)](#), authorizes agencies to require a contractor to continue contract performance in accordance with the contracting officer's decision pending a final resolution of any claim arising under, or relating to, the contract. (A claim arising under a contract is a claim that can be resolved under a contract clause, other than the clause at [52.233-1](#), Disputes, that provides for the relief sought by the claimant; however, relief for such claim can also be sought under the clause at [52.233-1](#). A claim relating to a contract is a claim that cannot be resolved under a contract clause other than the clause at [52.233-1](#).) This distinction is recognized by the clause with its Alternate I (see [33.215](#)).

(b) In all contracts that include the clause at [52.233-1](#), Disputes, with its Alternate I, in the event of a dispute not arising under, but relating to, the contract, the contracting officer shall consider providing, through appropriate agency procedures,

financing of the continued performance; provided, that the Government's interest is properly secured.

33.214 Alternative dispute resolution (ADR).

(a) The objective of using ADR procedures is to increase the opportunity for relatively inexpensive and expeditious resolution of issues in controversy. Essential elements of ADR include—

- (1) Existence of an issue in controversy;
- (2) A voluntary election by both parties to participate in the ADR process;
- (3) An agreement on alternative procedures and terms to be used in lieu of formal litigation; and
- (4) Participation in the process by officials of both parties who have the authority to resolve the issue in controversy.

(b) If the contracting officer rejects a contractor's request for ADR proceedings, the contracting officer shall provide the contractor a written explanation citing one or more of the conditions in [5 U.S.C. 572\(b\)](#) or such other specific reasons that ADR procedures are inappropriate for the resolution of the dispute. In any case where a contractor rejects a request of an agency for ADR proceedings, the contractor shall inform the agency in writing of the contractor's specific reasons for rejecting the request.

(c) ADR procedures may be used at any time that the contracting officer has authority to resolve the issue in controversy. If a claim has been submitted, ADR procedures may be applied to all or a portion of the claim. When ADR procedures are used subsequent to the issuance of a contracting officer's final decision, their use does not alter any of the time limitations or procedural requirements for filing an appeal of the

contracting officer's final decision and does not constitute a reconsideration of the final decision.

(d) When appropriate, a neutral person may be used to facilitate resolution of the issue in controversy using the procedures chosen by the parties.

(e) The confidentiality of ADR proceedings shall be protected consistent with [5 U.S.C. 574](#).

(f)(1) A solicitation shall not require arbitration as a condition of award, unless arbitration is otherwise required by law. Contracting officers should have flexibility to select the appropriate ADR procedure to resolve the issues in controversy as they arise.

(2) An agreement to use arbitration shall be in writing and shall specify a maximum award that may be issued by the arbitrator, as well as any other conditions limiting the range of possible outcomes.

(g) Binding arbitration, as an ADR procedure, may be agreed to only as specified in agency guidelines. Such guidelines shall provide advice on the appropriate use of binding arbitration and when an agency has authority to settle an issue in controversy through binding arbitration.

33.215 Contract clauses.

(a) Insert the clause at [52.233-1](#), Disputes, in solicitations and contracts, unless the conditions in [33.203\(b\)](#) apply. If it is determined under agency procedures that continued performance is necessary pending resolution of any claim arising under or relating to the contract, the contracting officer shall use the clause with its Alternate I.

(b) Insert the clause at [52.233-4](#) in all solicitations and contracts.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

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52.100 Scope of subpart.

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52.102 Incorporating provisions and clauses.

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| 52.245-6 | [Reserved] | | |
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- 52.247-38 F.o.b. Inland Carrier, Point of Exportation.
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- 52.247-43 F.o.b. Designated Air Carrier's Terminal, Point of Exportation.
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- 52.247-45 F.o.b. Origin and/or F.o.b. Destination Evaluation.
- 52.247-46 Shipping Point(s) Used in Evaluation of F.o.b. Origin Offers.
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- 52.247-52 Clearance and Documentation Requirements—Shipments to DoD Air or Water Terminal Transshipment Points.
- 52.247-53 Freight Classification Description.
- 52.247-54 [Reserved]
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- 52.247-56 Transit Arrangements.
- 52.247-57 Transportation Transit Privilege Credits.
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- 52.247-63 Preference for U.S.-Flag Air Carriers.
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- 52.248-2 Value Engineering—Architect-Engineer.
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- 52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form).
- 52.249-2 Termination for Convenience of the Government (Fixed-Price).
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- 52.249-11 [Reserved]
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- 52.249-14 Excusable Delays.
- 52.250-1 Indemnification Under Public Law 85-804.
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- 52.251-1 Government Supply Sources.
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- 52.252-1 Solicitation Provisions Incorporated by Reference.
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- 52.252-3 Alterations in Solicitation.
- 52.252-4 Alterations in Contract.
- 52.252-5 Authorized Deviations in Provisions.

52.252-6 Authorized Deviations in Clauses.
52.253-1 Computer Generated Forms.

