

FEDERAL ACQUISITION CIRCULAR

April 1, 2011

Number 2005-51

Federal Acquisition Circular (FAC) 2005-51 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 2005-51 is effective April 1, 2011, except for Item II, which is effective May 2, 2011.

(BLANK PAGE)

FAC 2005-48 LIST OF SUBJECTS

<u>Item</u>	<u>Title</u>	<u>Page</u>
I	Women-Owned Small Business (WOSB) Program (Interim)	i
II	Clarification of Standard Form 26- Award/Contract	ii
	Looseleaf Only Corrections	ii

(BLANK PAGE)

FAC 2005-51 SUMMARY OF ITEMS

Federal Acquisition Circular (FAC) 2005-51 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Women-Owned Small Business (WOSB) Program (Interim) (FAR Case 2010-015)

This interim rule amends the FAR to add subpart 19.15, Women-Owned Small Business Program, which will assist Federal agencies in achieving the 5 percent statutory goal for contracting with women-owned small business (WOSB) concerns.

Agencies may restrict competition to economically disadvantaged women-owned small business (EDWOSB) concerns for contracts assigned a North American Industry Classification Systems (NAICS) code in an industry in which the Small Business Administration has determined that WOSB concerns are underrepresented in Federal procurement. For NAICS code industries where WOSB concerns are not just underrepresented, but substantially underrepresented, agencies may restrict competition to WOSB concerns eligible under the WOSB Program.

EDWOSB concerns and WOSB concerns eligible under the WOSB Program must be owned and controlled by one or more women who are citizens of the United States. An EDWOSB concern is automatically a WOSB concern eligible under the WOSB Program.

Replacement pages: General Structure pp. iii and iv; 2.1-5 thru 2.1-8.2; 2.1-15 and 2.1-16; 4.8-1 thru 4.8-6; Part 6 TOC pp. 6-1 and 6-2; 6.2-1 and 6.2-2; 7.1-3 and 7.1-6; 13.1-1 thru 13.1-6; 14.5-1 and 14.5-2; 15.5-1 thru 15.5-4; Part 18 TOC pp. 18-1 and 18-2; 18.1-1 and 18.1-2; 18.2-1 and 18.2-2; Part 19 TOC pp. 19-1 and 19-2; 19.1-1 thru 19.1-4; 19.2-1 thru 19.2-4; 19.3-1 thru 19.3-8; 19.4-1 and 19.4-2; 19.5-1 and 19.5-2; 19.8-1 and 19.8-2; 19.12-1 and 19.12-2; 19.15-1 and 19.15-2; 26.2-1 and 26.2-2; 33.1-1 thru 33.1-4; 36.5-1 and 36.5-2; 42.5-1 and 42.5-2; Part 52 TOC pp. 52-3 and 52-4; 52.2-29 thru 52.2-34.4 (52.2-5 and 52.2-34.6 added); 52.2-39 thru 52.2-42.4; 52.2-87 thru 52.2-96.4; 52.2-89 and 52.2-90; 52.2-99 and 52.2-100; 52.2-103 thru 52.2-104.2 (52.2-104.1 and 52.2-104.2 added); Matrix pp. 52.3-13 thru 52.3-34; 53.3-159 thru 53.3-162; and 53.3-175 and 53.3-176.

**Item II—Clarification of Standard Form 26—Award/Contract
(FAR Case 2009-029)**

This final rule amends the FAR to revise FAR part 53 to amend the Standard Form (SF) 26, Award/Contract, above blocks 17 and 18 and in block 18 to clarify that block 18 should not be used when awarding a negotiated procurement and should only be checked when awarding a sealed bid contract. The changes will not prevent contracting officers from using block 17 of the SF 26 when awarding negotiated procurements in which the signature of both parties, on a single document, is required; it will only prohibit them from using block 18 of the SF 26 when awarding negotiated procurements.

Replacement pages: THE 30-DAY PAGES WILL BE POSTED ON THEIR EFFECTIVE DATE OF MAY 2, 2011.

Looseleaf Only Correction

1.109 [Corrected]

Section 1.109 is corrected by adding "(search FAR Case 2008-024)" to end of the paragraph.

Replacement pages: 1.1-7 and 1.1-8.

Page 2.1-5 of the FAR looseleaf [Corrected]

Page 2.1-5 of the FAR looseleaf is corrected by adding a change bar.

Replacement pages: 2.1-5 and 2.1-6.

Pages 7.1-4 and 7.1-5 of the FAR looseleaf [Corrected]

Pages 7.1-4 and 7.1-5 of the FAR looseleaf are corrected by revising the header date to read "MARCH 16, 2011".

Replacement pages: 7.1-3 thru 7.1-6.

FAC 2005-51 FILING INSTRUCTIONS

NOTE: The FAR is segmented by subparts. The FAR page numbers reflect FAR subparts. For example, "2.1-5" is page 5 of subpart 2.1.

<u>Remove Pages</u>	<u>Insert Pages</u>
General Structure pp. iii and iv	General Structure pp. iii and iv
1.1-7 and 1.1-8	1.1-7 and 1.1-8
2.1-5 thru 2.1-8.2 2.1-15 and 2.1-16	2.1-5 thru 2.1-8.2 2.1-15 and 2.1-16
4.8-1 thru 4.8-6	4.8-1 thru 4.8-6
Part 6 TOC pp. 6-1 and 6-2	Part 6 TOC pp. 6-1 and 6-2
6.2-1 and 6.2-2	6.2-1 and 6.2-2
7.1-3 thru 7.1-6	7.1-3 thru 7.1-6
13.1-1 thru 13.1-6	13.1-1 thru 13.1-6
14.5-1 and 14.5-2	14.5-1 and 14.5-2
15.5-1 thru 15.5-4	15.5-1 thru 15.5-4
Part 18 TOC pp. 18-1 and 18-2	Part 18 TOC pp. 18-1 and 18-2
18.1-1 and 18.1-2	18.1-1 and 18.1-2
18.2-1 and 18.2-2	18.2-1 and 18.2-2
Part 19 TOC pp. 19-1 and 19-2	Part 19 TOC pp. 19-1 and 19-2
19.1-1 thru 19.1-4	19.1-1 thru 19.1-4
19.2-1 thru 19.2-4	19.2-1 thru 19.2-4
19.3-1 thru 19.3-8	19.3-1 thru 19.3-8
19.4-1 and 19.4-2	19.4-1 and 19.4-2

19.5-1 and 19.5-2

19.8-1 and 19.8-2

19.12-1 and 19.12-2

19.15-1 and 19.15-2

26.2-1 and 26.2-2

33.1-1 thru 33.1-4

36.5-1 and 36.5-2

42.5-1 and 42.5-2

Part 52 TOC

pp. 52-3 and 52-4

52.2-29 thru 52.2-34.4

52.2-39 thru 52.2-42.4

52.2-87 thru 52.2-96.4

52.2-89 and 52.2-90

52.2-99 and 52.2-100

52.2-103 thru 52.2-104

Matrix

pp. 52.3-13 thru 52.3-34

53.3-159 thru 53.3-162

53.3-175 and 53.3-176

19.5-1 and 19.5-2

19.8-1 and 19.8-2

19.12-1 and 19.12-2

19.15-1 and 19.15-2

26.2-1 and 26.2-2

33.1-1 thru 33.1-4

36.5-1 and 36.5-2

42.5-1 and 42.5-2

Part 52 TOC

pp.52-3 and 52-4

52.2-29 thru 52.2-34.6

52.2-39 thru 52.2-42.4

52.2-87 thru 52.2-96.4

52.2-89 and 52.2-90

52.2-99 and 52.2-100

52.2-103 thru 52.2-104.2

Matrix

pp. 52.3-13 thru 52.3-34

53.3-159 thru 53.3-162

53.3-175 and 53.3-176

FAC 2005-51 FILING INSTRUCTIONS

NOTE: THE 30-DAY PAGES WILL BE POSTED ON THEIR EFFECTIVE DATE OF MAY 2, 2011.

(BLANK PAGE)

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

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

PART 12—ACQUISITION OF COMMERCIAL ITEMS

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

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

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

PART 14—SEALED BIDDING

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

PART 15—CONTRACTING BY NEGOTIATION

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

PART 16—TYPES OF CONTRACTS

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

PART 17—SPECIAL CONTRACTING METHODS

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

PART 18—EMERGENCY ACQUISITIONS

- 18.1 Available Acquisition Flexibilities
- 18.2 Emergency Acquisition Flexibilities

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

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

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

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

(c) *Dollar thresholds.* Unless otherwise specified, a specific dollar threshold for the purpose of applicability is the final anticipated dollar value of the action, including the dollar value of all options. If the action establishes a maximum quantity of supplies or services to be acquired or establishes a ceiling price or establishes the final price to be based on future events, the final anticipated dollar value must be the highest final priced alternative to the Government, including the dollar value of all options.

(d) *Application of FAR changes to solicitations and contracts.* Unless otherwise specified—

(1) FAR changes apply to solicitations issued on or after the effective date of the change;

(2) Contracting officers may, at their discretion, include the FAR changes in solicitations issued before the effective date, provided award of the resulting contract(s) occurs on or after the effective date; and

(3) Contracting officers may, at their discretion, include the changes in any existing contract with appropriate consideration.

(e) *Citations.* When the FAR cites a statute, Executive order, Office of Management and Budget circular, Office of Federal Procurement Policy policy letter, or relevant portion of the *Code of Federal Regulations*, the citation includes all applicable amendments, unless otherwise stated.

(f) *Imperative sentences.* When an imperative sentence directs action, the contracting officer is responsible for the action, unless another party is expressly cited.

1.109 Statutory acquisition-related dollar thresholds—adjustment for inflation.

(a) [41 U.S.C. 431a](#) requires that the FAR Council periodically adjust all statutory acquisition-related dollar thresholds in the FAR for inflation, except as provided in paragraph (c) of this section. This adjustment is calculated every 5 years, starting in October 2005, using the Consumer Price Index (CPI) for all-urban consumers, and supersedes the applicability of any other provision of law that provides for the adjustment of such acquisition-related dollar thresholds.

(b) The statute defines an acquisition-related dollar threshold as a dollar threshold that is specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of supplies or services by an executive agency, as determined by the FAR Council.

(c) The statute does not permit escalation of acquisition-related dollar thresholds established by the Davis-Bacon Act ([40 U.S.C. 3141](#) through 3144, 3146, and 3147), the Service Contract Act of 1965 ([41 U.S.C. 351](#), *et seq.*), or the United States Trade Representative pursuant to the authority of the Trade Agreements Act of 1979 ([19 U.S.C. 2511](#), *et seq.*).

(d) A matrix showing calculation of the most recent escalation adjustments of statutory acquisition-related dollar thresholds is available via the Internet at <http://www.regulations.gov> (search FAR Case 2008-024).

This page intentionally left blank.

(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.

“Contracting officer’s representative (COR)” means an individual, including a contracting officer’s technical representative (COTR), designated and authorized in writing by the contracting officer to perform specific technical or administrative functions.

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

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

(1) Vendor quotations;

(2) Nonrecurring costs;

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

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

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

(6) Make-or-buy decisions;

(7) Estimated resources to attain business goals; and

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

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

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

(2) Reflect a clear understanding of the requirements; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Economically disadvantaged women-owned small business (EDWOSB) concern”—(see definition of “Women-Owned Small Business (WOSB) Program” in this section).

“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\(a\)](#).

“Energy-efficient product”— (1) Means a product that—

(i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

(ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy’s Federal Energy Management Program.

(2) As used in this definition, the term “product” does not include any energy-consuming product or system designed or procured for combat or combat-related missions ([42 U.S.C. 8259b](#)).

“Energy-efficient standby power devices” means products that use—

(1) External standby power devices, or that contain an internal standby power function; and

(2) No more than one watt of electricity in their standby power consuming mode or meet recommended low standby levels as designated by the Department of Energy Federal Energy Management Program.

“Energy-savings performance contract” means a contract that requires the contractor to—

(1) Perform services for the design, acquisition, financing, installation, testing, operation, and where appropriate, maintenance and repair, of an identified energy conservation measure or series of measures at one or more locations;

(2) Incur the costs of implementing the energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel in exchange for a predetermined share of the value of the energy savings directly resulting from implementation of such measures during the term of the contract; and

(3) Guarantee future energy and cost savings to the Government.

“Environmentally preferable” means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

“Excess personal property” means any personal property under the control of a Federal agency that the agency head determines is not required for its needs or for the discharge of its responsibilities.

“Excluded Parties List System” means an electronic database maintained and posted by the General Services Administration containing the list of all parties suspended, proposed for debarment, debarred, declared ineligible, or excluded or disqualified under the nonprocurement common rule by agencies, Government corporations, or by the Government Accountability Office.

“Executive agency” means an executive department, a military department, or any independent establishment within the meaning of [5 U.S.C. 101](#), [102](#), and [104\(1\)](#), respectively, and any wholly owned Government corporation within the meaning of [31 U.S.C. 9101](#).

“Facilities capital cost of money” means “cost of money as an element of the cost of facilities capital” as used at 48 CFR 9904.414—Cost Accounting Standard—Cost of Money as an Element of the Cost of Facilities Capital.

“Facsimile” means electronic equipment that communicates and reproduces both printed and handwritten material. If used in conjunction with a reference to a document; e.g., facsimile bid, the term refers to a document (in the example given, a bid) that has been transmitted to and received by the Government via facsimile.

“Federal agency” means any executive agency or any independent establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect’s direction).

“Federally-controlled facilities” means—

(1) Federally-owned buildings or leased space, whether for single or multi-tenant occupancy, and its grounds and

approaches, all or any portion of which is under the jurisdiction, custody or control of a department or agency;

(2) Federally-controlled commercial space shared with non-government tenants. For example, if a department or agency leased the 10th floor of a commercial building, the Directive applies to the 10th floor only;

(3) Government-owned, contractor-operated facilities, including laboratories engaged in national defense research and production activities; and

(4) Facilities under a management and operating contract, such as for the operation, maintenance, or support of a Government-owned or Government-controlled research, development, special production, or testing establishment.

“Federally-controlled information system” means an information system ([44 U.S.C. 3502\(8\)](#)) used or operated by a Federal agency, or a contractor or other organization on behalf of the agency ([44 U.S.C. 3544\(a\)\(1\)\(A\)](#)).

“Federally Funded Research and Development Centers (FFRDC’s)” means activities that are sponsored under a broad charter by a Government agency (or agencies) for the purpose of performing, analyzing, integrating, supporting, and/or managing basic or applied research and/or development, and that receive 70 percent or more of their financial support from the Government; and—

(1) A long-term relationship is contemplated;

(2) Most or all of the facilities are owned or funded by the Government; and

(3) The FFRDC has access to Government and supplier data, employees, and facilities beyond that common in a normal contractual relationship.

“Final indirect cost rate” means the indirect cost rate established and agreed upon by the Government and the contractor as not subject to change. It is usually established after the close of the contractor’s fiscal year (unless the parties decide upon a different period) to which it applies. For cost-reimbursement research and development contracts with educational institutions, it may be predetermined; that is, established for a future period on the basis of cost experience with similar contracts, together with supporting data.

“First article” means a preproduction model, initial production sample, test sample, first lot, pilot lot, or pilot models.

“First article testing” means testing and evaluating the first article for conformance with specified contract requirements before or in the initial stage of production.

“F.o.b.” means free on board. This term is used in conjunction with a physical point to determine—

(1) The responsibility and basis for payment of freight charges; and

(2) Unless otherwise agreed, the point where title for goods passes to the buyer or consignee.

“F.o.b. destination” means free on board at destination; *i.e.*, the seller or consignor delivers the goods on seller’s or consignor’s conveyance at destination. Unless the contract provides otherwise, the seller or consignor is responsible for the cost of shipping and risk of loss. For use in the clause at [52.247-34](#), see the definition at [52.247-34\(a\)](#).

“F.o.b. origin” means free on board at origin; *i.e.*, the seller or consignor places the goods on the conveyance. Unless the contract provides otherwise, the buyer or consignee is responsible for the cost of shipping and risk of loss. For use in the clause at [52.247-29](#), see the definition at [52.247-29\(a\)](#).

“F.o.b.”... (For other types of F.o.b., see [47.303](#)).

“Forward pricing rate agreement” means a written agreement negotiated between a contractor and the Government to make certain rates available during a specified period for use in pricing contracts or modifications. These rates represent reasonable projections of specific costs that are not easily estimated for, identified with, or generated by a specific contract, contract end item, or task. These projections may include rates for such things as labor, indirect costs, material obsolescence and usage, spare parts provisioning, and material handling.

“Forward pricing rate recommendation” means a rate set unilaterally by the administrative contracting officer for use by the Government in negotiations or other contract actions when forward pricing rate agreement negotiations have not been completed or when the contractor will not agree to a forward pricing rate agreement.

“Freight” means supplies, goods, and transportable property.

“Full and open competition,” when used with respect to a contract action, means that all responsible sources are permitted to compete.

“General and administrative (G&A) expense” means any management, financial, and other expense which is incurred by or allocated to a business unit and which is for the general management and administration of the business unit as a whole. G&A expense does not include those management expenses whose beneficial or causal relationship to cost objectives can be more directly measured by a base other than a cost input base representing the total activity of a business unit during a cost accounting period.

“Governmentwide acquisition contract (GWAC)” means a task-order or delivery-order contract for information technology established by one agency for Governmentwide use that is operated—

(1) By an executive agent designated by the Office of Management and Budget pursuant to [40 U.S.C. 11302\(e\)](#); or

(2) Under a delegation of procurement authority issued by the General Services Administration (GSA) prior to August 7, 1996, under authority granted GSA by former section [40 U.S.C. 759](#), repealed by Pub. L. 104-106. The Econ-

omy Act does not apply to orders under a Governmentwide acquisition contract.

“Governmentwide point of entry (GPE)” means the single point where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. The GPE is located at <http://www.fedbizopps.gov>.

“Head of the agency” (see “agency head”).

“Head of the contracting activity” means the official who has overall responsibility for managing the contracting activity.

“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, the National Aeronautics and Space Administration, 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.

“HUBZone” means a historically underutilized business zone that is an area located within one or more qualified census tracts, qualified nonmetropolitan counties, lands within the external boundaries of an Indian reservation, qualified base closure areas, or redesignated areas, as defined in 13 CFR 126.103.

“HUBZone contract” means a contract awarded to a “HUBZone small business” concern through any of the following procurement methods:

- (1) A sole source award to a HUBZone small business concern.
- (2) Set-aside awards based on competition restricted to HUBZone small business concerns.
- (3) Awards to HUBZone small business concerns through full and open competition after a price evaluation preference in favor of HUBZone small business concerns.

“HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration (13 CFR 126.103).

“Humanitarian or peacekeeping operation” means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under Chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing ([10 U.S.C. 2302\(8\)](#) and [41 U.S.C. 259\(d\)](#)).

“In writing,” “writing,” or “written” means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

“Indirect cost” means any cost not directly identified with a single final cost objective, but identified with two or more

final cost objectives or with at least one intermediate cost objective.

“Indirect cost rate” means the percentage or dollar factor that expresses the ratio of indirect expense incurred in a given period to direct labor cost, manufacturing cost, or another appropriate base for the same period (see also “final indirect cost rate”).

“Ineligible” means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority other than this regulation (48 CFR Chapter 1) and its implementing and supplementing regulations; for example, pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Employment Opportunity Acts and Executive orders, the Walsh-Healey Public Contracts Act, the Buy American Act, or the Environmental Protection Acts and Executive orders.

“Information security” means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

- (1) Integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;
- (2) Confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information; and
- (3) Availability, which means ensuring timely and reliable access to, and use of, information.

“Information technology” means any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

(1) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency that requires—

- (i) Its use; or
- (ii) To a significant extent, its use in the performance of a service or the furnishing of a product.

(2) The term “information technology” includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources.

(3) The term “information technology” does not include any equipment that—

- (i) Is acquired by a contractor incidental to a contract; or
- (ii) Contains imbedded information technology that is used as an integral part of the product, but the principal

function of which is not the acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment, such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

“Inherently governmental function” means, as a matter of policy, a function that is so intimately related to the public interest as to mandate performance by Government employees. This definition is a policy determination, not a legal determination. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments

in making decisions for the Government. Governmental functions normally fall into two categories: the act of governing, *i.e.*, the discretionary exercise of Government authority, and monetary transactions and entitlements.

(1) An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to—

(i) Bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(ii) Determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

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

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

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

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

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

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

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

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

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

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

“Value engineering change proposal (VECP)”—

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

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

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

“Virgin material” means—

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

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

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

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

“Women-owned small business concern” means—

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

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

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

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

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

(i) Eligible economically disadvantaged women-owned small business concerns for Federal contracts assigned a North American Industry Classification Systems (NAICS) code in an industry in which the Small Business Administration (SBA) has determined that WOSB concerns are underrepresented in Federal procurement; and

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

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

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

Subpart 4.8—Government Contract Files

4.800 Scope of subpart.

This subpart prescribes requirements for establishing, maintaining, and disposing of contract files.

4.801 General.

(a) The head of each office performing contracting, contract administration, or paying functions shall establish files containing the records of all contractual actions.

(b) The documentation in the files (see [4.803](#)) shall be sufficient to constitute a complete history of the transaction for the purpose of—

(1) Providing a complete background as a basis for informed decisions at each step in the acquisition process;

(2) Supporting actions taken;

(3) Providing information for reviews and investigations; and

(4) Furnishing essential facts in the event of litigation or congressional inquiries.

(c) The files to be established include—

(1) A file for cancelled solicitations;

(2) A file for each contract; and

(3) A file such as a contractor general file, containing documents relating—for example—to—

(i) No specific contract;

(ii) More than one contract; or

(iii) The contractor in a general way (*e.g.*, contractor's management systems, past performance, or capabilities).

4.802 Contract files.

(a) A contract file should generally consist of—

(1) The contracting office contract file that documents the basis for the acquisition and the award, the assignment of contract administration (including payment responsibilities), and any subsequent actions taken by the contracting office;

(2) The contract administration office contract file that documents actions reflecting the basis for and the performance of contract administration responsibilities; and

(3) The paying office contract file that documents actions prerequisite to, substantiating, and reflecting contract payments.

(b) Normally, each file should be kept separately; however, if appropriate, any or all of the files may be combined; *e.g.*, if all functions or any combination of the functions are performed by the same office.

(c) Files must be maintained at organizational levels that ensure—

(1) Effective documentation of contract actions;

(2) Ready accessibility to principal users;

(3) Minimal establishment of duplicate and working files;

(4) The safeguarding of classified documents; and

(5) Conformance with agency regulations for file location and maintenance.

(d) If the contract files or file segments are decentralized (*e.g.*, by type or function) to various organizational elements or to other outside offices, responsibility for their maintenance must be assigned. A central control and, if needed, a locator system should be established to ensure the ability to locate promptly any contract files.

(e) Contents of contract files that are contractor bid or proposal information or source selection information as defined in [2.101](#) must be protected from disclosure to unauthorized persons (see [3.104-4](#)).

(f) Agencies may retain contract files in any medium (paper, electronic, microfilm, etc.) or any combination of media, as long as the requirements of this subpart are satisfied.

4.803 Contents of contract files.

The following are examples of the records normally contained, if applicable, in contract files:

(a) *Contracting office contract file.* (1) Purchase request, acquisition planning information, and other presolicitation documents.

(2) Justifications and approvals, determinations and findings, and associated documents.

(3) Evidence of availability of funds.

(4) Synopsis of proposed acquisition as required by [Part 5](#) or a reference to the synopsis.

(5) The list of sources solicited, and a list of any firms or persons whose requests for copies of the solicitation were denied, together with the reasons for denial.

(6) Set-aside decision including the type and extent of market research conducted.

(7) Government estimate of contract price.

(8) A copy of the solicitation and all amendments thereto.

(9) Security requirements and evidence of required clearances.

(10) A copy of each offer or quotation, the related abstract, and records of determinations concerning late offers or quotations. Unsuccessful offers or quotations may be maintained separately, if cross-referenced to the contract file. The only portions of the unsuccessful offer or quotation that need be retained are—

(i) Completed solicitation sections A, B, and K;

(ii) Technical and management proposals;

(iii) Cost/price proposals; and

(iv) Any other pages of the solicitation that the offeror or quoter has altered or annotated.

(11) Contractor's representations and certifications (see [4.1201\(c\)](#)).

(12) Preaward survey reports or reference to previous preaward survey reports relied upon.

- (13) Source selection documentation.
- (14) Contracting officer's determination of the contractor's responsibility.
- (15) Small Business Administration Certificate of Competency.
- (16) Records of contractor's compliance with labor policies including equal employment opportunity policies.
- (17) Data and information related to the contracting officer's determination of a fair and reasonable price. This may include—
 - (i) Certified cost or pricing data;
 - (ii) Data other than certified cost or pricing data;
 - (iii) Justification for waiver from the requirement to submit certified cost or pricing data; or
 - (iv) Certificates of Current Cost or Pricing Data.
- (18) Packaging and transportation data.
- (19) Cost or price analysis.
- (20) Audit reports or reasons for waiver.
- (21) Record of negotiation.
- (22) Justification for type of contract.
- (23) Authority for deviations from this regulation, statutory requirements, or other restrictions.
- (24) Required approvals of award and evidence of legal review.
- (25) Notice of award.
- (26) The original of—
 - (i) The signed contract or award;
 - (ii) All contract modifications; and
 - (iii) Documents supporting modifications executed by the contracting office.
- (27) Synopsis of award or reference thereto.
- (28) Notice to unsuccessful quoters or offerors and record of any debriefing.
- (29) Acquisition management reports (see [Subpart 4.6](#)).
- (30) Bid, performance, payment, or other bond documents, or a reference thereto, and notices to sureties.
- (31) Report of postaward conference.
- (32) Notice to proceed, stop orders, and any overtime premium approvals granted at the time of award.
- (33) Documents requesting and authorizing modification in the normal assignment of contract administration functions and responsibility.
- (34) Approvals or disapprovals of requests for waivers or deviations from contract requirements.
- (35) Rejected engineering change proposals.
- (36) Royalty, invention, and copyright reports (including invention disclosures) or reference thereto.
- (37) Contract completion documents.
- (38) Documentation regarding termination actions for which the contracting office is responsible.
- (39) Cross-references to pertinent documents that are filed elsewhere.
- (40) Any additional documents on which action was taken or that reflect actions by the contracting office pertinent to the contract.
- (41) A current chronological list identifying the awarding and successor contracting officers, with inclusive dates of responsibility.
- (42) When limiting competition to women-owned small business (WOSB) concerns or economically disadvantaged women-owned small business (EDWOSB) concerns in accordance with [subpart 19.15](#), include documentation—
 - (i) Of the type and extent of market research; and
 - (ii) That the NAICS code assigned to the acquisition is for an industry that SBA has designated as—
 - (A) Underrepresented for economically disadvantaged women-owned small business set-asides, or
 - (B) Substantially underrepresented for women-owned small business set-asides.
- (b) *Contract administration office contract file.*
 - (1) Copy of the contract and all modifications, together with official record copies of supporting documents executed by the contract administration office.
 - (2) Any document modifying the normal assignment of contract administration functions and responsibility.
 - (3) Security requirements.
 - (4) Certified cost or pricing data, Certificates of Current Cost or Pricing Data, or data other than certified cost or pricing data; cost or price analysis; and other documentation supporting contractual actions executed by the contract administration office.
 - (5) Preaward survey information.
 - (6) Purchasing system information.
 - (7) Consent to subcontract or purchase.
 - (8) Performance and payment bonds and surety information.
 - (9) Postaward conference records.
 - (10) Orders issued under the contract.
 - (11) Notice to proceed and stop orders.
 - (12) Insurance policies or certificates of insurance or references to them.
 - (13) Documents supporting advance or progress payments.
 - (14) Progressing, expediting, and production surveillance records.
 - (15) Quality assurance records.
 - (16) Property administration records.
 - (17) Documentation regarding termination actions for which the contract administration office is responsible.
 - (18) Cross reference to other pertinent documents that are filed elsewhere.
 - (19) Any additional documents on which action was taken or that reflect actions by the contract administration office pertinent to the contract.
 - (20) Contract completion documents.
- (c) *Paying office contract file.*
 - (1) Copy of the contract and any modifications.

- (2) Bills, invoices, vouchers, and supporting documents.
- (3) Record of payments or receipts.
- (4) Other pertinent documents.

4.804 Closeout of contract files.

4.804-1 Closeout by the office administering the contract.

(a) Except as provided in paragraph (c) of this section, time standards for closing out contract files are as follows:

(1) Files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulations.

(2) Files for firm-fixed-price contracts, other than those using simplified acquisition procedures, should be closed within 6 months after the date on which the contracting officer receives evidence of physical completion.

(3) Files for contracts requiring settlement of indirect cost rates should be closed within 36 months of the month in which the contracting officer receives evidence of physical completion.

(4) Files for all other contracts should be closed within 20 months of the month in which the contracting officer receives evidence of physical completion.

(b) When closing out the contract files at [4.804-1](#)(a)(2), (3), and (4), the contracting officer shall use the closeout procedures at [4.804-5](#). However, these closeout actions may be modified to reflect the extent of administration that has been performed. Quick closeout procedures (see [42.708](#)) should be used, when appropriate, to reduce administrative costs and to enable deobligation of excess funds.

(c) A contract file shall not be closed if—

- (1) The contract is in litigation or under appeal; or
- (2) In the case of a termination, all termination actions have not been completed.

4.804-2 Closeout of the contracting office files if another office administers the contract.

(a) Contract files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulation.

(b) All other contract files shall be closed as soon as practicable after the contracting officer receives a contract completion statement from the contract administration office. The contracting officer shall ensure that all contractual actions required have been completed and shall prepare a statement to that effect. This statement is authority to close the contract file and shall be made a part of the official contract file.

4.804-3 Closeout of paying office contract files.

The paying office shall close the contract file upon issuance of the final payment voucher.

4.804-4 Physically completed contracts.

(a) Except as provided in paragraph (b) of this section, a contract is considered to be physically completed when—

(1)(i) The contractor has completed the required deliveries and the Government has inspected and accepted the supplies;

(ii) The contractor has performed all services and the Government has accepted these services; and

(iii) All option provisions, if any, have expired; or

(2) The Government has given the contractor a notice of complete contract termination.

(b) Rental, use, and storage agreements are considered to be physically completed when—

(1) The Government has given the contractor a notice of complete contract termination; or

(2) The contract period has expired.

4.804-5 Procedures for closing out contract files.

(a) The contract administration office is responsible for initiating (automated or manual) administrative closeout of the contract after receiving evidence of its physical completion. At the outset of this process, the contract administration office must review the contract funds status and notify the contracting office of any excess funds the contract administration office might deobligate. When complete, the administrative closeout procedures must ensure that—

(1) Disposition of classified material is completed;

(2) Final patent report is cleared;

(3) Final royalty report is cleared;

(4) There is no outstanding value engineering change proposal;

(5) Plant clearance report is received;

(6) Property clearance is received;

(7) All interim or disallowed costs are settled;

(8) Price revision is completed;

(9) Subcontracts are settled by the prime contractor;

(10) Prior year indirect cost rates are settled;

(11) Termination docket is completed;

(12) Contract audit is completed;

(13) Contractor's closing statement is completed;

(14) Contractor's final invoice has been submitted; and

(15) Contract funds review is completed and excess funds deobligated.

(b) When the actions in paragraph (a) of this subsection have been verified, the contracting officer administering the contract must ensure that a contract completion statement, containing the following information, is prepared:

(1) Contract administration office name and address (if different from the contracting office).

- (2) Contracting office name and address.
- (3) Contract number.
- (4) Last modification number.
- (5) Last call or order number.
- (6) Contractor name and address.
- (7) Dollar amount of excess funds, if any.
- (8) Voucher number and date, if final payment has been made.

(9) Invoice number and date, if the final approved invoice has been forwarded to a disbursing office of another agency or activity and the status of the payment is unknown.

(10) A statement that all required contract administration actions have been fully and satisfactorily accomplished.

(11) Name and signature of the contracting officer.

(12) Date.

(c) When the statement is completed, the contracting officer must ensure that—

(1) The signed original is placed in the contracting office contract file (or forwarded to the contracting office for placement in the files if the contract administration office is different from the contracting office); and

(2) A signed copy is placed in the appropriate contract administration file if administration is performed by a contract administration office.

4.805 Storage, handling, and disposal of contract files.

(a) Agencies must prescribe procedures for the handling, storing, and disposing of contract files. These procedures must take into account documents held in all types of media, including microfilm and various electronic media. Agencies may change the original medium to facilitate storage as long as the requirements of [Part 4](#), law, and other regulations are satisfied. The process used to create and store records must record and reproduce the original document, including signatures and other written and graphic images completely, accurately, and clearly. Data transfer, storage, and retrieval procedures must protect the original data from alteration. Unless law or other regulations require signed originals to be kept, they may be destroyed after the responsible agency official verifies that record copies on alternate media and copies reproduced from the record copy are accurate, complete, and clear representations of the originals. Agency procedures for contract file disposal must include provisions that the documents specified in paragraph (b) of this section may not be destroyed before the times indicated, and may be retained longer if the responsible agency official determines that the files have future value to the Government. When original documents have been converted to alternate media for storage, the requirements in paragraph (b) of this section also apply to the record copies in the alternate media.

(b) If administrative records are mixed with program records and cannot be economically segregated, the entire file should be kept for the period of time approved for the program

records. Similarly, if documents described in the following table are part of a subject or case file that documents activities that are not described in the table, they should be treated in the same manner as the files of which they are a part. The retention periods for acquisitions at or below the simplified acquisition threshold also apply to acquisitions conducted prior to July 3, 1995, that used small purchase procedures. The retention periods for acquisitions above the simplified acquisition threshold also apply to acquisitions conducted prior to July 3, 1995, that used other than small purchase procedures.

Document	Retention Period
(1) Records pertaining to Contract Disputes Act actions.	6 years and 3 months after final action or decision for files created prior to October 1, 1979. 1 year after final action or decision for files created on or after October 1, 1979.

Document	Retention Period	Document	Retention Period
(2) Contracts (and related records or documents, including successful proposals) exceeding the simplified acquisition threshold for other than construction.	6 years and 3 months after final payment.	(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 .	5 years after submittal to FPDS.
(3) Contracts (and related records or documents, including successful proposals) at or below the simplified acquisition threshold for other than construction.	3 years after final payment.	(10) Investigations, cases pending or in litigation (including protests), or similar matters.	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.
(4) Construction contracts:			
(i) Above \$2,000.	6 years and 3 months after final payment.		
(ii) \$2,000 or less.	3 years after final payment.		
(iii) Related records or documents, including successful proposals, except for contractor's payrolls (see (b)(4)(iv)).	Same as contract file.		
(iv) Contractor's payrolls submitted in accordance with Department of Labor regulations, with related certifications, anti-kickback affidavits, and other related papers.	3 years after contract completion unless contract performance is the subject of an enforcement action on that date.		
(5) Solicited and unsolicited unsuccessful offers, quotations, bids, and proposals:			
(i) Relating to contracts above the simplified acquisition threshold.	If filed separately from contract file, until contract is completed. Otherwise, the same as related contract file.		
(ii) Relating to contracts at or below the simplified acquisition threshold.	1 year after date of award or until final payment, whichever is later.		
(6) Files for canceled solicitations.	5 years after cancellation.		
(7) Other copies of procurement file records used by component elements of a contracting office for administrative purposes.	Upon termination or completion.		
(8) Documents pertaining generally to the contractor as described at 4.801(c)(3) .	Until superseded or obsolete.		

This page intentionally left blank.

PART 6—COMPETITION REQUIREMENTS

Sec.

- 6.000 Scope of part.
- 6.001 Applicability.
- 6.002 Limitations.
- 6.003 [Reserved]

Subpart 6.1—Full and Open Competition

- 6.100 Scope of subpart.
- 6.101 Policy.
- 6.102 Use of competitive procedures.

Subpart 6.2—Full and Open Competition After Exclusion of Sources

- 6.200 Scope of subpart.
- 6.201 Policy.
- 6.202 Establishing or maintaining alternative sources.
- 6.203 Set-asides for small business concerns.
- 6.204 Section 8(a) competition.
- 6.205 Set-asides for HUBZone small business concerns.
- 6.206 Set-asides for service-disabled veteran-owned small business concerns.
- 6.207 Set-asides for economically disadvantaged women-owned small business (EDWOSB) concerns or women-owned small business (WOSB) concerns eligible under the WOSB Program.
- 6.208 Set-asides for local firms during a major disaster or emergency.

Subpart 6.3—Other Than Full and Open Competition

- 6.300 Scope of subpart.
- 6.301 Policy.
- 6.302 Circumstances permitting other than full and open competition.
 - 6.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.
 - 6.302-2 Unusual and compelling urgency.
 - 6.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services.
 - 6.302-4 International agreement.
 - 6.302-5 Authorized or required by statute.
 - 6.302-6 National security.
 - 6.302-7 Public interest.
- 6.303 Justifications.
 - 6.303-1 Requirements.
 - 6.303-2 Content.
- 6.304 Approval of the justification.
- 6.305 Availability of the justification.

Subpart 6.4—Sealed Bidding and Competitive Proposals

- 6.401 Sealed bidding and competitive proposals.

Subpart 6.5—Competition Advocates

- 6.501 Requirement.
- 6.502 Duties and responsibilities.

This page intentionally left blank.

Subpart 6.2—Full and Open Competition After Exclusion of Sources

6.200 Scope of subpart.

This subpart prescribes policy and procedures for providing for full and open competition after excluding one or more sources.

6.201 Policy.

Acquisitions made under this subpart require use of the competitive procedures prescribed in [6.102](#).

6.202 Establishing or maintaining alternative sources.

(a) Agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would—

(1) Increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition;

(2) Be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization;

(3) Be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other non-profit institution or a federally funded research and development center;

(4) Ensure the continuous availability of a reliable source of supplies or services;

(5) Satisfy projected needs based on a history of high demand; or

(6) Satisfy a critical need for medical, safety, or emergency supplies.

(b)(1) Every proposed contract action under the authority of paragraph (a) of this section shall be supported by a determination and findings (D&F) (see [Subpart 1.7](#)) signed by the head of the agency or designee. This D&F shall not be made on a class basis.

