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Federal Register

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Monday, September 19, 1983

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Selected Subjects

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
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Monday, September 19, 1983

Presidential Documents

Title 3—

The President

Proclamation 5095 of September 15, 1983

National Respiratory Therapy Week, 1983

By the President of the United States of America

A Proclamation

Chronic lung diseases constitute an important health problem in the United States. They afflict nearly 18 million Americans and cause nearly 70,000 deaths each year, many of which are the direct result of cigarette smoking. Thousands of other persons annually suffer some degree of permanent disability as a result of these disorders. The economic cost of these diseases has been estimated to exceed $16 billion annually.

For some of these diseases the cause is unknown, and for many there is no cure. The timely initiation of appropriate therapy, however, can usually slow their progress, relieve their symptoms, reduce the extent of permanent lung damage and respiratory disability, and avert or delay the onset of life-threatening complications. Although the lung damage already caused by these diseases cannot be undone, respiratory therapy may help preserve lung function that might otherwise be irretrievably lost and can also help the patient make the most effective use of that which remains.

Respiratory therapy may take many forms, including drugs to dilate open air passages or protect against respiratory infections; respiratory-assistance techniques to maintain adequate blood oxygen levels; and exercise programs to improve the efficiency of breathing and condition respiratory muscles to bear the increased burden imposed on them. Kicking the smoking habit is also important to all respiratory therapy.

In recognition that chronic lung diseases are an important cause of death, ill health, and disability and that respiratory therapy can do much to lessen their effects, the Congress, by Senate Joint Resolution 67, has authorized and requested the President to proclaim the week of September 25, 1983, through October 1, 1983, as "National Respiratory Therapy Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of September 25 through October 1, 1983, as National Respiratory Therapy Week. I call upon all interested organizations and persons to utilize this opportunity to focus public attention on the national health problem posed by chronic lung diseases and to reaffirm our commitment to bring these diseases under effective control.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of September, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 83-25609
Filed 9-16-83; 11:18 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5096 of September 15, 1983

National Housing Week, 1983

By the President of the United States of America

A Proclamation

The provision of a home and a suitable living environment for every American family continues to be a national housing goal. Homeownership and decent housing instill pride in our citizens and contribute to the vitality of communities throughout America.

The resurgence of America's housing industry is both a contribution to and a result of our Nation's economic recovery. The substantial increase in housing starts in 1983, by restoring and creating thousands of jobs in housing and related industries, has been a major factor in the reduction of unemployment.

In recognition of our Nation's commitment to housing and homeownership and the role that housing plays in economic recovery, the Congress, by Senate Joint Resolution 98, has authorized and requested the President to issue a proclamation designating the week of October 2 through October 9, 1983, as "National Housing Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 2, 1983, as National Housing Week, and call upon the people of the United States and interested groups and organizations to observe this week with appropriate activities and events.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of September, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 83-25670
Filed 9-16-83; 11:19 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 48, No. 182
Monday, September 19, 1983

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 421

Cotton Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Cotton Crop Insurance Regulations (7 CFR Part 421), effective for the 1983 and succeeding crop years, in compliance with the provisions of Secretary's Memorandum No. 1512–1, which requires periodic review of FCIC's regulations as to need, currency, clarity, and effectiveness. The intended effect of this rule is to confirm the Interim Rule published in the **Federal Register** on December 21, 1982, at 47 FR 56813.

EFFECTIVE DATE: This rule is effective on October 19, 1983.

ADDRESS: Any comments on this rule may be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option are available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: On December 21, 1982, FCIC published an Interim Rule to revise and reissue the Cotton Crop Insurance Regulations (7 CFR Part 421) the intended effect of which is to improve the debt management practices of FCIC; revise the system of reporting damage or loss to insured crops; remove certain restrictions on coverage of insurance in the various stages; reduce the time and paperwork demands on an applicant; and, comply with the provisions of Secretary's Memorandum No. 1512–1, as to reviewing the regulations with regard to currency, clarity, need, and effectiveness.

The public was given until February 22, 1983, to submit written comments on the rule, but none were received. The rule was scheduled for review following a 60-day comment period in order to prepare any amendments made necessary by such comments. During the review period, FCIC determined that, the OMB Information Collection Control Numbers applicable to FCIC, should be codified and therefore will be at 7 CFR 421.3, previously designated as "Reserved." This amendment is contained in this final rule. The amendment providing for codification of OMB Control Numbers relates to internal agency management and, therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest.

List of Subjects in 7 CFR Part 421

Crop insurance, Cotton.

PART 421—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Cotton Crop Insurance Regulations (7 CFR Part 421), effective with the 1983 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR Part 421 is:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (1506, 1516).

2. 7 CFR Part 421 is amended in the Table of Contents thereof by removing the word "Reserved" from § 421.3 and inserting in its place, the words "OMB control numbers."

3. 7 CFR § 421.3 is added to read as follows:

§ 421.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 421) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control Nos. 0563–0003 and 0563–0007.

Accordingly, the interim rule published in the **Federal Register** of December 21, 1982 on pages 47 FR 56813–56820, as amended above, is adopted as final.

Done in Washington, D.C., on August 24, 1983.

Peter F. Cole,
Secretary, Federal Crop Insurance Corporation.

Dated: September 8, 1983.
Approved by:

Edward D. Hews,
Acting Manager.

[FR Doc. 83-25418 Filed 9-16-83; 8:45 am]
BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 1036

[Milk Order No. 36]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends certain shiping standards for supply plants regulated by the Eastern Ohio-Western Pennsylvania milk order. The suspension reduces from 40 percent of receipts to 30 percent the quantity of milk that supply plants must ship to distributing plants to maintain pool plant status for September through November 1983.

This action was requested by a cooperative association which represents a substantial number of producers associated with this market. In the past year this market has experienced a substantial increase in milk production without a corresponding increase in fluid sales. As a result, not as much bulk milk from supply plants will be needed to meet the fluid milk demands of distributing plants during

the fall months. Without the suspension, unneeded and uneconomic shipments of supply plant milk would be made solely for the purpose of assuring that dairy farmers historically associated with the market will continue to have their milk priced and pooled under the order.

Notice of this proposed action was published in the **Federal Register** and interested parties were given the opportunity to submit written comments. Two cooperative associations submitted comments in support of the suspension action. No written comments opposing the suspension were received.

EFFECTIVE DATE: September 19, 1983.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7183.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 16, 1983; published August 22, 1983 (48 FR 38001).

This action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as a "non-major" action.

It has been determined that the need for suspending certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the **Federal Register**. However, this would not permit the completion of the required suspension procedures in time to include September 1983 in the suspension period. This initial request for this action was received August 9, 1983. A notice of proposed suspension was issued on August 16, 1983, inviting interested parties to comment on the proposed action by August 29, 1983.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*,) and of the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area.

Notice of proposed rulemaking was published in the **Federal Register** (48 FR 38001) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded an opportunity to file written data, views, and arguments thereon. Two cooperative asociations submitted comments supporting the proposed action. No written comments opposing the action were received.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, data, views, and arguments filed thereon, and other available information, it is hereby found and determined that for the months of September through November 1983 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1036.7(b), the language "not less than 40 percent during the months of September, October and November and" and the language "in all other months,".

Statement of Consideration

This action reduces the quantity of milk that supply plants must ship to distributing plants to maintain pool plant status under the Eastern Ohio-Western Pennsylvania order. The order requires a supply plant to ship 40 percent of its receipts to distributing plants during the months of September through November. In other months the shipping standard is 30 percent. This action removes the 40 percent standard for the months of September, October and November. As a result, a 30 percent shipping standard for pooling supply plants will apply during these months.

This action was requested by Milk Marketing Inc. (MMI), a cooperative association which represents a substantial number of producers who supply milk to the Eastern Ohio-Western Pennsylvania market. Eastern Milk Producers Cooperative Association, Inc., supported the suspension action.

During the first 6 months of 1983, receipts of producer milk at pool plants increased 8 percent over the same period in 1982. At the same time, Class I usage increased less than 2 percent. All available information indicates that this supply-demand imbalance will continue through the remainder of 1983. As a result, distributing plants will receive a higher proportion of their milk supply by direct shipment and the quantity of milk moved from supply plants to distributing plants will be reduced. In some instances, supply plants will not be able to pool all of their available milk supply without back-hauling milk at considerable expense. Suspension of the 40 percent standard is thus necessary to prevent unneeded and uneconomic shipments of milk from supply plants to distributing plants that would be made solely for the purpose of pooling the milk of dairy farmers who historically have supplied the fluid needs of the market.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that without the suspension unneeded and uneconomic shipments of milk from supply plants would likely be made solely for the purpose of pooling the milk of dairy farmers who historically have supplied the fluid needs of the market;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1036

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of § 1036.7(b) of the order are hereby suspended for the months of September through November 1983.