Subpart 52.3—Provision and Clause Matrix

52.300 Scope of subpart.
52.301 Solicitation provisions and contract clauses
(Matrix).

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(2) termination settlements if the contract is terminated for the convenience of the Government.

(i) The Government may waive the requirement for first article approval test where supplies identical or similar to those called for in the schedule have been previously furnished by the Offeror/Contractor and have been accepted by the Government. The Offeror/Contractor may request a waiver.

(End of clause)

Alternate I (Jan 1997). As prescribed in 9.308-2(a)(2) and (b)(2), add the following paragraph (j) to the basic clause:

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

Alternate II (Sept 1989). As prescribed in 9.308-2(a)(3) and (b)(3), substitute the following paragraph (h) for paragraph (h) of the basic clause:

(h) Before first article approval, the Contracting Officer may, by written authorization, authorize the Contractor to acquire specific materials or components or to commence production to the extent essential to meet the delivery schedules. Until first article approval is granted, only costs for the first article and costs incurred under this authorization are allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

52.209-5 Certification Regarding Responsibility Matters.

As prescribed in 9.104-6, insert the following provision:

CERTIFICATION REGARDING RESPONSIBILITY MATTERS
(MAY 2008)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that—

(i) The Offeror and/or any of its Principals—

(A) Are are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

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

(C) Are are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity

with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision;

(D) Have , have not , within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

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

(i) *The tax liability is finally determined.*

The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) *Examples.*

(i) The taxpayer has received a statutory notice of deficiency, under I.R.C. § 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. § 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. § 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(ii) The Offeror has has not , within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) “Principals,” for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror’s responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

52.209-6 Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.

As prescribed in [9.409](#)(b), insert the following clause:

PROTECTING THE GOVERNMENT’S INTEREST WHEN
SUBCONTRACTING WITH CONTRACTORS DEBARRED,
SUSPENDED, OR PROPOSED FOR DEBARMENT (SEPT 2006)

(a) The Government suspends or debar Contractors to protect the Government’s interests. The Contractor shall not enter into any subcontract in excess of \$30,000 with a Con-

tractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$30,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR [9.404](#) for information on the Excluded Parties List System). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor’s knowledge of the reasons for the subcontractor being in the Excluded Parties List System.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.

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

(End of clause)

52.210 [Reserved]

52.211-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29.

As prescribed in [11.204](#)(a), insert the following provision:

AVAILABILITY OF SPECIFICATIONS LISTED IN THE GSA
INDEX OF FEDERAL SPECIFICATIONS, STANDARDS AND
COMMERCIAL ITEM DESCRIPTIONS, FPMR PART 101-29
(AUG 1998)

(a) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to—

GSA Federal Supply Service
Specifications Section, Suite 8100
470 East L’Enfant Plaza, SW
Washington, DC 20407

Telephone (202) 619-8925
Facsimile (202) 619-8978.

(b) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and

commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (a) of this provision. Additional copies will be issued for a fee.

(End of provision)

52.211-2 Availability of Specifications, Standards, and Data Item Descriptions Listed in the Acquisition Streamlining and Standardization Information System (ASSIST).

As prescribed in [11.204](#)(b), insert the following provision:

AVAILABILITY OF SPECIFICATIONS, STANDARDS, AND DATA ITEM DESCRIPTIONS LISTED IN THE ACQUISITION STREAMLINING AND STANDARDIZATION INFORMATION SYSTEM (ASSIST) (JAN 2006)

(a) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites:

- (1) ASSIST (<http://assist.daps.dla.mil>);
- (2) Quick Search (<http://assist.daps.dla.mil/quicksearch>);
- (3) ASSISTdocs.com (<http://assistdocs.com>).

(b) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by—

- (1) Using the ASSIST Shopping Wizard (<http://assist.daps.dla.mil/wizard>);
- (2) Phoning the DoDSSP Customer Service Desk (215) 697-2179, Mon-Fri, 0730 to 1600 EST; or
- (3) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.

(End of provision)

52.211-3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

As prescribed in [11.204](#)(c), insert a provision substantially the same as the following:

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

The specifications cited in this solicitation may be obtained from:

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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 (MAY 2008)

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

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

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

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

- (1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or
- (2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

“Manufactured end product” means any end product in Federal Supply Classes (FSC) 1000-9999, except—

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

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

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

(1) Means a small business concern—

- (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any pub-

lily 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 database 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. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

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

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic 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 “Bahrainian or Moroccan end product,” “component,”

“domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act-Free Trade Agreements-Israeli Trade Act.”

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

Free Trade Agreement Country End Products (Other than Bahrainian or Moroccan End Products) or Israeli End Products:

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

[List as necessary]

(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*. If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

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

Canadian End Products:

Line Item No.

[List as necessary]

Other Foreign End Products:

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

[List as necessary]

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

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

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

Canadian End Products:

Line Item No.

[List as necessary]

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

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

Canadian or Israeli End Products:

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

[List as necessary]

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

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

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

Other End Products:

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

[List as necessary]

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

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

(1) Are, are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

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

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

(4) Have, have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

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

(A) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(B) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(ii) *Examples.* (A) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(B) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(C) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(D) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. §362 (the Bankruptcy Code).