(2) Technical and requirements personnel are responsible for providing all necessary data to support their recommendation to exclude a particular source.

(3) When the authority in paragraph (a)(1) of this section is cited, the findings shall include a description of the estimated reduction in overall costs and how the estimate was derived.

6.203 Set-asides for small business concerns.

(a) To fulfill the statutory requirements relating to small business concerns, contracting officers may set aside solicitations to allow only such business concerns to compete. This

includes contract actions conducted under the Small Business Innovation Research Program established under Pub. L. 97-219.

(b) No separate justification or determination and findings is required under this part to set aside a contract action for small business concerns.

(c) [Subpart 19.5](#) prescribes policies and procedures that shall be followed with respect to set-asides.

6.204 Section 8(a) competition.

(a) To fulfill statutory requirements relating to section 8(a) of the Small Business Act, as amended by Pub. L. 100-656, contracting officers may limit competition to eligible 8(a) contractors (see [Subpart 19.8](#)).

(b) No separate justification or determination and findings is required under this part to limit competition to eligible 8(a) contractors. (But see 6.302-5 and 6.303-1 for sole source 8(a) awards over \$20 million.)

6.205 Set-asides for HUBZone small business concerns.

(a) To fulfill the statutory requirements relating to the HUBZone Act of 1997 ([15 U.S.C. 631](#) note), contracting officers in participating agencies (see [19.1302](#)) may set aside solicitations to allow only qualified HUBZone small business concerns to compete (see [19.1305](#)).

(b) No separate justification or determination and findings is required under this part to set aside a contract action for qualified HUBZone small business concerns.

6.206 Set-asides for service-disabled veteran-owned small business concerns.

(a) To fulfill the statutory requirements relating to the Veterans Benefits Act of 2003 ([15 U.S.C. 657f](#)), contracting officers may set-aside solicitations to allow only service-disabled veteran-owned small business concerns to compete (see [19.1405](#)).

(b) No separate justification or determination and findings are required under this part to set aside a contract action for service-disabled veteran-owned small business concerns.

6.207 Set-asides for economically disadvantaged women-owned small business (EDWOSB) concerns or women-owned small business (WOSB) concerns eligible under the WOSB Program.

(a) To fulfill the statutory requirements relating to [15 U.S.C. 637](#)(m), contracting officers may set aside solicitations for only EDWOSB concerns or WOSB concerns eligible under the WOSB Program (see [19.1505](#)).

(b) No separate justification or determination and findings is required under this part to set aside a contract action for EDWOSB concerns or WOSB concerns eligible under the WOSB Program.

6.208 Set-asides for local firms during a major disaster or emergency.

(a) To fulfill the statutory requirements relating to [42 U.S.C. 5150](#), contracting officers may set aside solicitations to allow only offerors residing or doing business primarily in the area affected by such major disaster or emergency to compete (see [Subpart 26.2](#)).

(b) No separate justification or determination and findings is required under this part to set aside a contract action. The set-aside area specified by the contracting officer shall be a geographic area within the area identified in a Presidential declaration(s) of major disaster or emergency and any additional geographic areas identified by the Department of Homeland Security.

paragraph (d)(1) of this section if the estimated contract or order value is—

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

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

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

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

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

7.105 Contents of written acquisition plans.

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

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

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

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

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

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

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

(ii) *Design-to-cost*. Describe the design-to-cost objective(s) and underlying assumptions, including the ratio-

nale for quantity, learning-curve, and economic adjustment factors. Describe how objectives are to be applied, tracked, and enforced. Indicate specific related solicitation and contractual requirements to be imposed.

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

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

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

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

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

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

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

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

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

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

(2) *Competition.*(i) Describe how competition will be sought, promoted, and sustained throughout the course of the acquisition. If full and open competition is not contemplated, cite the authority in [6.302](#), discuss the basis for the application of that authority, identify the source(s), and discuss why full and open competition cannot be obtained.

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

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

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

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

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

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

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

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

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

than a firm-fixed-price basis (see [37.102\(a\)](#), [16.103\(d\)](#), and [16.505\(a\)\(3\)](#)).

(ii) For each order contemplated, discuss—

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

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

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

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

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

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

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

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

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

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

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

(11) *Management information requirements.* Discuss, as appropriate, what management system will be used by the Government to monitor the contractor's effort. If an Earned Value Management System is to be used, discuss the methodology the Government will employ to analyze and use the

earned value data to assess and monitor contract performance. In addition, discuss how the offeror’s/contractor’s EVMS will be verified for compliance with the American National Standards Institute/Electronics Industries Alliance (ANSI/EIA) Standard-748, Earned Value Management Systems, and the timing and conduct of integrated baseline reviews (whether prior to or post award). (See [34.202](#).)

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

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

(14) *Logistics considerations*. Describe—

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

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

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

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

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

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

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

(18) *Security considerations*. For acquisitions dealing with classified matters, discuss how adequate security will be established, maintained, and monitored (see [Subpart 4.4](#)). For information technology acquisitions, discuss how agency information security requirements will be met. For acquisitions requiring routine contractor physical access to a Federally-controlled facility and/or routine access to a Federally-

controlled information system, discuss how agency requirements for personal identity verification of contractors will be met (see [Subpart 4.13](#)).

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

(20) *Other considerations*. Discuss, as applicable:

- (i) Standardization concepts;
- (ii) The industrial readiness program;
- (iii) The Defense Production Act;
- (iv) The Occupational Safety and Health Act;
- (v) Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act) (see [Subpart 50.2](#));
- (vi) Foreign sales implications;

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

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

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

- Acquisition plan approval.
- Statement of work.
- Specifications.
- Data requirements.
- Completion of acquisition-package preparation.
- Purchase request.
- Justification and approval for other than full and open competition where applicable and/or any required D&F approval.
- Issuance of synopsis.
- Issuance of solicitation.
- Evaluation of proposals, audits, and field reports.
- Beginning and completion of negotiations.
- Contract preparation, review, and clearance.
- Contract award.

(22) *Identification of participants in acquisition plan preparation*. List the individuals who participated in preparing the acquisition plan, giving contact information for each.

7.106 Additional requirements for major systems.

(a) In planning for the solicitation of a major system (see [Part 34](#)) development contract, planners shall consider requiring offerors to include, in their offers, proposals to incorporate in the design of a major system—

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

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

(b) In planning for the solicitation of a major system (see [Part 34](#)) production contract, planners shall consider requiring offerors to include, in their offers, proposals identifying opportunities to assure that the Government will be able to

obtain, on a competitive basis, items acquired in connection with the system that are likely to be acquired in substantial quantities during the service life of the system. Proposals submitted in response to such requirements may include the following:

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

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

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

7.107 Additional requirements for acquisitions involving bundling.

(a) Bundling may provide substantial benefits to the Government. However, because of the potential impact on small business participation, the head of the agency must conduct market research to determine whether bundling is necessary and justified ([15 U.S.C. 644\(e\)\(2\)](#)). Market research may indicate that bundling is necessary and justified if an agency or the Government would derive measurably substantial benefits (see [10.001\(a\)\(2\)\(iv\)](#) and [\(a\)\(3\)\(vi\)](#)).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.108 Additional requirements for telecommuting.

In accordance with section 1428 of Public Law 108-136, an agency shall generally not discourage a contractor from allowing its employees to telecommute in the performance of Government contracts. Therefore, agencies shall not—

(a) Include in a solicitation a requirement that prohibits an offeror from permitting its employees to telecommute unless the contracting officer first determines that the requirements of the agency, including security requirements, cannot be met if telecommuting is permitted. The contracting officer shall document the basis for the determination in writing and specify the prohibition in the solicitation; or

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

13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed the simplified acquisition threshold (see [2.101](#)). [Subpart 13.5](#) provides special authority for acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding \$6.5 million (\$12 million for acquisitions as described in [13.500\(e\)](#)), including options. See [Part 12](#) for policies applicable to the acquisition of commercial items exceeding the micro-purchase threshold. See [36.602-5](#) for simplified procedures to be used when acquiring architect-engineer services.

13.001 Definitions.

As used in this part—

“Authorized individual” means a person who has been granted authority, in accordance with agency procedures, to acquire supplies and services in accordance with this part.

“Governmentwide commercial purchase card” means a purchase card, similar in nature to a commercial credit card, issued to authorized agency personnel to use to acquire and to pay for supplies and services.

“Imprest fund” means a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for relatively small amounts.

“Third party draft” means an agency bank draft, similar to a check, that is used to acquire and to pay for supplies and services. (See Treasury Financial Management Manual, Section 3040.70.)

13.002 Purpose.

The purpose of this part is to prescribe simplified acquisition procedures in order to—

- (a) Reduce administrative costs;
- (b) Improve opportunities for small, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business concerns to obtain a fair proportion of Government contracts;
- (c) Promote efficiency and economy in contracting; and
- (d) Avoid unnecessary burdens for agencies and contractors.

13.003 Policy.

(a) Agencies shall use simplified acquisition procedures to the maximum extent practicable for all purchases of supplies or services not exceeding the simplified acquisition threshold (including purchases at or below the micro-purchase threshold). This policy does not apply if an agency can meet its requirement using—

(1) Required sources of supply under [Part 8](#) (e.g., Federal Prison Industries, Committee for Purchase from People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts);

(2) Existing indefinite delivery/indefinite quantity contracts; or

(3) Other established contracts.

(b)(1) Each acquisition of supplies or services that has an anticipated dollar value exceeding \$3,000 (\$15,000 for acquisitions as described in [13.201\(g\)\(1\)](#)) and not exceeding \$150,000 (\$300,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition at [2.101](#)) is reserved exclusively for small business concerns and shall be set aside (see [19.000](#), [19.203](#), and [Subpart 19.5](#)). See [19.000\(b\)](#) and [19.502-2](#) for exceptions.

(2) The contracting officer may make an award to a small business under the 8(a) Program (see subpart [19.8](#)), or set aside for HUBZone small business concerns (see [19.1305](#)), service-disabled veteran-owned small business concerns (see [19.1405](#)), or economically disadvantaged women-owned small business (EDWOSB) concerns and woman-owned small business (WOSB) concerns eligible under the WOSB Program (see [19.1505](#)), an acquisition of supplies or services that has an anticipated dollar value exceeding the micro-purchase threshold and at or below the simplified acquisition threshold. The following contracting officer’s decisions for acquisitions at or below the simplified acquisition threshold are not subject to review under subpart [19.4](#):

(i) A decision not to make an award under the 8(a) Program (see subpart [19.8](#)).

(ii) A decision not to set aside an acquisition for HUBZone small business concerns, service-disabled veteran-owned small business concerns, or EDWOSB concerns and WOSB concerns eligible under the WOSB Program.

(3) Each written solicitation under a set-aside shall contain the appropriate provisions prescribed by [Part 19](#). If the solicitation is oral, however, information substantially identical to that in the provision shall be given to potential quoters.

(c)(1) The contracting officer shall not use simplified acquisition procedures to acquire supplies and services if the anticipated award will exceed—

(i) The simplified acquisition threshold; or

(ii) \$6.5 million (\$12 million for acquisitions as described in [13.500\(e\)](#)), including options, for acquisitions of commercial items using [Subpart 13.5](#).

(2) Do not break down requirements aggregating more than the simplified acquisition threshold (or for commercial items, the threshold in [Subpart 13.5](#)) or the micro-purchase threshold into several purchases that are less than the applicable threshold merely to—

(i) Permit use of simplified acquisition procedures;

or

(ii) Avoid any requirement that applies to purchases exceeding the micro-purchase threshold.

(d) An agency that has specific statutory authority to acquire personal services (see [37.104](#)) may use simplified acquisition procedures to acquire those services.

(e) Agencies shall use the Governmentwide commercial purchase card and electronic purchasing techniques to the maximum extent practicable in conducting simplified acquisitions (but see [32.1108\(b\)\(2\)](#)).

(f) Agencies shall maximize the use of electronic commerce when practicable and cost-effective (see [Subpart 4.5](#)). Drawings and lengthy specifications can be provided off-line in hard copy or through other appropriate means.

(g) Authorized individuals shall make purchases in the simplified manner that is most suitable, efficient, and economical based on the circumstances of each acquisition. For acquisitions not expected to exceed—

(1) The simplified acquisition threshold for other than commercial items, use any appropriate combination of the procedures in [Parts 13, 14, 15, 35, or 36](#), including the use of [Standard Form 1442](#), Solicitation, Offer, and Award (Construction, Alteration, or Repair), for construction contracts (see [36.701\(a\)](#)); or

(2) \$6.5 million (\$12 million for acquisitions as described in [13.500\(e\)](#)), for commercial items, use any appropriate combination of the procedures in [Parts 12, 13, 14, and 15](#) (see paragraph (d) of this section).

(h) In addition to other considerations, contracting officers shall—

(1) Promote competition to the maximum extent practicable (see [13.104](#));

(2) Establish deadlines for the submission of responses to solicitations that afford suppliers a reasonable opportunity to respond (see [5.203](#));

(3) Consider all quotations or offers that are timely received. For evaluation of quotations or offers received electronically, see [13.106-2\(b\)\(3\)](#); and

(4) Use innovative approaches, to the maximum extent practicable, in awarding contracts using simplified acquisition procedures.

13.004 Legal effect of quotations.

(a) A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract. Therefore, issuance by the Government of an order in response to a supplier's quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer.

(b) When appropriate, the contracting officer may ask the supplier to indicate acceptance of an order by notification to the Government, preferably in writing, as defined at [2.101](#). In

other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

(c) If the Government issues an order resulting from a quotation, the Government may (by written notice to the supplier, at any time before acceptance occurs) withdraw, amend, or cancel its offer. (See [13.302-4](#) for procedures on termination or cancellation of purchase orders.)

13.005 Federal Acquisition Streamlining Act of 1994 list of inapplicable laws.

(a) The following laws are inapplicable to all contracts and subcontracts (if otherwise applicable to subcontracts) at or below the simplified acquisition threshold:

(1) [41 U.S.C. 57\(a\)](#) and (b) (Anti-Kickback Act of 1986). (Only the requirement for the incorporation of the contractor procedures for the prevention and detection of violations, and the contractual requirement for contractor cooperation in investigations are inapplicable.)

(2) [40 U.S.C. 3131](#) (Miller Act). (Although the Miller Act does not apply to contracts at or below the simplified acquisition threshold, alternative forms of payment protection for suppliers of labor and material (see [28.102](#)) are still required if the contract exceeds \$30,000 ([40 U.S.C. 3132](#)).)

(3) [40 U.S.C. 3701 et seq.](#) (Contract Work Hours and Safety Standards Act—Overtime Compensation).

(4) [41 U.S.C. 701\(a\)\(1\)](#) (Section 5152 of the Drug-Free Workplace Act of 1988), except for individuals.

(5) [42 U.S.C. 6962](#) (Solid Waste Disposal Act). (The requirement to provide an estimate of recovered material utilized in contract performance does not apply unless the contract value exceeds \$150,000.)

(6) [10 U.S.C. 2306\(b\)](#) and [41 U.S.C. 254\(a\)](#) (Contract Clause Regarding Contingent Fees).

(7) [10 U.S.C. 2313](#) and [41 U.S.C. 254\(c\)](#) (Authority to Examine Books and Records of Contractors).

(8) [10 U.S.C. 2402](#) and [41 U.S.C. 253g](#) (Prohibition on Limiting Subcontractor Direct Sales to the United States).

(9) [15 U.S.C. 631](#) note (HUBZone Act of 1997), except for [15 U.S.C. 657a\(b\)\(2\)\(B\)](#), which is optional for the agencies subject to the requirements of the Act.

(10) [31 U.S.C. 1354\(a\)](#) (Limitation on use of appropriated funds for contracts with entities not meeting veterans' employment reporting requirements).

(b) The Federal Acquisition Regulatory (FAR) Council will include any law enacted after October 13, 1994, that sets forth policies, procedures, requirements, or restrictions for the acquisition of property or services, on the list set forth in paragraph (a) of this section. The FAR Council may make exceptions when it determines in writing that it is in the best interest of the Government that the enactment should apply to

contracts or subcontracts not greater than the simplified acquisition threshold.

(c) The provisions of paragraph (b) of this section do not apply to laws that—

(1) Provide for criminal or civil penalties; or

(2) Specifically state that notwithstanding the language of Section 4101, Public Law 103-355, the enactment will be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) Any individual may petition the Administrator, Office of Federal Procurement Policy (OFPP), to include any applicable 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, except as used with its Alternate I, when using funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

(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 concern, including economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Woman-owned Small Business (WOSB) Program.

(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.

(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](#).

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

(1) Notices of proposed contract actions shall follow the procedures in [5.704](#) for posting orders.

(2) Award notices shall follow the procedures in [5.705](#).

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 burdensome fashion. Formal evaluation plans and establishing a competitive range, conducting discussions, and scoring quotations or offers are not required. Contracting offices may conduct comparative evaluations of offers. Evaluation of other factors, such as past performance—

(i) Does not require the creation or existence of a formal data base; and

(ii) May be based on one or more of the following:

(A) The contracting officer's knowledge of and previous experience with the supply or service being acquired;

(B) Customer surveys, and past performance questionnaire replies;

(C) The Governmentwide Past Performance Information Retrieval System (PPIRS) at www.ppirs.gov; or

(D) Any other reasonable basis.

(4) For acquisitions conducted using a method that permits electronic response to the solicitation, the contracting officer may—

(i) After preliminary consideration of all quotations or offers, identify from all quotations or offers received one that is suitable to the user, such as the lowest priced brand name product, and quickly screen all lower priced quotations or offers based on readily discernible value indicators, such as past performance, warranty conditions, and maintenance availability; or

(ii) Where an evaluation is based only on price and past performance, make an award based on whether the lowest priced of the quotations or offers having the highest past performance rating possible represents the best value when compared to any lower priced quotation or offer.

13.106-3 Award and documentation.

(a) *Basis for award.* Before making award, the contracting officer must determine that the proposed price is fair and reasonable.

(1) Whenever possible, base price reasonableness on competitive quotations or offers.

(2) If only one response is received, include a statement of price reasonableness in the contract file. The contracting officer may base the statement on—

(i) Market research;

(ii) Comparison of the proposed price with prices found reasonable on previous purchases;

(iii) Current price lists, catalogs, or advertisements. However, inclusion of a price in a price list, catalog, or advertisement does not, in and of itself, establish fairness and reasonableness of the price;

(iv) A comparison with similar items in a related industry;

(v) The contracting officer's personal knowledge of the item being purchased;

(vi) Comparison to an independent Government estimate; or

(vii) Any other reasonable basis.

(3) Occasionally an item can be obtained only from a supplier that quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantity required. In these instances, the contracting officer should inform the requiring activity of all facts regarding the quotation or offer and ask it to confirm or alter its requirement. The file shall be documented to support the final action taken.

(b) *File documentation and retention.* Keep documentation to a minimum. Purchasing offices shall retain data supporting purchases (paper or electronic) to the minimum extent and duration necessary for management review purposes (see [Subpart 4.8](#)). The following illustrate the extent to which quotation or offer information should be recorded:

(1) *Oral solicitations.* The contracting office should establish and maintain records of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases, this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each.

(2) *Written solicitations* (see [2.101](#)). For acquisitions not exceeding the simplified acquisition threshold, limit written records of solicitations or offers to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier or suppliers contacted, and other pertinent data.

(3) *Special situations.* Include additional statements—

(i) Explaining the absence of competition (see [13.106-1](#) for brand name purchases) if only one source is solicited and the acquisition does not exceed the simplified acquisition threshold (does not apply to an acquisition of utility services available from only one source); or

(ii) Supporting the award decision if other than price-related factors were considered in selecting the supplier.

(c) *Notification.* For acquisitions that do not exceed the simplified acquisition threshold and for which automatic notification is not provided through an electronic commerce method that employs widespread electronic public notice, notification to unsuccessful suppliers shall be given only if requested or required by [5.301](#).

(d) *Request for information.* If a supplier requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the contract award decision shall be provided (see 15.503(b)(2)).

(e) *Taxpayer Identification Number.* If an oral solicitation is used, the contracting officer shall ensure that the copy of the award document sent to the payment office is annotated with the contractor's Taxpayer Identification Number (TIN) and

type of organization (see [4.203](#)), unless this information will be obtained from some other source (*e.g.*, centralized database). The contracting officer shall disclose to the contractor that the TIN may be used by the Government to collect and report on any delinquent amounts arising out of the contractor's relationship with the Government ([31 U.S.C. 7701\(c\)\(3\)](#)).

Subpart 14.5—Two-Step Sealed Bidding

14.501 General.

Two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding when adequate specifications are not available. An objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirements, including an adequate technical data package, so that subsequent acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex items. It is conducted in two steps:

(a) Step one consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques. It is the proper step for clarification of questions relating to technical requirements. Conformity to the technical requirements is resolved in this step, but not responsibility as defined in 9.1.

(b) Step two involves the submission of sealed priced bids by those who submitted acceptable technical proposals in step one. Bids submitted in step two are evaluated and the awards made in accordance with [Subparts 14.3](#) and [14.4](#).

14.502 Conditions for use.

(a) Unless other factors require the use of sealed bidding, two-step sealed bidding may be used in preference to negotiation when all of the following conditions are present:

(1) Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to ensure mutual understanding between each source and the Government.

(2) Definite criteria exist for evaluating technical proposals.

(3) More than one technically qualified source is expected to be available.

(4) Sufficient time will be available for use of the two-step method.

(5) A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.

(b) None of the following precludes the use of two-step sealed bidding:

(1) Multi-year contracting.

(2) Government property to be made available to the successful bidder.

(3) A total small business set-aside (see [19.502-2](#)).

(4) The use of the price evaluation adjustment for small disadvantaged business concerns (see [Subpart 19.11](#)).

(5) The use of a set-aside or price evaluation preference for HUBZone small business concerns (see [Subpart 19.13](#)).

(6) The use of a set-aside for service-disabled veteran-owned small business concerns (see [Subpart 19.14](#)).

(7) The use of a set-aside for economically disadvantaged woman-owned small business concerns and women-owned small business concerns eligible under the Woman-Owned Small Business Program (see subpart [19.15](#)).

(8) A first or subsequent production quantity is being acquired under a performance specification.

14.503 Procedures.

14.503-1 Step one.

(a) Requests for technical proposals shall be synopsisized in accordance with [Part 5](#). The request must include, as a minimum, the following:

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

(2) A statement of intent to use the two-step method.

(3) The requirements of the technical proposal.

(4) The evaluation criteria, to include all factors and any significant subfactors.

(5) A statement that the technical proposals shall not include prices or pricing information.

(6) The date, or date and hour, by which the proposal must be received (see [14.201-6\(r\)](#)).

(7) A statement that—

(i) In the second step, only bids based upon technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for awards, and

(ii) Each bid in the second step must be based on the bidder's own technical proposals.

(8) A statement that—

(i) Offerors should submit proposals that are acceptable without additional explanation or information,

(ii) The Government may make a final determination regarding a proposal's acceptability solely on the basis of the proposal as submitted; and

(iii) The Government may proceed with the second step without requesting further information from any offeror; however, the Government may request additional information from offerors of proposals that it considers reasonably susceptible of being made acceptable, and may discuss proposals with their offerors.

(9) A statement that a notice of unacceptability will be forwarded to the offeror upon completion of the proposal evaluation and final determination of unacceptability.

(10) A statement either that only one technical proposal may be submitted by each offeror or that multiple technical proposals may be submitted. When specifications permit different technical approaches, it is generally in the Govern-

ment's interest to authorize multiple proposals. If multiple proposals are authorized, see [14.201-6\(s\)](#).

(b) Information on delivery or performance requirements may be of assistance to bidders in determining whether or not to submit a proposal and may be included in the request. The request shall also indicate that the information is not binding on the Government and that the actual delivery or performance requirements will be contained in the invitation issued under step two.

(c) Upon receipt, the contracting officer shall—

(1) Safeguard proposals against disclosure to unauthorized persons;

(2) Accept and handle data marked in accordance with [15.609](#) as provided in that section; and

(3) Remove any reference to price or cost.

(d) The contracting officer shall establish a time period for evaluating technical proposals. The period may vary with the complexity and number of proposals involved. However, the evaluation should be completed quickly.

(e)(1) Evaluations shall be based on the criteria in the request for proposals but not consideration of responsibility as defined in 9.1, Proposals, shall be categorized as—

(i) Acceptable;

(ii) Reasonably susceptible of being made acceptable; or

(iii) Unacceptable.

(2) Any proposal which modifies, or fails to conform to the essential requirements or specifications of, the request for technical proposals shall be considered nonresponsive and categorized as unacceptable.

(f)(1) The contracting officer may proceed directly with step two if there are sufficient acceptable proposals to ensure adequate price competition under step two, and if further time, effort and delay to make additional proposals acceptable and thereby increase competition would not be in the Government's interest. If this is not the case, the contracting officer shall request bidders whose proposals may be made acceptable to submit additional clarifying or supplementing information. The contracting office shall identify the nature of the deficiencies in the proposal or the nature of the additional information required. The contracting officer may also

arrange discussions for this purpose. No proposal shall be discussed with any offeror other than the submitter.

(2) In initiating requests for additional information, the contracting officer shall fix an appropriate time for bidders to conclude discussions, if any, submit all additional information, and incorporate such additional information as part of their proposals submitted. Such time may be extended in the discretion of the contracting officer. If the additional information incorporated as part of a proposal within the final time fixed by the contracting officer establishes that the proposal is acceptable, it shall be so categorized. Otherwise, it shall be categorized as unacceptable.

(g) When a technical proposal is found unacceptable (either initially or after clarification), the contracting officer shall promptly notify the offeror of the basis of the determination and that a revision of the proposal will not be considered. Upon written request, the contracting officer shall debrief unsuccessful offerors (see [15.505](#) and [15.506](#)).

(h) Late technical proposals are governed by [15.208\(b\)](#), (c), and (f).

(i) If it is necessary to discontinue two-step sealed bidding, the contracting officer shall include a statement of the facts and circumstances in the contract file. Each offeror shall be notified in writing. When step one results in no acceptable technical proposal or only one acceptable technical proposal, the acquisition may be continued by negotiation.

14.503-2 Step two.

(a) Sealed bidding procedures shall be followed except that invitations for bids shall—

(1) Be issued only to those offerors submitting acceptable technical proposals in step one;

(2) Include the provision prescribed in [14.201-6\(t\)](#);

(3) Prominently state that the bidder shall comply with the specifications and the bidder's technical proposal; and

(4) Not be synopsisized through the Governmentwide point of entry (GPE) as an acquisition opportunity nor publicly posted (see [5.101\(a\)](#)).

(b) The names of firms that submitted acceptable proposals in step one will be listed through the GPE for the benefit of prospective subcontractors (see [5.207](#)).

* * * * *

Subpart 15.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

15.501 Definition.

“Day,” as used in this subpart, has the meaning set forth at [33.101](#).

15.502 Applicability.

This subpart applies to competitive proposals, as described in [6.102\(b\)](#), and a combination of competitive procedures, as described in [6.102\(c\)](#). The procedures in [15.504](#), [15.506](#), [15.507](#), [15.508](#), and [15.509](#), with reasonable modification, should be followed for sole source acquisitions and acquisitions described in [6.102\(d\)\(1\)](#) and (2).

15.503 Notifications to unsuccessful offerors.

(a) *Preaward notices*— (1) *Preaward notices of exclusion from competitive range*. The contracting officer shall notify offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice shall state the basis for the determination and that a proposal revision will not be considered.

(2) *Preaward notices for small business programs*.

(i) In addition to the notice in paragraph (a)(1) of this section, the contracting officer shall notify each offeror in writing prior to award, upon completion of negotiations, determinations of responsibility, and, if necessary, the process in [19.304\(d\)](#)—

(A) When using a small business set-aside (see [Subpart 19.5](#));

(B) When a small disadvantaged business concern receives a benefit based on its disadvantaged status (see [Subpart 19.11](#) and [19.1202](#)) and is the apparently successful offeror;

(C) When using the HUBZone procedures in [19.1305](#) or [19.1307](#);

(D) When using the service-disabled veteran-owned small business procedures in [19.1405](#); or

(E) When using the Woman-Owned Small Business Program procedures in [19.1505](#).

(ii) The notice shall state—

(A) The name and address of the apparently successful offeror;

(B) That the Government will not consider subsequent revisions of the offeror’s proposal; and

(C) That no response is required unless a basis exists to challenge the size status or small business status of the apparently successful offeror (e.g., small business concern, small disadvantaged business concern, HUBZone small business concern, service-disabled veteran-owned small business concern, economically disadvantaged women-owned small business concern, or women-owned small business con-

cern eligible under the Women-Owned Small Business Program).

(iii) The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay or when the contract is entered into under the 8(a) program (see [19.805-2](#)).

(b) *Postaward notices*. (1) Within 3 days after the date of contract award, the contracting officer shall provide written notification to each offeror whose proposal was in the competitive range but was not selected for award ([10 U.S.C. 2305\(b\)\(5\)](#) and [41 U.S.C. 253b\(c\)](#)) or had not been previously notified under paragraph (a) of this section. The notice shall include—

(i) The number of offerors solicited;

(ii) The number of proposals received;

(iii) The name and address of each offeror receiving an award;

(iv) The items, quantities, and any stated unit prices of each award. If the number of items or other factors makes listing any stated unit prices impracticable at that time, only the total contract price need be furnished in the notice. However, the items, quantities, and any stated unit prices of each award shall be made publicly available, upon request; and

(v) In general terms, the reason(s) the offeror’s proposal was not accepted, unless the price information in paragraph (b)(1)(iv) of this section readily reveals the reason. In no event shall an offeror’s cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(2) Upon request, the contracting officer shall furnish the information described in paragraph (b)(1) of this section to unsuccessful offerors in solicitations using simplified acquisition procedures in [Part 13](#).

(3) Upon request, the contracting officer shall provide the information in paragraph (b)(1) of this section to unsuccessful offerors that received a preaward notice of exclusion from the competitive range.

15.504 Award to successful offeror.

The contracting officer shall award a contract to the successful offeror by furnishing the executed contract or other notice of the award to that offeror.

(a) If the award document includes information that is different than the latest signed proposal, as amended by the offeror’s written correspondence, both the offeror and the contracting officer shall sign the contract award.

(b) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the proposal acceptance period.

(c) If the [Optional Form \(OF\) 307](#), Contract Award, [Standard Form \(SF\) 26](#), Award/Contract, or [SF 33](#), Solicitation, Offer and Award, is not used to award the contract, the first page of the award document shall contain the Government's acceptance statement from Block 15 of that form, exclusive of the Item 3 reference language, and shall contain the contracting officer's name, signature, and date. In addition, if the award document includes information that is different than the signed proposal, as amended by the offeror's written correspondence, the first page shall include the contractor's agreement statement from Block 14 of the [OF 307](#) and the signature of the contractor's authorized representative.

15.505 Preaward debriefing of offerors.

Offerors excluded from the competitive range or otherwise excluded from the competition before award may request a debriefing before award ([10 U.S.C. 2305\(b\)\(6\)\(A\)](#) and [41 U.S.C. 253b\(f\)](#) - (h)).

(a)(1) The offeror may request a preaward debriefing by submitting a written request for debriefing to the contracting officer within 3 days after receipt of the notice of exclusion from the competition.

(2) At the offeror's request, this debriefing may be delayed until after award. If the debriefing is delayed until after award, it shall include all information normally provided in a postaward debriefing (see [15.506\(d\)](#)). Debriefings delayed pursuant to this paragraph could affect the timeliness of any protest filed subsequent to the debriefing.

(3) If the offeror does not submit a timely request, the offeror need not be given either a preaward or a postaward debriefing. Offerors are entitled to no more than one debriefing for each proposal.

(b) The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable, but may refuse the request for a debriefing if, for compelling reasons, it is not in the best interests of the Government to conduct a debriefing at that time. The rationale for delaying the debriefing shall be documented in the contract file. If the contracting officer delays the debriefing, it shall be provided no later than the time postaward debriefings are provided under [15.506](#). In that event, the contracting officer shall include the information at [15.506\(d\)](#) in the debriefing.

(c) Debriefings may be done orally, in writing, or by any other method acceptable to the contracting officer.

(d) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(e) At a minimum, preaward debriefings shall include—

(1) The agency's evaluation of significant elements in the offeror's proposal;

(2) A summary of the rationale for eliminating the offeror from the competition; and

(3) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed in the process of eliminating the offeror from the competition.

(f) Preaward debriefings shall not disclose—

(1) The number of offerors;

(2) The identity of other offerors;

(3) The content of other offerors' proposals;

(4) The ranking of other offerors;

(5) The evaluation of other offerors; or

(6) Any of the information prohibited in [15.506\(e\)](#).

(g) An official summary of the debriefing shall be included in the contract file.

15.506 Postaward debriefing of offerors.

(a)(1) An offeror, upon its written request received by the agency within 3 days after the date on which that offeror has received notification of contract award in accordance with [15.503\(b\)](#), shall be debriefed and furnished the basis for the selection decision and contract award.

(2) To the maximum extent practicable, the debriefing should occur within 5 days after receipt of the written request. Offerors that requested a postaward debriefing in lieu of a preaward debriefing, or whose debriefing was delayed for compelling reasons beyond contract award, also should be debriefed within this time period.

(3) An offeror that was notified of exclusion from the competition (see [15.505\(a\)](#)), but failed to submit a timely request, is not entitled to a debriefing.

(4)(i) Untimely debriefing requests may be accommodated.

(ii) Government accommodation of a request for delayed debriefing pursuant to [15.505\(a\)\(2\)](#), or any untimely debriefing request, does not automatically extend the deadlines for filing protests. Debriefings delayed pursuant to [15.505\(a\)\(2\)](#) could affect the timeliness of any protest filed subsequent to the debriefing.

(b) Debriefings of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the contracting officer.

(c) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(d) At a minimum, the debriefing information shall include—

(1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;

(2) The overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror 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 the 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; and

(6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

(e) The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, the debriefing shall not reveal any information prohibited from disclosure by [24.202](#) or exempt from release under the Freedom of Information Act ([5 U.S.C. 552](#)) including—

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques;

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and

(4) The names of individuals providing reference information about an offeror's past performance.

(f) An official summary of the debriefing shall be included in the contract file.

15.507 Protests against award.

(a) Protests against award in negotiated acquisitions shall be handled in accordance with [Part 33](#). Use of agency protest procedures that incorporate the alternative dispute resolution provisions of Executive Order 12979 is encouraged for both preaward and postaward protests.

(b) If a protest causes the agency, within 1 year of contract award, to—

(1) Issue a new solicitation on the protested contract award, the contracting officer shall provide the information in paragraph (c) of this section to all prospective offerors for the new solicitation; or

(2) Issue a new request for revised proposals on the protested contract award, the contracting officer shall provide the information in paragraph (c) of this section to offerors that were in the competitive range and are requested to submit revised proposals.

(c) The following information will be provided to appropriate parties:

(1) Information provided to unsuccessful offerors in any debriefings conducted on the original award regarding the successful offeror's proposal; and

(2) Other nonproprietary information that would have been provided to the original offerors.

15.508 Discovery of mistakes.

Mistakes in a contractor's proposal that are disclosed after award shall be processed substantially in accordance with the procedures for mistakes in bids at [14.407-4](#).

15.509 Forms.

[Optional Form 307](#), Contract Award, [Standard Form \(SF\) 26](#), Award/Contract, or [SF 33](#), Solicitation, Offer and Award, may be used to award negotiated contracts in which the signature of both parties on a single document is appropriate. Note however, if using the [SF 26](#) for a negotiated procurement, block 18 is not to be used. If these forms are not used, the award document shall incorporate the agreement and award language from the [OF 307](#).

This page intentionally left blank.

PART 18—EMERGENCY ACQUISITIONS

<i>Sec.</i>			
18.000	Scope of part.	18.116	Service-disabled Veteran-owned Small Business (SDVOSB) sole source awards.
18.001	Definition.	18.117	Awards to economically disadvantaged women-owned small business (EDWOSB) concerns and women-owned small business (WOSB) concerns eligible under the WOSB Program.
	Subpart 18.1—Available Acquisition Flexibilities		
18.101	General.	18.118	Overtime approvals.
18.102	Central contractor registration.	18.119	Trade agreements.
18.103	Synopses of proposed contract actions.	18.120	Use of patented technology under the North American Free Trade Agreement.
18.104	Unusual and compelling urgency.	18.121	Bid guarantees.
18.105	Federal Supply Schedules (FSSs), multi-agency blanket purchase agreements (BPAs), and multi-agency indefinite delivery contracts.	18.122	Advance payments.
18.106	Acquisitions from Federal Prison Industries, Inc. (FPI).	18.123	Assignment of claims.
18.107	AbilityOne specification changes.	18.124	Electronic funds transfer.
18.108	Qualifications requirements.	18.125	Protest to GAO.
18.109	Priorities and allocations.	18.126	Contractor rent-free use of Government property.
18.110	Soliciting from a single source.	18.127	Extraordinary contractual actions.
18.111	Oral requests for proposals.		Subpart 18.2—Emergency Acquisition Flexibilities
18.112	Letter contracts.	18.201	Contingency operation.
18.113	Interagency acquisitions.	18.202	Defense or recovery from certain attacks.
18.114	Contracting with the Small Business Administration (The 8(a) Program).	18.203	Emergency declaration or major disaster declaration.
18.115	HUBZone sole source awards.	18.204	Resources.

This page intentionally left blank.

18.000 Scope of part.

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

(1) Generally available flexibilities; and

(2) Emergency acquisition flexibilities that are available only under prescribed circumstances.

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

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

18.001 Definition.

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

(a) In support of a contingency operation as defined in [2.101](#);

(b) To facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States; or

(c) When the President issues an emergency declaration, or a major disaster declaration.

Subpart 18.1—Available Acquisition Flexibilities

18.101 General.

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

18.102 Central contractor registration.

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

18.103 Synopses of proposed contract actions.

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

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

18.104 Unusual and compelling urgency.

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

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

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

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

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

18.107 AbilityOne specification changes.

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

18.108 Qualifications requirements.

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

18.109 Priorities and allocations.

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

18.110 Soliciting from a single source.

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

18.111 Oral requests for proposals.

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

18.112 Letter contracts.

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

18.113 Interagency acquisitions.

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

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

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

18.115 HUBZone sole source awards.

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

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

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

18.117 Awards to economically disadvantaged women-owned small business (EDWOSB) concerns and women-owned small business (WOSB) concerns eligible under the WOSB Program.