Effective Date: September 9, 1983.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Signed at Washington, D.C. on: September 12, 1983.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 83-25451 Filed 9-16-83; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 109

Employment Authorization; Withdrawal of Provisions Specifying Period of Time That Permission To Accept Employment Is Authorized

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: On June 27, 1983 (48 FR 29465), the Service published a final rule clarifying existing regulations relating to employment authorization for aliens admitted to the United States. Sections 109.1(b) (2) and (3) were amended to specify that temporary employment authorization is automatically terminated upon denial of the application. This notice serves as a withdrawal of that amendment to § 109.1 (b)(2) and (b)(3). A proposed rule is published elsewhere in this issue. The remaining provisions of the final rule remain as they were published with an effective date of June 28, 1983.

EFFECTIVE DATE: September 19, 1983.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 Eye Street NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

For Specific Information: Craig O. Raynsford, Assistant General Counsel, Immigration and Naturalization Service, 425 Eye Street NW., Washington, D.C. 20536, Telephone: (202) 633-1266.

SUPPLEMENTARY INFORMATION: On June 27, 1983 at 48 FR 29465, the Service published a final rule amending 8 CFR Part 109 to clarify who is eligible for employment authorization, under what conditions employment can be authorized, and when such authorization terminates.

Sections 109.1 (b)(2) and (b)(3) of Title 8 were amended to specify the period of time that permission to accept employment is authorized. After appropriate review, the Service wishes to withdraw the revisions to these sections at this time and to republish, as a separate document, a proposed revision to these sections to allow for a 60 day public comment period. Therefore, paragraphs (b)(2) and (b)(3) relating to the period of time permission to accept employment may be authorized is removed from the final order as published on June 27, 1983 (48 FR 29465).

List of Subjects in 8 CFR Part 109

Aliens, Employment.

Accordingly, Title 8 of the Code of Federal Regulations is amended as follows:

PART 109—EMPLOYMENT AUTHORIZATION

In § 109.1, paragraphs (b) (2) and (3) are revised to read as originally published on Nov. 12, 1981 (46 FR 55920):

§ 109.1 Classes of aliens eligible.

* * * * *

(b) * * *

(2) Any alien who has filed a non-frivolous application for asylum pursuant to Part 208 of this chapter may be granted permission to be employed for the period of time necessary to decide the case.

(3) Any alien who has properly filed an application for adjustment of status to permanent resident alien may be granted permission to be employed for the period of time necessary to decide the case.

* * * * *

(Secs. 103, 212, 245, Immigration and Nationality Act, as amended (8 U.S.C. 1103, 1182, 1255))

Dated: September 12, 1983.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 83-25450 Filed 9-16-83; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-CE-10-AD; Amdt. 39-4724]

Airworthiness Directives; British Aerospace, Aircraft Group (Formerly Scottish Aviation Limited) Model HP.137 Jetstream MK-1 and Series 200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 83-05-08 Amendment 39-4582 applicable to British Aerospace Aircraft Group, Model HP.137 Jetstream MK-1 and Series 200 airplanes by providing a definitive test procedure to verify the proper operation of the Non-Return-Valve (NRV). Reference was made in AD 83-05-08 to manufacturer data which instructed inspection of the NRV in accordance with nonexistent vendor data. This error has come to the attention of the manufacturer and FAA and the manufacturer has published Revision 1 to SB No. 18/3 dated March 31, 1983, which incorporates reference to an acceptable inspection procedure. This revision makes the AD consistent with current manufacturer's data.

DATE: Effective September 23, 1983.

Compliance: As prescribed in the body of the AD.

ADDRESSES: British Aerospace, Aircraft Group, Scottish Division Jetstream Service Bulletin (SB) No. 18/3 Revision 1 dated March 31, 1983, and British Aerospace Aircraft Group Jetstream Modification No. 5179 Issue 1, dated December 1981, applicable to this AD may be obtained from British Aerospace Incorporated, 13850 McLearen Road, Dulles Industrial Aerospace Park, Herndon, Virginia 22070. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, FAA Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. A. Astorga, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium, Telephone 513.38.30; or Mr. P. Cormaci, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106, Telephone 816/374-6932.

SUPPLEMENTARY INFORMATION: AD 83-05-08, Amendment 39-4582 (48 FR 10625, 10626) applicable to British Aerospace Aircraft Group Model HP.137 Jetstream MK-1 and Series 200 airplanes requires removal and inspection of the fuel filter bleed pipe NRVs, to correct an unsafe condition in the aircraft. Subsequent to the issuance of this AD, the British Aerospace, Aircraft Group and the United Kingdom Civil Aviation Authority (UKCAA) published a definitive test procedure for this valve in lieu of the previous vendor overhaul manual procedure. This amendment is to ensure that the valve is operating in accordance with its intended use and provides the owner-operator with a detailed step-by-step test procedure to accomplish this inspection. It imposes no additional burden on any person and is clarifying in nature. Therefore, notice and public procedure hereon are unnecessary, contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator AD 83-05-08, Amendment 39-4582 (48 FR 10625, 10626), § 39.13 of the Federal Aviation Regulations (14 CFR 39.13), is amended as follows:

(1) Revise the lead in paragraph following the Compliance statement to read as follows:

To detect defective fuel filter bleed pipe Non-Return-Valve (NRV) Part Number (P/N) 702CD02, unless accomplished in the previous 200 hours time-in-service, within the next 20 hours time-in-service after the effective date of this AD and thereafter at intervals not to exceed 200 hours time-in-service, accomplish the following:

(2) Revise paragraph a) to read as follows:

(a) Remove, inspect, and test the fuel filter bleed pipe NRV P/N 702CD02 for correct operation in accordance with the "Action" section of Scottish Aviation Limited Jetstream SB No. 18/3 Revision 1, March 31, 1983.

Note.—SB No. 18/3, Revision 1, specifies a detailed test procedure to verify that the valve operates as intended.

(3) Revise paragraph b) to read as follows:

(b) If a defective NRV is found, replace the valve prior to further flight.

This amendment becomes effective September 23, 1983.

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 79-449, January 12, 1983); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89))

Note.— The FAA has determined that this document involves an amendment that is of a clarifying nature and does not impose any additional burden on any persons. Therefore, (1) it is not a major rule under Executive Order 12291, and (2) it is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because its anticipated impact is so minimal, it does not warrant preparation of a regulatory evaluation. I certify it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act because it is clarifying in nature, and because it involves few, if any, small entities.

Issued in Kansas City, Missouri, on September 8, 1983.

Murray E. Smith,

Director, Central Region.

[FR Doc. 83-25411 Filed 9-16-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 83-ASW-38; Amdt. 39-4721]

Airworthiness Directives; Enstrom Models F-28A, 280, F-28C, F-28C-2, 280C, F-28F, and 280F

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires repetitive inspection and lubrication of tail rotor drive shaft couplings on Enstrom Models F-28A, 280, F-28C, F-28C-2, 280C, F-28F, and 280F. This AD is needed to prevent tail rotor drive shaft coupling failure due to improper lubrication which could result in loss of directional control and subsequent loss of the helicopter.

DATES: Effective September 23, 1983.

Compliance schedule—As prescribed in body of AD.

ADDRESSES: The applicable service information, Enstrom Helicopter Corporation Service Directive Bulletin 0065, may be obtained from Enstrom Helicopter Corporation, P.O. Box 277, Menominee, Michigan 49858.

A copy of the service bulletin is contained in the Rules Docket, Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Joseph H. McGarvey, ACE-120C, Chicago Aircraft Certification Office, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone number (312) 694-7136.

SUPPLEMENTARY INFORMATION: There have been two reports of tail rotor drive shaft coupling failures and loss of directional control causing crash landings with substantial aircraft damage. The FAA has determined that the failures were the result of excessive wear due to improper lubrication. Since this condition is likely to exist or develop in other tail rotor drive systems of the same type design, an airworthiness directive is being issued that requires repetitive inspections, replacement as necessary, and lubrication of tail rotor drive shaft couplings on Enstrom F-28A, 280, F-28C, F-28C-2, F-28F, and 280F helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Enstrom Helicopter Corporation: Applies to Enstrom Model F-28A: 280; F-28C; F-28C-2; 280C; F-28F, Serial numbers 506, 507, 509, 510, 511, 512, 513, 514, 515, 517, 527, 700, 701, 702, and 704; and 280F, Serial numbers 1212 and 1500.

Compliance is required as indicated.

To prevent the possible loss of directional control, accomplish the following:

(a) Prior to next flight after the effective date of this AD, disassemble the forward and aft tail rotor drive shaft couplings (P/N 28-13609), visually and dimensionally inspect for wear and proper tooth contact, lubricate, and reassemble, in accordance with Enstrom Service Directive Bulletin 0065, dated August 19, 1983, and the Maintenance Manual/ Maintenance Manual Supplement for the respective models or FAA approved equivalent. Couplings not complying with the prescribed wear limits are not airworthy and must be replaced with airworthy parts.

(1) Tail rotor drive shaft couplings which have been overhauled less than 100 hours prior to the effective date of this AD are exempt from the initial requirements of this paragraph.

(2) Tail rotor drive shaft couplings that have a history of crash damage in which the couplings were not magnafluxed, must be removed and magnafluxed prior to further flight.