(i) Certification Regarding Knowledge of Child Labor for *Listed End Products (Executive Order 13126)*. [The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at [22.1503\(b\)](#).]

(1) *Listed end products.*

Listed End Product	Listed Countries of Origin
_____	_____
_____	_____

(2) *Certification.* [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]

[] (i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

[] (ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those

efforts, the offeror certifies that it is not aware of any such use of child labor.

(j) *Place of manufacture.* (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly—

(1) In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or

(2) Outside the United States.

(k) *Certificates regarding exemptions from the application of the Service Contract Act.* (Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.) [The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.]

[] (1) Maintenance, calibration, or repair of certain equipment as described in FAR [22.1003-4\(c\)](#)(1). The offeror does does not certify that—

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

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR [22.1003-4\(c\)](#)(2)(ii)) for the maintenance, calibration, or repair of such equipment; and

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

[] (2) Certain services as described in FAR [22.1003-4\(d\)](#)(1). The offeror does does not certify that—

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

(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR [22.1003-4\(d\)](#)(2)(iii));

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

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the con-

tract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies—

(i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Act wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and

(ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

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

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

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

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

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

(End of provision)

Alternate I (Apr 2002). As prescribed in [12.301\(b\)\(2\)](#), add the following paragraph (c)(11) to the basic provision:

(11) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(4) or (c)(9) of this provision.)

[The offeror shall check the category in which its ownership falls]:

_____ Black American.

_____ Hispanic American.

_____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

_____ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

_____ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

_____ Individual/concern, other than one of the preceding.

Alternate II (Oct 2000). As prescribed in [12.301\(b\)\(2\)](#), add the following paragraph (c)(9)(iii) to the basic provision:

(iii) *Address.* The offeror represents that its address is, is not in a region for which a small disadvantaged business procurement mechanism is authorized and its address has not changed since its certification as a small disadvantaged business concern or submission of its application for certification. The list of authorized small disadvantaged business procurement mechanisms and regions is posted at <http://www.arnet.gov/References/sdbadjustments.htm>. The offeror shall use the list in effect on the date of this solicitation. “Address,” as used in this provision, means the address of the offeror as listed on the Small Business Administration’s register of small disadvantaged business concerns or the address on the completed application that the concern has submitted to the Small Business Administration or a Private Certifier in accordance with 13 CFR Part 124, subpart B. For joint ventures, “address” refers to the address of the small disadvantaged business concern that is participating in the joint venture.

52.212-4 Contract Terms and Conditions—Commercial Items.

As prescribed in [12.301\(b\)\(3\)](#), insert the following clause:

CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (FEB 2007)

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights—

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act ([31 U.S.C. 3727](#)). However, when a third party makes payment (*e.g.*, use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended ([41 U.S.C. 601-613](#)). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR [52.233-1](#), Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.* (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, contract line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (*e.g.*, [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration, or [52.232-34](#), Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.*—(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and prompt payment regulations at 5 CFR Part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date

which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments*. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(j) *Risk of loss*. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes*. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience*. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable

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(9) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

As prescribed in [12.301\(b\)\(4\)](#), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (MAY 2008)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(2) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78)

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

(1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) ([41 U.S.C. 253g](#) and [10 U.S.C. 2402](#)).

(2) [52.219-3](#), Notice of Total HUBZone Set-Aside (JAN 1999) ([15 U.S.C. 657a](#)).

(3) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JULY 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).

(4) [Reserved]

(5)(i) [52.219-6](#), Notice of Total Small Business Set-Aside (JUNE 2003) ([15 U.S.C. 644](#)).

(ii) Alternate I (OCT 1995) of [52.219-6](#).

(iii) Alternate II (MAR 2004) of [52.219-6](#).

(6)(i) [52.219-7](#), Notice of Partial Small Business Set-Aside (JUNE 2003) ([15 U.S.C. 644](#)).

(ii) Alternate I (OCT 1995) of [52.219-7](#).

(iii) Alternate II (MAR 2004) of [52.219-7](#).

(7) [52.219-8](#), Utilization of Small Business Concerns (MAY 2004) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).

(8)(i) [52.219-9](#), Small Business Subcontracting Plan (APR 2008) ([15 U.S.C. 637\(d\)\(4\)](#)).

(ii) Alternate I (OCT 2001) of [52.219-9](#).

(iii) Alternate II (OCT 2001) of [52.219-9](#).

(9) [52.219-14](#), Limitations on Subcontracting (DEC 1996) ([15 U.S.C. 637\(a\)\(14\)](#)).

(10) [52.219-16](#), Liquidated Damages—Subcontracting Plan (JAN 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).

(11)(i) [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (SEPT 2005) ([10 U.S.C. 2323](#)) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

(ii) Alternate I (JUNE 2003) of [52.219-23](#).

(12) [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (APR 2008) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).

(13) [52.219-26](#), Small Disadvantaged Business Participation Program—Incentive Subcontracting (OCT 2000) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).