Contracts may be awarded to EDWOSB concerns and WOSB concerns on a competitive basis. (See subpart [19.15](#).)

18.118 Overtime approvals.

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

18.119 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\(a\)\(5\)](#)).

18.120 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](#).)

18.121 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\(c\)](#).)

18.122 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](#).)

18.123 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\(d\)](#).)

18.124 Electronic funds transfer.

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

18.125 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).)

18.126 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](#).)

18.127 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 18.2—Emergency Acquisition Flexibilities

18.201 Contingency operation.

(a) *Contingency operation* is defined in [2.101](#).

(b) *Micro-purchase threshold*. The threshold increases when the head of the agency determines the supplies or services are to be used to support a contingency operation. (See [2.101](#) and [13.201](#)(g).)

(c) *Simplified acquisition threshold*. The threshold increases when the head of the agency determines the supplies or services are to be used to support a contingency operation. (See [2.101](#).)

(d) *SF 44, Purchase Order-Invoice-Voucher*. The normal threshold for the use of the [SF 44](#) is at or below the micro-purchase threshold. Agencies may, however, establish higher dollar limitations for purchases made to support a contingency operation. (See [13.306](#).)

(e) *Test program for certain commercial items*. The threshold limits authorized for use of the test program may be increased for acquisitions to support a contingency operation. (See [13.500](#)(e).)

18.202 Defense or recovery from certain attacks.

(a) *Micro-purchase threshold*. The threshold increases when the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. (See [2.101](#).)

(b) *Simplified acquisition threshold*. The threshold increases when the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. (See [2.101](#).)

(c) *Commercial items to facilitate defense and recovery*. Contracting officers may treat any acquisition of supplies or services as an acquisition of commercial items if the head of the agency determines the acquisition is to be used to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack. (See [12.102](#)(f)(1) and [13.500](#)(e).)

(d) *Test program for certain commercial items*. The threshold limits authorized for use of the test program may be increased when it is determined the acquisition is to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. (See [13.500](#)(e).)

18.203 Emergency declaration or major disaster declaration.

(a) *Disaster or emergency assistance activities*. Preference will be given to local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities when the President has made a declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Preference may take the form of local area set-asides or an evaluation preference. (See [6.208](#) and [Subpart 26.2](#).)

(b) *Ocean transportation by U.S. flag vessels*. The provisions of the Cargo Preference Act of 1954 may be waived in emergency situations. (See [47.502](#)(c).)

18.204 Resources.

(a) *National Response Framework*. The National Response Framework (NRF) is a guide to how the Nation conducts all-hazards response. This key document establishes a comprehensive, national, all-hazards approach to domestic incident response. The Framework identifies the key response principles, roles and structures that organize national response. It describes how communities, States, the Federal Government, the private-sector, and nongovernmental partners apply these principles for a coordinated, effective national response. It also describes special circumstances where the Federal Government exercises a larger role, including incidents where Federal interests are involved and catastrophic incidents where a State would require significant support. The NRF is available at <http://www.fema.gov/emergency/nrf/>.

(b) *OFPP Guidelines*. The Office of Federal Procurement Policy (OFPP) “Emergency Acquisitions Guide” is available at http://www.whitehouse.gov/sites/default/files/omb/assets/procurement_guides/emergency_acquisitions_guide.pdf

This page intentionally left blank.

PART 19—SMALL BUSINESS PROGRAMS

Sec.

- 19.000 Scope of part.
- 19.001 Definitions.

Subpart 19.1—Size Standards

- 19.101 Explanation of terms.
- 19.102 Size standards.

Subpart 19.2—Policies

- 19.201 General policy.
- 19.202 Specific policies.
- 19.202-1 Encouraging small business participation in acquisitions.
- 19.202-2 Locating small business sources.
- 19.202-3 Equal low bids.
- 19.202-4 Solicitation.
- 19.202-5 Data collection and reporting requirements.
- 19.202-6 Determination of fair market price.
- 19.203 Relationship among small business programs.

Subpart 19.3—Determination of Small Business Status for Small Business Programs

- 19.301 Representations and rerepresentations.
- 19.301-1 Representation by the offeror.
- 19.301-2 Rerepresentation by a contractor that represented itself as a small business concern.
- 19.301-3 Rerepresentation by a contractor that represented itself as other than a small business concern.
- 19.302 Protesting a small business representation or rerepresentation.
- 19.303 Determining North American Industry Classification System (NAICS) codes and size standards.
- 19.304 Disadvantaged business status.
- 19.305 Protesting a representation of disadvantaged business status.
- 19.306 Protesting a firm’s status as a HUBZone small business concern.
- 19.307 Protesting a firm’s status as a service-disabled veteran-owned small business concern.
- 19.308 Protesting a firm’s status as an economically disadvantaged women-owned small business (EDWOSB) concern or women-owned small business (WOSB) concern eligible under the WOSB Program.
- 19.309 Solicitation provisions and contract clauses.

Subpart 19.4—Cooperation with the Small Business Administration

- 19.401 General.
- 19.402 Small Business Administration procurement center representatives.
- 19.403 Small Business Administration breakout procurement center representative.

Subpart 19.5—Set-Asides for Small Business

- 19.501 General.
- 19.502 Setting aside acquisitions.
- 19.502-1 Requirements for setting aside acquisitions.
- 19.502-2 Total small business set-asides.
- 19.502-3 Partial set-asides.
- 19.502-4 Methods of conducting set-asides.
- 19.502-5 Insufficient causes for not setting aside an acquisition.
- 19.503 Setting aside a class of acquisitions for small business.
- 19.504 Inclusion of Federal Prison Industries, Inc.
- 19.505 Rejecting Small Business Administration recommendations.
- 19.506 Withdrawing or modifying small business set-asides.
- 19.507 Automatic dissolution of a small business set-aside.
- 19.508 Solicitation provisions and contract clauses.

Subpart 19.6—Certificates of Competency and Determinations of Responsibility

- 19.601 General.
- 19.602 Procedures.
- 19.602-1 Referral.
- 19.602-2 Issuing or denying a Certificate of Competency (COC).
- 19.602-3 Resolving differences between the agency and the Small Business Administration.
- 19.602-4 Awarding the contract.

Subpart 19.7—The Small Business Subcontracting Program

- 19.701 Definitions.
- 19.702 Statutory requirements.
- 19.703 Eligibility requirements for participating in the program.
- 19.704 Subcontracting plan requirements.
- 19.705 Responsibilities of the contracting officer under the subcontracting assistance program.
- 19.705-1 General support of the program.
- 19.705-2 Determining the need for a subcontracting plan.
- 19.705-3 Preparing the solicitation.
- 19.705-4 Reviewing the subcontracting plan.
- 19.705-5 Awards involving subcontracting plans.
- 19.705-6 Postaward responsibilities of the contracting officer.
- 19.705-7 Liquidated damages.
- 19.706 Responsibilities of the cognizant administrative contracting officer.
- 19.707 The Small Business Administration’s role in carrying out the program.
- 19.708 Contract clauses.

Subpart 19.8—Contracting with the Small Business Administration (The 8(a) Program)

- 19.800 General.
- 19.801 [Reserved]
- 19.802 Selecting concerns for the 8(a) Program.
- 19.803 Selecting acquisitions for the 8(a) Program.
- 19.804 Evaluation, offering, and acceptance.
- 19.804-1 Agency evaluation.
- 19.804-2 Agency offering.
- 19.804-3 SBA acceptance.
- 19.804-4 Repetitive acquisitions.
- 19.804-5 Basic ordering agreements.
- 19.804-6 Indefinite delivery contracts.
- 19.805 Competitive 8(a).
- 19.805-1 General.
- 19.805-2 Procedures.
- 19.806 Pricing the 8(a) contract.
- 19.807 Estimating fair market price.
- 19.808 Contract negotiation.
- 19.808-1 Sole source.
- 19.808-2 Competitive.
- 19.809 Preaward considerations.
- 19.810 SBA appeals.
- 19.811 Preparing the contracts.
- 19.811-1 Sole source.
- 19.811-2 Competitive.
- 19.811-3 Contract clauses.
- 19.812 Contract administration.

Subpart 19.9—[Reserved]

Subpart 19.10—[Reserved]

Subpart 19.11—Price Evaluation Adjustment for Small Disadvantaged Business Concerns

- 19.1101 General.
- 19.1102 Applicability.
- 19.1103 Procedures.
- 19.1104 Contract clause.

Subpart 19.12—Small Disadvantaged Business Participation Program

- 19.1201 General.
- 19.1202 Evaluation factor or subfactor.
- 19.1202-1 General.
- 19.1202-2 Applicability.

- 19.1202-3 Considerations in developing an evaluation factor or subfactor.
- 19.1202-4 Procedures.
- 19.1203 Incentive subcontracting with small disadvantaged business concerns.
- 19.1204 Solicitation provisions and contract clauses.

Subpart 19.13—Historically Underutilized Business Zone (HUBZone) Program

- 19.1301 General.
- 19.1302 Applicability.
- 19.1303 Status as a HUBZone small business concern.
- 19.1304 Exclusions.
- 19.1305 HUBZone set-aside procedures.
- 19.1306 HUBZone sole source awards.
- 19.1307 Price evaluation preference for HUBZone small business concerns.
- 19.1308 Performance of work requirements (limitations on subcontracting) for general construction or construction by special trade contractors.
- 19.1309 Contract clauses.

Subpart 19.14—Service-Disabled Veteran-Owned Small Business Procurement Program

- 19.1401 General.
- 19.1402 Applicability.
- 19.1403 Status as a service-disabled veteran-owned small business concern.
- 19.1404 Exclusions.
- 19.1405 Service-disabled veteran-owned small business set-aside procedures.
- 19.1406 Sole source awards to service-disabled veteran-owned small business concerns.
- 19.1407 Contract clauses.

Subpart 19.15—Women-Owned Small Business (WOSB) Program

- 19.1500 General.
- 19.1501 Definition.
- 19.1502 Applicability.
- 19.1503 Status.
- 19.1504 Exclusions.
- 19.1505 Set-aside procedures.
- 19.1506 Contract clauses.

19.000 Scope of part.

(a) This part implements the acquisition-related sections of the Small Business Act ([15 U.S.C. 631](#), *et seq.*), applicable sections of the Armed Services Procurement Act ([10 U.S.C. 2302](#), *et seq.*), the Federal Property and Administrative Services Act ([41 U.S.C. 252](#)), section 7102 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355), [10 U.S.C. 2323](#), and Executive Order 12138, May 18, 1979. It covers—

- (1) The determination that a concern is eligible for participation in the programs identified in this part;
- (2) The respective roles of executive agencies and the Small Business Administration (SBA) in implementing the programs;
- (3) Setting acquisitions aside for exclusive competitive participation by small business, 8(a) business development participants, HUBZone small business concerns, service-disabled veteran-owned small business concerns, and economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Women-Owned Small Business Program;
- (4) The certificate of competency program;
- (5) The subcontracting assistance program;
- (6) The “8(a)” business development program (hereafter referred to as 8(a) program), under which agencies contract with the SBA for goods or services to be furnished under a subcontract by a small disadvantaged business concern;
- (7) The use of women-owned small business concerns;
- (8) The use of a price evaluation adjustment for small disadvantaged business concerns, and the use of a price evaluation preference for HUBZone small business concerns;
- (9) The Small Disadvantaged Business Participation Program;
- (10) [Reserved];
- (11) The use of veteran-owned small business concerns; and
- (12) Sole source awards to HUBZone small business and service-disabled veteran-owned small business concerns.

(b) This part, except for [Subpart 19.6](#), applies only in the United States or its outlying areas. [Subpart 19.6](#) applies worldwide.

19.001 Definitions.

As used in this part—

“Concern” means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States or its outlying areas and that makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. “Concern” includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see [19.101](#)), include any business

entity, whether organized for profit or not, and any foreign business entity, *i.e.*, any entity located outside the United States and its outlying areas.

“Fair market price” means a price based on reasonable costs under normal competitive conditions and not on lowest possible cost (see [19.202-6](#)).

“Industry” means all concerns primarily engaged in similar lines of activity, as listed and described in the North American Industry Classification System (NAICS) manual (available via the Internet at <http://www.census.gov/epcd/www/naics.html>).

“Nonmanufacturer rule” means that a contractor under a small business set-aside or 8(a) contract shall be a small business under the applicable size standard and shall provide either its own product or that of another domestic small business manufacturing or processing concern (see 13 CFR 121.406).

Subpart 19.1—Size Standards**19.101 Explanation of terms.**

As used in this subpart—

“Affiliates.” Business concerns are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or another concern controls or has the power to control both. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships; provided, that restraints imposed by a franchise agreement are not considered in determining whether the franchisor controls or has the power to control the franchisee, if the franchisee has the right to profit from its effort, commensurate with ownership, and bears the risk of loss or failure. Any business entity may be found to be an affiliate, whether or not it is organized for profit or located in the United States or its outlying areas.

(1) *Nature of control.* Every business concern is considered as having one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

(2) *Meaning of “party or parties.”* The term “party” or “parties” includes, but is not limited to, two or more persons with an identity of interest such as members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control a concern, persons with an identity of interest may be treated as though they were one person.

(3) *Control through stock ownership.* (i) A party is considered to control or have the power to control a concern, if the party controls or has the power to control 50 percent or more of the concern’s voting stock.

(ii) A party is considered to control or have the power to control a concern, even though the party owns, controls, or has the power to control less than 50 percent of the concern's voting stock, if the block of stock the party owns, controls, or has the power to control is large, as compared with any other outstanding block of stock. If two or more parties each owns, controls, or has the power to control, less than 50 percent of the voting stock of a concern, and such minority block is equal or substantially equal in size, and large as compared with any other block outstanding, there is a presumption that each such party controls or has the power to control such concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(iii) If a concern's voting stock is distributed other than as described above, its management (officers and directors) is deemed to be in control of such concern.

(4) *Stock options and convertible debentures.* Stock options and convertible debentures exercisable at the time or within a relatively short time after a size determination and agreements to merge in the future, are considered as having a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are treated as though the rights held thereunder had been exercised.

(5) *Voting trusts.* If the purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may qualify as a small business within the size regulations, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not valid within the appropriate jurisdiction. However, if a voting trust is entered into for a legitimate purpose other than that described above, and it is valid within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination, provided such consideration is determined to be in the best interest of the small business program.

(6) *Control through common management.* A concern may be found as controlling or having the power to control another concern when one or more of the following circumstances are found to exist, and it is reasonable to conclude that under the circumstances, such concern is directing or influencing, or has the power to direct or influence, the operation of such other concern.

(i) *Interlocking management.* Officers, directors, employees, or principal stockholders of one concern serve as a working majority of the board of directors or officers of another concern.

(ii) *Common facilities.* One concern shares common office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operation, or where such concerns were formerly affiliated.

(iii) *Newly organized concern.* Former officers, directors, principal stockholders, and/or key employees of one concern organize a new concern in the same or a related industry or field operation, and serve as its officers, directors, principal stockholders, and/or key employees, and one concern is furnishing or will furnish the other concern with subcontracts, financial or technical assistance, and/or facilities, whether for a fee or otherwise.

(7) *Control through contractual relationships—*
(i) *Definition of a joint venture for size determination purposes.* A joint venture for size determination purposes is an association of persons or concerns with interests in any degree or proportion by way of contract, express or implied, consenting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.

(A) For bundled requirements, apply size standards for the requirement to individual persons or concerns, not to the combined assets, of the joint venture.

(B) For other than bundled requirements, apply size standards for the requirement to individual persons or concerns, not to the combined assets, of the joint venture, if—

(1) A revenue-based size standard applies to the requirement and the estimated contract value, including options, exceeds one-half the applicable size standard; or

(2) An employee-based size standard applies to the requirement and the estimated contract value, including options, exceeds \$10 million.

(ii) *HUBZone joint venture.* A HUBZone joint venture of two or more HUBZone small business concerns may submit an offer for a HUBZone contract as long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided one of the following conditions apply:

(A) The aggregate total of the joint venture is small under the size standard corresponding to the NAICS code assigned to the contract.

(B) The aggregate total of the joint venture is not small under the size standard corresponding to the NAICS code assigned to the contract and either—

(1) For a revenue-based size standard, the estimated contract value exceeds half the size standard corresponding to the NAICS code assigned to the contract; or

(2) For an employee-based size standard, the estimated contract value exceeds \$10 million.

(iii) *Joint venture.* Concerns submitting offers on a particular acquisition as joint ventures are considered as affiliated and controlling or having the power to control each other with regard to performance of the contract. Moreover, an ostensible subcontractor which is to perform primary or vital

requirements of a contract may have a controlling role such to be considered a joint venturer affiliated on the contract with the prime contractor. A joint venture affiliation finding is limited to particular contracts unless the SBA size determination finds general affiliation between the parties. The rules governing 8(a) Program joint ventures are described in 13 CFR 124.513.

(iv) Where a concern is not considered as being an affiliate of a concern with which it is participating in a joint venture, it is necessary, nevertheless, in computing annual receipts, etc., for the purpose of applying size standards, to include such concern's share of the joint venture receipts (as distinguished from its share of the profits of such venture).

(v) *Franchise and license agreements.* If a concern operates or is to operate under a franchise (or a license) agreement, the following policy is applicable: In determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints imposed on a franchisee by its franchise agreement shall not be considered, provided that the franchisee has the right to profit from its effort and the risk of loss or failure, commensurate with ownership. Even though a franchisee may not be controlled by the franchisor by virtue of the contractual relationship between them, the franchisee may be controlled by the franchisor or others through common ownership or common management, in which case they would be considered as affiliated.

(vi) *Size determination for teaming arrangements.* For size determination purposes, apply the size standard tests in paragraphs (7)(i)(A) and (B) of this section when a teaming arrangement of two or more business concerns submits an offer, as appropriate.

“Annual receipts.” (1) Annual receipts of a concern which has been in business for 3 or more complete fiscal years means the annual average gross revenue of the concern taken for the last 3 fiscal years. For the purpose of this definition, gross revenue of the concern includes revenues from sales of products and services, interest, rents, fees, commissions and/or whatever other sources derived, but less returns and allowances, sales of fixed assets, interaffiliate transactions between a concern and its domestic and foreign affiliates, and taxes collected for remittance (and if due, remitted) to a third party. Such revenues shall be measured as entered on the regular books of account of the concern whether on a cash, accrual, or other basis of accounting acceptable to the U.S. Treasury Department for the purpose of supporting Federal income tax returns, except when a change in accounting method from cash to accrual or accrual to cash has taken place during such 3-year period, or when the completed contract method has been used.

(i) In any case of change in accounting method from cash to accrual or accrual to cash, revenues for such 3-year period shall, prior to the calculation of the annual average, be

restated to the accrual method. In any case, where the completed contract method has been used to account for revenues in such 3-year period, revenues must be restated on an accrual basis using the percentage of completion method.

(ii) In the case of a concern which does not keep regular books of accounts, but which is subject to U.S. Federal income taxation, “annual receipts” shall be measured as reported, or to be reported to the U.S. Treasury Department, Internal Revenue Service, for Federal income tax purposes, except that any return based on a change in accounting method or on the completed contract method of accounting must be restated as provided for in the preceding paragraphs.

(2) Annual receipts of a concern that has been in business for less than 3 complete fiscal years means its total receipts for the period it has been in business, divided by the number of weeks including fractions of a week that it has been in business, and multiplied by 52. In calculating total receipts, the definitions and adjustments related to a change of accounting method and the completed contract method of paragraph (1) of this definition, are applicable.

“Number of employees” is a measure of the average employment of a business concern and means its average employment, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods of the preceding 12 months. If a business has not been in existence for 12 months, “number of employees” means the average employment of such concern and its affiliates during the period that such concern has been in existence based on the number of persons employed during each of the pay periods of the period that such concern has been in business. If a business has acquired an affiliate during the applicable 12-month period, it is necessary, in computing the applicant's number of employees, to include the affiliate's number of employees during the entire period, rather than only its employees during the period in which it has been an affiliate. The employees of a former affiliate are not included, even if such concern had been an affiliate during a portion of the period.

19.102 Size standards.

(a) The SBA establishes small business size standards on an industry-by-industry basis. (See 13 CFR Part 121.)

(b) Small business size standards are applied by—

(1) Classifying the product or service being acquired in the industry whose definition, as found in the North American Industry Classification System (NAICS) Manual (available via the Internet at <http://www.census.gov/epcd/www/naics.html>), best describes the principal nature of the product or service being acquired;

(2) Identifying the size standard SBA established for that industry; and

(3) Specifying the size standard in the solicitation so that offerors can appropriately represent themselves as small or large.

(c) For size standard purposes, a product or service shall be classified in only one industry, whose definition best describes the principal nature of the product or service being acquired even though for other purposes it could be classified in more than one.

(d) When acquiring a product or service that could be classified in two or more industries with different size standards, contracting officers shall apply the size standard for the industry accounting for the greatest percentage of the contract price.

(e) If a solicitation calls for more than one item and allows offers to be submitted on any or all of the items, an offeror must meet the size standard for each item it offers to furnish. If a solicitation calling for more than one item requires offers on all or none of the items, an offeror may qualify as a small business by meeting the size standard for the item accounting for the greatest percentage of the total contract price.

(f) Any concern submitting a bid or offer in its own name, other than on a construction or service contract, that proposes to furnish an end product it did not manufacture (a “nonmanufacturer”), is a small business if it has no more than 500 employees, and—

(1) Except as provided in paragraphs (f)(4) through (f)(7) of this section, in the case of Government acquisitions set-aside for small businesses, furnishes in the performance of the contract, the product of a small business manufacturer or producer. The end product furnished must be manufactured or produced in the United States or its outlying areas. The term “nonmanufacturer” includes a concern that can, but elects not to, manufacture or produce the end product for the specific acquisition. For size determination purposes, there can be only one manufacturer of the end product being acquired. The manufacturer of the end product being acquired is the concern that, with its own forces, transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into the end product. However, see the limitations on subcontracting at [52.219-14](#) that apply to any small business offeror other than a nonmanufacturer for purposes of set-asides and 8(a) awards.

(2) A concern which purchases items and packages them into a kit is considered to be a nonmanufacturer small business and can qualify as such for a given acquisition if it meets the size qualifications of a small nonmanufacturer for the acquisition, and if more than 50 percent of the total value

of the kit and its contents is accounted for by items manufactured by small business.

(3) For the purpose of receiving a Certificate of Competency on an unrestricted acquisition, a small business nonmanufacturer may furnish any domestically produced or manufactured product.

(4) In the case of acquisitions set aside for small business or awarded under section 8(a) of the Small Business Act, when the acquisition is for a specific product (or a product in a class of products) for which the SBA has determined that there are no small business manufacturers or processors in the Federal market, then the SBA may grant a class waiver so that a nonmanufacturer does not have to furnish the product of a small business. For the most current listing of classes for which SBA has granted a waiver, contact an SBA Office of Government Contracting. A listing is also available on SBA’s Internet Homepage at <http://www.sba.gov/gc>. Contracting officers may request that the SBA waive the nonmanufacturer rule for a particular class of products.

(5) For a specific solicitation, a contracting officer may request a waiver of that part of the nonmanufacturer rule which requires that the actual manufacturer or processor be a small business concern if no known domestic small business manufacturers or processors can reasonably be expected to offer a product meeting the requirements of the solicitation.

(6) Requests for waivers shall be sent to the—

Associate Administrator for Government Contracting
United States Small Business Administration
Mail Code 6250
409 Third Street, SW
Washington, DC 20416.

(7) The SBA provides for an exception to the nonmanufacturer rule if—

(i) The procurement of a manufactured end product processed under the procedures set forth in [Part 13](#)—

- (A) Is set aside for small business; and
- (B) Is not anticipated to exceed \$25,000; and

(ii) The offeror supplies an end product that is manufactured or produced in the United States or its outlying areas.

(8) For non-manufacturer rules pertaining to HUBZone contracts, see [19.1303\(e\)](#).

(g) The industry size standards are published by the Small Business Administration and are available via the Internet at <http://www.sba.gov/size>.

Subpart 19.2—Policies

19.201 General policy.

(a) It is the policy of the Government to provide maximum practicable opportunities in its acquisitions 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. Such concerns must also have the maximum practicable opportunity to participate as subcontractors in the contracts awarded by any executive agency, consistent with efficient contract performance. The Small Business Administration (SBA) counsels and assists small business concerns and assists contracting personnel to ensure that a fair proportion of contracts for supplies and services is placed with small business.

(b) The Department of Commerce will determine on an annual basis, by North American Industry Classification System (NAICS) Industry Subsector, and region, if any, the authorized small disadvantaged business (SDB) procurement mechanisms and applicable factors (percentages). The Department of Commerce determination shall only affect solicitations that are issued on or after the effective date of the determination. The effective date of the Department of Commerce determination shall be no less than 60 days after its publication date. The Department of Commerce determination shall not affect ongoing acquisitions. The SDB procurement mechanisms are a price evaluation adjustment for SDB concerns (see [Subpart 19.11](#)), an evaluation factor or subfactor for participation of SDB concerns (see [19.1202](#)), and monetary subcontracting incentive clauses for SDB concerns (see [19.1203](#)). The Department of Commerce determination shall also include the applicable factors, by NAICS Industry Subsector, to be used in the price evaluation adjustment for SDB concerns (see [19.1104](#)). The General Services Administration shall post the Department of Commerce determination at <https://www.acquisition.gov/References/sdbadjustments.htm>. The authorized procurement mechanisms shall be applied consistently with the policies and procedures in this subpart. The agencies shall apply the procurement mechanisms determined by the Department of Commerce. The Department of Commerce, in making its determination, is not limited to the SDB procurement mechanisms identified in this section where the Department of Commerce has found substantial and persuasive evidence of—

(1) A persistent and significant underutilization of minority firms in a particular industry, attributable to past or present discrimination; and

(2) A demonstrated incapacity to alleviate the problem by using those mechanisms.

(c) Heads of contracting activities are responsible for effectively implementing the small business programs within their activities, including achieving program goals. They are to ensure that contracting and technical personnel maintain knowledge of small business program requirements and take

all reasonable action to increase participation in their activities' contracting processes by these businesses.

(d) The Small Business Act requires each agency with contracting authority to establish an Office of Small and Disadvantaged Business Utilization (see section (k) of the Small Business Act). For the Department of Defense, in accordance with the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163), the Office of Small and Disadvantaged Business Utilization has been redesignated as the Office of Small Business Programs. Management of the office shall be the responsibility of an officer or employee of the agency who shall, in carrying out the purposes of the Act—

(1) Be known as the Director of Small and Disadvantaged Business Utilization, or for the Department of Defense, the Director of Small Business Programs;

(2) Be appointed by the agency head;

(3) Be responsible to and report directly to the agency head or the deputy to the agency head;

(4) Be responsible for the agency carrying out the functions and duties in sections 8, 15, and 31 of the Small Business Act.

(5) Work with the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) to—

(i) Identify proposed solicitations that involve bundling;

(ii) Facilitate small business participation as contractors including small business contract teams, where appropriate; and

(iii) Facilitate small business participation as subcontractors and suppliers where participation by small business concerns as contractors is unlikely;

(6) Assist small business concerns in obtaining payments under their contracts, late payment, interest penalties, or information on contractual payment provisions;

(7) Have supervisory authority over agency personnel to the extent that their functions and duties relate to sections 8, 15, and 31 of the Small Business Act.

(8) Assign a small business technical advisor to each contracting activity within the agency to which the SBA has assigned a representative (see [19.402](#))—

(i) Who shall be a full-time employee of the contracting activity, well qualified, technically trained, and familiar with the supplies or services contracted for by the activity; and

(ii) Whose principal duty is to assist the SBA's assigned representative in performing functions and duties relating to sections 8, 15, and 31 of the Small Business Act;

(9) Cooperate and consult on a regular basis with the SBA in carrying out the agency's functions and duties in sections 8, 15, and 31 of the Small Business Act;

(10) Make recommendations in accordance with agency procedures as to whether a particular acquisition should be awarded under subpart [19.5](#) as a small business set-aside, under subpart [19.8](#) as a Section 8(a) award, under subpart [19.13](#) as a HUBZone set-aside, under subpart [19.14](#) as a

service-disabled veteran-owned small business set-aside, or under subpart [19.15](#) as an economically disadvantaged women-owned small business (EDWOSB) or women-owned small business (WOSB) set-aside.

(11) Conduct annual reviews to assess the—

(i) Extent to which small businesses are receiving a fair share of Federal procurements, including contract opportunities under the programs administered under the Small Business Act;

(ii) Adequacy of contract bundling documentation and justifications; and

(iii) Actions taken to mitigate the effects of necessary and justified contract bundling on small businesses.

(12) Provide a copy of the assessment made under paragraph (d)(11) of this section to the Agency Head and SBA Administrator.

(e) Small Business Specialists must be appointed and act in accordance with agency regulations.

(f)(1) Each agency shall designate, at levels it determines appropriate, personnel responsible for determining whether, in order to achieve the contracting agency's goal for SDB concerns, the use of the SDB mechanism in [Subpart 19.11](#) has resulted in an undue burden on non-SDB firms in one of the Industry Subsectors and regions identified by Department of Commerce following paragraph (b) of this section, or is otherwise inappropriate. Determinations under this subpart are for the purpose of determining future acquisitions and shall not affect ongoing acquisitions. Requests for a determination, including supporting rationale, may be submitted to the agency designee. If the agency designee makes an affirmative determination that the SDB mechanism has an undue burden or is otherwise inappropriate, the determination shall be forwarded through agency channels to the OFPP, which shall review the determination in consultation with the Department of Commerce and the Small Business Administration. At a minimum, the following information should be included in any submittal:

(i) A determination of undue burden or other inappropriate effect, including proposed corrective action.

(ii) The Industry Subsector affected.

(iii) Supporting information to justify the determination, including, but not limited to, dollars and percentages of contracts awarded by the contracting activity under the affected Industry Subsector for the previous two fiscal years and current fiscal year to date for—

(A) Total awards;

(B) Total awards to SDB concerns;

(C) Awards to SDB concerns awarded contracts under the SDB price evaluation adjustment where the SDB concerns would not otherwise have been the successful offeror;

(D) Number of successful and unsuccessful SDB offerors; and

(E) Number of successful and unsuccessful non-SDB offerors.

(iv) A discussion of the pertinent findings, including any peculiarities related to the industry, regions or demographics.

(v) A discussion of other efforts the agency has undertaken to ensure equal opportunity for SDBs in contracting with the agency.

(2) After consultation with OFPP, or if the agency does not receive a response from OFPP within 90 days after notice is provided to OFPP, the contracting agency may limit the use of the SDB mechanism in [Subpart 19.11](#) until the Department of Commerce determines the updated price evaluation adjustment, as required by this section. This limitation shall not apply to solicitations that already have been synopsisized.

19.202 Specific policies.

In order to further the policy in [19.201\(a\)](#), contracting officers shall comply with the specific policies listed in this section and shall consider recommendations of the agency Director of Small and Disadvantaged Business Utilization, or the Director's designee, as to whether a particular acquisition should be awarded under subpart [19.5](#), [19.8](#), [19.13](#), [19.14](#), or [19.15](#). Agencies shall establish procedures including dollar thresholds for review of acquisitions by the Director or the Director's designee for the purpose of making these recommendations. The contracting officer shall document the contract file whenever the Director's recommendations are not accepted.

19.202-1 Encouraging small business participation in acquisitions.

Small business concerns shall be afforded an equitable opportunity to compete for all contracts that they can perform to the extent consistent with the Government's interest. When applicable, the contracting officer shall take the following actions:

(a) Divide proposed acquisitions of supplies and services (except construction) into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement.

(b) Plan acquisitions such that, if practicable, more than one small business concern may perform the work, if the work exceeds the amount for which a surety may be guaranteed by SBA against loss under [15 U.S.C. 694b](#).

(c) Ensure that delivery schedules are established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government.

(d) Encourage prime contractors to subcontract with small business concerns (see [Subpart 19.7](#)).

(e)(1) Provide a copy of the proposed acquisition package to the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) at least 30 days prior to the issuance of the solicitation if—

(i) The proposed acquisition is for supplies or services currently being provided by a small business and the proposed acquisition is of a quantity or estimated dollar value, the magnitude of which makes it unlikely that small businesses can compete for the prime contract;

(ii) The proposed acquisition is for construction and seeks to package or consolidate discrete construction projects and the magnitude of this consolidation makes it unlikely that small businesses can compete for the prime contract; or

(iii) The proposed acquisition is for a bundled requirement. (See [10.001\(c\)\(2\)\(i\)](#) for mandatory 30-day notice requirement to incumbent small business concerns.) The contracting officer shall provide all information relative to the justification of contract bundling, including the acquisition plan or strategy, and if the acquisition involves substantial bundling, the information identified in [7.107\(e\)](#). When the acquisition involves substantial bundling, the contracting officer shall also provide the same information to the agency Office of Small and Disadvantaged Business Utilization.

(2) The contracting officer also must provide a statement explaining why the—

(i) Proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement;

(ii) Delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government;

(iii) Proposed acquisition cannot be structured so as to make it likely that small businesses can compete for the prime contract;

(iv) Consolidated construction project cannot be acquired as separate discrete projects; or

(v) Bundling is necessary and justified.

(3) The 30-day notification process shall occur concurrently with other processing steps required prior to the issuance of the solicitation.

(4) If the contracting officer rejects the SBA representative's recommendation made in accordance with [19.402\(c\)\(2\)](#), the contracting officer shall document the basis for the rejection and notify the SBA representative in accordance with [19.505](#).

19.202-2 Locating small business sources.

The contracting officer must, to the extent practicable, encourage maximum participation by 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 acquisitions by taking the following actions:

(a) Before issuing solicitations, make every reasonable effort to find additional small business concerns, unless lists are already excessively long and only some of the concerns on

the list will be solicited. This effort should include contacting the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)).

(b) Publicize solicitations and contract awards through the Governmentwide point of entry (see [Subparts 5.2](#) and [5.3](#)).

19.202-3 Equal low bids.

In the event of equal low bids (see [14.408-6](#)), awards shall be made first to small business concerns which are also labor surplus area concerns, and second to small business concerns which are not also labor surplus area concerns.

19.202-4 Solicitation.

The contracting officer must encourage maximum response to solicitations by 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 taking the following actions:

(a) Allow the maximum amount of time practicable for the submission of offers.

(b) Furnish specifications, plans, and drawings with solicitations, or furnish information as to where they may be obtained or examined.

(c) Provide to any small business concern, upon its request, a copy of bid sets and specifications with respect to any contract to be let, the name and telephone number of an agency contact to answer questions related to such prospective contract and adequate citations to each major Federal law or agency rule with which such business concern must comply in performing such contract other than laws or agency rules with which the small business must comply when doing business with other than the Government.

19.202-5 Data collection and reporting requirements.

Agencies must measure the extent of small business participation in their acquisition programs by taking the following actions:

(a) Require each prospective contractor to represent whether it is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, women-owned small business, EDWOSB concern, or WOSB concern eligible under the WOSB Program (see the provision at [52.219-1](#), Small Business Program Representations).

(b) Accurately measure the extent of participation by 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 Government acquisitions in terms of the total value of contracts placed during each fiscal year, and report data to the SBA at the end of each fiscal year (see [Subpart 4.6](#)).

(c) When the contract includes the clause at [52.219-28](#), Post Award Small Business Program Rerepresentation, and the conditions in the clause for rerepresenting are met—

(1) Require a contractor that represented itself as a small business concern prior to award of the contract to rerepresent its size status; and

(2) Permit a contractor that represented itself as other than a small business concern prior to award to rerepresent its size status.

19.202-6 Determination of fair market price.

(a) The fair market price shall be the price achieved in accordance with the reasonable price guidelines in [15.404-1\(b\)](#) for—

(1) Total and partial small business set-asides (see [Subpart 19.5](#));

(2) HUBZone set-asides (see [Subpart 19.13](#));

(3) Contracts utilizing the price evaluation adjustment for small disadvantaged business concerns (see [Subpart 19.11](#));

(4) Contracts utilizing the price evaluation preference for HUBZone small business concerns (see [Subpart 19.13](#));

(5) Service-disabled veteran-owned small business set-asides (see subpart [19.14](#));

(6) Set-asides for EDWOSB concerns and WOSB concerns eligible under the WOSB Program (see subpart [19.15](#)).

(b) For 8(a) contracts, both with respect to meeting the requirement at [19.806\(b\)](#) and in order to accurately estimate

the current fair market price, contracting officers shall follow the procedures at [19.807](#).

19.203 Relationship among small business programs.

(a) There is no order of precedence among the 8(a) Program (subpart [19.8](#)), HUBZone Program (subpart [19.13](#)), Service-Disabled Veteran-Owned Small Business (SDVOSB) Procurement Program (subpart [19.14](#)), or the Women-Owned Small Business (WOSB) Program (subpart [19.15](#)).

(b) *At or below the simplified acquisition threshold.* The requirement to exclusively reserve acquisitions for small business concerns at [19.502-2\(a\)](#) does not preclude the contracting officer from awarding a contract to a small business under the 8(a) Program, HUBZone Program, SDVOSB Program, or WOSB Program. If the contracting officer does not proceed with a small business set-aside and purchases on an unrestricted basis, the contracting officer shall include in the contract file the reason for this unrestricted purchase.

(c) *Above the simplified acquisition threshold.* The contracting officer shall first consider an acquisition for the 8(a), HUBZone, SDVOSB, or WOSB programs before using a small business set-aside (see [19.502-2\(b\)](#)). However, if a requirement has been accepted by the SBA under the 8(a) Program, it must remain in the 8(a) Program unless SBA agrees to its release in accordance with 13 CFR 124, 125 and 126.

(d) Small business set-asides have priority over acquisitions using full and open competition. See requirements for establishing a small business set-aside at subpart [19.5](#).

Subpart 19.3—Determination of Small Business Status for Small Business Programs

19.301 Representations and rerepresentations.

19.301-1 Representation by the offeror.

(a) To be eligible for award as a small business, an offeror must represent in good faith that it is a small business at the time of its written representation. An offeror may represent that it is a small business concern in connection with a specific solicitation if it meets the definition of a small business concern applicable to the solicitation and has not been determined by the Small Business Administration (SBA) to be other than a small business.