(b) Within 100 hours' time in service after the effective date of this AD or since the last inspection in accordance with paragraph (a), and at 100-hour intervals thereafter, partially disassemble the forward and aft tail rotor drive shaft couplings (P/N 28-13609), inspect, lubricate, and reassemble in accordance with Enstrom Service Directive Bulletin 0065, dated August 19, 1983, and the Maintenance Manual/Maintenance Manual Supplement for the respective models or FAA approved equivalent.

(c) Each 600 hours' time in service or at each annual inspection, whichever occurs first after the effective date of this AD, disassemble the forward and aft tail rotor drive shaft couplings (P/N 28-13609), visually and dimensionally inspect for wear and proper tooth contact, lubricate, and reassemble in accordance with Enstrom Service Directive Bulletin 0065, dated August 19, 1983 and the Maintenance Manual/ Maintenance Manual Supplement for the respective models or FAA approved equivalent.

(d) Any equivalent method of compliance with this AD must be approved by the Manager, Chicago Aircraft Certification Office, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

(e) In accordance with FAR 21.197, flight is permitted to a base where the requirements of this AD may be accomplished.

This amendment becomes effective September 23, 1983.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended [49 U.S.C. 1354(a), 1421, and 1423]; 49 U.S.C. 106(g) [Revised, Pub. L. 97-449, January 12, 1983]; 14 CFR 11.89)

Note.—The FAA has determined that this regulation involves approximately 650 helicopters at a cost of $105 per aircraft. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures [44 FR 11034; February 26, 1979]. A copy of the final regulation evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Fort Worth, Texas, on August 31, 1983.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 83-25410 Filed 9-16-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-ASO-26]

Alteration of Transition Area; Nashville, Tenn.

AGENCY: Federal Aviation Administration [FAA], DOT

ACTION: Final rule.

SUMMARY: This amendment increases the size of the Nashville, Tennessee, transition area to accommodate future Instrument Flight Rule (IFR) operations at Cockrill Bend Airport which is presently under construction. This action lowers the base of controlled airspace in the vicinity of the new airport from 1,200 to 700 feet above the surface. The intended effect of this action is to ensure segregation of aircraft executing instrument approach procedures from other aircraft which may be operating under Visual Flight Rules (VFR) in controlled airspace. This amendment will also correct erroneous geographical coordinates for several existing airports.

EFFECTIVE DATE: 0901 G.m.t., November 24, 1983.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Thursday, July 14, 1983, the FAA proposed to amend Part 71 of the Federal Aviation Regulations [14 CFR Part 71] by increasing the size of the Nashville, Tennessee, transition area to provide additional controlled airspace in the vicinity of Cockrill Bend Airport which is presently under construction. In addition, several deficiencies in the existing description will be corrected (48 FR 32187). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received in response to the circularization. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Nashville, Tennessee, transition area by lowering the base of controlled airspace in the vicinity of Cockrill Bend Airport from 1,200 to 700 feet above the surface.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Nashville, Tennessee, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 G.m.t., November 24, 1983, as follows:

Nashville, TN—[Revised]

That airspace extending upward from 700 feet above the surface within a 17-mile radius of Nashville Metropolitan Airport (Lat. 36°07'37" N., Long. 86°40'53" W.), within an 8.5-mile radius of Smyrna Airport (Lat. 36°00'32" N., Long. 86°31'12" W.), Gallatin Municipal Airport (Lat. 36°22'43" N., Long. 86°24'32" W.), Lebanon Municipal Airport (Lat. 36°11'22" N., Long. 86°16'35" W.), Murfreesboro Municipal Airport (Lat. 35°52'38" N., Long. 86°22'39" W.), and Cockrill Bend Airport (Lat. 36°10'53" N., Long. 86°53'13" W.).

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 [49 U.S.C. 1348(a) and 1354(a)]; 49 U.S.C. 106(g) [Revised, Pub. L. 97-449, January 12, 1983])

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures [44 FR 11034; February 26, 1979]; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on September 2, 1983.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 83-25412 Filed 9-16-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 23756; Amdt. No. 1251]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures and Airspace Branch (AFO-730), Aircraft Programs Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washingon, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Aviation safety, Standard instrument approaches.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

. . . Effective November 24, 1983

Manhattan, KS—Manhattan Muni, VOR Rwy 3, Amdt. 13
Wichita, KS—Beech Factory, VOR-B, Amdt. Orig.
Wichita, KS—Beech Factory, VOR-B, Amdt. 11, Cancelled
Wichita, KS—Cessna Acft Field, VOR-C, Amdt. Orig.
Wichita, KS—Cessna Acft Field, VOR-C, Amdt. 2, Cancelled
Wichita, KS—Wichita Mid-Continent, VOR Rwy 14, Amdt. Orig.
Wichita, KS—Wichita Mid-Continent, VOR Rwy 14, Amdt. 12, Cancelled

. . . Effective October 27, 1983

Bridgeport, CT—Igor I. Sikorsky Memorial, VOR Rwy 6, Amdt. 17
Bridgeport, CT—Igor I. Sikorsky Memorial, VOR Rwy 24, Amdt. 10
Swainsboro, GA—Emanuel County, VOR-A, Amdt. 3
Carbondale-Murphysboro, IL—Southern Illinois, VOR-B, Amdt. 2
Bloomington, IN—Monroe County, VOR Rwy 24, Amdt. 7
Kentland, IN—Kentland Muni, VOR-A, Amdt. 2
Ottumwa, IA—Ottumwa Industrial, VOR/DME Rwy 13, Amdt. 5
Ottumwa, IA—Ottumwa Industrial, VOR Rwy. 31, Amdt. 13
Longview, TX—Gregg County, VOR or TACAN Rwy 13, Amdt. 17
Longview, TX—Gregg County, VOR/DME or TACAN Rwy 31, Amdt. 4
Longview, TX—Gregg County, VOR/DME or TACAN Rwy 35, Amdt. 4

. . . Effective September 29, 1983

Sault Ste Marie, MI—Chippewa County Intl, VOR-A, Amdt. 2

. . . Effective September 7, 1983

Key West, FL—Key West Intl, VOR-B, Amdt. 6

2. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

. . . Effective November 24, 1983

Wichita, KS—Wichita Mid-Continent, LOC BC Rwy 19L, Amdt. 12

. . . Effective October 27, 1983

Ottumwa, IA—Ottumwa Industrial, LOC/DME BC Rwy 13, Amdt. 1
Hibbing, MN—Chisholm-Hibbing, LOC BC Rwy 13, Amdt. 8

3. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

. . . Effective November 24, 1983

Wichita, KS—Wichita Mid-Continent, NDB Rwy 1R, Amdt. 14

. . . Effective October 27, 1983

Fort Morgan, Co—Fort Morgan Muni, NDB Rwy 14, Amdt. Orig.
Fort Morgan, Co—Fort Morgan Muni, NDB Rwy 32, Amdt. Orig.
Carbondale-Murphysboro, IL—Southern Illinois, NDB Rwy 18, Amdt. 9
Cedar Rapids, IA—Cedar Rapids Muni, NDB Rwy 9, Amdt. 9
Greenwood, MS—Greenwood-LeFlore, NDB Rwy 18, Amdt. Orig.
Longview TX—Gregg County, NDB Rwy 13, Amdt. 11

. . . Effective September 29, 1983

Sault Ste Marie, MI—Chippewa County Intl, NDB Rwy 10, Amdt. 2
Sault Ste Marie, MI—Chippewa County Intl, NDB Rwy 34, Amdt. 1

. . . Effective September 7, 1983

Key West, Fl—Key West Intl, NDB-A, Amdt. 10

4. By amending § 97.29 ILS ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

. . . Effective October 27, 1983

Ontario, CA—Ontario International, ILS Rwy 8L, Amdt. 3
Bridgeport, CT—Igor I. Sikorsky Memorial, ILS Rwy 6, Amdt.4

Carbondale-Murphysboro, IL—Southern Illinois, ILS Rwy 18, Amdt. 9
Cedar Rapids, IA—Cedar Rapids Muni, ILS Rwy 9, Amdt. 13
Cedar Rapids, IA—Cedar Rapids Muni, ILS Rwy 27, Amdt. 2
Ottumwa, IA—Ottumwa Industrial, ILS Rwy 31, Amdt. 3
Hibbing, MN—Chisholm-Hibbing, ILS Rwy 31, Amdt. 8
Greenwood, MS—Greenwood-LeFlore, ILS Rwy 18, Amdt. 3
New York, NY—LaGuardia, ILS Rwy 22, Amdt. 16
Chattanooga, TN—Lovell Field, ILS Rwy 2, Amdt. 4

Effective September 29, 1983

Sault Ste Marie, MI—Chippewa County Intl, ILS Rwy 16, Amdt. 3

Effective November 24, 1983

Manhattan, KS—Manhattan Muni, ILS Rwy 3, Amdt. 2
Wichita, KS—Wichita Mid-Continent, ILS Rwy 1L, Amdt. 1
Wichita, KS—Wichita Mid-Continent, ILS Rwy 1R Amdt. 14
Wichita, KS—Wichita Mid-Continent, ILS Rwy 19R, Amdt. 3