(14) [52.219-27](#), Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (MAY 2004) ([15 U.S.C. 657 f](#)).

(15) [52.219-28](#), Post Award Small Business Program Rerepresentation (JUNE 2007) ([15 U.S.C. 632\(a\)\(2\)](#)).

(16) [52.222-3](#), Convict Labor (JUNE 2003) (E.O. 11755).

(17) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (FEB 2008) (E.O. 13126).

(18) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999).

(19) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

(20) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)).

— (21) [52.222-36](#), Affirmative Action for Workers with Disabilities (JUN 1998) ([29 U.S.C. 793](#)).

— (22) [52.222-37](#), Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)).

— (23) [52.222-39](#), Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).

— (24)(i) [52.222-50](#), Combating Trafficking in Persons (AUG 2007) (Applies to all contracts).

— (ii) Alternate I (AUG 2007) of [52.222-50](#).

— (25)(i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Items (MAY 2008) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)).

— (ii) Alternate I (MAY 2008) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)).

— (26) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)).

— (27)(i) [52.223-16](#), IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007) (E.O. 13423).

— (ii) Alternate I (DEC 2007) of [52.223-16](#).

— (28) [52.225-1](#), Buy American Act—Supplies (JUNE 2003) ([41 U.S.C. 10a-10d](#)).

— (29)(i) [52.225-3](#), Buy American Act—Free Trade Agreements—Israeli Trade Act (AUG 2007) ([41 U.S.C. 10a-10d](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, Pub. L 108-77, 108-78, 108-286, 109-53 and 109-169).

— (ii) Alternate I (JAN 2004) of [52.225-3](#).

— (iii) Alternate II (JAN 2004) of [52.225-3](#).

— (30) [52.225-5](#), Trade Agreements (NOV 2007) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).

— (31) [52.225-13](#), Restrictions on Certain Foreign Purchases (FEB 2006) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

— (32) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (NOV 2007) ([42 U.S.C. 5150](#)).

— (33) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) ([42 U.S.C. 5150](#)).

— (34) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (FEB 2002) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

— (35) [52.232-30](#), Installment Payments for Commercial Items (OCT 1995) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

— (36) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003) ([31 U.S.C. 3332](#)).

— (37) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999) ([31 U.S.C. 3332](#)).

— (38) [52.232-36](#), Payment by Third Party (MAY 1999) ([31 U.S.C. 3332](#)).

— (39) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ([5 U.S.C. 552a](#)).

— (40)(i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).

— (ii) Alternate I (Apr 2003) of [52.247-64](#).

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [*Contracting Officer check as appropriate.*]

— (1) [52.222-41](#), Service Contract Act of 1965 (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

— (2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (MAY 1989) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

— (3) [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (NOV 2006) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

— (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (FEB 2002) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

— (5) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

— (6) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

— (7) [52.237-11](#), Accepting and Dispensing of \$1 Coin (AUG 2007) ([31 U.S.C. 5112\(p\)\(1\)](#)).

(d) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at [52.215-2](#), Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR [Subpart 4.7](#), Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to

52.223-1 Biobased Product Certification.

As prescribed in [23.406\(a\)](#), insert the following provision:

BIOBASED PRODUCT CERTIFICATION (DEC 2007)

As required by the Farm Security and Rural Investment Act of 2002 and the Energy Policy Act of 2005 ([7 U.S.C. 8102\(c\)\(3\)](#)), the offeror certifies, by signing this offer, that biobased products (within categories of products listed by the United States Department of Agriculture in 7 CFR part 2902, subpart B) to be used or delivered in the performance of the contract, other than biobased products that are not purchased by the offeror as a direct result of this contract, will comply with the applicable specifications or other contractual requirements.

(End of provision)

52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

As prescribed in [23.406\(b\)](#), insert the following clause:

AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (DEC 2007)

(a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless—

- (1) The product cannot be acquired—
 - (i) Competitively within a time frame providing for compliance with the contract performance schedule;
 - (ii) Meeting contract performance requirements; or
 - (iii) At a reasonable price.

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 2902.10 *et seq.*). For example, some USDA-designated items such as mobile equipment hydraulic fluids, diesel fuel additives, and penetrating lubricants are excluded from the preferred procurement requirement for the application of the USDA-designated item to one or both of the following:

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

(b) Information about this requirement and these products is available at <http://www.usda.gov/biopreferred>.

(End of clause)

52.223-3 Hazardous Material Identification and Material Safety Data.

As prescribed in [23.303](#), insert the following clause:

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)

(a) “Hazardous material,” as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material	Identification No.
<i>(If none, insert “None”)</i>	
_____	_____
_____	_____
_____	_____

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government’s rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to—

- (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with paragraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(End of clause)

Alternate I (July 1995). If the contract is awarded by an agency other than the Department of Defense, add the following paragraph (i) to the basic clause:

(i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

52.223-4 Recovered Material Certification.