(b) The contracting officer shall accept an offeror's representation in a specific bid or proposal that it is a small business unless (1) another offeror or interested party challenges the concern's small business representation or (2) the contracting officer has a reason to question the representation. Challenges of and questions concerning a specific representation shall be referred to the SBA in accordance with [19.302](#).

(c) An offeror's representation that it is a small business is not binding on the SBA. If an offeror's small business status is challenged, the SBA will evaluate the status of the concern and make a determination, which will be binding on the contracting officer, as to whether the offeror is a small business. A concern cannot become eligible for a specific award by taking action to meet the definition of a small business concern after the SBA has determined that it is not a small business.

(d) If the SBA determines that the status of a concern as a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business has been misrepresented in order to obtain a set-aside contract, an 8(a) subcontract, a subcontract that is to be included as part or all of a goal contained in a subcontracting plan, or a prime or subcontract to be awarded as a result, or in furtherance of any other provision of Federal law that specifically references Section 8(d) of the Small Business Act for a definition of program eligibility, the SBA may take action as specified in Sections 16(a) or 16(d) of the Act. If the SBA declines to take action, the agency may initiate the process. The SBA's regulations on penalties for misrepresentations and false statements are contained in 13 CFR 121.108 for small business, 13 CFR 124.501 for 8(a) small business, 13 CFR 124.1004 for small disadvantaged business, 13 CFR 125.29 for veteran or service-disabled veteran-owned small business, 13 CFR 126.900 for HUBZone small business, and 13 CFR 127.700 for economically disadvantaged women-owned small business concerns and women-owned small business (WOSB) concerns eligible under the WOSB Program.

19.301-2 Rerepresentation by a contractor that represented itself as a small business concern.

(a) *Definition.* As used in this subsection—

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at [52.217-8](#), Option to Extend Services, or other appropriate authority.

(b) A contractor that represented itself as a small business concern before contract award must rerepresent its size status for the North American Industry Classification System (NAICS) code in the contract upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include the clause at [52.219-28](#), Post-Award Small Business Program Rerepresentation, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition of the contractor that does not require novation or within 30 days after modification of the contract to include the clause at [52.219-28](#), Post-Award Small Business Program Rerepresentation, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts—

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) A contractor must rerepresent its size status in accordance with the size standard in effect at the time of its rerepresentation that corresponds to the NAICS code that was initially assigned to the contract.

(d) After a contractor rerepresents it is other than small in accordance with [52.219-28](#), the agency may no longer include the value of options exercised, modifications issued, orders issued, or purchases made under blanket purchase agreements on that contract in its small business prime contracting goal achievements. Agencies should issue a modification to the contract capturing the rerepresentation and report it to FPDS within 30 days after notification of the rerepresentation.

(e) A change in size status does not change the terms and conditions of the contract.

19.301-3 Rerepresentation by a contractor that represented itself as other than a small business concern.

A contractor that represented itself as other than small before contract award may, but is not required to, rerepresent its size status when—

(a) The conditions in [19.301-2](#)(b) apply; and

(b) The contractor qualifies as a small business concern under the applicable size standard in effect at the time of its rerepresentation.

19.302 Protesting a small business representation or rerepresentation.

(a) An offeror, the SBA, or another interested party may protest the small business representation of an offeror in a specific offer. However, for competitive 8(a) contracts, the filing of a protest is limited to an offeror, the contracting officer, or the SBA.

(b) Any time after offers are opened, the contracting officer may question the small business representation of any offeror in a specific offer by filing a contracting officer's protest (see paragraph (c) of this section).

(c)(1) Any contracting officer who receives a protest, whether timely or not, or who, as the contracting officer, wishes to protest the small business representation of an offeror, or rerepresentation of a contractor, shall promptly forward the protest to the SBA Government Contracting Area Office for the geographical area where the principal office of the concern in question is located.

(2) The protest, or confirmation if the protest was initiated orally, shall be in writing and shall contain the basis for the protest with specific, detailed evidence to support the allegation that the offeror is not small. The SBA will dismiss any protest that does not contain specific grounds for the protest.

(d) In order to affect a specific solicitation, a protest must be timely. SBA's regulations on timeliness are contained in 13 CFR 121.1004. SBA's regulations on timeliness related to protests of disadvantaged status are contained in 13 CFR 124, Subpart B.

(1) To be timely, a protest by any concern or other interested party must be received by the contracting officer (see paragraphs (d)(1)(i) and (ii) of this section) by the close of business of the 5th business day after bid opening (in sealed bid acquisitions) or receipt of the special notification from the contracting officer that identifies the apparently successful offeror (in negotiated acquisitions) (see [15.503\(a\)\(2\)](#)).

(i) A protest may be made orally if it is confirmed in writing either within the 5-day period or by letter postmarked no later than 1 business day after the oral protest.

(ii) A protest may be made in writing if it is delivered to the contracting officer by hand, telegram, or letter postmarked within the 5-day period.

(2) A contracting officer's protest is always considered timely whether filed before or after award.

(3) A protest under a Multiple Award Schedule will be timely if received by SBA at any time prior to the expiration of the contract period, including renewals.

(e) Upon receipt of a protest from or forwarded by the Contracting Office, the SBA will—

(1) Notify the contracting officer and the protester of the date it was received, and that the size of the concern being challenged is under consideration by the SBA; and

(2) Furnish to the concern whose representation is being protested a copy of the protest and a blank SBA Form 355, Application for Small Business Determination, by certified mail, return receipt requested.

(f) Within 3 business days after receiving a copy of the protest and the form, the challenged concern must file with the SBA a completed SBA Form 355 and a statement answering the allegations in the protest, and furnish evidence to support its position. If the concern does not submit the required material within the 3 business days or another period of time granted by the SBA, the SBA may assume that the disclosure would be contrary to the concern's interests.

(g)(1) Within 10 business days after receiving a protest, the challenged concern's response, and other pertinent information, the SBA will determine the size status of the challenged concern and notify the contracting officer, the protester, and the challenged concern of its decision by certified mail, return receipt requested.

(2) The SBA Government Contracting Area Director, or designee, will determine the small business status of the questioned concern and notify the contracting officer and the concern of the determination. Award may be made on the basis of that determination. This determination is final unless it is appealed in accordance with paragraph (i) of this section, and the contracting officer is notified of the appeal before award. If an award was made before the time the contracting officer received notice of the appeal, the contract shall be presumed to be valid.

(h)(1) After receiving a protest involving an offeror being considered for award, the contracting officer shall not award the contract until (i) the SBA has made a size determination or (ii) 10 business days have expired since SBA's receipt of a protest, whichever occurs first; however, award shall not be withheld when the contracting officer determines in writing that an award must be made to protect the public interest.

(2) After the 10-day period has expired, the contracting officer may, when practical, continue to withhold award until the SBA's determination is received, unless further delay would be disadvantageous to the Government.

(3) Whenever an award is made before the receipt of SBA's size determination, the contracting officer shall notify SBA that the award has been made.

(4) If a protest is received that challenges the small business status of an offeror not being considered for award, the contracting officer is not required to suspend contract action. The contracting officer shall forward the protest to the SBA (see paragraph (c)(1) of this section) with a notation that the concern is not being considered for award, and shall notify the protester of this action.

(i) An appeal from an SBA size determination may be filed by any concern or other interested party whose protest of the small business representation of another concern has been denied by an SBA Government Contracting Area Director, any concern or other interested party that has been adversely affected by a Government Contracting Area Director's deci-

sion, or the SBA Associate Administrator for the SBA program involved. The appeal must be filed with the—

Office of Hearings and Appeals
Small Business Administration
Suite 5900, 409 3rd Street, SW
Washington, DC 20416

within the time limits and in strict accordance with the procedures contained in Subpart C of 13 CFR 134. It is within the discretion of the SBA Judge whether to accept an appeal from a size determination. If the Judge decides not to consider such an appeal, the Judge will issue an order denying review and specifying the reasons for the decision. The SBA will inform the contracting officer of its ruling on the appeal. The SBA decision, if received before award, will apply to the pending acquisition. SBA rulings received after award shall not apply to that acquisition.

(j) A protest that is not timely, even though received before award, shall be forwarded to the SBA Government Contracting Area Office (see paragraph (c)(1) of this section), with a notation on it that the protest is not timely. The protester shall be notified that the protest cannot be considered on the instant acquisition but has been referred to SBA for its consideration in any future actions. A protest received by a contracting officer after award of a contract shall be forwarded to the SBA Government Contracting Area Office with a notation that award has been made. The protester shall be notified that the award has been made and that the protest has been forwarded to SBA for its consideration in future actions.

(k) When a concern is found to be other than small under a protest concerning a size status rerepresentation made in accordance with the clause at [52.219-28](#), Post-Award Small Business Program Rerepresentation, a contracting officer may permit contract performance to continue, issue orders, or exercise option(s), because the contract remains a valid contract.

19.303 Determining North American Industry Classification System (NAICS) codes and size standards.

(a) The contracting officer shall determine the appropriate NAICS code and related small business size standard and include them in solicitations above the micro-purchase threshold.

(b) If different products or services are required in the same solicitation, the solicitation shall identify the appropriate small business size standard for each product or service.

(c) The contracting officer's determination is final unless appealed as follows:

(1) An appeal from a contracting officer's NAICS code designation and the applicable size standard must be served and filed within 10 calendar days after the issuance of the initial solicitation. SBA's Office of Hearings and Appeals (OHA) will dismiss summarily an untimely NAICS code appeal.

(2)(i) The appeal petition must be in writing and must be addressed to the—

Office of Hearings and Appeals
Small Business Administration
Suite 5900, 409 3rd Street, SW
Washington, DC 20416

(ii) There is no required format for the appeal; however, the appeal must include—

(A) The solicitation or contract number and the name, address, and telephone number of the contracting officer;

(B) A full and specific statement as to why the size determination or NAICS code designation is allegedly erroneous and argument supporting the allegation; and

(C) The name, address, telephone number, and signature of the appellant or its attorney.

(3) The appellant must serve the appeal petition upon—

(i) The SBA official who issued the size determination;

(ii) The contracting officer who assigned the NAICS code to the acquisition;

(iii) The business concern whose size status is at issue;

(iv) All persons who filed protests; and

(v) SBA's Office of General Counsel.

(4) Upon receipt of a NAICS code appeal, OHA will notify the contracting officer by a notice and order of the date OHA received the appeal, the docket number, and Judge assigned to the case. The contracting officer's response to the appeal, if any, must include argument and evidence (see 13 CFR Part 134), and must be received by OHA within 10 calendar days from the date of the docketing notice and order, unless otherwise specified by the Administrative Judge. Upon receipt of OHA's docketing notice and order, the contracting officer must immediately send to OHA a copy of the solicitation relating to the NAICS code appeal.

(5) After close of record, OHA will issue a decision and inform the contracting officer. If OHA's decision is received by the contracting officer before the date the offers are due, the decision shall be final and the solicitation must be amended to reflect the decision, if appropriate. OHA's decision received after the due date of the initial offers shall not apply to the pending solicitation but shall apply to future solicitations of the same products or services.

19.304 Disadvantaged business status.

(a) To be eligible to receive a benefit as a prime contractor based on its disadvantaged status, a concern, at the time of its offer, must either be certified as a small disadvantaged business (SDB) concern or have a completed SDB application pending at the SBA or a Private Certifier (see [19.001](#)).

(b) The contracting officer may accept an offeror's representation that it is an SDB concern for general statistical purposes. The provision at [52.219-1](#), Small Business Program Representations, or [52.212-3\(c\)\(4\)](#), Offeror Representations and Certifications-Commercial Items, is used to collect SDB data for general statistical purposes.

(c) The provision at [52.219-22](#), Small Disadvantaged Business Status, or [52.212-3\(c\)\(8\)](#), Offeror Representations and Certifications-Commercial Items, is used to obtain SDB status when the prime contractor may receive a benefit based on its disadvantaged status. The mechanisms that may provide benefits on the basis of disadvantaged status as a prime contractor are a price evaluation adjustment for SDB concerns (see [Subpart 19.11](#)), and an evaluation factor or subfactor for SDB participation (see [19.1202](#)).

(1) If the apparently successful offeror has represented that it is currently certified as an SDB, the contracting officer may confirm that the concern is identified 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.

(2) If the apparently successful offeror has represented that its SDB application is pending at the SBA or a Private Certifier, and its position as the apparently successful offeror is due to the application of the price evaluation adjustment, the contracting officer shall follow the procedure in paragraph (d) of this section.

(d) Notifications to SBA of potential awards to offerors with pending SDB applications.

(1) The contracting officer shall notify the—

Small Business Administration
Assistant Administrator for SDBCE
409 Third Street, SW
Washington, DC 20416.

The notification shall contain the name of the apparently successful offeror, and the names of any other offerors that have represented that their applications for SDB status are pending at the SBA or a Private Certifier and that could receive the award due to the application of a price evaluation adjustment if the apparently successful offeror is determined not to be an SDB by the SBA.

(2) The SBA will, within 15 calendar days after receipt of the notification, determine the disadvantaged status of the apparently successful offeror and, as appropriate, any other offerors referred by the contracting officer and will notify the contracting officer.

(3) If the contracting officer does not receive an SBA determination within 15 calendar days after the SBA's receipt of the notification, the contracting officer shall presume that the apparently successful offeror, and any other offerors referred by the contracting officer, are not disadvantaged, and shall make award accordingly, unless the contracting officer

grants an extension to the 15-day response period. No written determination is required for the contracting officer to make award at any point following the expiration of the 15-day response period.

(4) When the contracting officer makes a written determination that award must be made to protect the public interest, the contracting officer may proceed to contract award without notifying SBA or before receiving a determination of SDB status from SBA during the 15-day response period. In both cases, the contracting officer shall presume that the apparently successful offeror, or any other offeror referred to the SBA whose SDB application is pending, is not an SDB and shall make award accordingly.

19.305 Protesting a representation of disadvantaged business status.

(a) This section applies to protests of a small business concern's disadvantaged status as a prime contractor. Protests of a small business concern's disadvantaged status as a subcontractor are processed under [19.703\(a\)\(2\)](#). Protests of a concern's size as a prime contractor are processed under [19.302](#). Protests of a concern's size as a subcontractor are processed under [19.703\(b\)](#). An offeror, the contracting officer, or the SBA may protest the apparently successful offeror's representation of disadvantaged status if the concern is eligible to receive a benefit based on its disadvantaged status (see [Subpart 19.11](#) and [19.1202](#).)

(b) An offeror, excluding an offeror determined by the contracting officer to be non-responsive or outside the competitive range, or an offeror that SBA has previously found to be ineligible for the requirement at issue, may protest the apparently successful offeror's representation of disadvantaged status by filing a protest in writing with the contracting officer. SBA regulations concerning protests are contained in 13 CFR 124, Subpart B. The protest—

(1) Must be filed within the times specified in [19.302\(d\)\(1\)](#); and

(2) Must contain specific facts or allegations supporting the basis of protest.

(c) The contracting officer or the SBA may protest in writing a concern's representation of disadvantaged status at any time following bid opening or notification of intended award.

(1) If a contracting officer's protest is based on information provided by a party ineligible to protest directly or ineligible to protest under the timeliness standard, the contracting officer must be persuaded by the evidence presented before adopting the grounds for protest as his or her own.

(2) The SBA may protest a concern's representation of disadvantaged status by filing directly with its Assistant Administrator for Small Disadvantaged Business Certification and Eligibility and notifying the contracting officer.

(d) The contracting officer shall return premature protests to the protestor. A protest is considered to be premature if it

is submitted before bid opening or notification of intended award. SBA normally will not consider a postaward protest. SBA may consider a postaward protest in its discretion where it determines that an SDB determination after award is meaningful (*e. g.*, where the contracting officer agrees to terminate the contract if the protest is sustained).

(e) Upon receipt of a protest that is not premature, the contracting officer shall withhold award and forward the protest to—

Small Business Administration
Assistant Administrator for SDBCE
409 Third Street, SW
Washington, DC 20416.

The contracting officer shall send to SBA—

(1) The written protest and any accompanying materials;

(2) The date the protest was received;

(3) A copy of the protested concern's representation as a small disadvantaged business, and the date of such representation; and

(4) The date of bid opening or date on which notification of the apparently successful offeror was sent to unsuccessful offerors.

(f) When the contracting officer makes a written determination that award must be made to protect the public interest, award may be made notwithstanding the protest.

(g) The SBA Assistant Administrator for Small Disadvantaged Business Certification and Eligibility will notify the protestor and the contracting officer of the date the protest was received and whether it will be processed or dismissed for lack of timeliness or specificity. For protests that are not dismissed, the SBA will, within 15 working days after receipt of the protest, determine the disadvantaged status of the challenged offeror and will notify the contracting officer, the challenged offeror, and the protestor. Award may be made on the basis of that determination. The determination is final for purposes of the instant acquisition, unless it is appealed and—

(1) The contracting officer receives the SBA's decision on the appeal before award; or

(2) The contracting officer has agreed to terminate the contract, as appropriate, based on the outcome of the appeal (see 13 CFR 124, Subpart B).

(h) If the contracting officer does not receive an SBA determination within 15 working days after the SBA's receipt of the protest, the contracting officer shall presume that the challenged offeror is disadvantaged and may award the contract, unless the SBA requests and the contracting officer grants an extension to the 15-day response period.

(i) An SBA determination may be appealed by—

(1) The party whose protest has been denied;

(2) The concern whose status was protested; or

(3) The contracting officer.

(j) The appeal must be filed with the SBA's Administrator or designee within five working days after receipt of the determination. If the contracting officer receives the SBA's decision on the appeal before award, the decision shall apply to the instant acquisition. If the decision is received after award, it will not apply to the instant acquisition (but see paragraph (g)(2) of this section).

19.306 Protesting a firm's status as a HUBZone small business concern.

(a) *Definition.* As used in this section—

"Interested party" has the meaning given in 13 CFR 126.103.

(b) "*HUBZone Small Business Status*". (1) For sole source acquisitions, the SBA or the contracting officer may protest the apparently successful offeror's HUBZone small business concern status.

(2) For all other acquisitions, an offeror that is an interested party, the contracting officer, or the SBA may protest the apparently successful offeror's qualified HUBZone small business concern status.

(c) Protests relating to whether a qualified HUBZone small business concern is a small business for purposes of any Federal program are subject to the procedures of [Subpart 19.3](#). Protests relating to small business size status for the acquisition and the HUBZone qualifying requirements will be processed concurrently by SBA.

(d) All protests must be in writing and must state all specific grounds for the protest. Assertions that a protested concern is not a qualified HUBZone small business concern, without setting forth specific facts or allegations, are insufficient. An offeror must submit its protest to the contracting officer. The contracting officer and the SBA must submit protests to SBA's Associate Administrator for the HUBZone Program (Director/HUB).

(e)(1) The protest of an offeror that is an interested party must be submitted by—

(i) For sealed bids:

(A) The close of business on the fifth business day after bid opening; or

(B) The close of business on the fifth business day from the date of identification of the apparent successful offeror, if the price evaluation preference was not applied at the time of bid opening.

(ii) For negotiated acquisitions, the close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror.

(2) Any protest submitted after these time limits is untimely, unless it is submitted by the SBA or the contracting officer. Any protest received prior to bid opening or notification of intended award, whichever applies, is premature and shall be returned to the protestor.

(f) Except for premature protests, the contracting officer shall forward all protests received, notwithstanding whether the contracting officer believes that the protest is not sufficiently specific, timely, or submitted by an interested party. The contracting officer shall also forward a referral letter with the information required by 13 CFR 126.801(e).

(g)(1) Protests may be submitted in person or by facsimile, express delivery service, or U.S. mail (postmarked within the applicable time period) to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, Fax (202) 205-7167.

(2) The Director/HUB will notify the protester and the contracting officer that the protest was received and indicate whether the protest will be processed or dismissed for lack of timeliness or specificity. A protest will be dismissed if SBA determines the protester is not an interested party.

(h) SBA will determine the HUBZone status of the protested HUBZone small business concern within 15 business days after receipt of a protest. If SBA does not contact the contracting officer within 15 business days, the contracting officer may award the contract to the apparently successful offeror, unless the contracting officer has granted SBA an extension. The contracting officer may award the contract after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest.

(i) SBA will notify the contracting officer, the protester, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by SBA's Associate Deputy Administrator for Government Contracting and Administrator for Government Contracting and 8(a) Business Development(AA/GC&BD).

(j) The protested HUBZone small business concern, the protester, or the contracting officer may file appeals of protest determinations with SBA's AA/GC&BD. The AA/GC&BD must receive the appeal no later than 5 business days after the date of receipt of the protest determination. SBA will dismiss any appeal received after the 5-day period.

(k) The appeal must be in writing. The appeal must identify the protest determination being appealed and must set forth a full and specific statement as to why the decision is erroneous or what significant fact the Director/HUB failed to consider.

(l) The party appealing the decision must provide notice of the appeal to the contracting officer and either the protested HUBZone small business concern or the original protester, as appropriate. SBA will not consider additional information or changed circumstances that were not disclosed at the time of the Director/HUB's decision or that are based on disagreement with the findings and conclusions contained in the determination.

(m) The AA/GC&BD will make its decision within 5 business days of the receipt of the appeal, if practicable, and will base its decision only on the information and documen-

tation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested HUBZone small business concern. The SBA decision, if received before award, will apply to the pending acquisition. SBA rulings received after award will not apply to that acquisition. The AA/GC&BD's decision is the final decision.

19.307 Protesting a firm's status as a service-disabled veteran-owned small business concern.

(a) For sole source acquisitions, the SBA or the contracting officer may protest the apparently successful offeror's service-disabled veteran-owned small business status. For service-disabled veteran-owned small business set-asides, any interested party may protest the apparently successful offeror's service-disabled veteran-owned small business concern status.

(b) Protests relating to whether a service-disabled veteran-owned small business concern is a small business for purposes of any Federal program are subject to the procedures of [Subpart 19.3](#). Protests relating to small business size status for the acquisition and the service-disabled veteran-owned small business status requirements will be processed concurrently by SBA.

(c) All protests must be in writing and must state all specific grounds for the protest. Assertions that a protested concern is not a service-disabled veteran-owned small business concern, without setting forth specific facts or allegations, are insufficient. An offeror must submit its protest to the contracting officer. The contracting officer and the SBA must submit protests to SBA's Associate Administrator for Government Contracting. The SBA regulations are found at 13 CFR 125.24 through 125.28.

(d) An offeror's protest must be received by close of business on the fifth business day after bid opening (in sealed bid acquisitions) or by close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror (in negotiated acquisitions). Any protest received after these time limits is untimely. Any protest received prior to bid opening or notification of intended award, whichever applies, is premature and shall be returned to the protester.

(e) Except for premature protests, the contracting officer must forward to SBA by mail or facsimile transmission (202-205-6390) any protest received, notwithstanding whether the contracting officer believes that the protest is insufficiently specific or untimely. The protest must be accompanied by a referral letter, with the notation on the envelope or facsimile cover sheet: "Attn: Service-Disabled Veteran Status Protest," and be sent to Associate Administrator for Government Contracting AA/GC, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

(f) The referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including the solicitation number; the name, address, telephone number and facsimile number of the contracting officer; whether the contract was sole-source or set-aside; whether the protestor submitted an offer; whether the protested concern was the apparent successful offeror; when the protested concern submitted its offer (*i.e.*, made the self-representation that it was a service-disabled veteran-owned small business concern); whether the procurement was conducted using sealed bid or negotiated procedures; the bid opening date, if applicable; when the protest was submitted; when the protestor received notification about the apparent successful offeror, if applicable; and whether a contract has been awarded.

(g) The Associate Administrator for Government Contracting will notify the protestor and the contracting officer of the date the protest was received and whether the protest will be processed or dismissed for lack of timeliness or specificity.

(h) All questions about service-disabled veteran-owned small business size or status must be referred to the SBA for resolution. When making its determinations of veteran, service-disabled veteran, or service-disabled veteran with a permanent and severe disability status, the SBA will rely upon determinations made by the Department of Veteran’s Affairs, Department of Defense determinations, or such determinations identified by documents provided by the U.S. National Archives and Records Administration. SBA will determine the service-disabled veteran-owned small business status of the protested concern within 15 business days after receipt of a protest. If SBA does not contact the contracting officer within 15 business days, the contracting officer may award the contract to the apparently successful offeror, unless the contracting officer has granted SBA an extension. The contracting officer may award the contract after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest.

(i) SBA will notify the contracting officer, the protestor, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by SBA’s Office of Hearings and Appeals (OHA) pursuant to 13 CFR part 134.

19.308 Protesting a firm’s status as an economically disadvantaged women-owned small business (EDWOSB) concern or women-owned small business (WOSB) concern eligible under the WOSB Program.

(a) An offeror, the contracting officer, or the SBA may protest the apparent successful offeror’s status as an EDWOSB concern or WOSB concern eligible under the WOSB Program.

(b) Protests relating to small business size status are subject to the procedures of subpart [19.3](#). An interested party (see

[19.308\(a\)](#)) seeking to protest both the size and status of an apparent successful offeror shall file two separate protests.

(c) All protests shall be in writing and must state all specific grounds for the protest.

(1) SBA will consider protests challenging the status of a concern if—

(i) The protest presents evidence that the concern is not at least 51 percent owned and controlled by one or more women who are United States citizens; or

(ii) The protest presents evidence that the concern is not at least 51 percent owned and controlled by one or more economically disadvantaged women, when it is in connection with an EDWOSB contract.

(2) SBA shall consider protests by a contracting officer when the apparent successful offeror has failed to provide all of the required documents, as set forth in FAR [19.1503\(c\)](#).

(d) Protest by an offeror.

(1) An offeror shall submit its protest to the contracting officer—

(i) To be received by the close of business by the fifth business day after bid opening (in sealed bid acquisitions); or

(ii) To be received by the close of business by the fifth business day after notification by the contracting officer of the apparent successful offeror (in negotiated acquisitions).

(2) Any protest received after the designated time limit is untimely, unless it is from the contracting officer or SBA.

(e)(1) The contracting officer shall forward all protests to SBA. The protests are to be submitted to SBA’s Director for Government Contracting, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416 or by fax to (202) 205-6390, Attn: Women-owned Small Business Status Protest. SBA’s protest regulations are found in subpart F “Protests” at 13 CFR 127.600 through 127.605.

(2) The protest shall include a referral letter written by the contracting officer with information pertaining to the solicitation. The referral letter must include the following information to allow SBA to determine timeliness and standing of the protest:

(i) The solicitation number; the name, address, telephone number and facsimile number of the contracting officer, the successful offeror and the protestor.

(ii) Whether the protestor submitted an offer.

(iii) Whether the protested concern was the apparent successful offeror.

(iv) When the protested concern submitted its offer.

(v) Whether the acquisition was conducted using sealed bid or negotiated procedures.

(vi) The bid opening date, if applicable.

(vii) The date the contracting officer received the protest.

(viii) The date the protestor received notification about the apparent successful offeror, if applicable; and

(ix) Whether a contract has been awarded.

(f) SBA will notify the protester and the contracting officer of the date the protest was received.

(g) *Before SBA decision.* The contracting officer may award the contract after receipt of the protest but before SBA issues its decision if the contracting officer determines in writing that an award must be made to prevent significant harm to the public interest.

(1) SBA will determine the merits of the status protest within 15 business days after receipt of a protest, or within any extension of that time that the contracting officer may grant SBA.

(2) If SBA does not issue its determination within 15 business days, the contracting officer shall contact SBA to obtain the status of its decision.

(3) After contacting SBA, if the contracting officer determines in writing that there is an immediate need and it is in the public's interest to proceed with award, the contracting officer may award the contract. This determination shall be provided to the SBA Director for Government Contracting and a copy shall be included in the contract file.

(h) *After SBA decision.* SBA will notify the contracting officer, the protester, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by SBA's Office of Hearings and Appeals (OHA) pursuant to 13 CFR part 134.

(1) If SBA has denied or dismissed the protest, the contracting officer may award the contract to the protested concern. If OHA subsequently overturns the SBA Director for Government Contracting's determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

(2) If SBA has sustained the protest and determined that the concern is not eligible under the WOSB Program, and no OHA appeal has been filed, then—

(i) The concern must remove its designation in the Central Contractor Registration (CCR) and Online Representations and Certifications Application (ORCA) as an EDWOSB or WOSB concern, and shall not submit an offer as an EDWOSB concern or WOSB concern eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved.

(ii) The contracting officer shall not award the contract to the protested concern.

(iii) The contracting officer shall terminate the award, shall not exercise any options or award further task or delivery orders, if the contracting officer receives the determination after contract award.

(iv) The contracting officer may allow contract performance to continue when a written determination is made in

accordance with [19.308\(g\)](#) and (h), but shall not exercise any options or award further task or delivery orders.

(v) The contracting officer shall update the FPDS to reflect the final SBA decision.

(3) If SBA has sustained the protest and determined that the concern is not eligible under the WOSB Program, and a timely OHA appeal has been filed, then—

(i) The contracting officer must consider whether performance can be suspended until an OHA decision is rendered.

(ii) The contracting officer shall either terminate the contract, not exercise the next option, or not award further task or delivery orders, if OHA affirms the SBA Director for Government Contracting's determination finding the protested concern is ineligible. The contracting officer may allow contract performance to continue when a written determination is made in accordance with [19.308\(g\)](#) and (h), but shall not exercise any options or award further task or delivery orders; and

(iii) The contracting officer shall update the FPDS to reflect OHA's decision.

(iv) The concern must remove its designation in CCR and ORCA as an EDWOSB or WOSB concern, and shall not submit an offer as an EDWOSB concern or WOSB concern eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved or OHA finds the concern is eligible on appeal.

19.309 Solicitation provisions and contract clauses.

(a)(1) Insert the provision at [52.219-1](#), Small Business Program Representations, in solicitations exceeding the micro-purchase threshold when the contract will be performed in the United States or its outlying areas.

(2) Use the provision with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard.

(b) Insert the provision at [52.219-22](#), Small Disadvantaged Business Status, in solicitations that include the clause at [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, or [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting. Use the provision with its Alternate I in solicitations for acquisitions for which a price evaluation adjustment for small disadvantaged business concerns is authorized on a regional basis.

(c) When contracting by sealed bidding, insert the provision at [52.219-2](#), Equal Low Bids, in solicitations when the contract will be performed in the United States or its outlying areas.

(d) Insert the clause at [52.219-28](#), Post-Award Small Business Program Rerepresentation, in solicitations and contracts exceeding the micro-purchase threshold when the contract will be performed in the United States or its outlying areas.

Subpart 19.4—Cooperation with the Small Business Administration

19.401 General.

(a) The Small Business Act is the authority under which the Small Business Administration (SBA) and agencies consult and cooperate with each other in formulating policies to ensure that small business interests will be recognized and protected.

(b) The Director of Small and Disadvantaged Business Utilization serves as the agency focal point for interfacing with SBA.

19.402 Small Business Administration procurement center representatives.

(a)(1) The SBA may assign one or more procurement center representatives to any contracting activity or contract administration office to carry out SBA policies and programs. Assigned SBA procurement center representatives are required to comply with the contracting agency's directives governing the conduct of contracting personnel and the release of contract information. The SBA must obtain for its procurement center representatives security clearances required by the contracting agency.

(2) If a SBA procurement center representative is not assigned to the procuring activity or contract administration office, contact the SBA Office of Government Contracting Area Office serving the area in which the procuring activity is located for assistance in carrying out SBA policies and programs. See <http://www.sba.gov/GC/pcr.html> for the location of the SBA office servicing the activity.

(b) Upon their request and subject to applicable acquisition and security regulations, contracting officers shall give SBA procurement center representatives (or, if a procurement center representative is not assigned, see paragraph (a) of this section) access to all reasonably obtainable contract information that is directly pertinent to their official duties.

(c) The duties assigned by SBA to its procurement center representatives include the following:

(1) Reviewing proposed acquisitions to recommend—

(i) The setting aside of selected acquisitions not unilaterally set aside by the contracting officer;

(ii) New qualified small business sources, including veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, economically disadvantaged women-owned small, and women-owned small eligible under the Woman-Owned Small Business Program; and

(iii) Breakout of components for competitive acquisitions.

(2) Reviewing proposed acquisition packages provided in accordance with [19.202-1\(e\)](#). If the SBA procurement center representative (or, if a procurement center representative is not assigned, see paragraph (a) of this section) believes that

the acquisition, as proposed, makes it unlikely that small businesses can compete for the prime contract, the representative shall recommend any alternate contracting method that the representative reasonably believes will increase small business prime contracting opportunities. The recommendation shall be made to the contracting officer within 15 days after receipt of the package.

(3) Recommending concerns for inclusion on a list of concerns to be solicited in a specific acquisition.

(4) Appealing to the chief of the contracting office any contracting officer's determination not to solicit a concern recommended by the SBA for a particular acquisition, when not doing so results in no small business being solicited.

(5) Conducting periodic reviews of the contracting activity to which assigned to ascertain whether it is complying with the small business policies in this regulation.

(6) Sponsoring and participating in conferences and training designed to increase small business participation in the contracting activities of the office.

19.403 Small Business Administration breakout procurement center representative.

(a) The SBA is required by section 403 of Pub. L. 98-577 to assign a breakout procurement center representative to each major procurement center. A major procurement center means a procurement center that, in the opinion of the administrator, purchases substantial dollar amounts of other than commercial items, and which has the potential to incur significant savings as a result of the placement of a breakout procurement representative. The SBA breakout procurement center representative is an advocate for (1) the appropriate use of full and open competition, and (2) the breakout of items, when appropriate and while maintaining the integrity of the system in which such items are used. The SBA breakout procurement center representative is in addition to the SBA procurement center representative (see [19.402](#)). When an SBA breakout procurement center representative is assigned, the SBA is required to assign at least two collocated small business technical advisors. Assigned SBA breakout procurement center representatives and technical advisors are required to comply with the contracting agency's directives governing the conduct of contracting personnel and the release of contract information. The SBA must obtain for its breakout procurement center representatives and technical advisors security clearances required by the contracting agency.

(b) Contracting officers shall comply with [19.402\(b\)](#) in their relationships with SBA breakout procurement center representatives and SBA small business technical advisors.

(c) The SBA breakout procurement center representative is authorized to—

(1) Attend any provisioning conference or similar evaluation session during which determinations are made as to whether requirements are to be acquired using other than full and open competition and make recommendations with

respect to such requirements to the members of such conference or session;

(2) Review, at any time, restrictions on competition previously imposed on items through acquisition method coding or similar procedures and recommend to personnel of the appropriate activity the prompt reevaluation of such limitations;

(3) Review restrictions on competition arising out of restrictions on the rights of the United States in technical data and, when appropriate, recommend that personnel of the appropriate activity initiate a review of the validity of such an asserted restriction;

(4) Obtain from any governmental source, and make available to personnel of the appropriate center, technical data necessary for the preparation of a competitive solicitation package for any item of supply or service previously acquired noncompetitively due to the unavailability of such technical data;

(5) Have access to procurement records and other data of the procurement center commensurate with the level of such representative's approved security clearance classification;

(6) Receive unsolicited engineering proposals and, when appropriate—

(i) Conduct a value analysis of such proposal to determine whether it, if adopted, will result in lower costs to the United States without substantially impeding legitimate acquisition objectives and forward to personnel of the appropriate center recommendations with respect to such proposal; or

(ii) Forward such proposals without analysis to personnel of the center responsible for reviewing them who shall furnish the breakout procurement center representative with information regarding the proposal's disposition;

(7) Review the systems that account for the acquisition and management of technical data within the procurement center to ensure that such systems provide the maximum availability and access to data needed for the preparation of offers to sell to the United States those supplies to which such data pertain which potential offerors are entitled to receive;

(8) Appeal the failure by the procurement center to act favorably on any recommendation made pursuant to paragraphs (c)(1) through (7) of this section. Such appeal must be in writing and shall be filed and processed in accordance with the appeal procedures set out at [19.505](#);

(9) Conduct familiarization sessions for contracting officers and other appropriate personnel of the procurement center to which assigned. Such sessions shall acquaint the participants with the duties and objectives of the representative and shall instruct them in the methods designed to further the breakout of items for procurement through full and open competition; and

(10) Prepare and personally deliver an annual briefing and report to the head of the procurement center to which assigned. Such briefing and report shall detail the past and planned activities of the representative and shall contain recommendations for improvement in the operation of the center as may be appropriate. The head of such center shall personally receive the briefing and report and shall, within 60 calendar days after receipt, respond, in writing, to each recommendation made by the representative.

(d) The duties of the SBA small business technical advisors are to assist the SBA breakout procurement center representative in carrying out the activities described in paragraphs (c)(1) through (7) of this section to assist the SBA procurement center representatives (see FAR [19.402](#)).

Subpart 19.5—Set-Asides for Small Business**19.501 General.**

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

(b) The determination to make a small business set-aside may be unilateral or joint. A unilateral determination is one that is made by the contracting officer. A joint determination is one that is recommended by the Small Business Administration (SBA) procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) and concurred in by the contracting officer.

(c) The contracting officer shall review acquisitions to determine if they can be set aside for small business, giving consideration to the recommendations of agency personnel having cognizance of the agency’s small business programs. The contracting officer shall perform market research and document why a small business set-aside is inappropriate when an acquisition is not set aside for small business, unless an award is anticipated to a small business under the 8(a), HUBZone, service-disabled veteran-owned, or WOSB programs. If the acquisition is set aside for small business based on this review, it is a unilateral set-aside by the contracting officer. Agencies may establish threshold levels for this review depending upon their needs.

(d) At the request of an SBA procurement center representative, (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) the contracting officer shall make available for review at the contracting office (to the extent of the SBA representative’s security clearance) all proposed acquisitions in excess of the micro-purchase threshold that have not been unilaterally set aside for small business.

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

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

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

19.502 Setting aside acquisitions.**19.502-1 Requirements for setting aside acquisitions.**

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

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

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

(b) This requirement does not apply to purchases of \$3,000 or less (\$15,000 or less for acquisitions as described in [13.201\(g\)\(1\)](#)), or purchases from required sources of supply under [Part 8](#) (e.g., Committee for Purchase From People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts).

19.502-2 Total small business set-asides.