5. By amending § 97.31 RADAR SIAPs identified as follows:

Effective October 27, 1983

Longview, TX—Gregg County, RADAR-1, Amdt. 2

Effective September 7, 1983

Key West, FL—Key West Intl, RADAR-1, Amdt. 1

6. By amending § 97.33 RNAV SIAPs identified as follows:

Effective November 24, 1983

Wichita, KS—Beech Factory, RNAV Rwy 18, Amdt. Orig.
Wichita, KS—Beech Factory, RNAV Rwy 18, Amdt. 3, Cancelled
Wichita, KS—Beech Factory, RNAV Rwy 36, Amdt. Orig.
Wichita, KS—Beech Factory, RNAV Rwy 36, Amdt. 5, Cancelled
Wichita, KS—Cessna Acft Field, RNAV Rwy 17L Amdt. Orig.
Wichita, KS—Cessna Acft Field, RNAV Rwy 17L Amdt. 1, Cancelled
Wichita, KS—Cessna Acft Field, RNAV Rwy 35R, Amdt. Orig.
Wichita, KS—Cessna Acft Field, RNAV Rwy 35R Amdt. 1, Cancelled
Wichita, KS—Wichita Mid-Continent, RNAV Rwy 1L, Amdt. Orig.
Wichita, KS—Wichita Mid-Continent, RNAV Rwy 1L, Amdt. 4, Cancelled
Wichita, KS—Wichita Mid-Continent, RNAV Rwy 19R, Amdt. Orig.
Wichita, KS—Wichita Mid-Continent, RNAV Rwy 19R, Amdt. 3, Cancelled

Effective October 27, 1983

Ottumwa, IA—Ottumwa Industrial, RNAV Rwy 22, Amdt. 2
Milliville, NJ—Millville Muni, RNAV Rwy 28, Amdt. Orig.
Milliville, NJ—Millville Muni, RNAV Rwy 32, Amdt. Orig.
Longview, TX—Gregg County, RNAV Rwy 22, Amdt. 5

Effective September 1, 1983

San Antonio, TX—San Antonio Intl, RNAV Rwy 30L, Amdt. 8

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 [49 U.S.C. §§ 1348, 1354(a), 1421, and 1510]; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Note. The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

Issued in Washington, D.C. on 16 September 1983.

Kenneth S. Hunt,

Director of Flight Operations.

[FR Doc. 83-25746 Filed 9-16-83; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 83C-0051]

Listing of Color Additives for Coloring Contact Lenses; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of August 9, 1983, for a final rule that provides for the safe use of four color additives for coloring contact lenses. This action responds to a petition filed by Custom Tint Laboratories, Inc.

DATE: Effective date confirmed: August 9, 1983.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** of July 8, 1983 (48 FR 31374), FDA amended the color additive regulations to provide for the safe use of four color additives for coloring contact lenses. The final rule added new § 73.3117 (21 CFR 73.3117) that allows the use of 16,23-dihydrodinaphtho[2,3-*a*:2',3'-*i*] naphth[2',3':6,7]indolo 2,3-*c*]carbazole-5,10,15,17,22,24-hexone; § 73.3118 (21 CFR 73.3118) that allows the use of *N,N'*-(9,10-dihydro-9,10-dioxo-1,5-anthracenediyl)bisbenzamide; § 73.3119 (21 CFR 73.3119) that allows the use of 7,16-dichloro-6,15-dihydro-5,9,14,18-anthrazinetetrone; and § 73.3120 (21 CFR 73.3120) that allows the use of 16,17-dimethoxydinaphtho[1,2,3-*cd*:3',2',1-*lm*]perylene-5,10-dione for coloring contact lenses.

In the final rule, FDA gave interested persons until August 8, 1983, to file objections. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of July 8, 1983, for these four color additives should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Color additives exempt from certification, Cosmetics, Drugs, Medical devices.

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371(e), 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the final rule of July 8, 1983. Accordingly, the final rule adding §§ 73.3117, 73.3118, 73.3119, and 73.3120 to provide for the safe use of four color additives in coloring contact lenses became effective August 9, 1983.

Dated: September 12, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-25449 Filed 9-16-83; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 74, 81, and 82

[Docket No. 83C-0128]

Color Additives; D&C Yellow No. 10

Correction

In FR Doc. 83-23708 beginning on page 39217 in the issue of Tuesday, August 30, 1983, make the following corrections:

1. On page 39218, second column, fifth line from the bottom of the first complete paragraph, "(P<0.05)" should read "(P<0.05)".

2. On page 39220, second column, the third line of the last paragraph, the date should read "September 29".

3. On the same page, the third column, in the authority citation "706(d)" should read "706(b)".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 250

Indian Fishing; Hoopa Valley Indian Reservation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is amending its conservation regulations governing Indian fishing on the Hoopa Valley Reservation in response to recommendations received from Indians and from officials assigned to implement the rules. The most significant change is a closure to gillnet fishing from 9 a.m. Monday to 9 a.m. Tuesday of each week during the fall chinook run. Prior to publication of this rule, gillnet fishing was banned only from 9 a.m. to 5 p.m. on Monday of each week. Last year, however, gillnet fishing during the fall chinook run was banned from 9 a.m. Monday to 5 p.m. Wednesday of each week and from 9 a.m. to 5 p.m. on Thursday and Fridays.

DATE: This rule becomes effective September 19, 1983.

FOR FURTHER INFORMATION CONTACT: Daniel Swaney, Superintendent, Northern California Agency, Bureau of Indian Affairs, P.O. Box 367, Hoopa, California 95546, telephone number (916) 625-4285.

SUPPLEMENTARY INFORMATION: The Department of the Interior is responsible for the supervision and management of Indian Affairs under 43 U.S.C. 1457, 25 U.S.C. 2, 9 and 13 and the Reorganization Plan No. 3 of 1950 (64 Stat. 1262), including the protection of Indian fishing rights.

Normally, tribal governments are responsible for regulation of Indian fishing on a reservation. Tribal regulation on the Hoopa Valley Indian reservation has not been possible because not all tribes on the reservation have functioning governments. The Yurok Tribe has not developed an organized government able to participate in regulation of the Indian fishery. Until organization is accomplished by the Yurok Tribe, the Department will continue to regulate the fishery to assure the continued existence of this valuable tribal asset. In keeping with the Department's policy of Indian self-determination, the Department makes a special effort to consult with the Indians governed by these regulations and gives special consideration to their views in making decisions concerning these regulations. It is also recognized that the resource is best protected when the people to be regulated participate in resource management decisions.

In early February 1983, public meetings were held on the reservation to receive comments and suggestions concerning possible changes to the fishing regulations. The comments and suggestions made at those meetings were considered in developing the proposed rule, which was published in the Federal Register on June 24, 1983 (48 FR 29004). An additional public meeting was held in July in Eureka, California. Comments made at that meeting and written comments received in response to publication of the proposed rule have been considered in developing the final rule.

Changes Made Due to Comments Received

1. One commenter recommended that "anadromous fish" be defined by species because questions have arisen with respect to the applicability of the regulations to sturgeon, steelhead, and lamprey or eels. The proposed rule would have made it clear that eels or lamprey are anadromous fish, but would not have mentioned what other fish in the Klamath and Trinity Rivers are anadromous, and, therefore, covered by the regulations. The same commenter also questioned whether a conservation need exists to regulate the harvest of anadromous fish other than salmon. This proposal to define anadromous fish has been adopted. The term is defined to include salmon, steelhead, sturgeon and eels. There is biological information available that indicates that green sturgeon are particularly vulnerable to overharvest. Although not in as precarious condition as salmon in the Klamath, steelhead stocks have declined substantially from historical levels—largely due to habitat degradation. Information on the status of the stocks of sturgeon and lamprey or eels in the Klamath and Trinity is limited. That fact alone justifies some level of regulation in order to avoid a possible overharvest of those stocks. Additionally, since gillnets used to harvest steelhead or sturgeon are also likely to harvest chinook salmon—which are know to require protection—regulation of the harvest of sturgeon and steelhead is necessary to protect chinook stocks.

2. The Hoopa Valley Business Council objected to the deletion of the "stretched measure" definition even though that term has not been used in the regulations for several years. The Council reports that it is presently considering the possibility of recommending that mesh size restriction be reinstated as a way to provide for subsistence needs while conserving the resource. For the reasons discussed in more detail below, the Department would give such a recommendation from the Council special consideration. Accordingly, the definition of "stretched measure" has been retained.

Changes Recommended But Not Adopted

1. A number of commenters urged a return to the closures that applied during the fall chinook run last year. Those included daytime closures to gillnet fishing from Monday through Friday and nighttime closures on Mondays and Tuesdays of each week.

As discussed above, reservation fisheries are usually regulated by the tribes themselves. Although the non-existence of a tribal government for many Indians of the Hoopa Valley Reservation makes such self-regulation impossible at the present, it is the Department's policy to give the Indians regulated by these rules as much control of the content of these rules as is possible given the Department's responsibility to assure the preservation of the resource and the difficulties in finding a consensus on such issues.