As prescribed in [23.406\(c\)](#), insert the following provision:

RECOVERED MATERIAL CERTIFICATION (MAY 2008)

As required by the Resource Conservation and Recovery Act of 1976 ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(i\)](#)), the offeror certifies, by signing this offer, that the percentage of recovered materials content for EPA-designated items to be delivered or used in the performance of the contract will be at least the amount required by the applicable contract specifications or other contractual requirements.

(End of provision)

52.223-5 Pollution Prevention and Right-to-Know Information.

As prescribed in [23.1005](#), insert the following clause:

POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (AUG 2003)

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

“Priority chemical” means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to Section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

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

(b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) ([42 U.S.C. 11001-11050](#)) and the Pollution Prevention Act of 1990 (PPA) ([42 U.S.C. 13101-13109](#)).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

(1) The emergency planning reporting requirements of Section 302 of EPCRA.

(2) The emergency notice requirements of Section 304 of EPCRA.

(3) The list of Material Safety Data Sheets, required by Section 311 of EPCRA.

(4) The emergency and hazardous chemical inventory forms of Section 312 of EPCRA.

(5) The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA.

(6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of Sections 502 and 503 of Executive Order 13148.

(End of clause)

Alternate I (Aug 2003). As prescribed in [23.1005\(b\)](#), add the following paragraph (c)(7) to the basic clause:

(c)(7) The environmental management system as described in Section 401 of E.O. 13148.

Alternate II (Aug 2003). As prescribed in [23.1005\(c\)](#), add the following paragraph (c)(7) to the basic clause. If Alternate I is also prescribed, renumber paragraph (c)(7) as paragraph (c)(8).

(c)(7) The facility compliance audits as described in Section 402 of E.O. 13148.

52.223-6 Drug-Free Workplace.

As prescribed in [23.505](#), insert the following clause:

DRUG-FREE WORKPLACE (MAY 2001)

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

“Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act ([21 U.S.C. 812](#)) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

“Conviction” means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any

(ii) Notify the employer in writing of the employee’s conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor’s failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

(End of clause)

52.223-7 Notice of Radioactive Materials.

As prescribed in 23.602, insert the following clause:

NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)

(a) The Contractor shall notify the Contracting Officer or designee, in writing, _____* days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the *Code of Federal Regulations*, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials,

the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

* The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions. See FAR 23.601(d).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall—

(1) Be submitted in writing;

(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

(End of clause)

52.223-8 [Reserved]

52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Items.

As prescribed in 23.406(d), insert the following clause:

ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED ITEMS (MAY 2008)

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

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.”

“Recovered material” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall—

(1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of post-consumer material content; and

(2) Submit this estimate to _____
 [Contracting Officer complete in accordance with agency procedures].

(End of clause)

Alternate I (May 2008). As prescribed in 23.406(d), redesignate paragraph (b) of the basic clause as paragraph (c) and add the following paragraph (b) to the basic clause:

(b) The Contractor shall execute the following certification required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(i)(2)(C)):

CERTIFICATION

I, _____ (name of certifier), am an officer or employee responsible for the performance of this contract and hereby certify that the percentage of recovered material content for EPA-designated items met the applicable contract specifications or other contractual requirements.

 [Signature of the Officer or Employee]

 [Typed Name of the Officer or Employee]

 [Title]

 [Name of Company, Firm, or Organization]

 [Date]

(End of certification)

52.223-10 Waste Reduction Program.

As prescribed in 23.706(a), insert the following clause:

WASTE REDUCTION PROGRAM (AUG 2000)

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

“Recycling” means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

“Waste prevention” means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they

are discarded. Waste prevention also refers to the reuse of products or materials.

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

(b) Consistent with the requirements of Section 701 of Executive Order 13101, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor’s programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, *et seq.*) and implementing regulations (40 CFR Part 247).

(End of clause)

52.223-11 Ozone-Depleting Substances.

As prescribed in 23.804(a), insert the following clause:

OZONE-DEPLETING SUBSTANCES (MAY 2001)

(a) *Definition.* “Ozone-depleting substance,” as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as—

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

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

(b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

WARNING

Contains (or manufactured with, if applicable) * _____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* The Contractor shall insert the name of the substance(s).

(End of clause)

52.223-12 Refrigeration Equipment and Air Conditioners.

As prescribed in 23.804(b), insert the following clause:

REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995)

The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

(End of clause)

ernment-owned facility, only personal computer products that at the time of submission of proposals were EPEAT Silver registered or higher. Silver is the second level discussed in clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.

52.223-17 Affirmative Procurement of EPA-designated Items in Service and Construction Contracts.

As prescribed in [23.406\(e\)](#), insert the following clause:

AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED
ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS
(MAY 2008)

(a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- (1) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (2) Meeting contract performance requirements; or
- (3) At a reasonable price.

(b) Information about this requirement is available at EPA’s Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designated items is available at <http://www.epa.gov/cpg/products.htm>.

(End of clause)

52.224-1 Privacy Act Notification.

As prescribed in [24.104](#), insert the following clause in solicitations and contracts, when the design, development, or operation of a system of records on individuals is required to accomplish an agency function:

PRIVACY ACT NOTIFICATION (APR 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 ([5 U.S.C. 552a](#)) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

(End of clause)

52.224-2 Privacy Act.