(a) Before setting aside an acquisition under this paragraph, refer to [19.203\(b\)](#). Each acquisition of supplies or services that has an anticipated dollar value exceeding \$3,000 (\$15,000 for acquisitions as described in [13.201\(g\)\(1\)](#)), but not over \$150,000 (\$300,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition at [2.101](#)), is automatically reserved exclusively for small business concerns and shall be set aside for small business unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. If the contracting officer does not proceed with the small business set-aside and purchases on an unrestricted basis, the contracting officer shall include in the contract file the reason for this unrestricted purchase. If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm. If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside shall be withdrawn and the requirement, if still valid, shall be resolicited on an unrestricted basis. The small business reservation does not preclude the award of a contract as described in [19.203](#).

(b) Before setting aside an acquisition under this paragraph, refer to [19.203\(c\)](#). Total small business set-asides shall not be made unless such a reasonable expectation exists (but see [19.502-3](#) as to partial set-asides). Although past acquisition history of an item or similar items is always important, it is not the only factor to be considered in determining whether a reasonable expectation exists. In making R&D small business set-asides, there must also be a reasonable expectation of

obtaining from small businesses the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances, and schedules.

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

19.502-3 Partial set-asides.

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

- (1) A total set-aside is not appropriate (see [19.502-2](#));
- (2) The requirement is severable into two or more economic production runs or reasonable lots;
- (3) One or more small business concerns are expected to have the technical competence and productive capacity to satisfy the set-aside portion of the requirement at a fair market price;
- (4) The acquisition is not subject to simplified acquisition procedures; and
- (5) A partial set-aside shall not be made if there is a reasonable expectation that only two concerns (one large and one small) with capability will respond with offers unless authorized by the head of a contracting activity on a case-by-case basis. Similarly, a class of acquisitions, not including construction, may be partially set aside. Under certain specified conditions, partial set-asides may be used in conjunction with multiyear contracting procedures.

(b) When the contracting officer determines that a portion of an acquisition is to be set aside, the requirement shall be divided into a set-aside portion and a non-set-aside portion, each of which shall (1) be an economic production run or reasonable lot and (2) have terms and a delivery schedule com-

parable to the other. When practicable, the set-aside portion should make maximum use of small business capacity.

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

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

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

19.502-4 Methods of conducting set-asides.

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

(b) Except for offers on the non-set-aside portion of partial set-asides, offers received from concerns that do not qualify as small business concerns shall be considered nonresponsive and shall be rejected. However, before rejecting an offer otherwise eligible for award because of questions concerning the size representation, an SBA determination must be obtained (see [Subpart 19.3](#)).

19.502-5 Insufficient causes for not setting aside an acquisition.

None of the following is, in itself, sufficient cause for not setting aside an acquisition:

(a) A large percentage of previous contracts for the required item(s) has been placed with small business concerns.

Subpart 19.8—Contracting with the Small Business Administration (The 8(a) Program)

19.800 General.

(a) Section 8(a) of the Small Business Act ([15 U.S.C. 637\(a\)](#)) established a program that authorizes the Small Business Administration (SBA) to enter into all types of contracts with other agencies and let subcontracts for performing those contracts to firms eligible for program participation. The SBA's subcontractors are referred to as "8(a) contractors."

(b) Contracts may be awarded to the SBA for performance by eligible 8(a) firms on either a sole source or competitive basis.

(c) When, acting under the authority of the program, the SBA certifies to an agency that the SBA is competent and responsible to perform a specific contract, the contracting officer is authorized, in the contracting officer's discretion, to award the contract to the SBA based upon mutually agreeable terms and conditions.

(d) The SBA refers to this program as the 8(a) Business Development (BD) Program.

(e) Before deciding to set aside an acquisition in accordance with subpart [19.5](#), the contracting officer may consider offering the acquisition to a small business under the 8(a) Program in accordance with [19.203](#).

(f) When SBA has delegated its 8(a) Program contract execution authority to an agency, the contracting officer must refer to its agency supplement or other policy directives for appropriate guidance.

19.801 [Reserved]

19.802 Selecting concerns for the 8(a) Program.

Selecting concerns for the 8(a) Program is the responsibility of the SBA and is based on the criteria established in 13 CFR 124.101-112.

19.803 Selecting acquisitions for the 8(a) Program.

Through their cooperative efforts, the SBA and an agency match the agency's requirements with the capabilities of 8(a) concerns to establish a basis for the agency to contract with the SBA under the program. Selection is initiated in one of three ways—

(a) The SBA advises an agency contracting activity through a search letter of an 8(a) firm's capabilities and asks the agency to identify acquisitions to support the firm's business plans. In these instances, the SBA will provide at least the following information in order to enable the agency to match an acquisition to the firm's capabilities:

(1) Identification of the concern and its owners.

(2) Background information on the concern, including any and all information pertaining to the concern's technical ability and capacity to perform.

(3) The firm's present production capacity and related facilities.

(4) The extent to which contracting assistance is needed in the present and the future, described in terms that will enable the agency to relate the concern's plans to present and future agency requirements.

(5) If construction is involved, the request shall also include the following:

(i) The concern's capabilities in and qualifications for accomplishing various categories of maintenance, repair, alteration, and construction work in specific categories such as mechanical, electrical, heating and air conditioning, demolition, building, painting, paving, earth work, waterfront work, and general construction work.

(ii) The concern's capacity in each construction category in terms of estimated dollar value (*e.g.*, electrical, up to \$100,000).

(b) The SBA identifies a specific requirement for a particular 8(a) firm or firms and asks the agency contracting activity to offer the acquisition to the 8(a) Program for the firm(s). In these instances, in addition to the information in paragraph (a) of this section, the SBA will provide—

(1) A clear identification of the acquisition sought; *e.g.*, project name or number;

(2) A statement as to how any additional needed equipment and real property will be provided in order to ensure that the firm will be fully capable of satisfying the agency's requirements;

(3) If construction, information as to the bonding capability of the firm(s); and

(4) Either—

(i) If sole source request—

(A) The reasons why the firm is considered suitable for this particular acquisition; *e.g.*, previous contracts for the same or similar supply or service; and

(B) A statement that the firm is eligible in terms of NAICS code, business support levels, and business activity targets; or

(ii) If competitive, a statement that at least two 8(a) firms are considered capable of satisfying the agency's requirements and a statement that the firms are also eligible in terms of the NAICS code, business support levels, and business activity targets. If requested by the contracting activity, SBA will identify at least two such firms and provide information concerning the firms' capabilities.

(c) Agencies may also review other proposed acquisitions for the purpose of identifying requirements which may be offered to the SBA. Where agencies independently, or through the self marketing efforts of an 8(a) firm, identify a requirement for the 8(a) Program, they may offer on behalf of a spe-

cific 8(a) firm, for the 8(a) Program in general, or for 8(a) competition.

19.804 Evaluation, offering, and acceptance.

19.804-1 Agency evaluation.

In determining the extent to which a requirement should be offered in support of the 8(a) Program, the agency should evaluate—

(a) Its current and future plans to acquire the specific items or work that 8(a) contractors are seeking to provide, identified in terms of—

(1) Quantities required or the number of construction projects planned; and

(2) Performance or delivery requirements, including required monthly production rates, when applicable;

(b) Its current and future plans to acquire items or work similar in nature and complexity to that specified in the business plan;

(c) Problems encountered in previous acquisitions of the items or work from the 8(a) contractors and/or other contractors;

(d) The impact of any delay in delivery;

(e) Whether the items or work have previously been acquired using small business set-asides; and

(f) Any other pertinent information about known 8(a) contractors, the items, or the work. This includes any information concerning the firms' capabilities. When necessary, the contracting agency shall make an independent review of the factors in [19.803\(a\)](#) and other aspects of the firms' capabilities which would ensure the satisfactory performance of the requirement being considered for commitment to the 8(a) Program.

19.804-2 Agency offering.

(a) After completing its evaluation, the agency must notify the SBA of the extent of its plans to place 8(a) contracts with the SBA for specific quantities of items or work. The notification must identify the time frames within which prime contract and subcontract actions must be completed in order for the agency to meet its responsibilities. The notification must also contain the following information applicable to each prospective contract:

(1) A description of the work to be performed or items to be delivered, and a copy of the statement of work, if available.

(2) The estimated period of performance.

(3) The NAICS code that applies to the principal nature of the acquisition.

(4) The anticipated dollar value of the requirement, including options, if any.

(5) Any special restrictions or geographical limitations on the requirement (for construction, include the location of the work to be performed).

(6) Any special capabilities or disciplines needed for contract performance.

(7) The type of contract anticipated.

(8) The acquisition history, if any, of the requirement, including the names and addresses of any small business contractors that have performed this requirement during the previous 24 months.

(9) A statement that prior to the offering no solicitation for the specific acquisition has been issued as a small business, HUBZone, service-disabled veteran-owned small business set-aside, or a set-aside under the Women-Owned Small Business (WOSB) Program, and that no other public communication (such as a notice through the Governmentwide point of entry (GPE)) has been made showing the contracting agency's clear intention to set-aside the acquisition for small business, HUBZone small business, service-disabled veteran-owned small business concerns, or a set-aside under the WOSB Program.

(10) Identification of any particular 8(a) concern designated for consideration, including a brief justification, such as—

(i) The 8(a) concern, through its own efforts, marketed the requirement and caused it to be reserved for the 8(a) Program; or

(ii) The acquisition is a follow-on or renewal contract and the nominated concern is the incumbent.

(11) Bonding requirements, if applicable.

(12) Identification of all SBA field offices that have asked for the acquisition for the 8(a) Program.

(13) A request, if appropriate, that a requirement with an estimated contract value under the applicable competitive threshold be awarded as an 8(a) competitive contract (see [19.805-1\(d\)](#)).

(14) A request, if appropriate, that a requirement with a contract value over the applicable competitive threshold be awarded as a sole source contract (see [19.805-1\(b\)](#)).

(15) Any other pertinent and reasonably available data.

(b)(1) An agency offering a construction requirement for which no specific offeror is nominated should submit it to the SBA District Office for the geographical area where the work is to be performed.

(2) An agency offering a construction requirement on behalf of a specific offeror should submit it to the SBA District Office servicing that concern.

(3) Sole source requirements, other than construction, should be forwarded directly to the district office that services the nominated firm. If the contracting officer is not nominating a specific firm, the offering letter should be forwarded to the district office servicing the geographical area in which the contracting office is located.

(c) All requirements for 8(a) competition, other than construction, should be forwarded to the district office servicing the geographical area in which the contracting office is

Subpart 19.12—Small Disadvantaged Business Participation Program

19.1201 General.

This subpart addresses the evaluation of the extent of participation of small disadvantaged business (SDB) concerns in performance of contracts in the North American Industry Classification System (NAICS) Industry Subsectors as determined by the Department of Commerce (see [19.201\(b\)](#)), and to the extent authorized by law. Two mechanisms are addressed in this subpart—

- (a) An evaluation factor or subfactor for the participation of SDB concerns in performance of the contract; and
- (b) An incentive subcontracting program for SDB concerns.

19.1202 Evaluation factor or subfactor.

19.1202-1 General.

The extent of participation of SDB concerns in performance of the contract, in the NAICS Industry Subsector as determined by the Department of Commerce, and to the extent authorized by law, shall be evaluated consistent with this section. Participation in performance of the contract includes joint ventures, teaming arrangements, and subcontracts. Credit under the evaluation factor or subfactor is not available to SDB concerns that receive a price evaluation adjustment under [Subpart 19.11](#). If an SDB concern waives the price evaluation adjustment at [Subpart 19.11](#), participation in performance of that contract includes the work expected to be performed by the SDB concern at the prime contract level.

19.1202-2 Applicability.

(a) Except as provided in paragraph (b) of this subsection, the extent of participation of SDB concerns in performance of the contract in the authorized NAICS Industry Subsector shall be evaluated in competitive, negotiated acquisitions expected to exceed \$650,000 (\$1.5 million for construction).

(b) The extent of participation of SDB concerns in performance of the contract in the authorized NAICS Industry Subsector (see paragraph (a) of this subsection) shall not be evaluated in—

(1) Small business set-asides (see subpart [19.5](#)), HUB-Zone set-asides (see subpart [19.13](#)), service-disabled veteran-owned small business set-asides (see subpart [19.14](#)), economically disadvantaged women-owned small business set-asides, and set-asides for women-owned small business concerns eligible under the Women-Owned Small Business Program (see subpart [19.15](#)).

(2) 8(a) acquisitions (see [Subpart 19.8](#));

(3) Negotiated acquisitions where the lowest price technically acceptable source selection process is used (see [15.101-2](#)); or

(4) Contract actions that will be performed entirely outside of the United States and its outlying areas.

19.1202-3 Considerations in developing an evaluation factor or subfactor.

In developing an SDB participation evaluation factor or subfactor for the solicitation, agencies may consider—

- (a) The extent to which SDB concerns are specifically identified;
- (b) The extent of commitment to use SDB concerns (for example, enforceable commitments are to be weighted more heavily than non-enforceable ones);
- (c) The complexity and variety of the work SDB concerns are to perform;
- (d) The realism of the proposal;
- (e) Past performance of offerors in complying with subcontracting plan goals for SDB concerns and monetary targets for SDB participation; and
- (f) The extent of participation of SDB concerns in terms of the value of the total acquisition.

19.1202-4 Procedures.

(a) The solicitation shall describe the SDB participation evaluation factor or subfactor. The solicitation shall require offerors to provide, with their offers, targets, expressed as dollars and percentages of total contract value, in each of the applicable, authorized NAICS Industry Subsector, and a total target for SDB participation by the contractor, including joint venture partners, and team members, and a total target for SDB participation by subcontractors. The solicitation shall require an SDB offeror that waives the SDB price evaluation adjustment in the clause at [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, to provide with its offer a target for the work that it intends to perform as the prime contractor. The solicitation shall state that any targets will be incorporated into and become part of any resulting contract. Contractors with SDB participation targets shall be required to report SDB participation.

(b) When an evaluation includes an SDB participation evaluation factor or subfactor that considers the extent to which SDB concerns are specifically identified, the SDB concerns considered in the evaluation shall be listed in the contract, and the contractor shall be required to notify the contracting officer of any substitutions of firms that are not SDB concerns.

19.1203 Incentive subcontracting with small disadvantaged business concerns.

The contracting officer may encourage increased subcontracting opportunities in the NAICS Industry Subsector as determined by the Department of Commerce for SDB concerns in negotiated acquisitions by providing monetary incen-

tives (see the clause at [52.219-26](#), Small Disadvantaged Business Participation Program—Incentive Subcontracting, and [19.1204\(c\)](#)). Monetary incentives shall be based on actual achievement as compared to proposed monetary targets for SDB subcontracting. The incentive subcontracting program is separate and distinct from the establishment, monitoring, and enforcement of SDB subcontracting goals in a subcontracting plan.

19.1204 Solicitation provisions and contract clauses.

(a) The contracting officer may insert a provision substantially the same as the provision at [52.219-24](#), Small Disadvantaged Business Participation Program—Targets, in solicitations that consider the extent of participation of SDB concerns in performance of the contract. The contracting officer may vary the terms of this provision consistent with the policies in [19.1202-4](#).

(b) The contracting officer shall insert the clause at [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, in solicitations and contracts that consider the extent of participation of SDB concerns in performance of the contract.

(c) The contracting officer may, when contracting by negotiation, insert in solicitations and contracts containing the clause at [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, a clause substantially the same as the clause at [52.219-26](#), Small Disadvantaged Business Participation Program—Incentive Subcontracting, when authorized (see [19.1203](#)). The contracting officer may include an award fee provision in lieu of the incentive; in such cases, however, the contracting officer shall not use the clause at [52.219-26](#).

Subpart 19.15—Women-Owned Small Business (WOSB) Program

19.1500 General.

(a) Section 8(m) of the Small Business Act ([15 U.S.C. 637\(m\)](#)) created the Women-Owned Small Business (WOSB) Program.

(b) The purpose of the WOSB Program is to ensure women-owned small business concerns have an equal opportunity to participate in Federal contracting and to assist agencies in achieving their WOSB participation goals (see 13 part CFR 127).

19.1501 Definition.

“WOSB Program Repository” means a secure, Web-based application that collects, stores, and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under the WOSB Program.

19.1502 Applicability.

The procedures in this subpart apply to all Federal agencies that employ one or more contracting officers.

19.1503 Status.

(a) Status as an economically disadvantaged women-owned small business (EDWOSB) or WOSB concern is determined in accordance with 13 CFR part 127.

(b) The contracting officer shall verify that the offeror—

- (1) Is registered in Central Contractor Registration (CCR);
- (2) Is self-certified in the Online Representation and Certifications Application (ORCA); and
- (3) Has submitted documents verifying its eligibility at the time of initial offer to the WOSB Program Repository. The contract shall not be awarded until all required documents are received.

(c)(1) An EDWOSB or WOSB concern that has been certified by an SBA approved third party certifier, (which includes SBA certification under the 8(a) Program), must provide the following eligibility requirement documents—

- (i) The third-party certification;
- (ii) SBA’s WOSB Program Certification form (SBA Form 2413); and
- (iii) The joint venture agreement, if applicable.

(2) An EDWOSB or WOSB concern that has not been certified by an SBA approved third party certifier or by SBA under the 8(a) Program, must provide the following documents:

- (i) The U.S. birth certificate, naturalization documentation, or unexpired U.S. passport for each woman owner.
- (ii) The joint venture agreement, if applicable.

(iii) For limited liability companies, Articles of organization (also referred to as certificate of organization or articles of formation) and any amendments, and the operating agreement and any amendments.

(iv) For corporations, articles of incorporation and any amendments, by-laws and any amendments, all issued stock certificates, including the front and back copies, signed in accord with the by-laws, stock ledger, and voting agreements, if any.

(v) For partnerships, the partnership agreement and any amendments.

(vi) For sole proprietorships, corporations, limited liability companies and partnerships if applicable, the assumed/fictitious name certificate(s).

(vii) SBA’s WOSB Program Certification form (SBA Form 2413).

(viii) For EDWOSB concerns, in addition to the above, the SBA Form 413, Personal Financial Statement, available to the public at <http://www.sba.gov/tools/Forms/index.html>, for each woman claiming economic disadvantage.

(d)(1) A contracting officer may accept a concern’s self-certification as accurate for a specific procurement reserved for award under this subpart if—

- (i) The apparent successful WOSB or EDWOSB offeror provided the required documents;
- (ii) There has been no protest or other credible information that calls into question the concern’s eligibility as an EDWOSB or WOSB concern; and
- (iii) There has been no decision issued by SBA as a result of a current eligibility examination finding the concern did not qualify as an EDWOSB or WOSB concern at the time it submitted its initial offer for an EDWOSB or WOSB requirement.

(2) The contracting officer shall file a status protest in accordance with FAR [19.308](#) if—

- (i) There is information that questions the eligibility of a concern; or
- (ii) The concern fails to provide all of the required documents to verify its eligibility.

(e) If there is a decision issued by SBA as a result of a current eligibility examination finding the concern did not qualify as an EDWOSB or WOSB concern, the contracting officer may terminate the contract, and shall not exercise any option nor award further task or delivery orders. The contracting officer shall not count or include the award toward the small business accomplishments for an EDWOSB or WOSB concern and must update FPDS from the date of award.

(f) A joint venture may be considered an EDWOSB concern or WOSB concern if it meets the requirements of 13 CFR 127.506.

(g) An EDWOSB or WOSB concern that is a non-manufacturer, as defined in 13 CFR 121.406(b), may submit an offer on an EDWOSB or WOSB requirement with a NAICS

code for supplies, if it meets the requirements under the non-manufacturer rule set forth in that regulation.

19.1504 Exclusions.

This subpart does not apply to—

(a) Requirements that an 8(a) concern is currently performing under the 8(a) Program or that SBA has accepted for performance under the authority of the 8(a) Program, unless SBA has consented to release the requirements from the 8(a) Program;

(b) Requirements that can be satisfied through award to—

(1) Federal Prison Industries, Inc. (see subpart [8.6](#)); or

(2) Javits-Wagner-O'Day Act participating non-profit agencies for the blind or severely disabled (see subpart [8.7](#));

(c) Orders against indefinite delivery contracts (see subpart [16.5](#)); or

(d) Orders against Federal Supply Schedules (see subpart [8.4](#)).

19.1505 Set-aside procedures.

(a) The contracting officer may set-aside acquisitions exceeding the micro-purchase threshold for competition restricted to EDWOSB or WOSB concerns eligible under the WOSB Program in those NAICS codes in which SBA has determined that women-owned small business concerns are underrepresented or substantially underrepresented in Federal procurement, as specified on SBA's Web site at <http://www.sba.gov/WOSB>.

(b) For requirements in NAICS codes designated by SBA as underrepresented, a contracting officer may restrict competition to EDWOSB concerns if the contracting officer has a reasonable expectation based on market research that—

(1) Two or more EDWOSB concerns will submit offers for the contract;

(2) The anticipated award price of the contract (including options) does not exceed \$6.5 million, in the case of a contract assigned an NAICS code for manufacturing; or \$4 million, for all other contracts; and

(3) Contract award will be made at a fair and reasonable price.

(c) A contracting officer may restrict competition to WOSB concerns eligible under the WOSB Program (including EDWOSB concerns), for requirements in NAICS codes designated by SBA as substantially underrepresented if there is a reasonable expectation based on market research that—

(1) Two or more WOSB concerns (including EDWOSB concerns), will submit offers;

(2) The anticipated award price of the contract (including options) will not exceed \$6.5 million, in the case of a con-

tract assigned an NAICS code for manufacturing, or \$4 million for all other contracts; and

(3) Contract award may be made at a fair and reasonable price.

(d) The contracting officer may make an award, if only one acceptable offer is received from a qualified EDWOSB or WOSB concern.

(e) The contracting officer must check whether the apparently successful offeror filed all the required eligibility documents, and file a status protest if any documents are missing. See [19.1503](#)(d)(2).

(f) If no acceptable offers are received from an EDWOSB or WOSB concern, the set-aside shall be withdrawn and the requirement, if still valid, must be considered for set aside in accordance with [19.203](#) and subpart [19.5](#).

(g) If the contracting officer rejects a recommendation by SBA's Procurement Center Representative—

(1) The contracting officer shall notify the procurement center representative as soon as practicable;

(2) SBA shall notify the contracting officer of its intent to appeal the contracting officer's decision no later than five business days after receiving notice of the contracting officer's decision;

(3) The contracting officer shall suspend further action regarding the procurement until the head of the agency issues a written decision on the appeal, that there are urgent and compelling circumstances which significantly affect the interests of the United States compel award of the contract;

(4) Within 15 business days of SBA's notification to the head of the contracting activity, SBA shall file a formal appeal to the head of the agency, or the appeal will be determined withdrawn; and

(5) The head of the agency, or designee, shall specify in writing the reasons for a denial of an appeal brought under this section.

19.1506 Contract clauses.

(a) The contracting officer shall insert the clause [52.219-29](#), Notice of Total Set-Aside for Economically Disadvantaged Women-owned Small Business (EDWOSB) Concerns, in solicitations and contracts for acquisitions that are set aside for economically disadvantaged women-owned small business concerns under [19.1505](#)(b).

(b) The contracting officer shall insert the clause [52.219-30](#), Notice of Total Set-Aside for Women-Owned Small Business (WOSB) Concerns Eligible Under the Women-Owned Small Business Program, in solicitations and contracts for acquisitions that are set aside for women-owned small business concerns under [19.1505](#)(c).

* * * * *

Subpart 26.2—Disaster or Emergency Assistance Activities

26.200 Scope of subpart.

This subpart implements the Robert T. Stafford Disaster Relief and Emergency Assistance Act ([42 U.S.C. 5150](#)), which provides a preference for local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities.

26.201 Definitions.

“Emergency response contract” means a contract with private entities that supports assistance activities in a major disaster or emergency area, such as debris clearance, distribution of supplies, or reconstruction.

“Local firm” means a private organization, firm, or individual residing or doing business primarily in a major disaster or emergency area.

“Major disaster or emergency area” means the area included in the official Presidential declaration(s) and any additional areas identified by the Department of Homeland Security. Major disaster declarations and emergency declarations are published in the Federal Register and are available at <http://www.fema.gov/news/disasters.fema>.

26.202 Local area preference.

When awarding emergency response contracts during the term of a major disaster or emergency declaration by the President of the United States under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act ([42 U.S.C. 5121](#), *et seq.*), preference shall be given, to the extent feasible and practicable, to local firms. Preference may be given through a local area set-aside or an evaluation preference.

26.202-1 Local area set-aside.

The contracting officer may set aside solicitations to allow only local firms within a specific geographic area to compete (see [6.208](#)).

(a) The contracting officer, in consultation with the requirements office, shall define the specific geographic area for the local set-aside.

(b) A major disaster or emergency area may span counties in several contiguous States. The set-aside area need not include all the counties in the declared disaster/emergency area(s), but cannot go outside it.

(c) The contracting officer shall also determine whether a local area set-aside should be further restricted to small business concerns in the set-aside area (see [Part 19](#)).

26.202-2 Evaluation preference.

The contracting officer may use an evaluation preference, when authorized in agency regulations or procedures.

26.203 Transition of work.

(a) In anticipation of potential emergency response requirements, agencies involved in response planning should consider awarding emergency response contracts before a major disaster or emergency occurs to ensure immediate response and relief. These contracts should be structured to respond to immediate emergency response needs, and should not be structured in any way that may inhibit the transition of emergency response work to local firms (*e.g.*, unnecessarily broad scopes of work or long periods of performance).

(b) [42 U.S.C. 5150\(b\)\(2\)](#) requires that agencies performing response, relief, and reconstruction activities transition to local firms any work performed under contracts in effect on the date on which the President declares a major disaster or emergency, unless the head of such agency determines in writing that it is not feasible or practicable. This determination may be made on an individual contract or class basis. The written determination shall be prepared within a reasonable time given the circumstances of the emergency.

(c) In effecting the transition, agencies are not required to terminate or renegotiate existing contracts. Agencies should transition the work at the earliest practical opportunity after consideration of the following:

(1) The potential duration of the disaster or emergency.

(2) The severity of the disaster or emergency.

(3) The scope and structure of the existing contract, including its period of performance and the milestone(s) at which a transition is reasonable (*e.g.*, before exercising an option).

(4) The potential impact of a transition, including safety, national defense, and mobilization.

(5) The expected availability of qualified local offerors who can provide the products or services at a reasonable price.

(d) The agency shall transition the work to local firms using the local area set-aside identified in [26.202-1](#).

26.204 Justification for expenditures to other than local firms.

(a) [42 U.S.C. 5150\(b\)\(1\)](#) requires that, subsequent to any Presidential declaration of a major disaster or emergency, any expenditure of Federal funds, under an emergency response contract not awarded to a local firm, must be justified in writing in the contract file. The justification should include consideration for the scope of the major disaster or emergency and the immediate requirements or needs of supplies and services to ensure life is protected, victims are cared for, and property is protected.

(b) The justification may be made on an individual or class basis. The contracting officer approves the justification.

26.205 Disaster Response Registry.

(a) Contracting officers shall consult the Disaster Response Registry at www.ccr.gov to determine the availabil-

ity of contractors for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas.

(b) A list of prospective vendors voluntarily participating in the Disaster Response Registry can be retrieved using the CCR Search tool on the CCR webpage. These vendors may be identified by selecting the criteria for “Disaster Response Contractors”. Contractors are required to register with CCR in order to gain access to the Disaster Response Registry.

26.206 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the provision at [52.226-3](#), Disaster or Emergency Area Representation, in solicitations involving the local area set-aside. For commercial items, see [12.301](#)(e)(4).

(b) The contracting officer shall insert the clause at [52.226-4](#), Notice of Disaster or Emergency Area Set-aside in solicitations and contracts involving local area set-asides.

(c) The contracting officer shall insert the clause at [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area, in all solicitations and contracts that involve local area set-asides.

33.000 Scope of part.

This part prescribes policies and procedures for filing protests and for processing contract disputes and appeals.

Subpart 33.1—Protests**33.101 Definitions.**

As used in this subpart—

“Day” means a calendar day, unless otherwise specified. In the computation of any period—

(1) The day of the act, event, or default from which the designated period of time begins to run is not included; and

(2) The last day after the act, event, or default is included unless—

(i) The last day is a Saturday, Sunday, or Federal holiday; or

(ii) In the case of a filing of a paper at any appropriate administrative forum, the last day is a day on which weather or other conditions cause the closing of the forum for all or part of the day, in which event the next day on which the appropriate administrative forum is open is included.

“Filed” means the complete receipt of any document by an agency before its close of business. Documents received after close of business are considered filed as of the next day. Unless otherwise stated, the agency close of business is presumed to be 4:30 p.m., local time.

“Interested party for the purpose of filing a protest” means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

“Protest” means a written objection by an interested party to any of the following:

(1) A solicitation or other request by an agency for offers for a contract for the procurement of property or services.

(2) The cancellation of the solicitation or other request.

(3) An award or proposed award of the contract.

(4) A termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

33.102 General.

(a) Contracting officers shall consider all protests and seek legal advice, whether protests are submitted before or after award and whether filed directly with the agency or the Government Accountability Office (GAO). (See [19.302](#) for protests of small business status, [19.305](#) for protests of disadvantaged business status, [19.306](#) for protests of HUB-Zone small business status, and [19.307](#) for protests of service-disabled veteran-owned small business status, and [19.308](#) for protests of the status of an economically disadvantaged women-owned small business concern or of a women-owned

small business concern eligible under the Women-Owned Small Business Program.)

(b) If, in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency may—

(1) Take any action that could have been recommended by the Comptroller General had the protest been filed with the Government Accountability Office;

(2) Pay appropriate costs as stated in [33.104\(h\)](#); and

(3) Require the awardee to reimburse the Government’s costs, as provided in this paragraph, where a postaward protest is sustained as the result of an awardee’s intentional or negligent misstatement, misrepresentation, or miscertification. In addition to any other remedy available, and pursuant to the requirements of [Subpart 32.6](#), the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

(i) When a protest is sustained by GAO under circumstances that may allow the Government to seek reimbursement for protest costs, the contracting officer will determine whether the protest was sustained based on the awardee’s negligent or intentional misrepresentation. If the protest was sustained on several issues, protest costs shall be apportioned according to the costs attributable to the awardee’s actions.

(ii) The contracting officer shall review the amount of the debt, degree of the awardee’s fault, and costs of collection, to determine whether a demand for reimbursement ought to be made. If it is in the best interests of the Government to seek reimbursement, the contracting officer shall notify the contractor in writing of the nature and amount of the debt, and the intention to collect by offset if necessary. Prior to issuing a final decision, the contracting officer shall afford the contractor an opportunity to inspect and copy agency records pertaining to the debt to the extent permitted by statute and regulation, and to request review of the matter by the head of the contracting activity.

(iii) When appropriate, the contracting officer shall also refer the matter to the agency debarment official for consideration under [Subpart 9.4](#).

(c) In accordance with [31 U.S.C. 1558](#), with respect to any protest filed with the GAO, if the funds available to the agency for a contract at the time a protest is filed in connection with a solicitation for, proposed award of, or award of such a contract would otherwise expire, such funds shall remain available for obligation for 100 days after the date on which the final ruling is made on the protest. A ruling is considered final on the date on which the time allowed for filing an appeal or request for reconsideration has expired, or the date on which a decision is rendered on such appeal or request, whichever is later.

(d) *Protest likely after award.* The contracting officer may stay performance of a contract within the time period contained in paragraph [33.104\(c\)\(1\)](#) if the contracting officer makes a written determination that—

(1) A protest is likely to be filed; and

(2) Delay of performance is, under the circumstances, in the best interests of the United States.

(e) An interested party wishing to protest is encouraged to seek resolution within the agency (see [33.103](#)) before filing a protest with the GAO, but may protest to the GAO in accordance with GAO regulations (4 CFR Part 21).

(f) No person may file a protest at GAO for a procurement integrity violation unless that person reported to the contracting officer the information constituting evidence of the violation within 14 days after the person first discovered the possible violation ([41 U.S.C. 423\(g\)](#)).

33.103 Protests to the agency.

(a) *Reference.* Executive Order 12979, Agency Procurement Protests, establishes policy on agency procurement protests.

(b) Prior to submission of an agency protest, all parties shall use their best efforts to resolve concerns raised by an interested party at the contracting officer level through open and frank discussions.

(c) The agency should provide for inexpensive, informal, procedurally simple, and expeditious resolution of protests. Where appropriate, the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel are acceptable protest resolution methods.

(d) The following procedures are established to resolve agency protests effectively, to build confidence in the Government's acquisition system, and to reduce protests outside of the agency:

(1) Protests shall be concise and logically presented to facilitate review by the agency. Failure to substantially comply with any of the requirements of paragraph (d)(2) of this section may be grounds for dismissal of the protest.

(2) Protests shall include the following information:

(i) Name, address, and fax and telephone numbers of the protester.

(ii) Solicitation or contract number.

(iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester.

(iv) Copies of relevant documents.

(v) Request for a ruling by the agency.

(vi) Statement as to the form of relief requested.

(vii) All information establishing that the protester is an interested party for the purpose of filing a protest.

(viii) All information establishing the timeliness of the protest.

(3) All protests filed directly with the agency will be addressed to the contracting officer or other official designated to receive protests.

(4) In accordance with agency procedures, interested parties may request an independent review of their protest at a level above the contracting officer; solicitations should advise potential bidders and offerors that this review is available. Agency procedures and/or solicitations shall notify potential bidders and offerors whether this independent review is available as an alternative to consideration by the contracting officer of a protest or is available as an appeal of a contracting officer decision on a protest. Agencies shall designate the official(s) who are to conduct this independent review, but the official(s) need not be within the contracting officer's supervisory chain. When practicable, officials designated to conduct the independent review should not have had previous personal involvement in the procurement. If there is an agency appellate review of the contracting officer's decision on the protest, it will not extend GAO's timeliness requirements. Therefore, any subsequent protest to the GAO must be filed within 10 days of knowledge of initial adverse agency action (4 CFR 21.2(a)(3)).

(e) Protests based on alleged apparent improprieties in a solicitation shall be filed before bid opening or the closing date for receipt of proposals. In all other cases, protests shall be filed no later than 10 days after the basis of protest is known or should have been known, whichever is earlier. The agency, for good cause shown, or where it determines that a protest raises issues significant to the agency's acquisition system, may consider the merits of any protest which is not timely filed.

(f) *Action upon receipt of protest.* (1) Upon receipt of a protest before award, a contract may not be awarded, pending agency resolution of the protest, unless contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall be approved at a level above the contracting officer, or by another official pursuant to agency procedures.

(2) If award is withheld pending agency resolution of the protest, the contracting officer will inform the offerors whose offers might become eligible for award of the contract. If appropriate, the offerors should be requested, before expiration of the time for acceptance of their offers, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extension of offers, consideration should be given to proceeding with award pursuant to paragraph (f)(1) of this section.

(3) Upon receipt of a protest within 10 days after contract award or within 5 days after a debriefing date offered to the protester under a timely debriefing request in accordance with [15.505](#) or [15.506](#), whichever is later, the contracting officer shall immediately suspend performance, pending res-

olution of the protest within the agency, including any review by an independent higher level official, unless continued performance is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall be approved at a level above the contracting officer, or by another official pursuant to agency procedures.

(4) Pursuing an agency protest does not extend the time for obtaining a stay at GAO. Agencies may include, as part of the agency protest process, a voluntary suspension period when agency protests are denied and the protester subsequently files at GAO.

(g) Agencies shall make their best efforts to resolve agency protests within 35 days after the protest is filed. To the extent permitted by law and regulation, the parties may exchange relevant information.

(h) Agency protest decisions shall be well-reasoned, and explain the agency position. The protest decision shall be provided to the protester using a method that provides evidence of receipt.

33.104 Protests to GAO.

Procedures for protests to GAO are found at 4 CFR Part 21 (GAO Bid Protest Regulations). In the event guidance concerning GAO procedure in this section conflicts with 4 CFR Part 21, 4 CFR Part 21 governs.

(a) *General procedure.* (1) A protester is required to furnish a copy of its complete protest to the official and location designated in the solicitation or, in the absence of such a designation, to the contracting officer, so it is received no later than 1 day after the protest is filed with the GAO. The GAO may dismiss the protest if the protester fails to furnish a complete copy of the protest within 1 day.

(2) Immediately after receipt of the GAO's written notice that a protest has been filed, the agency shall give notice of the protest to the contractor if the award has been made, or, if no award has been made, to all parties who appear to have a reasonable prospect of receiving award if the protest is denied. The agency shall furnish copies of the protest submissions to such parties with instructions to (i) communicate directly with the GAO, and (ii) provide copies of any such communication to the agency and to other participating parties when they become known. However, if the protester has identified sensitive information and requests a protective order, then the contracting officer shall obtain a redacted version from the protester to furnish to other interested parties, if one has not already been provided.

(3)(i) Upon notice that a protest has been filed with the GAO, the contracting officer shall immediately begin compiling the information necessary for a report to the GAO. The agency shall submit a complete report to the GAO within 30 days after the GAO notifies the agency by telephone that a protest has been filed, or within 20 days after receipt from

the GAO of a determination to use the express option, unless the GAO—

(A) Advises the agency that the protest has been dismissed; or

(B) Authorizes a longer period in response to an agency's request for an extension. Any new date is documented in the agency's file.

(ii) When a protest is filed with the GAO, and an actual or prospective offeror so requests, the procuring agency shall, in accordance with any applicable protective orders, provide actual or prospective offerors reasonable access to the protest file. However, if the GAO dismisses the protest before the documents are submitted to the GAO, then no protest file need be made available. Information exempt from disclosure under [5 U.S.C. 552](#) may be redacted from the protest file. The protest file shall be made available to non-intervening actual or prospective offerors within a reasonable time after submittal of an agency report to the GAO. The protest file shall include an index and as appropriate—

(A) The protest;

(B) The offer submitted by the protester;

(C) The offer being considered for award or being protested;

(D) All relevant evaluation documents;

(E) The solicitation, including the specifications or portions relevant to the protest;

(F) The abstract of offers or relevant portions; and

(G) Any other documents that the agency determines are relevant to the protest, including documents specifically requested by the protester.