Last year's closures did have broad support both with the Hoopa Valley Tribe and among the non-Hoopa Valley Tribal members who exercise fishing rights on the reservation. Most Indians favored the daytime closures as a necessary measure to maintain good relations with the sport fishery on the river. The two-day nighttime closure, which was probably responsible for most of the reduction in Indian harvest experienced last year, was supported by

the Indians in the hopes it would result in similar restraint by the commercial troll fishery in the ocean.

With respect to the daytime closure, the Department stated in the preamble to the regulations last year, "It is anticipated that a cooperative spirit among user groups could result in the groups working together to preserve the resource and, consequently, could produce significant conservation benefits. This particular benefit exists, however, only as long as the closures have the support of both user groups. Additional daytime closures may be desirable, but they should be achieved through agreement rather than by asking the Department to impose them on the Indian gillnet fishery unilaterally."

The Department sincerely regrets that the cooperative spirit that existed last year is apparently weaker this year. Clearly, however, the Department cannot strengthen that cooperative spirit by regulatory fiat. The Department strongly urges both user groups to work together to improve cooperation between them.

Both the Hoopa Valley Tribe and Indian fishers who are not members of that tribe have expressed the view that the response of the commercial troll industry to the restraint exercised by the Indian fishing community last year does not warrant continued Indian restraint this year.

In order to assure preservation of the resource under current conditions, the Department has committed itself to implementing regulations that will prevent the Indian harvest from exceeding 30,000 adult fall chinook this year. The Department believes imposition of a one-day closure to gillnet fishing during the fall run will keep the harvest below that level.

Some commenters asserted that, contrary to the view expressed in the preamble to the proposed rule, high water levels on the Klamath would increase rather than decrease the net harvest because increased turbidity would make the nets more efficient. Only 500 spring chinook were harvested in nets this year through July. That is only 24% of the 1982 level for the same period. Much of this reduction is attributed to high water levels and accompanying debris causing a reduction in effort as well as netting efficiency. Water levels appear to have dropped to a point where they will not seriously inhibit gillnet fishing during the fall run as was the case during the spring. It is also unlikely, however, that turbidity during the fall fishery will be high enough to make the nets significantly more efficient than in the past seasons.

In the absence of Indian community support for such measures, it is difficult, as a legal matter, to justify restraints on the Indian fishery that are not needed for conservation purposes—especially if such restraints are likely to lead to reallocation of harvest to non-Indian user groups rather than to improved run sizes.

2. A number of commenters recommended changes to the regulations that are unrelated to any changes published in the proposed rule. Among these were recommendations to address the applicability of state law to Indian fishing, to remove the residency requirement in determining eligibility to exercise fishing rights for persons who are neither *Short* plaintiffs nor members of the Hoopa Valley Tribe, to delete certain creeks from the list of creeks that may not be blocked by nets, to authorized the sale of fish seized from fishers who do not have an identification card with them, and to make the regulations appliable to all persons. Adoption of any of these recommendations in this final rule would deprive the public of an opportunity to comment on them prior to their adoption. Although none of these recommendations was considered for adoption in this document, some of them may be the subject of rulemaking later.

3. One commenter objected that the maximum penalty of $250 proposed as an amendment to §250.3(d) is excessive and impractical for minors. The commenter urged the use of other sanctions, such as forfeiture of gear and/or fish or requiring community service. Another commenter, however, urged more severe penalties for minors because some minors are used as "fronts" by adults for illegal activity. The amendment simply provides a maximum dollar amount for any fine and does not preclude the use of other non-monetary penalties other than incarceration. The Department's experience to date with violations by minors does not indicate that they are serious enough to override the Department's reluctance to incarcerate minors because of the potential adverse effects on them. Fines larger than $250 do not appear to be needed in order to deter illegal fishing by minors.

4. One commenter urged that jury trials be denied only for those offenses for which the regulations themselves exclude the possibility of a jail sentence. The proposed rule would permit the denial of a jury trial if the court rules, based on the allegations against the particular defendant, that the particular offense will not be punishable by imprisonment. The Indian Civil Rights Act, 25 U.S.C. 1302 (10) prohibits the denial of a request for a jury trial by "any person accused of an offense punishable by imprisonment." Nothing in the Indian Civil Rights Act precludes delegation to the court of authority to decide whether a specific offense is punishable by imprisonment. It would be difficult to state in advance in a regulation all the factors that could make it appropriate to punish a particular offense with a jail sentence. For those reasons the proposed rule has been adopted without change.

5. One commenter objected to the proposal to define the term "assist" to include being in a boat while Indian fishing rights are being exercised. The commenter asserted that some elderly and disabled eligible fishers need help in managing the boat in order to exercise their fishing rights safely. Permitting persons without fishing rights to accompany eligible fishers in a boat could lead to serious abuses that could result in substantially increasing the gillnet harvest to the benefit of persons who do not have Indian fishing rights. Because the federal regulations do not apply to such persons, the BIA relies on state enforcement to prevent illegal depletion of the resource by such individuals. It is clearly in the interest of the Indians to facilitate state enforcement of its restrictions on non-Indian fishers in order to maximize the number of fish for spawning and Indian harvest. Provisions have been made in the regulations for the assistance of handicapped eligible fishers by able-bodied eligible fishers.

6. Another commenter, however, urged that the definition of "assist" be expanded to prohibit persons who are not eligible fishers from carrying the fish from the river banks to the transport vehicle. The commenter noted that state law places a limit on the number of fish such persons may have in their possession at any one time. As is discussed above, the restriction on "assisting" is designed to avoid the risk that non-eligible persons will be exercising Indian fishing rights under the guise of "assisting" simply by having an eligible person accompany them while fishing. This goal is met so long as the regulations prohibit non-eligible persons from being in the boat or handling the fish while they are in the boat or caught in the gear. Under the regulations, eligible fishers are permitted to catch fish for consumption by family members even if some of those family members are not themselves eligible fishers. For that reason, there will be many occasions when such family members may

legitimately be in possession of fish caught by eligible fishers.

7. One commenter objected to the proposal to amend the definition of "commercial fishing" to make it clear that the intent to sell the fish may be formed after they are caught because the commenter believes such a change would facilitate state prosecution of Indians. The change in the definition is intended to facilitate prosecutions in the court of Indian offenses. It is not intended to have any effect on state law.

8. One commenter urged that ceremonial fishing be omitted from the regulations or else a provision be included that ceremonial fishing is to occur according to tradition and custom with disputes to be resolved by the tribe. The provision concerning ceremonial fishing is designed to give the superintendent some guidance in accommodating the free exercise of religion as is required by the First Amendment to the United States Constitution. A federal requirement that ceremonial fishing occur according to tradition would be a clear violation of the First Amendment.

9. One commenter urged that the logsheet requirement be retained and an effort be made to correct the compliance problem because information regarding the number of fish taken in the Indian gillnet fishery is a prerequisite for effective management. We agree that such information is essential. We have found, however, that the most effective method for collecting that information is to visit Indian netting sites regularly while the run is underway. We believe the data collected in this manner is much more reliable than any data we could obtain through the use of logsheets.

10. One recommendation was received to impose a minimum mesh size of 6.25 inches in order to reduce the harvest of adult steelhead. During the summer months few Indians use nets with a mesh size of less than 6.25 inches because most Indians prefer to catch chinook rather than steelhead. Smaller mesh sizes are used in the fall when the Indians are fishing for coho. At that time of the year, however, there are usually much fewer steelhead in the river than there are in the summer. Since, for these reasons, there appears to be no urgent need to impose a minimum mesh size requirement, the Department plans to await the recommendation of the Hoopa Valley Business Council before deciding whether such a requirement should be imposed.

A technical amendment is being made to §§ 250.8(b) and 250.8(c) to eliminate language applicable only to last year and to clarify the relationship between paragraph (c) and paragraph (b). Paragraph (b) restrictions apply in August and September. Paragraph (c) restrictions apply during the rest of the year.

The primary author of this document is David Etheridge, Office of the Solicitor, Division of Indian Affairs, Department of the Interior.

It has been determined that this final rule is not a major rule as that term is defined in Executive Order 12291 of February 17, 1981, 46 FR 13193, because it will have a limited economic impact on a small number of people. For the same reasons, it has been determined that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Pub. L. 96-354.

List of Subjects in 25 CFR Part 250

Fisheries, Fishing, Indians—land, Penalties.

This rule is being made effective upon publication in the **Federal Register** under the exception in 5 U.S.C. 553(d)(3), which permits rules to become effective in less than 30 days when provided by the agency for good cause found and published with the rule. The regulations need to be in effect by the time the fall chinook run is underway. Large numbers of fall chinook usually begin to enter the river in August.

PART 250—INDIAN FISHING—HOOPA VALLEY RESERVATION

Part 250 of Title 25 Code of Federal Regulations is amended as follows:

1. By removing paragraph (d) of § 250.1 and revising the section heading to read as follows:

§ 250.1 Purpose.

* * * * *

2. By removing paragraph (e) of §250.3, redesignating paragraph (f) of that section as paragraph (e) and by revising paragraph (d) of that section to read as follows:

§ 250.3 Application.

* * * * *

(d) Minors between the ages of 10 and 18 are eligible to receive identification cards and are subject to the provisions of this Part, but are not subject to a fine of more than $250 or incarceration.