As prescribed in [24.104](#), insert the following clause in solicitations and contracts, when the design, development, or operation of a system of records on individuals is required to accomplish an agency function:

PRIVACY ACT (APR 1984)

(a) The Contractor agrees to—

- (1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on

individuals to accomplish an agency function when the contract specifically identifies—

- (i) The systems of records; and
- (ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this paragraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c)(1) “Operation of a system of records,” as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) “Record,” as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person’s name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) “System of records on individuals,” as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(End of clause)

52.225-1 Buy American Act—Supplies.

As prescribed in [25.1101\(a\)\(1\)](#), insert the following clause:

BUY AMERICAN ACT—SUPPLIES (JUNE 2003)

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

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

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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
52.209-4 First Article Approval—Government Testing.	9.308-2 (a)(1) and (b)(1)	C	Yes	I	A	O								A					A		A		
Alternate I	9.308-2 (a)(1) and (b)(2)	C	Yes	I	A	O								A					A		A		
Alternate II	9.308-2 (a)(1) and (b)(3)	C	Yes	I	A	O								A					A		A		
52.209-5 Certification Regarding Responsibility Matters. ✓	9.104-6 ✓	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.	9.409 (b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.211-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29.	11.204 (a)	P	No	L	A	A	A	A	A	A	A			A	A				A	A		A	
52.211-2 Availability of Specifications, Standards, and Data Item Descriptions Listed in the Acquisition Streamlining and Standardization Information System (ASSIST).	11.204 (b)	P	No	L	A	A	A	A	A	A	A			A	A				A	A		A	
52.211-3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.	11.204 (c)	P	No	L	A	A	A	A	A	A	A			A	A				A	A		A	
52.211-4 Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Index Descriptions.	11.204 (d)	P	No	L	A	A	A	A	A	A	A			A	A				A	A	A	A	
52.211-5 Material Requirements.	11.304	C	Yes	I	R	R																A	
52.211-6 Brand Name or Equal.	11.107 (a)	P	Yes	L	A	A							A							A		A	
52.211-7 Alternatives to Government-Unique Standards.	11.107 (b)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.211-8 Time of Delivery.	11.404 (a)(2)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate I	11.404 (a)(2)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate II	11.404 (a)(2)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate III	11.404 (a)(2)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O

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
52.211-9 Desired and Required Time of Delivery.	11.404(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	
Alternate I	11.404(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	
Alternate II	11.404(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	
Alternate III	11.404(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	
52.211-10 Commencement, Prosecution, and Completion of Work.	11.404(b)	C	Yes							R													
Alternate I	11.404(b)	C	Yes							R													
52.211-11 Liquidated Damages—Supplies, Services, or Research and Development.	11.503(a)	C	Yes	F	O		O		O					O							O	O	
52.211-12 Liquidated Damages—Construction.	11.503(b)	C	Yes							O	O										O		
52.211-13 Time Extensions.	11.503(c)	C	Yes							A	A										A		
52.211-14 Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use.✓	11.604(a)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.211-15 Defense Priority and Allocation Requirements.	11.604(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.211-16 Variation in Quantity.	11.703(a)	C	Yes	F	A			A						A						A	A		
52.211-17 Delivery of Excess Quantities.	11.703(b)	C	Yes	F	O									O						O	O		
52.211-18 Variation in Estimated Quantity.	11.703(c)	C	Yes							A											A		
52.212-1 Instructions to Offerors—Commercial Items.	12.301(b)(1)	P	Yes	NA	A		A		A		A			A	A	A	A	A	A	A	A	R	
52.212-2 Evaluation—Commercial Items.	12.301(c)(1)	P	No	NA	O		O		O		O			O	O	O	O	O	O	O	O	O	
52.212-3 Offeror Representations and Certifications—Commercial Items.	12.301(b)(2)	P	No	NA	A		A		A		A			A	A	A	A	A	A	A	A	R	
Alternate I	12.301(b)(2)	P	No	NA	A		A		A		A			A	A	A	A	A	A	A	A	A	
Alternate II	12.301(b)(2)	P	No	NA	A		A		A		A			A	A	A	A	A	A	A	A	A	
52.212-4 Contract Terms and Conditions—Commercial Items.	12.301(b)(3)	C	Yes	NA	A		A		A		A			A	A	A	A	A	A	A	A	R	
Alternate I	12.301(b)(3)	C	Yes	NA									A									A	
52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders— Commercial Items	12.301(b)(4)	C	No	NA	A		A		A		A			A	A	A	A	A	A	A	A	R	
Alternate I	12.301(b)(4)	C	No	NA	A		A		A		A			A	A	A	A	A	A	A	A	R	
52.213-1 Fast Payment Procedure.	13.404	C	Yes		A									A						A	A		
52.213-2 Invoices.	13.302-5(b)	C	Yes																		A		
52.213-3 Notice to Supplier.	13.302-5(c)	C	Yes																		A		