(iii) At least 5 days prior to the filing of the report, in cases in which the protester has filed a request for specific documents, the agency shall provide to all parties and the GAO a list of those documents, or portions of documents, that the agency has released to the protester or intends to produce in its report, and those documents that the agency intends to withhold from the protester and the reasons for the proposed withholding. Any objection to the scope of the agency's proposed disclosure or nondisclosure of the documents must be filed with the GAO and the other parties within 2 days after receipt of this list.

(iv) The agency report to the GAO shall include—

(A) A copy of the documents described in [33.104\(a\)\(3\)\(ii\)](#);

(B) The contracting officer's signed statement of relevant facts, including a best estimate of the contract value, and a memorandum of law. The contracting officer's statement shall set forth findings, actions, and recommendations, and any additional evidence or information not provided in the protest file that may be necessary to determine the merits of the protest; and

(C) A list of parties being provided the documents.

(4)(i) At the same time the agency submits its report to the GAO, the agency shall furnish copies of its report to the protester and any intervenors. A party shall receive all relevant documents, except—

(A) Those that the agency has decided to withhold from that party for any reason, including those covered by a protective order issued by the GAO. Documents covered by a protective order shall be released only in accordance with the terms of the order. Examples of documents the agency may decide to exclude from a copy of the report include documents previously furnished to or prepared by a party; classified information; and information that would give the party a competitive advantage; and

(B) Protester's documents which the agency determines, pursuant to law or regulation, to withhold from any interested party.

(ii)(A) If the protester requests additional documents within 2 days after the protester knew the existence or relevance of additional documents, or should have known, the agency shall provide the requested documents to the GAO within 2 days of receipt of the request.

(B) The additional documents shall also be provided to the protester and other interested parties within this 2-day period unless the agency has decided to withhold them for any reason (see subdivision (a)(4)(i) of this section). This includes any documents covered by a protective order issued by the GAO. Documents covered by a protective order shall be provided only in accordance with the terms of the order.

(C) The agency shall notify the GAO of any documents withheld from the protester and other interested parties and shall state the reasons for withholding them.

(5) The GAO may issue protective orders which establish terms, conditions, and restrictions for the provision of any document to an interested party. Protective orders prohibit or restrict the disclosure by the party of procurement sensitive information, trade secrets or other proprietary or confidential research, development or commercial information that is contained in such document. Protective orders do not authorize withholding any documents or information from the United States Congress or an executive agency.

(i) *Requests for protective orders.* Any party seeking issuance of a protective order shall file its request with the GAO as soon as practicable after the protest is filed, with copies furnished simultaneously to all parties.

(ii) *Exclusions and rebuttals.* Within 2 days after receipt of a copy of the protective order request, any party may file with the GAO a request that particular documents be excluded from the coverage of the protective order, or that particular parties or individuals be included in or excluded from the protective order. Copies of the request shall be furnished simultaneously to all parties.

(iii) *Additional documents.* If the existence or relevance of additional documents first becomes evident after a protective order has been issued, any party may request that

these additional documents be covered by the protective order. Any party to the protective order also may request that individuals not already covered by the protective order be included in the order. Requests shall be filed with the GAO, with copies furnished simultaneously to all parties.

(iv) *Sanctions and remedies.* The GAO may impose appropriate sanctions for any violation of the terms of the protective order. Improper disclosure of protected information will entitle the aggrieved party to all appropriate remedies under law or equity. The GAO may also take appropriate action against an agency which fails to provide documents designated in a protective order.

(6) The protester and other interested parties are required to furnish a copy of any comments on the agency report directly to the GAO within 10 days, or 5 days if express option is used, after receipt of the report, with copies provided to the contracting officer and to other participating interested parties. If a hearing is held, these comments are due within 5 days after the hearing.

(7) Agencies shall furnish the GAO with the name, title, and telephone number of one or more officials (in both field and headquarters offices, if desired) whom the GAO may contact who are knowledgeable about the subject matter of the protest. Each agency shall be responsible for promptly advising the GAO of any change in the designated officials.

(b) *Protests before award.*(1) When the agency has received notice from the GAO of a protest filed directly with the GAO, a contract may not be awarded unless authorized, in accordance with agency procedures, by the head of the contracting activity, on a nondelegable basis, upon a written finding that—

(i) Urgent and compelling circumstances which significantly affect the interest of the United States will not permit awaiting the decision of the GAO; and

(ii) Award is likely to occur within 30 days of the written finding.

(2) A contract award shall not be authorized until the agency has notified the GAO of the finding in paragraph (b)(1) of this section.

(3) When a protest against the making of an award is received and award will be withheld pending disposition of the protest, the contracting officer should inform the offerors whose offers might become eligible for award of the protest. If appropriate, those offerors should be requested, before expiration of the time for acceptance of their offer, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extensions of offers, consideration should be given to proceeding under paragraph (b)(1) of this section.

(c) *Protests after award.*(1) When the agency receives notice of a protest from the GAO within 10 days after contract award or within 5 days after a debriefing date offered to the protester for any debriefing that is required by [15.505](#) or [15.506](#), whichever is later, the contracting officer shall immediately suspend performance or terminate the awarded con-

Subpart 36.5—Contract Clauses

36.500 Scope of subpart.

This subpart prescribes clauses for insertion in solicitations and contracts for (a) construction and (b) dismantling, demolition, or removal of improvements contracts. Provisions and clauses prescribed elsewhere in the Federal Acquisition Regulation (FAR) shall also be used in such solicitations and contracts when the conditions specified in the prescriptions for the provisions and clauses are applicable.

36.501 Performance of work by the contractor.

(a) To assure adequate interest in and supervision of all work involved in larger projects, the contractor shall be required to perform a significant part of the contract work with its own forces. The contract shall express this requirement in terms of a percentage that reflects the minimum amount of work the contractor must perform with its own forces. This percentage is (1) as high as the contracting officer considers appropriate for the project, consistent with customary or necessary specialty subcontracting and the complexity and magnitude of the work, and (2) ordinarily not less than 12 percent unless a greater percentage is required by law or agency regulation. Specialties such as plumbing, heating, and electrical work are usually subcontracted, and should not normally be considered in establishing the amount of work required to be performed by the contractor.

(b) The contracting officer shall insert the clause at [52.236-1](#), Performance of Work by the Contractor, in solicitations and contracts, except those awarded pursuant to [Subparts 19.5](#), [19.8](#), [19.11](#), [19.13](#), [19.14](#), or [19.15](#) when a fixed-price construction contract is contemplated and the contract amount is expected to exceed \$1.5 million. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction contract is contemplated and the contract amount is expected to be \$1.5 million or less.

36.502 Differing site conditions.

The contracting officer shall insert the clause at [52.236-2](#), Differing Site Conditions, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

36.503 Site investigation and conditions affecting the work.

The contracting officer shall insert the clause at [52.236-3](#), Site Investigation and Conditions Affecting the Work, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

36.504 Physical data.

The contracting officer shall insert the clause at [52.236-4](#), Physical Data, in solicitations and contracts when a fixed-price construction contract is contemplated and physical data (e.g., test borings, hydrographic data, weather conditions data) will be furnished or made available to offerors.

36.505 Material and workmanship.

The contracting officer shall insert the clause at [52.236-5](#), Material and Workmanship, in solicitations and contracts for construction contracts.

36.506 Superintendence by the contractor.

The contracting officer shall insert the clause at [52.236-6](#), Superintendence by the Contractor, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

36.507 Permits and responsibilities.

The contracting officer shall insert the clause at [52.236-7](#), Permits and Responsibilities, in solicitations and contracts when a fixed-price or cost-reimbursement construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated.

36.508 Other contracts.

The contracting officer shall insert the clause at [52.236-8](#), Other Contracts, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified

acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

36.509 Protection of existing vegetation, structures, equipment, utilities, and improvements.

The contracting officer shall insert the clause at [52.236-9](#), Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

36.510 Operations and storage areas.

The contracting officer shall insert the clause at [52.236-10](#), Operations and Storage Areas, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

36.511 Use and possession prior to completion.

The contracting officer shall insert the clause at [52.236-11](#), Use and Possession Prior to Completion, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract award amount is expected to exceed the simplified acquisition threshold. This clause may be inserted in solicitations and contracts when the contract amount is expected to be at or below the simplified acquisition threshold.

36.512 Cleaning up.

The contracting officer shall insert the clause at [52.236-12](#), Cleaning Up, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price con-

struction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

36.513 Accident prevention.

(a) The contracting officer shall insert the clause at [52.236-13](#), Accident Prevention, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold. If the contract will involve work of a long duration or hazardous nature, the contracting officer shall use the clause with its Alternate I.

(b) The contracting officer shall insert the clause or the clause with its Alternate I in solicitations and contracts when a contract for services to be performed at Government facilities (see 48 CFR Part 37) is contemplated, and technical representatives advise that special precautions are appropriate.

(c) The contracting officer should inform the Occupational Safety and Health Administration (OSHA), or other cognizant Federal, State, or local officials, of instances where the contractor has been notified to take immediate action to correct serious or imminent dangers.

36.514 Availability and use of utility services.

The contracting officer shall insert the clause at [52.236-14](#), Availability and Use of Utility Services, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated, the contract is to be performed on Government sites, and the contracting officer decides (a) that the existing utility system(s) is adequate for the needs of both the Government and the contractor, and (b) furnishing it is in the Government's interest. When this clause is used, the contracting officer shall list the available utilities in the contract.

36.515 Schedules for construction contracts.

The contracting officer may insert the clause at [52.236-15](#), Schedules for Construction Contracts, in solicitations and contracts when a fixed-price construction contract is contemplated, the contract amount is expected to exceed the simplified acquisition threshold, and the period of actual work performance exceeds 60 days. This clause may also be inserted in such solicitations and contracts when work performance is expected to last less than 60 days and an unusual situation exists that warrants imposition of the requirements. This clause should not be used in the same contract with

Subpart 42.5—Postaward Orientation

42.500 Scope of subpart.

This subpart prescribes policies and procedures for the postaward orientation of contractors and subcontractors through—

- (a) A conference; or
- (b) A letter or other form of written communication.

42.501 General.

(a) A postaward orientation aids both Government and contractor personnel to (1) achieve a clear and mutual understanding of all contract requirements, and (2) identify and resolve potential problems. However, it is not a substitute for the contractor's fully understanding the work requirements at the time offers are submitted, nor is it to be used to alter the final agreement arrived at in any negotiations leading to contract award.

(b) Postaward orientation is encouraged to assist (see part 19)—

- (1) Small business concerns;
- (2) Small disadvantaged business concerns;
- (3) Veteran-owned small business concerns;
- (4) Service-disabled veteran-owned small business concerns;
- (5) HUBZone small business concerns; and
- (6) Women-owned small business concerns (including economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Women-Owned Small Business Program).

(c) While cognizant Government or contractor personnel may request the contracting officer to arrange for orientation, it is up to the contracting officer to decide whether a postaward orientation in any form is necessary.

(d) Maximum benefits will be realized when orientation is conducted promptly after award.

42.502 Selecting contracts for postaward orientation.

When deciding whether postaward orientation is necessary and, if so, what form it shall take, the contracting officer shall consider, as a minimum, the—

- (a) Nature and extent of the preaward survey and any other prior discussions with the contractor;
- (b) Type, value, and complexity of the contract;
- (c) Complexity and acquisition history of the product or service;
- (d) Requirements for spare parts and related equipment;
- (e) Urgency of the delivery schedule and relationship of the product or service to critical programs;
- (f) Length of the planned production cycle;
- (g) Extent of subcontracting;
- (h) Contractor's performance history and experience with the product or service;

(i) Contractor's status, if any, as a small business, small disadvantaged, women-owned, veteran-owned, HUBZone, or service-disabled veteran-owned small business concern;

(j) Contractor's performance history with small, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business subcontracting programs;

(k) Safety precautions required for hazardous materials or operations; and

(l) Complex financing arrangements, such as progress payments, advance payments, or guaranteed loans.

42.503 Postaward conferences.

42.503-1 Postaward conference arrangements.

(a) The contracting officer who decides that a conference is needed is responsible for—

- (1) Establishing the time and place of the conference;
- (2) Preparing the agenda, when necessary;
- (3) Notifying appropriate Government representatives (e.g., contracting/contract administration office) and the contractor;
- (4) Designating or acting as the chairperson;
- (5) Conducting a preliminary meeting of Government personnel; and
- (6) Preparing a summary report of the conference.

(b) When the contracting office initiates a conference, the arrangements may be made by that office or, at its request, by the contract administration office.

42.503-2 Postaward conference procedure.

The chairperson of the conference shall conduct the meeting. Unless a contract change is contemplated, the chairperson shall emphasize that it is not the purpose of the meeting to change the contract. The contracting officer may make commitments or give directions within the scope of the contracting officer's authority and shall put in writing and sign any commitment or direction, whether or not it changes the contract. Any change to the contract that results from the postaward conference shall be made only by a contract modification referencing the applicable terms of the contract. Participants without authority to bind the Government shall not take action that in any way alters the contract. The chairperson shall include in the summary report (see [42.503-3](#)) all information and guidance provided to the contractor.

42.503-3 Postaward conference report.

The chairperson shall prepare and sign a report of the postaward conference. The report shall cover all items discussed, including areas requiring resolution, controversial matters, the names of the participants assigned responsibility for further actions, and the due dates for the actions. The chairperson shall furnish copies of the report to the contracting office, the

contract administration office, the contractor, and others who require the information.

42.504 Postaward letters.

In some circumstances, a letter or other written form of communication to the contractor may be adequate postaward orientation (in lieu of a conference). The letter should identify the Government representative responsible for administering the contract and cite any unusual or significant contract requirements. The rules on changes to the contract in [42.503-2](#) also apply here.

42.505 Postaward subcontractor conferences.

(a) The prime contractor is generally responsible for conducting postaward conferences with subcontractors. However, the prime contractor may invite Government

representatives to a conference with subcontractors, or the Government may request that the prime contractor initiate a conference with subcontractors. The prime contractor should ensure that representatives from involved contract administration offices are invited.

(b) Government representatives—

(1) Must recognize the lack of privity of contract between the Government and subcontractors;

(2) Shall not take action that is inconsistent with or alters subcontracts; and

(3) Shall ensure that any changes in direction or commitment affecting the prime contract or contractor resulting from a subcontractor conference are made by written direction of the contracting officer to the prime contractor in the same manner as described in [42.503-2](#).

FAC 2005–51 APRIL 1, 2011

FEDERAL ACQUISITION REGULATION

- 52.216-12 Cost-Sharing Contract—No Fee.
- 52.216-13 [Reserved]
- 52.216-14 [Reserved]
- 52.216-15 Predetermined Indirect Cost Rates.
- 52.216-16 Incentive Price Revision—Firm Target.
- 52.216-17 Incentive Price Revision—Successive Targets.
- 52.216-18 Ordering.
- 52.216-19 Order Limitations.
- 52.216-20 Definite Quantity.
- 52.216-21 Requirements.
- 52.216-22 Indefinite Quantity.
- 52.216-23 Execution and Commencement of Work.
- 52.216-24 Limitation of Government Liability.
- 52.216-25 Contract Definitization.
- 52.216-26 Payments of Allowable Costs Before Definitization.
- 52.216-27 Single or Multiple Awards.
- 52.216-28 Multiple Awards for Advisory and Assistance Services.
- 52.216-29 Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition With Adequate Price Competition.
- 52.216-30 Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition Without Adequate Price Competition.
- 52.216-31 Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition.
- 52.217-1 [Reserved]
- 52.217-2 Cancellation Under Multi-year Contracts.
- 52.217-3 Evaluation Exclusive of Options.
- 52.217-4 Evaluation of Options Exercised at Time of Contract Award.
- 52.217-5 Evaluation of Options.
- 52.217-6 Option for Increased Quantity.
- 52.217-7 Option for Increased Quantity—Separately Priced Line Item.
- 52.217-8 Option to Extend Services.
- 52.217-9 Option to Extend the Term of the Contract.
- 52.218 [Reserved]
- 52.219-1 Small Business Program Representations.
- 52.219-2 Equal Low Bids.
- 52.219-3 Notice of Total HUBZone Set-Aside or Sole Source Award.
- 52.219-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.
- 52.219-5 [Reserved]
- 52.219-6 Notice of Total Small Business Set-Aside.
- 52.219-7 Notice of Partial Small Business Set-Aside.
- 52.219-8 Utilization of Small Business Concerns.
- 52.219-9 Small Business Subcontracting Plan.
- 52.219-10 Incentive Subcontracting Program.
- 52.219-11 Special 8(a) Contract Conditions.
- 52.219-12 Special 8(a) Subcontract Conditions.
- 52.219-13 [Reserved]
- 52.219-14 Limitations on Subcontracting.
- 52.219-15 [Reserved]
- 52.219-16 Liquidated Damages—Subcontracting Plan.
- 52.219-17 Section 8(a) Award.
- 52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.
- 52.219-19 [Reserved]
- 52.219-20 [Reserved]
- 52.219-21 [Reserved]
- 52.219-22 Small Disadvantaged Business Status.
- 52.219-23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.
- 52.219-24 Small Disadvantaged Business Participation Program—Targets.
- 52.219-25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.
- 52.219-26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.
- 52.219-27 Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside.
- 52.219-28 Post-Award Small Business Program Rerepresentation.
- 52.219-29 Notice of Total Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns.
- 52.219-30 Notice of Total Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.
- 52.220 [Reserved]
- 52.221 [Reserved]
- 52.222-1 Notice to the Government of Labor Disputes.
- 52.222-2 Payment for Overtime Premiums.
- 52.222-3 Convict Labor.
- 52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.
- 52.222-5 Davis-Bacon Act—Secondary Site of the Work.
- 52.222-6 Davis-Bacon Act.
- 52.222-7 Withholding of Funds.
- 52.222-8 Payrolls and Basic Records.
- 52.222-9 Apprentices and Trainees.
- 52.222-10 Compliance with Copeland Act Requirements.
- 52.222-11 Subcontracts (Labor Standards).
- 52.222-12 Contract Termination—Debarment.
- 52.222-13 Compliance with Davis-Bacon and Related Act Regulations.
- 52.222-14 Disputes Concerning Labor Standards.
- 52.222-15 Certification of Eligibility.
- 52.222-16 Approval of Wage Rates.
- 52.222-17 [Reserved]
- 52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.
- 52.222-19 Child Labor—Cooperation with Authorities and Remedies.

- 52.222-20 Walsh-Healey Public Contracts Act.
- 52.222-21 Prohibition of Segregated Facilities.
- 52.222-22 Previous Contracts and Compliance Reports.
- 52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction.
- 52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation.
- 52.222-25 Affirmative Action Compliance.
- 52.222-26 Equal Opportunity.
- 52.222-27 Affirmative Action Compliance Requirements for Construction.
- 52.222-28 [Reserved]
- 52.222-29 Notification of Visa Denial.
- 52.222-30 Davis-Bacon Act—Price Adjustment (None or Separately Specified Method).
- 52.222-31 Davis-Bacon Act—Price Adjustment (Percentage Method).
- 52.222-32 Davis-Bacon Act—Price Adjustment (Actual Method).
- 52.222-33 Notice of Requirement for Project Labor Agreement.
- 52.222-34 Project Labor Agreement.
- 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.
- 52.222-36 Affirmative Action for Workers with Disabilities.
- 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.
- 52.222-38 Compliance with Veterans' Employment Reporting Requirements.
- 52.222-39 [Reserved]
- 52.222-40 Notification of Employee Rights Under the National Labor Relations Act.
- 52.222-41 Service Contract Act of 1965.
- 52.222-42 Statement of Equivalent Rates for Federal Hires.
- 52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).
- 52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.
- 52.222-45 [Reserved]
- 52.222-46 Evaluation of Compensation for Professional Employees.
- 52.222-47 [Reserved]
- 52.222-48 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.
- 52.222-49 Service Contract Act—Place of Performance Unknown.
- 52.222-50 Combating Trafficking in Persons.
- 52.222-51 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements.
- 52.222-52 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.
- 52.222-53 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements.
- 52.222-54 Employment Eligibility Verification.
- 52.223-1 Biobased Product Certification.
- 52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts.
- 52.223-3 Hazardous Material Identification and Material Safety Data.
- 52.223-4 Recovered Material Certification.
- 52.223-5 Pollution Prevention and Right-to-Know Information.
- 52.223-6 Drug-Free Workplace.
- 52.223-7 Notice of Radioactive Materials.
- 52.223-8 [Reserved]
- 52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Items.
- 52.223-10 Waste Reduction Program.
- 52.223-11 Ozone-Depleting Substances.
- 52.223-12 Refrigeration Equipment and Air Conditioners.
- 52.223-13 Certification of Toxic Chemical Release Reporting.
- 52.223-14 Toxic Chemical Release Reporting.
- 52.223-15 Energy Efficiency in Energy-Consuming Products.
- 52.223-16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.
- 52.223-17 Affirmative Procurement of EPA-designated Items in Service and Construction Contracts.
- 52.223-18 Contractor Policy to Ban Text Messaging While Driving.
- 52.224-1 Privacy Act Notification.
- 52.224-2 Privacy Act.
- 52.225-1 Buy American Act—Supplies.
- 52.225-2 Buy American Act Certificate.
- 52.225-3 Buy American Act—Free Trade Agreements—Israeli Trade Act.
- 52.225-4 Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.
- 52.225-5 Trade Agreements.
- 52.225-6 Trade Agreements Certificate.
- 52.225-7 Waiver of Buy American Act for Civil Aircraft and Related Articles.
- 52.225-8 Duty-Free Entry.
- 52.225-9 Buy American Act—Construction Materials.

(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 (APR 2011)

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

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

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

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

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

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

“Inverted domestic corporation” means a foreign incorporated entity which is treated as an inverted domestic corporation under [6 U.S.C. 395\(b\)](#), *i.e.*, a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in

[6 U.S.C. 395\(b\)](#), applied in accordance with the rules and definitions of [6 U.S.C. 395\(c\)](#).

“Manufactured end product” means any end product in Federal Supply Classes (FSC) 1000-9999, except—

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

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

“Restricted business operations” means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

- (1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;
- (2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;
- (3) Consist of providing goods or services to marginalized populations of Sudan;
- (4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;
- (5) Consist of providing goods or services that are used only to promote health or education; or
- (6) Have been voluntarily suspended.

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

(1) Means a small business concern—

- (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
- (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

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

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

“Veteran-owned 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”—

- (1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

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

(b) (1) *Annual Representations and Certifications*. Any changes provided by the offeror in paragraph (b)(2) of this provision do not automatically change the representations and

certifications posted on the Online Representations and Certifications Application (ORCA) website.

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

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

These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, 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.]

(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 repre-

sents that it is, is not a women-owned small business concern.

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

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

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

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

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

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

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

(8) *Women-owned business concern (other than small business concern).* *[Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.]* The offeror represents that it is a women-owned business concern.

(9) *Tie bid priority for labor surplus area concerns.* If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-

tier subcontractors) amount to more than 50 percent of the contract price: _____

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

(i) *General.* The offeror represents that either—

(A) 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 CCR Dynamic Small Business Search database maintained by the Small Business Administration, and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

(B) 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)(10)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture: _____.]

(11) *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 changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR Part 126; and

(ii) It is, is not a HUBZone joint venture that complies with the requirements of 13 CFR Part 126, and the

representation in paragraph (c)(11)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: _____.] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

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

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

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end prod-

ucts manufactured in the United States that do not qualify as domestic end products, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.” The terms “commercially available off-the-shelf (COTS) item” “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Supplies.”

(2) Foreign End Products:

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

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

Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, or Peruvian 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, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.”

Other Foreign End Products:

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 (or subcontractor in the case of an exempt subcontract) 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 contract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies—

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

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

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

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

- TIN: _____.
- TIN has been applied for.
- 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 _____.

(m) *Restricted business operations in Sudan.* By submission of its offer, the offeror certifies that the offeror does not conduct any restricted business operations in Sudan.

(n) *Prohibition on Contracting with Inverted Domestic Corporations.*(1) *Relation to Internal Revenue Code.* A foreign entity that is treated as an inverted domestic corporation for purposes of the Internal Revenue Code at [26 U.S.C. 7874](#) (or would be except that the inversion transactions were completed on or before March 4, 2003), is also an inverted domestic corporation for purposes of [6 U.S.C. 395](#) and for this solicitation provision (see FAR [9.108](#)).

(2) *Representation.* By submission of its offer, the offeror represents that it is not an inverted domestic corporation and is not a subsidiary of one.

(o) Sanctioned activities relating to Iran. (1) Unless a waiver is granted or an exception applies as provided in paragraph (o)(2) of this provision, by submission of its offer, the offeror certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996.

(2) The certification requirement of paragraph (o)(1) of this provision does not apply if—

(i) This solicitation includes a trade agreements certification (e.g., [52.212-3\(g\)](#)) or a comparable agency provision); and

(ii) The offeror has certified that all the offered products to be supplied are designated country end products.

(End of provision)

Alternate I (Apr 2011). As prescribed in [12.301\(b\)\(2\)](#), add the following paragraph (c)(12) to the basic provision:

(12) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(4) or (c)(10) 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 (Apr 2011). As prescribed in [12.301\(b\)\(2\)](#), add the following paragraph (c)(10)(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/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.

52.212-4 Contract Terms and Conditions—Commercial Items.

As prescribed in [12.301\(b\)\(3\)](#), insert the following clause:

CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (JUNE 2010)

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance

of nonconforming supplies or services. The Government must exercise its post-acceptance rights—

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act ([31 U.S.C. 3727](#)). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended ([41 U.S.C. 601-613](#)). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR [52.233-1](#), Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.*(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, contract line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration, or [52.232-34](#), Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.*—(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and prompt payment regulations at 5 CFR Part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

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

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.* (i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by [33.211](#) if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see [32.607-2](#)).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in [32.608-2](#) of the Federal Acquisition Regulation in effect on the date of this contract.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with [31 U.S.C. 1352](#) relating to limitations on the use of appropriated funds to influence certain Federal contracts; [18 U.S.C. 431](#) relating to officials not to benefit; [40 U.S.C. 3701](#), *et seq.*, Contract Work Hours and Safety Standards Act; [41 U.S.C. 51-58](#), Anti-Kickback Act of 1986; [41 U.S.C. 265](#) and [10 U.S.C. 2409](#) relating to whistleblower protections; [49 U.S.C. 40118](#), Fly American; and [41 U.S.C. 423](#) relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.
- (3) The clause at [52.212-5](#).
- (4) Addenda to this solicitation or contract, including any license agreements for computer software.
- (5) Solicitation provisions if this is a solicitation.
- (6) Other paragraphs of this clause.

(7) The [Standard Form 1449](#).

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) *Central Contractor Registration (CCR).* (1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

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

This page intentionally left blank.

pose. This paragraph does not give the Government any right to audit the Contractor’s records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

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

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

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS— COMMERCIAL ITEMS (APR 2011)

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

(1) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).
 Alternate I (AUG 2007) of [52.222-50](#) ([22 U.S.C. 7104\(g\)](#)).

(2) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(3) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

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

[Contracting Officer check as appropriate.]

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

(2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (APR 2010) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).

(3) [52.203-15](#), Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUNE 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

(4) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2010) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)).

(5) [52.204-11](#), American Recovery and Reinvestment Act—Reporting Requirements (JUL 2010) (Pub. L. 111-5).

(6) [52.209-6](#), Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (DEC 2010) ([31 U.S.C. 6101 note](#)). (Applies to contracts over \$30,000). (Not applicable to subcontracts for the acquisition of commercially available off-the-shelf items).

(7) [52.219-3](#), Notice of Total HUBZone Set-Aside or Sole-Source Award (JAN 2011) ([15 U.S.C. 657a](#)).

(8) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JAN 2011) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).

(9) [Reserved]

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

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

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

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

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

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

(12) [52.219-8](#), Utilization of Small Business Concerns (JAN 2011) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).

(13)(i) [52.219-9](#), Small Business Subcontracting Plan (JAN 2011) ([15 U.S.C. 637\(d\)\(4\)](#)).

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

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

(iv) Alternate III (JUL 2010) of [52.219-9](#).

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

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

(16)(i) [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (OCT 2008) ([10 U.S.C. 2323](#)) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

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

(17) [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (DEC 2010) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).

(18) [52.219-26](#), Small Disadvantaged Business Participation Program— Incentive Subcontracting Program (OCT 2000) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).

(19) [52.219-27](#), Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (MAY 2004) ([15 U.S.C. 657 f](#)).

(20) [52.219-28](#), Post Award Small Business Program Rerepresentation (APR 2009) ([15 U.S.C. 632\(a\)\(2\)](#)).

(21) [52.219-29](#) Notice of Total Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (APR 2011).

(22) [52.219-30](#) Notice of Total Set-Aside for Women-Owned Small Business (WOSB) Concerns Eligible Under the WOSB Program (APR 2011).

(23) [52.222-3](#), Convict Labor (JUNE 2003) (E.O. 11755).

(24) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (JUL 2010) (E.O. 13126).

(25) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999).

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

___ (27) [52.222-35](#), Equal Opportunity for Veterans (SEP 2010) ([38 U.S.C. 4212](#)).

___ (28) [52.222-36](#), Affirmative Action for Workers with Disabilities (OCT 2010) ([29 U.S.C. 793](#)).

___ (29) [52.222-37](#), Employment Reports on Veterans (SEP 2010) ([38 U.S.C. 4212](#)).

___ (30) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).

___ (31) [52.222-54](#), Employment Eligibility Verification (JAN 2009). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](#).)

___ (32)(i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA–Designated Items (MAY 2008) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

___ (ii) Alternate I (MAY 2008) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

___ (33) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)).

___ (34)(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](#).

___ (35) [52.223-18](#), Contractor Policy to Ban Text Messaging While Driving (SEP 2010) (E.O. 13513).

___ (36) [52.225-1](#), Buy American Act—Supplies (FEB 2009) ([41 U.S.C. 10a-10d](#)).

___ (37)(i) [52.225-3](#), Buy American Act—Free Trade Agreements—Israeli Trade Act (JUNE 2009) ([41 U.S.C. 10a-10d](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, [19 U.S.C. 3805](#) note, Pub. L. 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, and 110-138).

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

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

___ (38) [52.225-5](#), Trade Agreements (AUG 2009) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).

___ (39) [52.225-13](#), Restrictions on Certain Foreign Purchases (JUNE 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

___ (40) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (NOV 2007) ([42 U.S.C. 5150](#)).

___ (41) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) ([42 U.S.C. 5150](#)).

___ (42) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (FEB 2002) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

___ (43) [52.232-30](#), Installment Payments for Commercial Items (OCT 1995) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

___ (44) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003) ([31 U.S.C. 3332](#)).

___ (45) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999) ([31 U.S.C. 3332](#)).

___ (46) [52.232-36](#), Payment by Third Party (FEB 2010) ([31 U.S.C. 3332](#)).

___ (47) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ([5 U.S.C. 552a](#)).

___ (48)(i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).

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

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

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

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

___ (3) [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (SEP 2009) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

___ (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (SEP 2009) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

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

___ (6) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (FEB 2009) ([41 U.S.C. 351](#), *et seq.*).

___ (7) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Pub. L. 110-247).

___ (8) [52.237-11](#), Accepting and Dispensing of \$1 Coin (SEPT 2008) ([31 U.S.C. 5112\(p\)\(1\)](#)).

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

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall

have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

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

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (APR 2010) (Pub. L. 110-252, Title VI, Chapter I ([41 U.S.C. 251 note](#))).

(ii) [52.219-8](#), Utilization of Small Business Concerns (DEC 2010) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(iii) [Reserved]

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

(v) [52.222-35](#), Equal Opportunity for Veterans (SEP 2010) ([38 U.S.C. 4212](#)).

(vi) [52.222-36](#), Affirmative Action for Workers with Disabilities (OCT 2010) ([29 U.S.C. 793](#)).

(vii) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).

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

(ix) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).

____ Alternate I (AUG 2007) of [52.222-50](#) ([22 U.S.C. 7104\(g\)](#)).

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

(xi) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (FEB 2009) ([41 U.S.C. 351](#), *et seq.*).

(xii) [52.222-54](#), Employment Eligibility Verification (JAN 2009).

(xiii) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(xiv) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

Alternate I (Feb 2000). As prescribed in [12.301\(b\)\(4\)\(i\)](#), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to “paragraphs (a), (b), (c), or (d) of this clause” in the redesignated paragraph (d) to read “paragraphs (a), (b), and (c) of this clause.”

Alternate II (Dec 2010). As prescribed in [12.301\(b\)\(4\)\(ii\)](#), substitute the following paragraphs (d)(1) and (e)(1) for paragraphs (d)(1) and (e)(1) of the basic clause as follows:

(d)(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 ([5 U.S.C. App.](#)), or an authorized representative of either of the foregoing officials shall have access to and right to—

(i) Examine any of the Contractor's or any subcontractors' records that pertain to, and involve transactions relating to, this contract; and

(ii) Interview any officer or employee regarding such transactions.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), and (c), of this clause, the Contractor is not required to flow down any FAR clause in a subcontract for commercial items, other than—

(i) *Paragraph (d) of this clause*. This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (d)(1)(ii) does not flow down; and

(ii) *Those clauses listed in this paragraph (e)(1)*. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(A) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).

(B) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1553 of Pub. L. 111-5).

(C) [52.219-8](#), Utilization of Small Business Concerns (Dec 2010) ([15 U.S.C. 637\(d\)\(2\) and \(3\)](#)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

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

(E) [52.222-35](#), Equal Opportunity for Veterans (Sep 2010) ([38 U.S.C. 4212](#)).

(F) [52.222-36](#), Affirmative Action for Workers with Disabilities (Oct 2010) ([29 U.S.C. 793](#)).

(G) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).

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

(I) [52.222-50](#), Combating Trafficking in Persons (Feb 2009) ([22 U.S.C. 7104\(g\)](#)).

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

(K) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (Feb 2009) ([41 U.S.C. 351, et seq.](#)).

(L) [52.222-54](#), Employment Eligibility Verification (Jan 2009).

(M) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations. (Mar 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(N) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

52.213-1 Fast Payment Procedure.

As prescribed in [13.404](#), insert the following clause:

FAST PAYMENT PROCEDURE (MAY 2006)

(a) *General.* The Government will pay invoices based on the Contractor's delivery to a post office or common carrier (or, if shipped by other means, to the point of first receipt by the Government).

(b) *Responsibility for supplies.* (1) Title to the supplies passes to the Government upon delivery to—

(i) A post office or common carrier for shipment to the specific destination; or

(ii) The point of first receipt by the Government, if shipment is by means other than Postal Service or common carrier.

(2) Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall—

(i) Assume all responsibility and risk of loss for supplies not received at destination, damaged in transit, or not conforming to purchase requirements; and

(ii) Replace, repair, or correct those supplies promptly at the Contractor's expense, if instructed to do so by the Contracting Officer within 180 days from the date title to the supplies vests in the Government.

(c) *Preparation of invoice.* (1) Upon delivery to a post office or common carrier (or, if shipped by other means, the point of first receipt by the Government), the Contractor shall—

(i) Prepare an invoice as provided in this contract, order, or blanket purchase agreement; and

(ii) Display prominently on the invoice "FAST PAY." Invoices not prominently marked "FAST PAY" via manual or electronic means may be accepted by the payment office for fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The Contractor shall not include the cost of parcel post insurance. If transportation charges are stated separately on the invoice, the Contractor shall retain related paid freight bills or other transportation billings paid separately for a period of 3 years and shall furnish the bills to the Government upon request.

(3) If this contract, order, or blanket purchase agreement requires the preparation of a receiving report, the Contractor shall either—

(i) Submit the receiving report on the prescribed form with the invoice; or

(ii) Include the following information on the invoice:

(A) Shipment number.

(B) Mode of shipment.

(C) At line item level—

(1) National stock number and/or manufacturer's part number;

(2) Unit of measure;

(3) Ship-To Point;

(4) Mark-For Point, if in the contract; and

(5) FEDSTRIP/MILSTRIP document number, if in the contract.

(4) If this contract, order, or blanket purchase agreement does not require preparation of a receiving report on a prescribed form, the Contractor shall include on the invoice the following information at the line item level, in addition to that required in paragraph (c)(1) of this clause:

- (i) Ship-To Point.
- (ii) Mark-For Point.
- (iii) FEDSTRIP/MILSTRIP document number, if in the contract.

(5) Where a receiving report is not required, the Contractor shall include a copy of the invoice in each shipment.

(d) *Certification of invoice.* The Contractor certifies by submitting an invoice to the Government that the supplies being billed to the Government have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated by the contract, order, or blanket purchase agreement.

(e) *FAST PAY container identification.* The Contractor shall mark all outer shipping containers “FAST PAY.” When outer shipping containers are not marked “FAST PAY,” the payment office may make fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

(End of clause)

52.213-2 Invoices.

As prescribed in [13.302-5\(b\)](#), insert the following clause:

INVOICES (APR 1984)

The Contractor’s invoices must be submitted before payment can be made. The Contractor will be paid on the basis of the invoice, which must state—

- (a) The starting and ending dates of the subscription delivery; and
- (b) Either that orders have been placed in effect for the addressees required, or that the orders will be placed in effect upon receipt of payment.

(End of clause)

52.213-3 Notice to Supplier.

As prescribed in [13.302-5\(c\)](#), insert the following clause:

NOTICE TO SUPPLIER (APR 1984)

This is a firm order ONLY if your price does not exceed the maximum line item or total price in the Schedule. Submit invoices to the Contracting Officer. If you cannot perform in exact accordance with this order, WITHHOLD PERFORMANCE,

and notify the Contracting Officer immediately, giving your quotation.

(End of clause)

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

As prescribed in [13.302-5\(d\)](#), insert the following clause:

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS
(OTHER THAN COMMERCIAL ITEMS) (JAN 2011)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

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

(ii) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999) (E.O. 11246).

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

(iv) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).

(v) [52.225-13](#), Restrictions on Certain Foreign Purchases (JUNE 2008) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

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

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

(2) Listed below are additional clauses that apply:

(i) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2010) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)).

(ii) [52.232-1](#), Payments (APR 1984).

(iii) [52.232-8](#), Discounts for Prompt Payment (FEB 2002).

(iv) [52.232-11](#), Extras (APR 1984).

(v) [52.232-25](#), Prompt Payment (OCT 2008).

(vi) [52.233-1](#), Disputes (JULY 2002).