* * * * *

3. By removing from § 250.4 the definition of "logsheet", by revising the definition of "commercial fishing", and by adding new definitions for "anadromous fish", "assist", and "eel" in alphabetical order to read as follows:

§ 250.4 Definitions.

"Anadromous fish" include salmon, steelhead, sturgeon and eels.

"Assist" as used in § 250.5(c) means providing aid to an eligible Indian fisher in placing fishing gear, checking it, removing it from the water, removing any fish caught with the gear or removing fish from the boat.

* * * * *

"Commercial fishing" means the taking of fish or fish parts with the prior or subsequent intent to sell or trade them or profit economically from them. It does not include accepting payment for the labor involved in catching fish for the elderly or incapacitated under § 250.8(t) of this Part where payment is not based on the number or weight of fish caught.

* * * * *

"Eel" means Pacific lamprey, an anadromous fish.

* * * * *

4. By revising paragraph (c) of § 250.5 to read as follows:

§ 250.5 Eligible fisher—eligible Indian.

* * * * *

(c) Except as provided under § 250.3(c), an eligible Indian who allows an ineligible person to assist in an Indian fishery on the reservation or who permits an ineligible person to be in a boat while it is being used in the exercise of Indian fishing rights is subject to the penalties set out in § 250.15.

§ 250.6 [Amended]

5. By removing paragraph (d) of § 250.6.

6. By revising the section heading and paragraph (c) of § 250.7 to read as follows:

§ 250.7 Identification and use of gear.

* * * * *

(c) Except as may be provided for elsewhere in this Part, no eligible Indian fisher may intentionally allow his or her identification number to be used on a net that he or she is not attending or fishing.

* * * * *

7. By revising paragraphs (b), (c), and (p) and adding paragraphs (w) and (x) to § 250.8 to read as follows:

§ 250.8 Permissible and prohibited fishing.

* * * * *

(b) Fishing with gillnets is prohibited from 9 a.m. Monday until 9 a.m. Tuesday of each week during the months of August and September of each year. Except as provided elsewhere in this Part, fishing with gillnets is permitted at all other times.

(c) From October 1 through July 31 of each year, fishing with gillnets is permitted seven days per week and twenty-four hours per day except that all nets must be out of the water between the hours of 9:00 a.m. and 5:00 p.m. on Monday of each week.

* * * * *

(p) No set-net fishing is allowed within 400 feet of a test seining operation conducted by either the U.S. Fish and Wildlife Service or the California Department of Fish and Game. Set-nets placed in an area normally used for test seining may be removed by law enforcement officers and held for the owner to claim if their removal is necessary in order to permit test seining operations to be conducted

* * * * *

(w) Eels may be taken by any method except by the use of snag gear as defined in § 250.4, explosives, stunning agents or caustic or lethal chemicals in any form.

(x) Ceremonial fishing may be conducted during closed hours pursuant to a special permit issued by the Superintendent of the Northern California Agency. The Superintendent may impose any conditions on the permittee that are necessary to protect the fish resource or to assure that all fish caught are used exclusively for ceremonial purposes

8. By revising paragraphs (a) and (b) of §205.11 to read as follows:

§250.11 In-season and emergency regulations.

(a) The Area Director of the Bureau of Indian Affairs is authorized to make in-season and emergency changes to the regulations when necessary to ensure proper management of the fisheries of the Klamath and Trinity Rivers. This authority includes the following powers:

(1) To close all or part of an Indian fishery when, in the Area Director's judgment, a closure is necessary to meet conservation needs.

(2) To re-open all or part of an Indian fishery when, in the Area Director's judgment, that action will not jeopardize spawning escapement.

(b) In-season or emergency regulations shall be effective 24 hours after publication in the *Eureka Times Standard*. They shall stay in effect until modified or rescinded by the Area Director. Failure to complete subsequent provisions of this section shall not affect the validity of any in-season or emergency adjustment.

* * * * *

9. By revising paragraphs (a) and (c) of § 205.12 to read as follows:

§250.12 Fish catch reporting.

(a) All eligible fishers shall allow access to harvested fish to authorized biologists, technicians, and enforcement officers for the purpose of monitoring the harvest and to check for compliance with the provisions of this part.

* * * * *

(c) The U.S. Fish and Wildlife Service will compile in-season catch data from information obtained from spot checks of fishers, landing counts, creel censuses and other information collected by State, Federal and tribal officials.

10. By revising § 205.14 to read as follows:

§250.14 Enforcement.

(a) Eligible Indians who violate the provisions of this Part or any in-season or emergency adjustments promulgated under this Part are subject to prosecution before the Court of Indian Offenses of the Hoopa Valley Indian Reservation. The Indian Civil Rights Act and, except as modified by this Part, 25 CFR 11.5 (a) and (b), 11.6–11.8, 11.11, 11.12(a), 11.14–11.19, 11.21, and 11.33–11.37 apply.

(b) *Citations.* Law enforcement officers may issue citations to any eligible Indian the officer believes has committed a violation of the regulations of this Part. Such citation shall state when and where the person is charged.

(c) *Seizure.* Confiscation of fishing gear and fish.

(1) Any net or other fishing gear used in violation of these regulations and any fish caught or possessed in violation of these regulations may be seized by a law enforcement officer. Fishing gear or fish so seized shall be held pending disposition by court order except as specifically provided in these regulations.

(2) When a net or other fishing gear is seized and the owner is unknown to the enforcement officer, the prosecutor shall, without unreasonable delay, commence proceedings in the Court of Indian Offenses by petitioning the court for a judgment forfeiting the fishing gear and/or fish. When a net or other fishing gear is seized and the fishing gear is marked with an identification number the prosecutor shall, without unreasonable delay, notify by registered mail the holder of the identification munber that his or her fishing gear has been seized. The notice of seizure shall state the date of seizure, the place of seizure, and the time of seizure and shall direct the person whose gear has been seized to notify the court directly to arrange to have the matter placed on the court's calendar.

(3) Upon filing of such petition, the enforcement officer shall set out details of the seizure, citing time, place, and location of such seizure. A notice of seizure shall be left at the site where the fishing gear of fish were confiscated. The court upon receipt of the petition shall fix a time for a hearing and cause notices for unidentified gear of fish to be posted and published. A notice shall be published at least ten days prior to the forfeiture hearing at both courthouses of the Court of Indian Offenses. The clerk of the court shall publish notices in local news media having circulation on the reservation. Such notices shall be published for a period of five days and shall set forth the reason for the hearing. Once a person claims seized fishing gear or fish, the publication of the notice shall cease.

(4) Any fishing gear forfeited shall be sold at public sale as directed by the Superintendent.

(5) Any person who satisfies the court that he or she is the owner of any fishing gear or fish seized under this section may intervene in the forfeiture proceeding on behalf of the fishing gear or fish.

(6) If there is no objection by the seizing agency, nor any Federal statutory or regulatory prohibition, all fish seized may be sold by the Superintendent, Northern California Agency, and the proceeds held pending adjudication of the charge that was the basis of the seizure. Proceeds from sales of fish that are found, upon adjudication, to have been taken in violation of these regulations shall be transferred to a special Hoopa-Yurok Fund in the U.S. Treasury. Nothing in this section shall be construed to prevent undercover law enforcement officers from selling fish as part of their duties or to make legal the purchase of fish from such officers.

(d) *Complaint procedures.* Any person regulated under this Part may file a complaint in writing against a law enforcement officer. The Superintendent of the Northern California Agency shall, without unreasonable delay, conduct an investigation into any allegation of misconduct by the BIA law enforcement officer in carrying out the duties of that office. Upon completion of the investigation, the Superintendent shall make available to the complainant, upon written request, the findings of the investigation.

11. By revising § 250.16 to read as follows:

§ 250.16 Forceable assault and impeding a Federal employee.

(a) Any person who forcibly assaults, resists, impedes, or interferes with an

employee of the Interior Department in the performance of his or her duties under this Part may be prosecuted in Federal court under 18 U.S.C. 111.

(b) Any eligible Indian who forcibly assaults, resists, impedes, or interferes with a law enforcement officer, biologist or other authorized employee in the performance of his or her duties under this Part shall be fined not more than $500, sentenced to jail for a period not to exceed six months and have his or her fishing rights suspended for not more than one hundred eighty days during the fall chinook runs.

12. By adding a new § 250.19 to read as follows:

§ 250.19 Juries.

(a) A jury trial shall be provided upon demand by the defendant in any case in which the court determines, assuming all allegations are proved true, that a jail sentence may be imposed.

(b) A list of eligible jurors shall be developed from the list of eligible Indians.

(c) A jury shall consist of six eligible Indians chosen by the judge pursuant to rules promulgated by the court.

(d) No juror may be seated unless the court concludes beyond a reasonable doubt that he or she is able to render a fair and impartial verdict.

(e) The judge shall instruct the jury in the law governing the case and the jury shall reach a verdict of guilt or innocence as to each count charged.

(f) Verdicts shall be rendered by unanimous vote.

(g) The jury shall return a verdict of guilty if it concludes beyond a reasonable doubt that the defendant committed the offense with which he or she is charged.