PROVISION OR CLAUSE	PRESCRIBED IN	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																					
		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees.	22.1605	c	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.222-41 Service Contract Act of 1965.	22.1006(a)	C	Yes	I					A	A			A		A	A	A			A	A		
52.222-42 Statement of Equivalent Rates for Federal Hires.	22.1006(b)	C	No	I					A	A			A		A	A	A			A	A		
52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).	22.1006(c)(1)	C	Yes	I					A				A		A	A	A			A	A		
52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.	22.1006(c)(2)	C	Yes	I					A				A		A	A	A			A	A		
52.222-46 Evaluation of Compensation for Professional Employees.	22.1103	P	Yes	L					A	A													
52.222-48 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.	22.1006(e)(1)	C	Yes	I					A	A			A								A		
52.222-49 Service Contract Act—Place of Performance Unknown.	22.1006(f)	C	Yes	I					A	A			A		A	A				A	A		
52.222-50 Combating Trafficking in Persons.	22.1705(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	22.1705(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-51 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements.	22.1006(e)(2)	C	Yes	I					A	A			A								A		
52.222-52 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.	22.1006(e)(3)	P	Yes	I					A	A			A								A		
52.222-53 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements.	22.1006(e)(4)	C	Yes	I					A	A			A								A		
52.223-1 Biobased Product Certification.	23.406(a)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A
52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts.	23.406(b)	C	Yes	I					A	A	A	A	A		A	A		A	A	A	A		
52.223-3 Hazardous Material Identification and Material Safety Data.	23.303	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	23.303(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.223-4 Recovered Material Certification.	23.406(c)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A			A	A	A	A	A	A
52.223-5 Pollution Prevention and Right-to-Know Information.	23.1005	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	23.1005(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate II	23.1005(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	a	A	A	A	A	A	A	A	

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		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.223-6 Drug-Free Workplace.	23.505	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.223-7 Notice of Radioactive Materials.	23.602	C	No	I	A	A	A	A	A	A	A	A			A		A	A	A		A		
52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Products.	23.406(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A
Alternate I	23.406(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A
52.223-10 Waste Reduction Program.	23.706(a)	C	Yes	I					A	A					A			A					
52.223-11 Ozone-Depleting Substances.	23.804(a)	C	No	I	A	A													A		A		
52.223-12 Refrigeration Equipment and Air Conditioners.	23.804(b)	C	Yes	I					A	A			A			A			A		A		
52.223-13 Certification of Toxic Chemical Release Reporting.	23.906(a)	P	No	K	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R	
52.223-14 Toxic Chemical Release Reporting.	23.906(b)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R	
52.223-15 Energy Efficiency in Energy-Consuming Products.	23.206	C	Yes	I	A	A	A	A	A	A	A	A			A	A		A	A	A	A	A	A
52.223-16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.	23.706(b)(1)	C	Yes	I	A	A	A	A	A			A	A	A					A		A		A
Alternate I	23.706(b)(2)	C	Yes	I	A	A	A	A	A			A	A	A					A		A		A
52.223-17 Affirmative Procurement of EPA-designated Items in Service and Construction Contracts.	23.406(e)	C	Yes	I					A	A	A	A			A	A		A	A	A			
52.224-1 Privacy Act Notification.	24.104(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.224-2 Privacy Act.	24.104(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.225-1 Buy American Act—Supplies.	25.1101(a)(1)	C	Yes	I	A	A	A	A	A	A			A	A	A				A		A		A
52.225-2 Buy American Act Certificate.	25.1101(a)(2)	P	No	K	A	A	A	A	A				A	A	A				A		A		
52.225-3 Buy American Act—Free Trade Agreements—Israeli Trade Act.	25.1101(b)(1)(i)	C	Yes	I	A	A							A	A					A		A		A
Alternate I	25.1101(b)(1)(ii)	C	Yes	I	A	A							A	A					A		A		A
Alternate II	25.1101(b)(1)(iii)	C	Yes	I	A	A							A	A					A		A		A
52.225-4 Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.	25.1101(b)(2)(i)	P	No	K	A	A							A	A					A		A		
Alternate I	25.1101(b)(2)(ii)	P	No	K	A	A							A	A					A		A		
Alternate II	25.1101(b)(2)(iii)	P	No	K	A	A							A	A					A		A		
52.225-5 Trade Agreements.	25.1101(c)(1)	C	Yes	I	A	A													A		A		A
52.225-6 Trade Agreements Certificate.	25.1101(c)(2)	P	No	K	A	A													A		A		
52.225-7 Waiver of Buy American Act for Civil Aircraft and Related Articles.	25.1101(d)	P	Yes	L	A	A	A	A											A		A		A
52.225-8 Duty-Free Entry.	25.1101(e)	C	Yes	I	A	A	A	A						A	A	A			A		A		A