(vii) [52.244-6](#), Subcontracts for Commercial Items (JAN 2011).

(viii) [52.253-1](#), Computer Generated Forms (JAN 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

(i) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (JUL 2010) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

(ii) [52.222-20](#), Walsh-Healey Public Contracts Act (Oct 2010) ([41 U.S.C. 35-45](#)) (Applies to supply contracts over \$15,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).

(iii) [52.222-35](#), Equal Opportunity for Veterans (SEP 2010) ([38 U.S.C. 4212](#)) (applies to contracts of \$100,000 or more).

(iv) [52.222-36](#), Affirmative Action for Workers with Disabilities (Oct 2010) ([29 U.S.C. 793](#)). (Applies to contracts over \$15,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, *United States* includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

(v) [52.222-37](#), Employment Reports on Veterans (SEP 2010) ([38 U.S.C. 4212](#)) (applies to contracts of \$100,000 or more).

(vi) [52.222-41](#), Service Contract Act of 1965 (NOV 2007) ([41 U.S.C. 351](#), *et seq.*) (Applies to service contracts over \$2,500 that are subject to the Service Contract Act and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer continental shelf lands.)

(vii) [52.223-5](#), Pollution Prevention and Right-to-Know Information (AUG 2003) (E.O. 13148) (Applies to services performed on Federal facilities).

(viii) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)) (Unless exempt pursuant to [23.204](#), applies to contracts when energy-consuming products listed in the ENERGY STAR® Program or Federal Energy Management Program (FEMP) will be—

(A) Delivered;

(B) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(C) Furnished by the Contractor for use by the Government; or

(D) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.)

(ix) [52.225-1](#), Buy American Act—Supplies (FEB 2009) ([41 U.S.C. 10a-10d](#)) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a ser-

vice contract exceeds the micro-purchase threshold and the acquisition—

(A) Is set aside for small business concerns; or

(B) Cannot be set aside for small business concerns (see [19.502-2](#)), and does not exceed \$25,000).

(x) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information.)

(xi) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999). (Applies when the payment will be made by EFT and the payment office does not use the CCR database as its source of EFT information.)

(xii) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. App. 1241](#)). (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at [47.504\(d\)](#).)

(2) Listed below are additional clauses that may apply:

(i) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (DEC 2010) (Applies to contracts over \$30,000). (Not applicable to subcontracts for the acquisition of commercially available off-the-shelf items).

(ii) [52.211-17](#), Delivery of Excess Quantities (SEPT 1989) (Applies to fixed-price supplies).

(iii) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Pub. L. 110-247) (Applies to contracts greater than \$25,000 that provide for the provision, the service, or the sale of food in the United States.)

(iv) [52.247-29](#), F.o.b. Origin (FEB 2006) (Applies to supplies if delivery is f.o.b. origin).

(v) [52.247-34](#), F.o.b. Destination (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) *FAR 52.252-2, Clauses Incorporated by Reference (FEB 1998)*. This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]

(d) *Inspection/Acceptance*. The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of noncon-

forming services at no increase in contract price. The Government must exercise its postacceptance rights—

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms

of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

This page intentionally left blank.

52.217-1 [Reserved]**52.217-2 Cancellation Under Multi-year Contracts.**

As prescribed in [17.109\(a\)](#), insert the following clause:

CANCELLATION UNDER MULTI-YEAR CONTRACTS
(OCT 1997)

(a) “Cancellation,” as used in this clause, means that the Government is canceling its requirements for all supplies or services in program years subsequent to that in which notice of cancellation is provided. Cancellation shall occur by the date or within the time period specified in the Schedule, unless a later date is agreed to, if the Contracting Officer—

(1) Notifies the Contractor that funds are not available for contract performance for any subsequent program year; or

(2) Fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.

(b) Except for cancellation under this clause or termination under the Default clause, any reduction by the Contracting Officer in the requirements of this contract shall be considered a termination under the Termination for Convenience of the Government clause.

(c) If cancellation under this clause occurs, the Contractor will be paid a cancellation charge not over the cancellation ceiling specified in the Schedule as applicable at the time of cancellation.

(d) The cancellation charge will cover only—

(1) Costs—

(i) Incurred by the Contractor and/or subcontractor;

(ii) Reasonably necessary for performance of the contract; and

(iii) That would have been equitably amortized over the entire multi-year contract period but, because of the cancellation, are not so amortized; and

(2) A reasonable profit or fee on the costs.

(e) The cancellation charge shall be computed and the claim made for it as if the claim were being made under the Termination for Convenience of the Government clause of this contract. The Contractor shall submit the claim promptly but no later than 1 year from the date—

(1) Of notification of the nonavailability of funds; or

(2) Specified in the Schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless extensions in writing are granted by the Contracting Officer.

(f) The Contractor’s claim may include—

(1) Reasonable nonrecurring costs (see [Subpart 15.4](#) of the Federal Acquisition Regulation) which are applicable to and normally would have been amortized in all supplies or services which are multi-year requirements;

(2) Allocable portions of the costs of facilities acquired or established for the conduct of the work, to the extent that it is impracticable for the Contractor to use the facilities in its commercial work, and if the costs are not charged to the contract through overhead or otherwise depreciated;

(3) Costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force; and

(4) Costs not amortized solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning.

(g) The claim shall not include—

(1) Labor, material, or other expenses incurred by the Contractor or subcontractors for performance of the canceled work;

(2) Any cost already paid to the Contractor;

(3) Anticipated profit or unearned fee on the canceled work; or

(4) For service contracts, the remaining useful commercial life of facilities. “Useful commercial life” means the commercial utility of the facilities rather than their physical life with due consideration given to such factors as location of facilities, their specialized nature, and obsolescence.

(h) This contract may include an Option clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding program year. If so, the Contractor agrees not to include in option quantities any costs of a startup or nonrecurring nature that have been fully set forth in the contract. The Contractor further agrees that the option quantities will reflect only those recurring costs and a reasonable profit or fee necessary to furnish the additional option quantities.

(i) Quantities added to the original contract through the Option clause of this contract shall be included in the quantity canceled for the purpose of computing allowable cancellation charges.

(End of clause)

52.217-3 Evaluation Exclusive of Options.

As prescribed in [17.208\(a\)](#), insert a provision substantially the same as in the following in solicitations when the solicitation includes an option clause and does not include one of the provisions prescribed in [17.208\(b\)](#) or (c):

EVALUATION EXCLUSIVE OF OPTIONS (APR 1984)

The Government will evaluate offers for award purposes by including only the price for the basic requirement; *i.e.*, options will not be included in the evaluation for award purposes.

(End of provision)

52.217-4 Evaluation of Options Exercised at Time of Contract Award.

As prescribed in [17.208](#)(b), insert a provision substantially the same as the following:

EVALUATION OF OPTIONS EXERCISED AT TIME OF CONTRACT AWARD (JUNE 1988)

Except when it is determined in accordance with FAR [17.206](#)(b) not to be in the Government's best interests, the Government will evaluate the total price for the basic requirement together with any option(s) exercised at the time of award.

(End of provision)

52.217-5 Evaluation of Options.

As prescribed in [17.208](#)(c), insert a provision substantially the same as the following:

EVALUATION OF OPTIONS (JULY 1990)

Except when it is determined in accordance with FAR [17.206](#)(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

(End of provision)

52.217-6 Option for Increased Quantity.

As prescribed in [17.208](#)(d), insert a clause substantially the same as the following:

OPTION FOR INCREASED QUANTITY (MAR 1989)

The Government may increase the quantity of supplies called for in the Schedule at the unit price specified. The Contracting Officer may exercise the option by written notice to the Contractor within [*insert in the clause the period of time in which the Contracting Officer has to exercise the option*]. Delivery of the added items shall continue at the same rate as the like items called for under the contract, unless the parties otherwise agree.

(End of clause)

52.217-7 Option for Increased Quantity—Separately Priced Line Item.

As prescribed in [17.208](#)(e), insert a clause substantially the same as the following:

OPTION FOR INCREASED QUANTITY—SEPARATELY PRICED LINE ITEM (MAR 1989)

The Government may require the delivery of the numbered line item, identified in the Schedule as an option item, in the quantity and at the price stated in the Schedule. The Contract-

ing Officer may exercise the option by written notice to the Contractor within [*insert in the clause the period of time in which the Contracting Officer has to exercise the option*]. Delivery of added items shall continue at the same rate that like items are called for under the contract, unless the parties otherwise agree.

(End of clause)

52.217-8 Option to Extend Services.

As prescribed in [17.208](#)(f), insert a clause substantially the same as the following:

OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within _____ [*insert the period of time within which the Contracting Officer may exercise the option*].

(End of clause)

52.217-9 Option to Extend the Term of the Contract.

As prescribed in [17.208](#)(g), insert a clause substantially the same as the following:

OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within _____ [*insert the period of time within which the Contracting Officer may exercise the option*]; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least _____ days [*60 days unless a different number of days is inserted*] before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed _____ (months) (years).

(End of clause)

52.218 [Reserved]**52.219-1 Small Business Program Representations.**

As prescribed in [19.309](#)(a)(1), insert the following provision:

SMALL BUSINESS PROGRAM REPRESENTATIONS
(APR 2011)

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

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

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

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

(2) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(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.

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

(4) Women-owned small business (WOSB) concern eligible under the WOSB Program. [Complete only if the offeror represented itself as a women-owned small business concern in paragraph (b)(3) of this provision.] The offeror represents as part of its offer that—

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

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (b)(4)(i) of this provision is accurate in reference to the WOSB concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the WOSB concern or concerns that are participating in the joint venture: _____.] Each WOSB concern participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(5) Economically disadvantaged women-owned small business (EDWOSB) concern. [Complete only if the offeror represented itself as a women-owned small business concern eligible under the WOSB Program in (b)(4) of this provision.] The offeror represents as part of its offer that—

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

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (b)(5)(i) of this provision is accurate in reference to the EDWOSB concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the EDWOSB concern or concerns that are participating in the joint venture: _____.] Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

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

(7) [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(6) of this provision.] The offeror represents as part of its offer that it is, is not a service-disabled veteran-owned small business concern.

(8) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(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 changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR Part 126; and

(ii) It is, is not a HUBZone joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (b)(8)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: _____.] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

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

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

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

(1) Means a small business concern—

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

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

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

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

“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.

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

(d) *Notice.* (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under [15 U.S.C. 645\(d\)](#), any person who misrepresents a firm’s status as a business concern that is small, HUB-Zone small, small disadvantaged, service-disabled veteran-owned small, economically disadvantaged women-owned small, or women-owned small eligible under the WOSB Program in order to obtain a contract to be awarded under the preference programs established pursuant to section 8, 9, 15, 31, and 36 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall—

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(End of provision)

Alternate I (APR 2011). As prescribed in [19.309\(a\)\(2\)](#), add the following paragraph (b)(9) to the basic provision:

(9) [*Complete if offeror represented itself as disadvantaged in paragraph (b)(2) 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.

52.219-2 Equal Low Bids.

As prescribed in [19.309\(c\)](#), insert the following provision:

EQUAL LOW BIDS (OCT 1995)

(a) This provision applies to small business concerns only.

(b) The bidder’s status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

(c) Failure to identify the labor surplus areas as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

(End of provision)

52.219-3 Notice of Total HUBZone Set-Aside or Sole Source Award.

As prescribed in [19.1309\(a\)](#), insert the following clause:

NOTICE OF TOTAL HUBZONE SET-ASIDE OR SOLE
SOURCE AWARD (JAN 2011)

(a) *Definitions.* See 13 CFR 125.6(e) for definitions of terms used in paragraph (c).

(b) *General.* (1) Offers are solicited only from HUBZone small business concerns. Offers received from concerns that are not HUBZone small business concerns will not be considered.

(2) Any award resulting from this solicitation will be made to a HUBZone small business concern.

(c) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) *General construction.* (i) At least 15 percent of the cost of contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees or on a combination of the HUBZone prime contractor's employees and employees of HUBZone small business concern subcontractors; and

(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns; or

(4) *Construction by special trade contractors.* (i) At least 25 percent of the cost of contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees or on a combination of the HUBZone prime contractor's employees and employees of HUBZone small business concern subcontractors;

(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns.

(d) A HUBZone joint venture agrees that, in the performance of the contract, the applicable percentage specified in

paragraph (c) of this clause will be performed by the aggregate of the HUBZone small business participants.

(e)(1) When the total value of the contract exceeds \$25,000, a HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business concern manufacturers.

(2) When the total value of the contract is equal to or less than \$25,000, a HUBZone small business concern nonmanufacturer may provide end items manufactured by other than a HUBZone small business concern manufacturer provided the end items are produced or manufactured in the United States.

(3) Paragraphs (e)(1) and (e)(2) of this section do not apply in connection with construction or service contracts.

(f) *Notice.* The HUBZone small business offeror acknowledges that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this contract. The HUBZone offeror shall provide the Contracting Officer a copy of the notice required by 13 CFR 126.501 if material changes occur before contract award that could affect its HUBZone eligibility. If the apparently successful HUBZone offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will proceed to award to the next otherwise successful HUBZone small business concern or other offeror.

(End of clause)

Alternate 1 (Jan 2011). As prescribed in [19.1309\(a\)\(1\)](#), substitute the following paragraphs (c)(3) and (c)(4) for paragraphs (c)(3) and (c)(4) of the basic clause:

(c)(3) General construction, at least 15 percent of the cost of the contract performance to be incurred for personnel will be spent on the concern's employees; or

(c)(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance to be incurred for personnel will be spent on the concern's employees.

52.219-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.

As prescribed in [19.1309\(b\)](#), insert the following clause:

NOTICE OF PRICE EVALUATION PREFERENCE FOR
HUBZONE SMALL BUSINESS CONCERNS (JAN 2011)

(a) *Definitions.* See 13 CFR 125.6(e) for definitions of terms used in paragraph (d).

(b) *Evaluation preference.* (1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference; and

(ii) Otherwise successful offers from small business concerns.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause [52.219-23](#)). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer. These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

(4) When the two highest rated offerors are a HUBZone small business concern and a large business, and the evaluated offer of the HUBZone small business concern is equal to the evaluated offer of the large business after considering the price evaluation preference, award will be made to the HUBZone small business concern.

(c) *Waiver of evaluation preference.* A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraphs (d) and (e) of this clause do not apply if the offeror has waived the evaluation preference.

☐ Offeror elects to waive the evaluation preference.

(d) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) *General construction.* (i) At least 15 percent of the cost of contract performance to be incurred for personnel will be spent on the prime contractor's employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the prime contractor's employees or on a combination of the prime contractor's employees and employees of HUBZone small business concern subcontractors;

(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns; or

(4) *Construction by special trade contractors.* (i) At least 25 percent of the cost of contract performance to be

incurred for personnel will be spent on the prime contractor's employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the prime contractor's employees or on a combination of the prime contractor's employees and employees of HUBZone small business concern subcontractors;

(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns.

(e) A HUBZone joint venture agrees that the aggregate of the HUBZone small business concerns to the joint venture, not each concern separately, will perform the applicable percentage of work requirements.

(f)(1) When the total value of the contract exceeds \$25,000, a HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business concern manufacturers.

(2) When the total value of the contract is equal to or less than \$25,000, a HUBZone small business concern nonmanufacturer may provide end items manufactured by other than a HUBZone small business concern manufacturer provided the end items are produced or manufactured in the United States.

(3) Paragraphs (f)(1) and (f)(2) of this section do not apply in connection with construction or service contracts.

(g) *Notice.* The HUBZone small business offeror acknowledges that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this contract. The HUBZone offeror shall provide the Contracting Officer a copy of the notice required by 13 CFR 126.501 if material changes occur before contract award that could affect its HUBZone eligibility. If the apparently successful HUBZone offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will proceed to award to the next otherwise successful HUBZone small business concern or other offeror.

(End of clause)

Alternate 1 (Jan 2011). As prescribed in [19.1309\(b\)\(1\)](#), substitute the following paragraphs (d)(3) and (d)(4) for paragraphs (d)(3) and (d)(4) of the basic clause:

(3) General construction, at least 15 percent of the cost of the contract performance to be incurred for personnel will be spent on the concern's employees; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance to be incurred for personnel will be spent on the concern's employees.

52.219-5 [Reserved]

52.219-6 Notice of Total Small Business Set-Aside.

As prescribed in [19.508\(c\)](#), insert the following clause:

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE
(JUNE 2003)

(a) *Definition.* “Small business concern,” as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) *General.* (1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

(c) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(End of clause)

Alternate I (Oct 1995). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with [19.502-2\(c\)](#), delete paragraph (c).

Alternate II (Mar 2004). As prescribed in [19.508\(c\)](#), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) *General.* (1) Offers are solicited only from small business concerns and Federal Prison Industries, Inc. (FPI). Offers received from concerns that are not small business concerns or FPI shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to either a small business concern or FPI.

52.219-7 Notice of Partial Small Business Set-Aside.

As prescribed in [19.508\(d\)](#), insert the following clause:

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE
(JUNE 2003)

(a) *Definitions.* “Small business concern,” as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) *General.* (1) A portion of this requirement, identified elsewhere in this solicitation, has been set aside for award to one or more small business concerns.

(2) Offers on the non-set-aside portion will be evaluated first and award will be made on that portion in accordance with the provisions of this solicitation.

(3) The set-aside portion will be awarded at the highest unit price(s) in the contract(s) for the non-set-aside portion, adjusted to reflect transportation and other costs appropriate for the selected contractor(s).

(4) The contractor(s) for the set-aside portion will be selected from among the small business concerns that submitted responsive offers on the non-set-aside portion. Negotiations will be conducted with the concern that submitted the lowest responsive offer on the non-set-aside portion. If the negotiations are not successful or if only part of the set-aside portion is awarded to that concern, negotiations will be conducted with the concern that submitted the second-lowest responsive offer on the non-set-aside portion. This process will continue until a contract or contracts are awarded for the entire set-aside portion.

(5) The Government reserves the right to not consider token offers or offers designed to secure an unfair advantage over other offerors eligible for the set-aside portion.

(c) *Agreement.* For the set-aside portion of the acquisition, a small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(End of clause)

Alternate I (Oct 1995). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with [19.502-2\(c\)](#), delete paragraph (c).

Alternate II (Mar 2004). As prescribed in [19.508\(d\)](#), add the following paragraph (d) to the basic clause:

(d) Notwithstanding paragraph (b) of this clause, offers from Federal Prison Industries, Inc., will be solicited and considered for both the set-aside and non-set-aside portion of this requirement.

52.219-8 Utilization of Small Business Concerns.

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

UTILIZATION OF SMALL BUSINESS CONCERNS (JAN 2011)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business con-

cerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) *Definitions.* As used in this contract—

“HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

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

(1) Means a small business concern—

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

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

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

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

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

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

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

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

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the CCR Dynamic Small Business Search database maintained by the Small Business Administration, or

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

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

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

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

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

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

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

(d)(1) 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 small disadvantaged business concern, or a women-owned small business concern.

(2) 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 small business database search application web page at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm; or <http://www.sba.gov/hubzone>;

(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; or

(iii) The SBA HUBZone Help Desk at hubzone@sba.gov.

(End of clause)

52.219-9 Small Business Subcontracting Plan.

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

SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2011)

(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 \$650,000 (\$1.5 million 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 (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), 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 offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; 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 subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, 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, HUB-Zone 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, HUB-Zone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, 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 sub-

contractor. 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, HUB-Zone 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, HUB-Zone 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.

(6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.

(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 Contractor

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. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan.

(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 \$650,000 (over \$1.5 million 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 unless stated otherwise in the contract.

(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). As prescribed in 19.708(b)(1)(i), 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)(ii), 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, HUBZone 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 time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

Alternate III (July 2010). As prescribed in 19.708(b)(1)(iii), substitute the following paragraphs (d)(10) and (l) for paragraphs (d)(10) and (l) in the basic clause;

(d)(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 Standard Form (SF) 294 Subcontracting Report for Individual Contract in accordance with paragraph (l) of this clause. Submit 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 (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), 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; and

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the SF 294 in accordance with paragraph (l) of this clause. Ensure that its subcontractors with subcontracting plans agree to submit the SSR in accordance with paragraph (l) of this clause using the eSRS.

(l) *The Contractor shall submit a SF 294.* The Contractor shall submit 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. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *SF 294.* This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan. For prime contractors the report shall be submitted to the contracting officer, or as specified elsewhere in this contract. In the case of a subcontract with a subcontracting plan, the report shall be submitted to the entity that awarded the subcontract.

(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.

(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 the eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(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.

(3) That payments to be made under the contract will be made directly to the subcontractor by the contracting activity.

(4) To notify the _____ [insert name of contracting agency] Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

(5) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the cognizant Contracting Officer under the “Disputes” clause of the subcontract.

(b) The offeror/subcontractor agrees and acknowledges that it will, for and on behalf of the SBA, fulfill and perform all of the requirements of the contract.

(c) The offeror/subcontractor agrees that it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the cognizant Contracting Officer of the _____ [insert name of contracting agency].

(End of clause)

52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.

As prescribed in [19.811-3\(d\)](#), insert the following clause:

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS (JUNE 2003)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA’s 8(a) Program and which meet the following criteria at the time of submission of offer—

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)(1) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(2) The _____ [insert name of SBA's contractor] will notify the _____ [insert name of contracting agency] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

Alternate I (Apr 2005). If the competition is to be limited to 8(a) concerns within one or more specific SBA regions or districts, add the following paragraph (a)(3) to paragraph (a) of the clause:

(3) The offeror’s approved business plan is on the file and serviced by _____ [Contracting Officer completes by inserting the appropriate SBA District and/or Regional Office(s) as identified by the SBA].

Alternate II (Dec 1996). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with [19.502-2\(c\)](#), delete paragraph (d)(1).

52.219-19 [Reserved]

52.219-20 [Reserved]

52.219-21 [Reserved]

52.219-22 Small Disadvantaged Business Status.

As prescribed in [19.309\(b\)](#), insert the following provision:

SMALL DISADVANTAGED BUSINESS STATUS (OCT 1999)

(a) *General.* This provision is used to assess an offeror’s small disadvantaged business status for the purpose of obtaining a benefit on this solicitation. Status as a small business and status as a small disadvantaged business for general statistical purposes is covered by the provision at FAR [52.219-1](#), Small Business Program Representation.

(b) *Representations.* (1) *General.* The offeror represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition; and either—

[] (i) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B; and

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

(B) 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

(C) 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); or

[] (ii) 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 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.

(2) *For Joint Ventures.* The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements at 13 CFR 124.1002(f) and that the representation in paragraph (b)(1) 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: _____.*]

(c) *Penalties and Remedies.* Anyone who misrepresents any aspects of the disadvantaged status of a concern for the purposes of securing a contract or subcontract shall—

(1) Be punished by imposition of a fine, imprisonment, or both;

(2) Be subject to administrative remedies, including suspension and debarment; and

(3) Be ineligible for participation in programs conducted under the authority of the Small Business Act.

(End of provision)

Alternate I (Apr 2011). As prescribed in 19.309(b), add the following paragraph (b)(3) to the basic provision:

(3) *Address.* The offeror represents that its address is, is not in a region for which a small disadvantaged business procurement mechanism is authorized and its address has not changed since its certification as a small disadvantaged business concern or submission of its application for certification. The list of authorized small disadvantaged business procurement mechanisms and regions is posted at <http://www.arnet.gov/References/sdbadjustments.htm>. The offeror shall use the list in effect on the date of this solicitation. “Address,” as used in this provision, means the address of the offeror as listed on the Small Business Administration’s register of small disadvantaged business concerns or the address on the completed application that the concern has submitted to the Small Business Administration or a Private Certifier in accordance with 13 CFR Part 124, subpart B. For joint ventures, “address” refers to the address of the small disadvantaged business concern that is participating in the joint venture.

52.219-23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

As prescribed in 19.1104, insert the following clause:

NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS (OCT 2008)

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

“Historically black college or university” means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense (DoD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

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

“Small disadvantaged business concern” means an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition; and either—

(1) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR Part 124, subpart B; and

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

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

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

(2) It has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR Part 124, subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted. In this case, in order to receive the benefit of a price evaluation adjustment, an offeror must receive certification as a small disadvantaged business concern by the Small Business Administration prior to contract award; or

(3) Is a joint venture as defined in 13 CFR 124.1002(f).

(b) *Evaluation adjustment.* (1) The Contracting Officer will evaluate offers by adding a factor of ____ [*Contracting Officer insert the percentage*] percent to the price of all offers, except—

(i) Offers from small disadvantaged business concerns that have not waived the adjustment; and

(ii) An otherwise successful offer from a historically black college or university or minority institution.

(2) The Contracting Officer will apply the factor to a line item or a group of line items on which award may be made. The Contracting Officer will apply other evaluation factors described in the solicitation before application of the

52.219-26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.

As prescribed in [19.1204](#)(c), insert a clause substantially the same as the following:

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—INCENTIVE SUBCONTRACTING (OCT 2000)

(a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its offer to try to award a certain amount to small disadvantaged business concerns in the North American Industry Classification System (NAICS) Industry Subsectors as determined by the Department of Commerce.

(b) If the Contractor exceeds its total monetary target for subcontracting to small disadvantaged business concerns in the authorized, NAICS Industry Subsectors, it will receive _____ [*Contracting Officer to insert the appropriate number between 0 and 10*] percent of the dollars in excess of the monetary target, unless the Contracting Officer determines that the excess was not due to the Contractor's efforts (e.g., a subcontractor cost overrun caused the actual subcontract amount to exceed that estimated in the offer, or the excess was caused by the award of subcontracts that had been planned but had not been disclosed in the offer during contract negotiations). Determinations made under this paragraph are unilateral decisions made solely at the discretion of the Government.

(c) If this is a cost-plus-fixed-fee contract, the sum of the fixed fee and the incentive fee earned under this contract may not exceed the limitations in subsection [15.404-4](#) of the Federal Acquisition Regulation.

(End of clause)

52.219-27 Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside.

As prescribed in [19.1407](#), insert the following clause:

NOTICE OF TOTAL SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS SET-ASIDE (MAY 2004)

(a) *Definition.* “Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

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

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

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

(b) *General.* (1) Offers are solicited only from service-disabled veteran-owned small business concerns. Offers received from concerns that are not service-disabled veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation will be made to a service-disabled veteran-owned small business concern.

(c) *Agreement.* A service-disabled veteran-owned small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other service-disabled veteran-owned small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other service-disabled veteran-owned small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other service-disabled veteran-owned small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other service-disabled veteran-owned small business concerns.

(d) A joint venture may be considered a service-disabled veteran owned small business concern if—

(1) At least one member of the joint venture is a service-disabled veteran-owned small business concern, and makes the following representations: That it is a service-disabled veteran-owned small business concern, and that it is a small business concern under the North American Industry Classification Systems (NAICS) code assigned to the procurement;

(2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement; and

(3) The joint venture meets the requirements of paragraph 7 of the explanation of Affiliates in [19.101](#) of the Federal Acquisition Regulation.

(4) The joint venture meets the requirements of 13 CFR 125.15(b)

(e) Any service-disabled veteran-owned small business concern (nonmanufacturer) must meet the requirements in

[19.102](#)(f) of the Federal Acquisition Regulation to receive a benefit under this program.

(End of clause)

52.219-28 Post-Award Small Business Program

Rerepresentation.

As prescribed in [19.309](#)(d), insert the following clause:

POST-AWARD SMALL BUSINESS PROGRAM
REREPRESENTATION (APR 2009)

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

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at [52.217-8](#), Option to Extend Services, or other appropriate authority.

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 the size standard in paragraph (c) of this clause. Such a concern is “not dominant in its field of operation” when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts—

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at <http://www.sba.gov/services/contractingopportunities/sizestandardsttopics/>.

(d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(e) Except as provided in paragraph (g) of this clause, the Contractor shall make the rerepresentation required by paragraph (b) of this clause by validating or updating all its representations in the Online Representations and Certifications Application and its data in the Central Contractor Registration, as necessary, to ensure that they reflect the Contractor’s current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause that the data have been validated or updated, and provide the date of the validation or update.

(f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.

(g) If the Contractor does not have representations and certifications in ORCA, or does not have a representation in ORCA for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

The Contractor represents that it is, is not a small business concern under NAICS Code _____ assigned to contract number _____.

[Contractor to sign and date and insert authorized signer’s name and title].

(End of clause)

52.219-29 Notice of Total Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns.

As prescribed in [19.1506](#), insert the following clause:

NOTICE OF TOTAL SET-ASIDE FOR ECONOMICALLY
DISADVANTAGED WOMEN-OWNED SMALL BUSINESS
(EDWOSB) CONCERNS (APR 2011)

(a) *Definitions.* “Economically disadvantaged women-owned small business (EDWOSB) concern” means—

A small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are eco-

nominically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business (WOSB) concern eligible under the WOSB Program.

“WOSB Program Repository” means a secure, Web-based application that collects, stores, and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under the WOSB Program.

(b) *General.* (1) Offers are solicited only from EDWOSB concerns. Offers received from concerns that are not EDWOSB concerns will not be considered.

(2) Any award resulting from this solicitation will be made to an EDWOSB concern.

(3) The contracting officer will ensure that the EDWOSB concern has provided all required documents to the WOSB Program Repository. The contract will not be awarded until all required documents are received.

(c) *Agreement.* An EDWOSB concern agrees that in the performance of the contract for—

(1) Services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees;

(2) Services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees;

(3) General construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials); and

(4) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including the cost of materials).

(d) *Joint Venture.* A joint venture may be considered an EDWOSB concern if—

(1) It meets the applicable size standard corresponding to the NAICS code assigned to the contract, unless an exception to affiliation applies pursuant to 13 CFR 121.103(h)(3);

(2) The EDWOSB participant of the joint venture is designated in the Central Contractor Registration (CCR) database and the Online Representations and Certifications Application (ORCA) as an EDWOSB concern;

(3) The parties to the joint venture have entered into a written joint venture agreement that contains provisions—

(i) Setting forth the purpose of the joint venture;

(ii) Designating an EDWOSB concern as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for the performance of the contract;

(iii) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the EDWOSB;

(iv) Specifying the responsibilities of the parties with regard to contract performance, sources of labor, and negotiation of the EDWOSB contract; and

(v) Requiring the final original records be retained by the managing venturer upon completion of the EDWOSB contract performed by the joint venture.

(4) The joint venture performs the applicable percentage of work required in accordance with paragraph (c) above; and

(5) The procuring activity executes the contract in the name of the EDWOSB or joint venture.

(e) *Nonmanufacturer.* An EDWOSB that is a non-manufacturer, as defined in 13 CFR 121.406(b) or 19.102(f), may submit an offer on an EDWOSB requirement with a NAICS code for supplies, if it meets the requirements under the non-manufacturer rule set forth in those regulations.

(End of clause)

52.219-30 Notice of Total Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.

As prescribed in 19.1506, insert the following clause:

NOTICE OF TOTAL SET-ASIDE FOR WOMEN-OWNED SMALL BUSINESS CONCERNS ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM (APR 2011)

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

“WOSB Program Repository” means a secure, Web-based application that collects, stores, and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under the WOSB Program.

(b) *General.* (1) Offers are solicited only from WOSBs. Offers received from concerns that are not WOSBs shall not be considered.

(2) Any award resulting from this solicitation will be made to a WOSB.

(3) The contracting officer will ensure that the WOSB has provided the required documents to the WOSB Program Repository. The contract shall not be awarded until all required documents are received.

(c) *Agreement.* A WOSB agrees that in the performance of the contract for—

(1) Services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees;

(2) Supplies or products (other than procurement from a non-manufacturer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials);

(3) General construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials); and

(4) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including cost of materials).

(d) *Joint Venture*. A joint venture may be considered a WOSB if—

(1) It meets the applicable size standard corresponding to the NAICS code assigned to the contract, unless an exception to affiliation applies pursuant to 13 CFR 121.103(h)(3);

(2) The WOSB participant of the joint venture is designated in the Central Contractor Registration (CCR) database and the Online Representations and Certifications Application (ORCA) as a WOSB concern;

(3) The parties to the joint venture have entered into a written joint venture agreement that contains provisions—

(i) Setting forth the purpose of the joint venture;

(ii) Designating a WOSB as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for the performance of the contract;

(iii) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the WOSB;

(iv) Specifying the responsibilities of the parties with regard to contract performance, sources of labor, and negotiation of the WOSB contract; and

(v) Requiring the final original records be retained by the managing venturer upon completion of the WOSB contract performed by the joint venture.

(4) The joint venture must perform the applicable percentage of work required in accordance with paragraph (c) above; and

(5) The procuring activity executes the contract in the name of the WOSB or joint venture.

(e) *Nonmanufacturer*. A WOSB that is a non-manufacturer, as defined in 13 CFR 121.406(b) or [19.102\(f\)](#), may submit an offer on a WOSB requirement with a NAICS code for supplies, if it meets the requirements under the non-manufacturer rule set forth in those regulations.