(h) Each juror who serves on a jury is entitled to a fee not less than the hourly mimimum wage scale established by 29 U.S.C. § 206(a)(1), and any of its subsequent revisions, plus fifteen cents per mile travel costs. Each juror shall receive the travel allowance and pay for a full day (eight hours) for any portion of a day served.

(25 U.S.C. 2, 9 and 13; Reorganization Plan No. 3 of 1950, 64 Stat. 1262)

Dated: September 1, 1983.

Kenneth L. Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 83-25384 Filed 9-16-83; 8:45 am]

BILLING CODE 4310-02-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1610

Freedom of Information Act; Schedule of Fees

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations on the availability of records so that its schedule of fees for the search of records will reflect increases in the direct costs incurred by the Commission in responding to requests for records.

EFFECTIVE DATE: October 19, 1983.

FOR FURTHER INFORMATION CONTACT: Anthony J. De Marco, Assistant Legal Counsel, Legal Services, Office of the Legal Counsel, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20506, (202) 634-6592.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission published a notice of proposed rulemaking (48 FR 16837) on April 26, 1983, proposing to amend 29 CFR 1610.15(a). Today's action makes final the amendment of that regulation as proposed in the April 26, 1983 notice. This provision contains a schedule of fees utilized by the Commission for purposes of assessing costs to individuals who seek access to records under the Freedom of Information Act, 5 U.S.C. 552. The present fee schedule has become outdated since it does not reflect increases in direct costs to the Commission for the search for records requested. The higher costs are attributable to increases in the salaries of personnel required to search for records. The last search fee revision occurred in 1978. 43 FR 40223 (Sept. 11, 1978).

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and Executive Order 12291, the Equal Employment Opportunity Commission certifies that the economic effects of this rule have been carefully analyzed, and that it has been determined that neither a regulatory flexibility analysis nor a regulatory impact analysis is required.

This regulation is published pursuant to the requirements of the Freedom of Information Act, 5 U.S.C. 552(a)(4)(A). This provision is also promulgated in accordance with 31 U.S.C. 438a.

Comments: No comments were received regarding the proposed changes in these regulations.

List of Subjects in 29 CFR Part 1610

Freedom of Information.

PART 1610—AVAILABILITY OF RECORDS

Section 1610.15 of Title 29 of the Code of Federal Regulations is hereby amended so that paragraph (a) will read as follows:

§ 1610.15 Schedule of fees and method of payment for services rendered.

(a) Except as otherwise provided, the following specific fees shall be applicable with respect to services rendered to members of the public under this subpart:

(1) For actual search time by clerical personnel—at the rate of $7.00 per hour.

(2) For actual search time by professional personnel—at the rate of $17.00 per hour.

(3) For copies made by photocopying machine—$.15 per page (maximum of 10 copies).

(4) For attestation of each record as a true copy—$.75 per document.

(5) For certification of each record as a true copy, under the seal of the agency—$1.00.

(6) For each signed statement of negative result of search for record—$1.00.

(7) All other direct costs of search or duplication shall be charged to the requester in the same amount as incurred by the agency.

* * * * *

(31 U.S.C. 9701)

Signed this 13th day of September, 1983.

For the Commission.

Clarence Thomas,

Chairman.

[FR Doc. 83-25449 Filed 9-16-83; 8:45 am]

BILLING CODE 6570-06-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[Docket No. AW700DE; A-3-FRL 2430-2]

Standards of Performance for New Stationary Sources; Delegation of Authority to the State of Delaware

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Section 111(c) of the Clean Air Act permits EPA to delegate to the States the authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS). On April 20, 1983, the State of Delaware

requested EPA to delegate to it the authority for additional NSPS source categories. EPA granted the request on July 5, 1983. The State now has authority to implement and enforce NSPS for steel plants: electric arc furnaces, storage vessels for petroleum liquids constructed after May 18, 1978, lead acid battery manufacturing plants, automobile and light duty truck surface coating operations, graphic arts industries, and asphalt processing and asphalt roofing manufacture. In addition, Delaware has amended several State NSPS and NESHAP regulatory requirements. These amendments are acceptable to EPA. Applications and reports required under the NSPS which EPA has delegated Delaware authority to implement and enforce should be sent to the State's Department of Natural Resources and Environmental Control rather than to EPA Region III.

EFFECTIVE DATE: July 5, 1983.

ADDRESSES: Applications and reports required under all NSPS source categories which EPA has delegated Delaware authority to implement and enforce should be addressed to the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover Delaware 19901, rather than to EPA Region III.

FOR FURTHER INFORMATION CONTACT: Daniel Ryan of EPA Region III's Air Management Branch, telephone 215/597-8555.

SUPPLEMENTARY INFORMATION: On April 20, 1983, the State of Delaware requested EPA to delegate to it authority to implement and enforce additional NSPS source categories. Delaware requested these delegations to supplement the delegations for other source categories which the State had already received and of which EPA had published notifications at 43 FR 6771 (1978), 44 FR 70465 (1979), and 46 FR 28402 (1981). In addition, Delaware notified EPA that the State had amended Regulation XX, *New Source Performance Standards*, by including a statement in Section 2—*Standards of Performance for Fuel Burning Equipment*—stating that this section does not apply to certain sources discussed in Section 11—*Standards of Performance for Petroleum Refineries*; by changing Section 4—*Standards of Performance for Storage Vessels for Petroleum Liquids*—by adding to the title the phrase *Constructed before May 18, 1978* to define to what sources the section pertains; and by deleting Section 11, Subsection 60.105(e), which was determined to be in conflict with other regulatory provisions and to be unnecessary. Finally, Delaware notified EPA that the State had revised Regulations XX, *New Source Performance Standards*, and XXI, *Emission Standards for Hazardous Air Pollutants*, by updating all citations to EPA references. EPA has reviewed all of these State regulatory changes and has found them acceptable.

Delegation of the additional standards was made by the following letter on July 5, 1983:

Honorable John E. Wilson III, Secretary,
Delaware Department of Natural Resources and Environmental Control,
89 Kings Highway, P.O. Box 1401, Dover, DE 19901

Dear Mr. Wilson: On September 30, 1977, October 9, 1979, and May 11, 1981, EPA delegated to the State of Delaware the authority to implement and enforce the Standards of Performance for New Stationary Sources (NSPS) for various NSPS source categories. In your letter of April 20, 1983, you requested that EPA delegate to the State of Delaware the authority to implement and enforce the NSPS for the following additional NSPS source categories: steel plants: electric arc furnaces, storage vessels for petroleum liquids constructed after May 18, 1978, lead acid battery manufacturing plants, automobile and light duty truck surface coating operations, graphic arts industries, and asphalt processing and asphalt roofing manufacture. You also requested EPA's approval of Delaware's adoption by reference of new Test Method 107A of Appendix B of 40 CFR, Part 61, promulgated by EPA at 47 FR 39485 on September 8, 1982; of new Quality Assurance Procedures 1 and 2 to 40 CFR, Part 61 and of revisions to Test Methods 106 and 107 of Appendix B to 40 CFR, Part 61, promulgated by EPA at 47 FR 39168 on September 7, 1982, and of revisions to Test Method 20 of Appendix A to 40 CFR, Part 60, promulgated by EPA at 47 FR 30480 on July 14, 1982.

We have reviewed the pertinent laws, rules and regulations of the State of Delaware and have determined that they continue to provide an adequate and effective procedure for implementing and enforcing the NSPS regulations. Therefore, we hereby delegate our authority for the implementation and enforcement of the NSPS regulations listed above to the State of Delaware for all sources located or to be located in Delaware that fall under the requirements of these regulations. We also approve Delaware's adoption by reference of the above test methods and test method revisions.

This NSPS delegation is based upon the following conditions:

1. Quarterly reports which may be combined with other reporting information are to be submitted to EPA Region III, Air Enforcement Section (3AW12) by the Delaware Department of Natural Resources and Environmental Control (DNREC) and should include the following:

(i) Source determined to be applicable during that quarter;

(ii) Applicable sources which started operation during that quarter or which started operation prior to that quarter which have not been previously reported;

(iii) The compliance status of the above, including the summary sheet from the compliance test(s); and

(iv) Any legal actions which pertain to these sources.

2. Enforcement of the NSPS regulations in the State of Delaware will be the primary responsibility of the DNREC. Where DNREC determines that such enforcement is not feasible and so notifies EPA, or where DNREC acts in a manner inconsistent with the terms of this delegation, EPA will exercise its concurrent enforcement authority pursuant to Section 113 of the Clean Air Act, as amended, with respect to sources within the State of Delaware subject to NSPS regulations.

3. Acceptance of this delegation of regulations for the source categories listed above does not commit the State of Delaware to request or accept delegation of other present or future standards and requirements. A new request for delegation will be required for any additional standards or amendments to previously delegated standards.

4. DNREC will not grant a variance from compliance with the applicable NSPS regulations if such variance delays compliance with the Federal Standards. Should DNREC grant such a variance, EPA will consider the source receiving the variance to be in violation of the applicable Federal regulations and may initiate enforcement action against the source pursuant to Section 113 of the Clean Air Act. The grant of such variance by the Agency shall also constitute grounds for revocation of delegation by EPA.