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
52.225-9 Buy American Act—Construction Materials.	25.1102(a)	C	No								A	A											
52.225-10 Notice of Buy American Act Requirement—Construction Materials.	25.1102(b)(1)	P	No								A	A											
Alternate I	25.1102(b)(2)	P	No								A	A											
52.225-11 Buy American Act—Construction Materials under Trade Agreements.	25.1102(c)	C	No								A	A											
Alternate I	25.1102(c)(3)	C	No								A	A											
52.225-12 Notice of Buy American Act Requirement—Construction Materials under Trade Agreements.	25.1102(d)(1)	P	No								A	A											
Alternate I	25.1102(d)(2)	P	No								A	A											
Alternate II	25.1102(d)(3)	P	No								A	A											
52.225-13 Restrictions on Certain Foreign Purchases.	25.1103(a)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.225-14 Inconsistency Between English Version and Translation of Contract.	25.1103(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-17 Evaluation of Foreign Currency Offers.	25.1103(c)	P	Yes	M	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-18 Place of Manufacture.	25.1101(f)	P	No	K	R	R							A						A		A		A
52.225-19 Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States.	25.301-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.	26.104	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.226-2 Historically Black College or University and Minority Institution Representation.	26.304	P	No	K	A	A	A	A	A	A			A		A				A		A		
52.226-3 Disaster or Emergency Area Representation.	26.205(a)	P	No	K	A	A			A	A	A	A	A	A	A	A	A	A	A	A		A	A
52.226-4 Notice of Disaster or Emergency Area Set-Aside.	26.205(b)	C	Yes	I	A	A			A	A	A	A	A	A	A	A	A	A	A	A		A	A
52.226-5 Restrictions on Subcontracting Outside Disaster or Emergency Area.	26.205(c)	C	Yes	I	A	A			A	A	A	A	A	A	A	A	A	A	A	A		A	A
52.227-1 Authorization and Consent.	27.201-2(a)(1)	C	Yes	I	A	A			A		A	A			A	A	A	A	A		O		
Alternate I	27.201-2(a)(2)	C	Yes	I			A	A			A	A			A		A	A					
Alternate II	27.201-2(a)(3)	C	Yes	I			A				A												
52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.	27.201-2(b)	C	Yes	I	A	A																	

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
52.227-3 Patent Indemnity.	27.201-2(c)(1)	C	Yes	I	A	A			A	A									A				
Alternate I	27.201-2(c)(2)	C	Yes	I	A	A			A	A									A				
Alternate II	27.201-2(c)(2)	C	Yes	I	A	A			A	A					A				A				
Alternate III	27.201-2(c)(3)	C	Yes	I											A						A		
52.227-4 Patent Indemnity—Construction Contracts.	27.201-2(d)(1)	C	Yes							A	A					A							
Alternate I	27.201-2(d)(2)	C	Yes							O	O					O							
52.227-5 Waiver of Indemnity.	27.201-2(e)	C	Yes	I	A	A	A	A	A	A	A					A		A	A				
52.227-6 Royalty Information.	27.202-5(a)(1)	P	No	K	A	A	A	A	A	A	A					A		A	A				
Alternate I	27.202-5(a)(2)	P	No	K											A			A					
52.227-7 Patents—Notice of Government Licensee.	27.202-5(b)	P	No	K	A	A	A	A	A	A	A					A	A		A	A			
52.227-9 Refund of Royalties.	27.202-5(c)	C	Yes	I	A		A		A		A				A	A		A	A				
52.227-10 Filing of Patent Applications—Classified Subject Matter.	27.203-2	C	Yes	I	A	A	A	A	A	A	A				A	A		A	A				
52.227-11 Patent Rights—Ownership by the Contractor.	27.303(b)(1)	C	Yes	I			A	A			A	A						A					
Alternate I	27.303(b)(3)	C	Yes	I			A	A			A	A						A					
Alternate II	27.303(b)(4)	C	Yes	I			A	A			A	A						A					
Alternate III	27.303(b)(5)	C	Yes	I			A	A			A	A											
Alternate IV	27.303(b)(6)	C	Yes	I			A	A			A	A											
Alternate V	27.303(b)(7)	C	Yes	I			A	A			A	A											
52.227-13 Patent Rights—Ownership by the Government.	27.303(e)	C	Yes	I			A	A			A	A						A					
Alternate I	27.303(e)(4)	C	Yes	I			A	A			A	A						A					
Alternate II	27.303(e)(5)	C	Yes	I			A	A			A	A						A					
52.227-14 Rights in Data—General.	27.409(b)(1)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A		
Alternate I	27.409(b)(2)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A		
Alternate II	27.409(b)(3)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A		
Alternate III	27.409(b)(4)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A		
Alternate IV	27.409(b)(5)	C	Yes	I	O	O	A	A	O	O			O	O	O	O		O	O	O	O		
Alternate V	27.409(b)(6)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A		
52.227-15 Representation of Limited Rights Data and Restricted Computer Software.	27.409(c)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.227-16 Additional Data Requirements.	27.409(d)	C	Yes	I			A	A													A		
52.227-17 Rights in Data—Special Works.	27.409(e)	C	Yes	I	A	A	A	A	A	A	O	O	A		A			O			A		