(End of clause)

52.220 [Reserved]

52.221 [Reserved]

FAC 2005-51 APRIL 1, 2011

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																					
					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			
52.219-26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.	19.1204(c)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O			
52.219-27 Notice of Total Service-Disabled Veteran-Owned Small Business Set Aside.	19.1407	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			
52.219-28 Post-Award Small Business Program Rerepresentation.	19.309(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.219-29 Notice of Total Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns.	19.1506(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.219-30 Notice of Total Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.	19.1506(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-1 Notice to the Government of Labor Disputes.	22.103-5(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-2 Payment for Overtime Premiums.	22.103-5(b)	C	Yes	I		A																				
52.222-3 Convict Labor.	22.202	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.	22.305	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-5 Davis-Bacon Act—Secondary Site of the Work.	22.407(h)	P	No	L																						
52.222-6 Davis-Bacon Act.	22.407(a)	C	Yes	I																						
52.222-7 Withholding of Funds.	22.407(a)	C	Yes	I																						
52.222-8 Payrolls and Basic Records.	22.407(a)	C	Yes	I																						
52.222-9 Apprentices and Trainees.	22.407(a)	C	Yes	I																						
52.222-10 Compliance with Copeland Act Requirements.	22.407(a)	C	Yes	I																						
52.222-11 Subcontracts (Labor Standards).	22.407(a)	C	Yes	I																						
52.222-12 Contract Termination—Debarment.	22.407(a)	C	Yes	I																						
52.222-13 Compliance with Davis-Bacon and Related Act Regulations.	22.407(a)	C	Yes	I																						
52.222-14 Disputes Concerning Labor Standards.	22.407(a)	C	Yes	I																						
52.222-15 Certification of Eligibility.	22.407(a)	C	Yes	I																						
52.222-16 Approval of Wage Rates.	22.407(b)	C	Yes	I																						

PROVISION OR CLAUSE	PRESCRIBED IN	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
52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.	22.1505(a)	P	No	K	A	A													A		A		A
52.222-19 Child Labor—Cooperation with Authorities and Remedies.	22.1505(b)	C	Yes	I	A	A													A		A		A
52.222-20 Walsh-Healey Public Contracts Act.	22.610	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.222-21 Prohibition of Segregated Facilities.	22.810(a)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.222-22 Previous Contracts and Compliance Reports.	22.810(a)(2)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction.	22.810(b)	P	Yes						A														
52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation.	22.810(c)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.222-25 Affirmative Action Compliance.	22.810(d)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.222-26 Equal Opportunity.	22.810(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
Alternate I	22.810(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.222-27 Affirmative Action Compliance Requirements for Construction.	22.810(f)	C	Yes						A														
52.222-29 Notification of Visa Denial.	22.810(g)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.222-30 Davis-Bacon Act—Price Adjustment (None or Separately Specified Method).	22.407(e)	C							A														
52.222-31 Davis Bacon Act—Price Adjustment (Percentage Method).	22.407(f)	C							A														
52.222-32 Davis-Bacon Act—Price Adjustment (Actual Method).	22.407(g)	C							A														
52.222-33 Notice of Requirement for Project Labor Agreement.	22.505(a)(1)	P	Yes						A														
Alternate I	22.505(a)(1)	P	Yes						A														
Alternate II	22.505(a)(2)	P	Yes						A														
52.222-34 Project Labor Agreement.	22.505(b)(1)	C	Yes						A														
Alternate I	22.505(b)(2)	C	Yes						A														
52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.	22.1310(A)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
Alternate I	22.1310(a)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A

PROVISION OR CLAUSE	PRESCRIBED IN	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
52.222-36 Affirmative Action for Workers with Disabilities.	22.1408(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	22.1408(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.	22.1310(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-38 Compliance with Veterans' Employment Reporting Requirements.	22.1310(c)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-40 Notification of Employee Rights Under the National Labor Relations Act.	22.1605	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-41 Service Contract Act of 1965.	22.1006(a)	C	Yes	I					A	A			A		A	A	A				A		
52.222-42 Statement of Equivalent Rates for Federal Hires.	22.1006(b)	C	No	I					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		
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		
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	
52.222-49 Service Contract Act—Place of Performance Unknown.	22.1006(f)	C	Yes	I					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	
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	
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	
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	
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	
52.222-54 Employment Eligibility Verification	22.1803	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.223-1 Biobased Product Certification.	23.406(a)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	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

PROVISION OR CLAUSE	PRESCRIBED IN	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
52.223-3 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	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	
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	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	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	A
52.223-10 Waste Reduction Program.	23.706(a)	C	Yes	I					A						A								
52.223-11 Ozone-Depleting Substances.	23.804(a)	C	No	I	A																	A	
52.223-12 Refrigeration Equipment and Air Conditioners.	23.804(b)	C	Yes	I					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	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	R	R
52.223-15 Energy Efficiency in Energy-Consuming Products.	23.206	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	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	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	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								
52.223-18 Contractor Policy to Ban Text Messaging While Driving	23.1105	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.224-1 Privacy Act Notification.	24.104(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	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	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	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	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	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	25.1101(b)(1)(ii)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	25.1101(b)(1)(iii)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

PROVISION OR CLAUSE	PRESCRIBED IN	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
52.225-4 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		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
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		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
52.225-20 Prohibition on Conducting Restricted Business Operations in Sudan—Certification.	25.1103(d)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-21 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials. ✓	25.1102(e)(1)	C	No						A	A													

PROVISION OR CLAUSE	PRESCRIBED IN	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
52.225-22 Notice of Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials. ✓	25.1102(e)(1)	P	No								A	A											
Alternate I	25.1102(e)(1)	P	No								A	A											
52.225-23 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements. ✓	25.1102(e)(1)	C	No								A	A											
Alternate I	25.1102(e)(1)	C	No								A	A											
52.225-24 Notice of Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements. ✓	25.1102(e)(1)	P	No								A	A											
Alternate I	25.1102(e)(1)	P	No								A	A											
Alternate II	25.1102(e)(1)	P	No								A	A											
52.225-25 Prohibition on Engaging in Sanctioned Activities Relating to Iran—Certification	25.1103	P	Yes	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
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	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	A	A	A	A	A	A	A	A	A
52.226-3 Disaster or Emergency Area Representation.	26.206(a)	P	No	K	A	A	A	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.	26.206(b)	C	Yes	I	A	A	A	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.	26.206(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.226-6 Promoting Excess Food Donation to Nonprofit Organizations.	26.404	C	Yes	I	A	A	A	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	A	A	A	A	A	A	A	A	A
Alternate I	27.201-2(a)(2)	C	Yes	I			A	A			A	A											
Alternate II	27.201-2(a)(3)	C	Yes	I			A	A			A	A											
52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.	27.201-2(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

PROVISION OR CLAUSE	PRESCRIBED IN	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				
Alternate III	27.201-2(c)(3)	C	Yes	I																	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	A				
52.227-6 Royalty Information.	27.202-5(a)(1)	P	No	K	A	A	A	A	A	A	A	A				A		A	A				
Alternate I	27.202-5(a)(2)	P	No	K														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				
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	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	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	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	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	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	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	
52.227-16 Additional Data Requirements.	27.409(d)	C	Yes	I			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	A	A	A	A	A	A	A	A	

PROVISION OR CLAUSE	PRESCRIBED IN	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
52.227-18 Rights in Data—Existing Works.	27.409(f)	C	Yes	I	A	A	A	A	A	A			A		A		A		A				
52.227-19 Commercial Computer Software License.	27.409(g)	C	Yes	I	A				A						A						A		
52.227-20 Rights in Data—SBIR Program.	27.409(h)	C	Yes	I			A																
52.227-21 Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.	27.409(i)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.227-22 Major System—Minimum Rights.	27.409(k)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.227-23 Rights to Proposal Data (Technical).	27.409(l)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
28.101-2 Bid Guarantee.		P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.228-2 Additional Bond Security.	28.106-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.228-3 Workers' Compensation Insurance (Defense Base Act).	28.309(a)	C	Yes	I					A	A	A	A	A										
52.228-4 Workers' Compensation and War-Hazard Insurance Overseas.	28.309(b)	C	Yes	I					A	A	A	A	A										
52.228-5 Insurance—Work on a Government Installation.	28.310	C	Yes	I	A		A		A		A			A	A	A	A	A	A	A			
52.228-7 Insurance—Liability to Third Persons.	28.311-1	C	Yes	I			A			A								A					
52.228-8 Liability and Insurance—Leased Motor Vehicles.	28.312	C	Yes	I										R								A	
52.228-9 Cargo Insurance.	28.313(a)	C	Yes	I																			
52.228-10 Vehicular and General Public Liability Insurance.	28.313(b)	C	Yes	I																			
52.228-11 Pledges of Assets.	28.203-6	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.228-12 Prospective Subcontractor Requests for Bonds.	28.106-4(b)	C	Yes	I					A		A					A							
52.228-13 Alternative Payment Protections.	28.102-3(b)	C	Yes	I					A		A					A							
52.228-14 Irrevocable Letter of Credit.	28.204-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.228-15 Performance and Payment Bonds—Construction.	28.102-3(a)	C	Yes	I							A					A							
52.228-16 Performance and Payment Bonds—Other Than Construction.	28.103-4	C	No	I	A	A	A	A	A	A													
Alternate I	28.103-4	C	No	I	A	A	A	A	A	A													
52.229-1 State and Local Taxes.	29.401-1	C	Yes	I																			

PROVISION OR CLAUSE	PRESCRIBED IN	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
52.229-2 North Carolina State and Local Sales and Use Tax.	29.401-2	C	Yes	I							A	A											
Alternate 1	29.401-2	C	Yes	I					A	A													
52.229-3 Federal, State, and Local Taxes.	29.401-3	C	Yes	I	A		A		A	A			A	A	A	A	A	A	A	A			
52.229-4 Federal, State, and Local Taxes (State and Local Adjustments).	29.401-3	C	Yes	I	A		A		A	A			A	A	A	A	A	A	A	A			
52.229-6 Taxes—Foreign Fixed-Price Contracts.	29.402-1(a)	C	Yes	I	A		A		A	A			A	A	A	A	A	A	A	A			
52.229-7 Taxes—Fixed-Price Contracts with Foreign Governments.	29.402-1(b)	C	Yes	I	A		A		A	A			A	A	A	A	A	A	A	A	A		
52.229-8 Taxes—Foreign Cost-Reimbursement Contracts.	29.402-2(a)	C	Yes	I		A		A		A				A	A	A	A	A	A	A			
52.229-9 Taxes—Cost-Reimbursement Contracts with Foreign Governments.	29.402-2(b)	C	Yes	I		A		A		A				A	A	A	A	A	A	A			
52.229-10 State of New Mexico Gross Receipts and Compensating Tax.	29.401-4(b)	C	Yes	I		A		A		A			A	A	A	A	A	A	A	A			
52.230-1 Cost Accounting Standards Notices and Certification.	30.201-3	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate 1	30.201-3(b)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.230-2 Cost Accounting Standards.	30.201-4(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.230-3 Disclosure and Consistency in Cost Accounting Practices.	30.201-4(b)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.230-4 Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.✓	30.201-4(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.230-5 Cost Accounting Standards—Educational Institution.	30.201-4(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.230-6 Administration of Cost Accounting Standards.	30.201-4(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.230-7 Proposal Disclosure—Cost Accounting Practice Changes.	30.201-3(c)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.232-1 Payments.	32.111(a)(1)	C	Yes	I	R				R													A	
52.232-2 Payments under Fixed-Price Research and Development Contracts.	32.111(a)(2)	C	Yes	I			R																
52.232-3 Payments under Personal Service Contracts.	32.111(a)(3)	C	Yes	I					A														
52.232-4 Payments under Transportation Contracts and Transportation-Related Services Contracts.	32.111(a)(4)	C	Yes	I																		R	A

PROVISION OR CLAUSE	PRESCRIBED IN	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
52.232-5 Payments under Fixed-Price Construction Contracts.	32.111(a)(5)	C	Yes								R												
52.232-6 Payment under Communication Service Contracts with Common Carriers.	32.111(a)(6)	C	Yes	I											A						A		
52.232-7 Payments under Time-and-Materials and Labor-Hour Contracts.	32.111(a)(7)	C	Yes	I									A										
Alternate I	32.111(b)	C	Yes	I									A										
52.232-8 Discounts for Prompt Payment.	32.111(b)(1)	C	Yes	I	A				A												A		
52.232-9 Limitation on Withholding of Payments.	32.111(b)(2)	C	Yes	I	A	A	A	A	A														
52.232-10 Payments under Fixed-Price Architect-Engineer Contracts.	32.111(c)(1)	C	Yes														A						
52.232-11 Extras.	32.111(c)(2)	C	Yes	I	A				A												A	A	A
52.232-12 Advance Payments.	32.412(a)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	32.412(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	32.412(c)	C	No	I																			
Alternate III	32.412(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate IV	32.412(e)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate V	32.412(f)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-13 Notice of Progress Payments.	32.502-3(a)	P	Yes	L	A				A														
52.232-14 Notice of Availability of Progress Payments Exclusively for Small Business Concerns.	32.502-3(b)(2)	P	Yes	L	A				A														
52.232-15 Progress Payments Not Included.	32.502-3(c)	P	Yes	M	A				A														
52.232-16 Progress Payments.	32.502-4(a)	C	Yes	I	A				A														
Alternate I	32.502-4(b)	C	Yes	I	A				A														
Alternate II (See Note 1.)	32.502-4(c)	C	Yes	I																			
Alternate III	32.502-4(d)	C	Yes	I																			
52.232-17 Interest.	32.611(a) and (b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-18 Availability of Funds.	32.705-1(a)	C	Yes	I	A				A														
52.232-19 Availability of Funds for the Next Fiscal Year.	32.705-1(b)	C	No	I					A														
52.232-20 Limitation of Cost.	32.705-2(a)	C	Yes	I					A														
52.232-22 Limitation of Funds.	32.705-2(b)	C	Yes	I					A														
52.232-23 Assignment of Claims.	32.806(a)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	32.806(a)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

PROVISION OR CLAUSE	PRESCRIBED IN	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
<u>52.232-24</u> Prohibition of Assignment of Claims.	<u>32.806(b)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
<u>52.232-25</u> Prompt Payment.	<u>32.908(c)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	<u>32.908(c)(3)</u>	C	Yes	I																			
<u>52.232-26</u> Prompt Payment for Fixed-Price Architect-Engineer Contracts.	<u>32.908(a)</u>	C	Yes	I																			
<u>52.232-27</u> Prompt Payment for Construction Contracts.	<u>32.908(b)</u>	C	Yes	I							R	R											
<u>52.232-28</u> Invitation to Propose Performance-Based Payments.	<u>32.1005(b)(1)</u>	P	No	L	A		A		A		A					A	A	A	A	A		A	
Alternate I	<u>32.1005(b)(2)</u>	P	No	L	A		A		A		A					A	A	A	A	A		A	
<u>52.232-29</u> Terms for Financing of Purchases of Commercial Items.	<u>32.206(b)(2)</u>	C	No	I	A																		A
<u>52.232-30</u> Installment Payments for Commercial Items.	<u>32.206(g)</u>	C	Yes	I	A																		A
<u>52.232-31</u> Invitation to Propose Financing Terms.	<u>32.205(b)</u> <u>32.206</u>	P	No	L	A				A														
<u>52.232-32</u> Performance-Based Payments.	<u>32.1005</u>	C	No	I	A				A														
<u>52.232-33</u> Payment by Electronic Funds Transfer—Central Contractor Registration.	<u>32.1110(a)</u> , (a)(1), (b), and (e)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.232-34</u> Payment by Electronic Funds Transfer—Other than Central Contractor Registration.	<u>32.1110(a)</u> , (a)(2), (b), and (e)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.232-35</u> Designation of Office for Government Receipt of Electronic Funds Transfer Information.	<u>32.1110(c)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.232-36</u> Payment by Third Party.	<u>32.1110(d)</u> and (e)(3)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.232-37</u> Multiple Payment Arrangements.	<u>32.1110(e)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.232-38</u> Submission of Electronic Funds Transfer Information with Offer.	<u>32.1110(g)</u>	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.233-1</u> Disputes.	<u>33.215</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	<u>33.215</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.233-2</u> Service of Protest.	<u>33.106(a)</u>	P	No	L	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
<u>52.233-3</u> Protest after Award.	<u>33.106(b)</u>	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
Alternate I	<u>33.106(b)</u>	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R

PROVISION OR CLAUSE	PRESCRIBED IN	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
52.233-4 Applicable Law for Breach of Contract Claim.	33.215(b)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.234-1 Industrial Resources Developed Under Defense Production Act Title III.	34.104	C	N	I	A	A	A	A															
52.234-2 Notice of Earned Value Management System - Pre-Award IBR.	34.203(a)	P	N	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.234-3 Notice of Earned Value Management System - Post Award IBR.	34.203(b)	P	N	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.234-4 Earned Value Management System.	34.203(c)	C	Y	H	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.236-1 Performance of Work by the Contractor.	36.501(b)	C	Yes								A												
52.236-2 Differing Site Conditions.	36.502	C	Yes								A					A							O
52.236-3 Site Investigation and Conditions Affecting the Work.	36.503	C	Yes								A					A							O
52.236-4 Physical Data.	36.504	C	No								A												A
52.236-5 Material and Workmanship.	36.505	C	Yes								R	R											A
52.236-6 Superintendence by the Contractor.	36.506	C	Yes								A					A							O
52.236-7 Permits and Responsibilities.	36.507	C	Yes								R	R				A							A
52.236-8 Other Contracts.	36.508	C	Yes								A					A							O
52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.	36.509	C	Yes								A					A							O
52.236-10 Operations and Storage Areas.	36.510	C	Yes								A					A							O
52.236-11 Use and Possession Prior to Completion.	36.511	C	Yes								A												O
52.236-12 Cleaning Up.	36.512	C	Yes								A					A							O
52.236-13 Accident Prevention.	36.513	C	Yes								A					A							O
Alternate I	36.513	C	Yes								A					A							O
52.236-14 Availability and Use of Utility Services.	36.514	C	Yes								A					A							A
52.236-15 Schedules for Construction Contracts.	36.515	C	Yes								O												
52.236-16 Quantity Surveys.	36.516	C	Yes								O												O
Alternate I	36.516	C	Yes								O												
52.236-17 Layout of Work.	36.517	C	Yes								A												A
52.236-18 Work Oversight in Cost-Reimbursement Construction Contracts.	36.518	C	Yes																				R

PROVISION OR CLAUSE	PRESCRIBED IN	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
52.236-19 Organization and Direction of the Work.	36.519	C	Yes									R											
52.236-21 Specifications and Drawings for Construction.	36.521	C	Yes						A							A					O		
Alternate I	36.521	C	Yes						A							A					O		
Alternate II	36.521	C	Yes						A							A					O		
52.236-22 Design Within Funding Limitations.	36.609-1(c)	C	Yes														A				O		
52.236-23 Responsibility of the Architect-Engineer Contractor.	36.609-2(b)	C	Yes														A						
52.236-24 Work Oversight in Architect-Engineer Contracts.	36.609-3	C	Yes														A						
52.236-25 Requirements for Registration of Designers.	36.609-4	C	Yes														A						
52.236-26 Preconstruction Conference.	36.522	C	Yes	I							A												
52.236-27 Site Visit (Construction).	36.523	P	Yes	L							A												
Alternate I	36.523	P	Yes	L							A												
52.236-28 Preparation of Proposals—Construction.	36.520	P	Yes	K							R												
52.237-1 Site Visit.	37.110(a)	P	Yes	L			A	A	A	A			A	A	A	A	A	A	A	A	A	A	A
52.237-2 Protection of Government Buildings, Equipment, and Vegetation.	37.110(b)	C	Yes	I			A	A	A	A			A	A	A	A	A	A	A	A	A	A	A
52.237-3 Continuity of Services.	37.110(c)	C	Yes	I					O	O													
52.237-4 Payment by Government to Contractor.	37.304(a)	C	Yes	I												A					A		
Alternate I	37.304(a)	C	Yes	I												A					A		
52.237-5 Payment by Contractor to Government.	37.304(b)	C	Yes	I												A					A		
52.237-6 Incremental Payment by Contractor to Government.	37.304(c)	C	Yes	I												A					A		
52.237-7 Indemnification and Medical Liability Insurance.	37.403	C	Yes	I					A	A												O	
52.237-8 Restriction on Severance Payments to Foreign Nationals.	37.113-2(a)	P	Yes	K			A	A					A	A	A	A	A	A	A	A			
52.237-9 Waiver of Limitation on Severance Payments to Foreign Nationals.	37.113-2(b)	C	Yes	I			A	A					A	A	A	A	A	A	A	A			
52.237-10 Identification of Uncompensated Overtime.	37.115-3	P	Yes	L																			
52.237-11 Accepting and Dispensing of \$1 Coin.	37.116-2	C	Yes	I	A	A			A	A								A	A		A	A	A

PROVISION OR CLAUSE	PRESCRIBED IN	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
<u>52.239-1</u> Privacy or Security Safeguards. (See Note 4.)	<u>39.107</u>	C	Yes	I	A	A	A	A	A	A			A					A			A		A
<u>52.241-1</u> Electric Service Territory Compliance Representation.	<u>41.501(b)</u>	P	No	K																	A	A	
<u>52.241-2</u> Order of Precedence—Utilities.	<u>41.501(c)(1)</u>	C	Yes	I																	O	R	
<u>52.241-3</u> Scope of Duration of Contract.	<u>41.501(c)(2)</u>	C	No	I																	O	R	
<u>52.241-4</u> Change in Class of Service.	<u>41.501(c)(3)</u>	C	Yes	I																	O	R	
<u>52.241-5</u> Contractor's Facilities.	<u>41.501(c)(4)</u>	C	Yes	I																	O	R	
<u>52.241-6</u> Service Provisions.	<u>41.501(c)(5)</u>	C	No	I																	O	R	
<u>52.241-7</u> Change in Rates or Terms and Conditions of Service for Regulated Services.	<u>41.501(d)(1)</u>	C	No	I																	O	A	
<u>52.241-8</u> Change in Rates or Terms and Conditions of Service for Unregulated Services.	<u>41.501(d)(2)</u>	C	No	I																	O	A	
<u>52.241-9</u> Connection Change.	<u>41.501(d)(3)</u>	C	No	I																	O	A	
Alternate I	<u>41.501(d)(3)</u>	C	No	I																	O	A	
<u>52.241-10</u> Termination Liability.	<u>41.501(d)(4)</u>	C	No	I																	O	A	
<u>52.241-11</u> Multiple Service Locations.	<u>41.501(d)(5)</u>	C	Yes	I																	O	A	
<u>52.241-12</u> Nonrefundable, Nonrecurring Service Charge.	<u>41.501(d)(6)</u>	C	No	I																	O	A	
<u>52.241-13</u> Capital Credits.	<u>41.501(d)(7)</u>	C	No	I																	O	A	
<u>52.242-1</u> Notice of Intent to Disallow Costs.	<u>42.802</u>	C	Yes	I	A	R	A	R	A	R	A	R	A	A	A	A	A	A	R	A	A	A	
<u>52.242-2</u> Production Progress Reports.	<u>42.1107(a)</u>	C	Yes	I	A	A	A	A	A	A													
<u>52.242-3</u> Penalties for Unallowable Costs.	<u>42.709-6</u>	C	Yes	I																	A	A	
<u>52.242-4</u> Certification of Final Indirect Costs.	<u>42.703-2(f)</u>	C	Yes	I																	A	A	
<u>52.242-13</u> Bankruptcy.	<u>42.903</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	O	R
<u>52.242-14</u> Suspension of Work.	<u>42.1305(a)</u>	C	Yes						A														
<u>52.242-15</u> Stop-Work Order.	<u>42.1305(b)(1)</u>	C	Yes	F	O	O	O	O	O	O													
Alternate I	<u>42.1305(b)(2)</u>	C	Yes	F		O		O		O													
<u>52.242-17</u> Government Delay of Work.	<u>42.1305(c)</u>	C	Yes	F	A				O												A	A	
<u>52.243-1</u> Changes—Fixed Price.	<u>43.205(a)(1)</u>	C	Yes	I	R																A	A	
Alternate I	<u>43.205(a)(2)</u>	C	Yes	I					A												A	A	
Alternate II	<u>43.205(a)(3)</u>	C	Yes	I					A												A	A	
Alternate III	<u>43.205(a)(4)</u>	C	Yes	I					A												A	A	
Alternate IV	<u>43.205(a)(5)</u>	C	Yes	I					A												A	A	
Alternate V	<u>43.205(a)(6)</u>	C	Yes	I				O														O	

PROVISION OR CLAUSE	PRESCRIBED IN	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
52.243-2 Changes—Cost Reimbursement.	43.205(b)(1)	C	Yes	I																			
Alternate I	43.205(b)(2)	C	Yes	I					A														
Alternate II	43.205(b)(3)	C	Yes	I					A														
Alternate III	43.205(b)(4)	C	Yes	I								A											
Alternate V	43.205(b)(6)	C	Yes	I				O															
52.243-3 Changes—Time-and-Materials or Labor-Hours.	43.205(c)	C	Yes	I									R										
52.243-4 Changes.	43.205(d)	C	Yes	I							A					R							
52.243-5 Changes and Changed Conditions.	43.205(e)	C	Yes	I							A										A		
52.243-6 Change Order Accounting.	43.205(f)	C	Yes	I	O	O	O	O						O									
52.243-7 Notification of Changes.	43.107	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	O
52.244-2 Subcontracts. (See Note 1.)	44.204(a)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I (See Note 1.)	44.204(a)(2)	C	Yes	I																			A
52.244-4 Subcontractors and Outside Associates and Consultants (Architect-Engineer Services).	44.204(b)	C	Yes	I																			
52.244-5 Competition in Subcontracting.	44.204(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.244-6 Subcontracts for Commercial Items.	44.403(a)✓	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
Alternate I	44.403(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.245-1 Government Property.	45.107(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	45.107(a)(2)				A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	45.107(a)(3)				A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.245-2 Government Property Installation Operation Services.	45.107(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.245-9 Use and Charges.	45.107(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.246-1 Contractor Inspection Requirements.	46.301	C	Yes																				
52.246-2 Inspection of Supplies—Fixed-Price.	46.302	C	Yes	E	A				A					A									O
Alternate I	46.302	C	Yes	E	A				A					A									
Alternate II	46.302	C	Yes	E	A				A					A									
52.246-3 Inspection of Supplies—Cost-Reimbursement.	46.303	C	Yes	E		A																	
52.246-4 Inspection of Services—Fixed-Price.	46.304	C	Yes	E	A				A					A									O
52.246-5 Inspection of Services—Cost-Reimbursement.	46.305	C	Yes	E		A																	

PROVISION OR CLAUSE	PRESCRIBED IN	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
<u>52.246-6</u> Inspection—Time-and-Material and Labor-Hour.	<u>46.306</u>	C	Yes	E									R										
Alternate I	<u>46.306</u>	C	Yes	E									A								O		
<u>52.246-7</u> Inspection of Research and Development—Fixed Price.	<u>46.307(a)</u>	C	Yes	E			A														O		
<u>52.246-8</u> Inspection of Research and Development—Cost Reimbursement.	<u>46.308</u>	C	Yes	E				A															
Alternate I	<u>46.308</u>	C	Yes	E				A															
<u>52.246-9</u> Inspection of Research and Development (Short Form).	<u>46.309</u>	C	Yes	E			A														O		
<u>52.246-11</u> Higher-Level Contract Quality Requirement.	<u>46.311</u>	C	Yes	E	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
<u>52.246-12</u> Inspection of Construction.	<u>46.312</u>	C	Yes						A													O	
<u>52.246-13</u> Inspection—Dismantling, Demolition, or Removal of Improvements.	<u>46.313</u>	C	Yes													R						A	
<u>52.246-14</u> Inspection of Transportation.	<u>46.314</u>	C	Yes	E																	A		
<u>52.246-15</u> Certificate of Conformance.	<u>46.315</u>	C	Yes	E	A	A	A	A	A	A				A							A		
<u>52.246-16</u> Responsibility for Supplies.	<u>46.316</u>	C	Yes	E	A	A	A	A	A					A								O	
<u>52.246-17</u> Warranty of Supplies of a Noncomplex Nature.	<u>46.710(a)(1)</u>	C	Yes	I	O									O									
Alternate I	<u>46.710(a)(2)</u>	C	Yes	I	O									O									
Alternate II	<u>46.710(a)(3)</u>	C	Yes	I	O									O									
Alternate III	<u>46.710(a)(4)</u>	C	Yes	I	O									O									
Alternate IV	<u>46.710(a)(5)</u>	C	Yes	I	O									O									
Alternate V	<u>46.710(a)(6)</u>	C	Yes	I	O									O									
<u>52.246-18</u> Warranty of Supplies of a Complex Nature.	<u>46.710(b)(1)</u>	C	Yes	I	O			O						O									
Alternate II	<u>46.710(b)(2)</u>	C	Yes	I	O			O						O									
Alternate III	<u>46.710(b)(3)</u>	C	Yes	I	O			O						O									
Alternate IV	<u>46.710(b)(4)</u>	C	Yes	I	O			O						O									
<u>52.246-19</u> Warranty of Systems and Equipment under Performance Specifications or Design Criteria.	<u>46.710(c)(1)</u>	C	Yes	I	O			O						O									
Alternate I	<u>46.710(c)(2)</u>	C	Yes	I	O			O						O									
Alternate II	<u>46.710(c)(3)</u>	C	Yes	I	O			O						O									
Alternate III	<u>46.710(c)(4)</u>	C	Yes	I	O			O						O									
<u>52.246-20</u> Warranty of Services.	<u>46.710(d)</u>	C	Yes	I																		O	
<u>52.246-21</u> Warranty of Construction.	<u>46.710(e)(1)</u>	C	Yes																		O		O
Alternate I	<u>46.710(e)(2)</u>	C	Yes																		O		O
<u>52.246-23</u> Limitation of Liability.	<u>46.805</u>	C	Yes	I	A	A	A	A						A							A		O

PROVISION OR CLAUSE	PRESCRIBED IN	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
<u>52.246-24</u> Limitation of Liability—High-Value Items.	<u>46.805(a)</u>	C	Yes	I	A	A	A	A						A									
Alternate I	<u>46.805(a)</u>	C	Yes	I	A	A	A	A					A	A									
<u>52.246-25</u> Limitation of Liability—Services.	<u>46.805(a)(4)</u>	C	Yes	I			A	A	A				A					A	A	A	O	A	
<u>52.247-1</u> Commercial Bill of Lading Notations.	<u>47.104-4</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	O	A	
<u>52.247-2</u> Permits, Authorities, or Franchises.	<u>47.207-1(a)</u>	C	No	I																A	A		
<u>52.247-3</u> Capability to Perform a Contract for the Relocation of a Federal Office.	<u>47.207-1(b)(1)</u>	C	Yes	I																A	A		
Alternate I	<u>47.207-1(b)(2)</u>	C	Yes	I																	A		
<u>52.247-4</u> Inspection of Shipping and Receiving Facilities.	<u>47.207-1(c)</u>	P	Yes	L																A			
<u>52.247-5</u> Familiarization with Conditions.	<u>47.207-1(d)</u>	C	Yes	I																	A		
<u>52.247-6</u> Financial Statement.	<u>47.207-1(e)</u>	P	Yes	L																	A		
<u>52.247-7</u> Freight Excluded.	<u>47.207-3(d)(2)</u>	C	Yes	I																	A		
<u>52.247-8</u> Estimated Weights or Quantities Not Guaranteed.	<u>47.207-3(e)(2)</u>	C	Yes	I																	A		
<u>52.247-9</u> Agreed Weight—General Freight.	<u>47.207-4(a)(1)</u>	C	Yes	I																	A		
<u>52.247-10</u> Net Weight—General Freight.	<u>47.207-4(a)(2)</u>	C	Yes	I																	A		
<u>52.247-11</u> Net Weight—Household Goods or Office Furniture.	<u>47.207-4(b)</u>	C	Yes	I																	A		
<u>52.247-12</u> Supervision, Labor, or Materials.	<u>47.207-5(b)</u>	C	Yes	I																	A		
<u>52.247-13</u> Accessorial Services—Moving Contracts.	<u>47.207-5(c)</u>	C	Yes	I																	A		
<u>52.247-14</u> Contractor Responsibility for Receipt of Shipment.	<u>47.207-5(d)</u>	C	Yes	I																	A		
<u>52.247-15</u> Contractor Responsibility for Loading and Unloading.	<u>47.207-5(e)</u>	C	Yes	I																	A		
<u>52.247-16</u> Contractor Responsibility for Returning Undelivered Freight.	<u>47.207-5(f)</u>	C	Yes	I																	A		
<u>52.247-17</u> Charges.	<u>47.207-6(a)(2)</u>	C	Yes	I																	A		
<u>52.247-18</u> Multiple Shipments.	<u>47.207-6(c)(5)(i)</u>	C	Yes	I																	A		

PROVISION OR CLAUSE	PRESCRIBED IN	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
<u>52.247-19</u> Stopping in Transit for Partial Unloading.	<u>47.207-6(c)(5)(ii)</u>	C	No	I																	A	A	
<u>52.247-20</u> Estimated Quantities or Weights for Evaluation of Offers.	<u>47.207-6(c)(6)</u>	P	Yes	M																	A	A	
<u>52.247-21</u> Contractor Liability for Personal Injury and/or Property Damage.	<u>47.207-7(c)</u>	C	Yes	I																	A	A	
<u>52.247-22</u> Contractor Liability for Loss of and/or Damage to Freight Other Than Household Goods.	<u>47.207-7(d)</u>	C	Yes	I																	A	A	
<u>52.247-23</u> Contractor Liability for Loss of and/or Damage to Household Goods.	<u>47.207-7(e)</u>	C	Yes	I																	A	A	
<u>52.247-24</u> Advance Notification by the Government.	<u>47.207-8(a)(1)</u>	C	Yes	I																	A	A	
<u>52.247-25</u> Government-Furnished Equipment With or Without Operators.	<u>47.207-8(a)(2)(i)</u>	C	Yes	I																	A	A	
<u>52.247-26</u> Government Direction and Marking.	<u>47.207-8(a)(3)</u>	C	Yes	I																	A	A	
<u>52.247-27</u> Contract Not Affected by Oral Agreement.	<u>47.207-8(b)</u>	C	Yes	I																	A	A	
<u>52.247-28</u> Contractor's Invoices.	<u>47.207-9(c)</u>	C	Yes	I																	A	A	
<u>52.247-29</u> F.o.b. Origin.	<u>47.303-1(c)</u>	C	Yes	F	A									A							A	A	
<u>52.247-30</u> F.o.b. Origin, Contractor's Facility.	<u>47.303-2(c)</u>	C	Yes	F	A									A							A	A	
<u>52.247-31</u> F.o.b. Origin, Freight Allowed.	<u>47.303-3(c)</u>	C	Yes	F	A									A							A	A	
<u>52.247-32</u> F.o.b. Origin, Freight Prepaid.	<u>47.303-4(c)</u>	C	Yes	F	A									A							A	A	
<u>52.247-33</u> F.o.b. Origin, with Differentials.	<u>47.303-5(c)</u>	C	No	F	A				A					A							A	A	
<u>52.247-34</u> F.o.b. Destination.	<u>47.303-6(c)</u>	C	Yes	F	A									A							A	A	
<u>52.247-35</u> F.o.b. Destination, within Consignee's Premises.	<u>47.303-7(c)</u>	C	Yes	F	A									A							A	A	
<u>52.247-36</u> F.a.s. Vessel, Port of Shipment.	<u>47.303-8(c)</u>	C	Yes	F	A									A							A	A	
<u>52.247-37</u> F.o.b. Vessel, Port of Shipment.	<u>47.303-9(c)</u>	C	Yes	F	A									A							A	A	
<u>52.247-38</u> F.o.b. Inland Carrier, Point of Exportation.	<u>47.303-10(c)</u>	C	Yes	F	A									A							A	A	

PROVISION OR CLAUSE	PRESCRIBED IN	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
52.247-39 F.o.b. Inland Point, Country of Importation.	47.303-11(c)	C	Yes	F	A									A					A		A		
52.247-40 Ex Dock, Pier, or Warehouse, Port of Importation.	47.303-12(c)	C	Yes	F	A									A					A		A		
52.247-41 C.&f. Destination.	47.303-13(c)	C	Yes	F	A									A					A		A		
52.247-42 C.i.f. Destination.	47.303-14(c)	C	Yes	F	A									A					A		A		
52.247-43 F.o.b. Designated Air Carrier's Terminal, Point of Exportation.	47.303-15(c)	C	Yes	F	A									A					A		A		
52.247-44 F.o.b. Designated Air Carrier's Terminal, Point of Importation.	47.303-16(c)	C	Yes	F	A									A					A		A		
52.247-45 F.o.b. Origin and/or F.o.b. Destination Evaluation.	47.305-2(b)	P	Yes	L	A									A					A		A		
52.247-46 Shipping Point(s) Used in Evaluation of F.o.b. Origin Offers.	47.305-3(b)(4)(ii)	P	Yes	L	A									A					A		A		
52.247-47 Evaluation—F.o.b. Origin.	47.305-3(f)(2)	P	Yes	M	A									A					A		A		
52.247-48 F.o.b. Destination—Evidence of Shipment.	47.305-4(c)	C	Yes	F	A									A					A		A		
52.247-49 Destination Unknown.	47.305-5(b)(2)	P	Yes	M	A									A					A		A		
52.247-50 No Evaluation of Transportation Costs.	47.305-5(c)(1)	P	Yes	M	A									A					A		A		
52.247-51 Evaluation of Export Offers.	47.305-6(e)	P	No	M	A									A					A		A		
Alternate I	47.305-6(e)(1)	P	No	M	A									A					A		A		
Alternate II	47.305-6(e)(2)	P	No	M	A									A					A		A		
Alternate III	47.305-6(e)(3)	P	No	M	A									A					A		A		
52.247-52 Clearance and Documentation Requirements—Shipments to DOD Air or Water Terminal Transshipment Points.	47.305-6(f)(2)	C	Yes	F	A				A														
52.247-53 Freight Classification Description.	47.305-9(b)(1)	P	No	K	A									A					A		A		
52.247-55 F.o.b. Point for Delivery of Government-Furnished Property.	47.305-12(a)(2)	C	Yes	F	A									A					A		A		
52.247-56 Transit Arrangements.	47.305-13(a)(3)(ii)	P	No	M	A									A					A		A		
52.247-57 Transportation Transit Privilege Credits.	47.305-13(b)(4)	C	No	F	A									A					A		A		
52.247-58 Loading, Blocking, and Bracing of Freight Car Shipments.	47.305-15(a)(2)	C	Yes	F	A									A					A		A		
52.247-59 F.o.b. Origin—Carload and Truckload Shipments.	47.305-16(a)	C	Yes	F	A									A					A		A		
52.247-60 Guaranteed Shipping Characteristics.	47.305-16(b)(1)	C	No	F	A									A					A		A		

PROVISION OR CLAUSE	PRESCRIBED IN	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
<u>52.247-61</u> F.o.b. Origin—Minimum Size of Shipments.	<u>47.305-16(c)</u>	C	Yes	F	A										A				A		A		
<u>52.247-62</u> Specific Quantities Unknown.	<u>47.305-16(d)(2)</u>	C	No	F	A										A				A		A		
<u>52.247-63</u> Preference for U.S.-Flag Air Carriers.	<u>47.405</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			
<u>52.247-64</u> Preference for Privately Owned U.S.-Flag Commercial Vessels.	<u>47.507(a)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			
Alternate I	<u>47.507(a)(2)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			
Alternate II	<u>47.507(a)(3)</u>	C		I																			
<u>52.247-65</u> F.o.b. Origin, Prepaid Freight—Small Package Shipments.	<u>47.303-17(f)</u>	C	Yes	F	A										A				A		A		
<u>52.247-66</u> Returnable Cylinders.	<u>47.305-17</u>	C	No	I	A										A				A				
<u>52.247-67</u> Submission of Transportation Documents for Audit.	<u>47.103-2</u>	C	No	I		A									A				A		A		
<u>52.247-68</u> Report of Shipment (REPSHIP).	<u>47.208-2</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			
<u>52.248-1</u> Value Engineering.	<u>48.201</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			
Alternate I	<u>48.201(c)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			
Alternate II	<u>48.201(d)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			
Alternate III	<u>48.201(e)(1)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			
<u>52.248-2</u> Value Engineering Program—Architect-Engineer.	<u>48.201(f)</u>	C	Yes																				
<u>52.248-3</u> Value Engineering—Construction.	<u>48.202</u>	C	Yes																				
Alternate I	<u>48.202</u>	C	Yes																				
<u>52.249-1</u> Termination for Convenience of the Government (Fixed-Price) (Short Form).	<u>49.502(a)(1)</u>	C	Yes	I	A										A				A		A		
Alternate I	<u>49.502(a)(2)</u>	C	Yes	I																			
<u>52.249-2</u> Termination for Convenience of the Government (Fixed-Price).	<u>49.502(b)(1)(i)</u>	C	Yes	I	A										A				A		A		
Alternate I	<u>49.502(b)(1)(ii)</u>	C	Yes	I																			
Alternate II	<u>49.502(b)(1)(iii)</u>	C	Yes	I	A										A				A		A		
Alternate III	<u>49.502(b)(1)(iii)</u>	C	Yes	I																			
<u>52.249-3</u> Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).	<u>49.502(b)(2)</u>	C	Yes	I																			
Alternate I	<u>49.502(b)(2)</u>	C	Yes	I																			
<u>52.249-4</u> Termination for Convenience of the Government (Services) (Short Form).	<u>49.502(c)</u>	C	Yes	I																			
		C	Yes	I																			

PROVISION OR CLAUSE	PRESCRIBED IN	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
52.250-5 SAFETY Act-Equitable Adjustment.	50.206(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.251-1 Government Supply Sources.	51.107	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.251-2 Interagency Fleet Management System Vehicles and Related Services.	51.205	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-1 Solicitation Provisions Incorporated by Reference.	52.107(a)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-2 Clauses Incorporated by Reference.	52.107(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-3 Alterations in Solicitation.	52.107(c)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-4 Alterations in Contract.	52.107(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-5 Authorized Deviations in Provisions.	52.107(e)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-6 Authorized Deviations in Clauses.	52.107(f)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.253-1 Computer Generated Forms.	53.111	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

NOTE 1:

The following clauses are prescribed for use in letter contracts:

- [52.216-23](#), Execution and Commencement of Work.
- [52.216-24](#), Limitation of Government Liability.
- [52.216-25](#), Contract Definition.
- [52.216-25](#), Contract Definition, Alternate I.

Further instructions concerning provisions and clauses for letter contracts are set forth in [16.603-4\(a\)](#).

Note 2:

The following clauses are prescribed for use in Small Business Administration 8(a) contracts:

- [52.219-11](#), Special 8(a) Contract Conditions.
- [52.219-12](#), Special 8(a) Subcontract Conditions.
- [52.219-14](#), Limitations on Subcontracting.
- [52.219-17](#), Section 8(a) Award.

NOTE 3:

FAR provisions and clauses not identified on the matrix may be used in contracts for commercial items consistent with the procedures and limitations in [FAR 12.302](#)

NOTE 4:

The following clause is prescribed for use in Information Technology Management Reform Act (ITMRA) contracts: [52.239-1](#), Privacy or Security Safeguards. "A".

Standard Form 1447

[Go to <http://www.gsa.gov/forms> to access form.]

Standard Form 1449

[Go to <http://www.gsa.gov/forms> to access form.]

Optional Form 347

[Go to <http://www.gsa.gov/forms> to access form.]