5. DNREC and EPA will develop a system of communication sufficient to guarantee that each office is always fully informed regarding the interpretation of applicable regulations. In instances where there is a conflict between DNREC's interpretation and a Federal interpretation of applicable regulations, the Federal interpretation must be applied if it is more stringent than that of DNREC.

6. If at any time there is a conflict between a DNREC regulation and Federal regulation found at 40 C.F.R. Part 60, the Federal regulation must be applied if it is more stringent than that of DNREC. If DNREC does not have the authority to enforce the more stringent Federal regulation, this portion of the delegation may be revoked.

7. DNREC will utilize the methods specified in 40 CFR Part 60 in performing source tests pursuant to these regulations. However, alternatives to continuous monitoring procedures and requirements may be acceptable upon concurrence by EPA as stipulated in 40 CFR 60.13.

8. If the Director of the Air and Waste Management Division determines that a DNREC program for enforcing or implementing the NSPS regulations is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be

effective as of the date specified in a Notice or Revocation to DNREC.

9. Information shall be made available to the public in accordance with 40 CFR 60.9.

EPA procedures permit delegation of all the Administrator's authorities under 40 CFR Part 60 except for any which require rulemaking in the **Federal Register** to implement or where Federal overview is the only way to ensure national consistency in the application of standards. Accordingly, the following authorities are not delegable under Section 111 of the Clean Air Act, as amended.

1. *Performance Tests, 60.8(b)(2) and 60.8(b)(3).* In order to ensure uniformity and technical quality in the test methods used for enforcement of national standards, EPA will retain the authority to approve alternative and equivalent methods which effectively replace a reference method. This restriction on delegation does not apply to 8(b)(1), which allows for approval of minor modifications to reference methods on a case-by-case basis.

Some subparts include general references to the authority in 60.8(b) to approve alternative or equivalent standards. Examples include, but are not necessarily limited to, §§ 60.11(b), 60.274(d), 60.396(a)(1), 60.396(a)(2), and 60.393(c)(1)(i). These references are reminders of the provisions of paragraphs 60.8 and are not separate authorities which can be delegated.

2. *Compliance with Standards and Maintenance Requirements, § 60.11(e).* The granting of an alternative opacity standard requires a site-specific opacity limit to be adopted under 40 CFR Part 60.

3. *Subpart S, § 60.195(b).* Development of alternative compliance testing schedules for primary aluminum plants is done by adopting site-specific amendments to Subpart S.

4. *Subpart Da, § 60.45a.* Commercial demonstration permits allow an alternative emission standard for a limited number of utility steam generators.

5. *Subpart GG, §§ 60.332(c)(3) and 60.335(a)(ii).* These sections pertain to approval of customized factors (fuel nitrogen content and ambient air conditions, respectively) for use by gas turbine manufacturers in assembly-line compliance testing. Since each approval potentially could affect emissions from equipment installed in a number of States, the decisionmaking must be maintained at the Federal level to ensure national consistency. Notice of approval must be published in the **Federal Register**.

6. *Equivalency Determinations, Section 111(h)(3) of the Clean Air Act.* Approval of alternative to any design, equipment, work practice, or operational standard, e.g., §§ 60.114(a) and 60.302(d)(3) is accomplished through the rulemaking process and is adopted as a change to the individual subpart.

7. *Innovative Technology Waiver, Section 111(j) of the Clean Air Act.* Innovative technology waivers must be adopted as site-specific amendments to the individual subpart. Any applications or questions pertaining to such waivers should be sent to the Director, Air and Waste Management Division, Region III. (States may be delegated the authority to enforce waiver provisions if the State has been delegated the authority to enforce NSPS).

8. *Determination of Construction or Modification (Applicability), § 60.5.* In order to ensure uniformity in making applicability determinations pertaining to sources, EPA will retain this authority. The delegated agency may exercise judgement based on the *Compendium of Applicability Determinations* issued by EPA annually, and updated quarterly. Any applicability determinations not explicitly treated in the EPA Compendium must be referred to EPA for a determination. Also, any determinations made by the State agency based on the Compendium must be sent to EPA for informational purposes in order for EPA to maintain national consistency.

A Notice announcing this delegation will be published in the **Federal Register** in the near future. The Notice will state, among other things, that effective immediately, all reports required pursuant to the above-enumerated Federal NSPS regulations by sources located in the State of Delaware should be submitted to the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901, in addition to EPA Region III. Any original reports which have been or may be received by EPA Region III will be promptly transmitted to DNREC.

Since this delegation is effective immediately, there is no requirement that DNREC notify EPA of its acceptance. Unless EPA receives from DNREC written notice of objections within ten (10) days of receipt of this letter, DNREC will be deemed to have accepted all of the terms of the delegation.

Sincerely Yours,

Stanley L. Laskowski,

Acting Regional Administrator.

Effective immediately, all applications, reports, and other correspondence required under the NSPS for steel plants: electric arc furnaces (Subpart AA), storage vessels for petroleum liquids constructed after May 18, 1978 (Subpart Ka), lead acid battery manufacturing plants (Subpart KK), automobile and light duty truck surface coating operations (Subpart MM), graphic arts industries (Subpart QQ), and asphalt processing and asphalt roofing manufacture (Subpart UU) should be sent to the Delaware Department of Natural Resources and Environmental Control (address above) rather than to the EPA Region III Office in Philadelphia.

(Sec. 111(c), Clean Air Act (42 U.S.C. 7411(c))

Dated: August 23, 1983.

Thomas P. Eichler,

Regional Administrator.

PART 60—[AMENDED]

Accordingly, Part 60 of 40 CFR Chapter I is amended as follows:

Section 60.4(b)(I) is amended by revising the address of the Delaware Department of Natural Resources and Environmental Control as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(I) * * *

Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19901

(Sec. 111(c) of the Clean Air Act, (42 U.S.C. 7411(c))]

[FR Doc. 83-24623 Filed 9-16-83; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 5-10

[APD 2800.2 Chge. 33]

Bonds and Insurance

AGENCY: General Services Administration.

ACTION: Final rule

SUMMARY: The General Services Administration Procurement Regulations, Chapter 5, are amended to eliminate the requirement for use of bid guarantees on construction contracts awarded to the Small Business Administration (SBA) under the Section 8(a) program, to permit the use of payment bonds on building service contracts, to provide additional guidance on determining the acceptability of bonds, and to establish a mechanism for excluding individuals under certain circumstances from acting as an individual surety on bonds and submitted by offerors on GSA procurements. In addition, obsolete material referring to SBA's authority to waive bonding requirements on Section 8(a) contracts is deleted and material referring to the recently enacted Pub. L. 98-47 of July 13, 1983, is substituted.

EFFECTIVE DATE: September 7, 1983.

FOR FURTHER INFORMATION CONTACT: Richard H. Hopf, Director, Office of GSA Acquisition Policy and Regulations, (202-566-1224).

List of Subjects in 41 CFR Part 5-10

Bonds and insurance and Government procurement.

PART 5-10—BONDS AND INSURANCE

1. The table of contents of Part 5-10 is amended by adding the following new entries:

Sec.

5-10.103-3 Invitation for bids provision.

5-10.201 General.

5-10.203 Individual sureties.

5-10.250 Acceptability of bonds and sureties.

5-10.251 Exclusion of individual sureties.

Authority: Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)).

2. The table of contents of Part 5–10 is amended by revising the entries for §§ 5–10.104–2 and 5–10.105–2 as follows:

Sec.

5–10.104–2 Other than construction contracts.

5–10.105–2 Other than construction contracts.

3. The table of contents of Part 5–10 is amended by removing the entry for § 5–10.151 in its entirety.

4. Section 5–10.103 is amended to remove the text, but retain the section heading to read as follows:

§ 5–10.103 Bid guarantees.

5. In § 5–10.103–1 paragraph (a) is revised to read as follows:

§ 5–10.103–1 Policy on use.

(a) *Construction contracts.* (1) bid guarantees shall be required for all construction contracts exceeding $25,000 when performance and payment bonds are required under the Miller Act, as amended, except that this requirement does not apply to contracts awarded under Section 8(a) of the Small Business Act. Refer to § 1–1.713–4 (g) and (h) for guidance on bonding requirements applicable to contracts to be awarded under the section 8(a) program.

(2) Bid guarantees shall be required for construction contracts which do not exceed $25,000 when it has been determined that a performance bond is essential to protect the Government as provided in § 5–10.104–1.

* * * * *

6. Section 5–10.103–2 is revised to read as follows:

§ 5–10.103–2 Amount required.

When a bid guarantee is required, the contracting officer shall determine in accordance with § 1–10.103–2 the amount, or percentage which when applied to the bid price will produce an amount that will be adequate to protect the Government from loss.

7. Section 5–10.103–3 is added to read as follows:

§ 5–10.103–3 Invitation for bids provision.

When a bid guarantee is required, a provision shall be included in the solicitation that clearly sets forth the amount of bid guarantee to be furnished. Solicitation provisions are prescribed in § 5–10.150 for this purpose.

8. Sections 5–10.104–1 and 5–10.104–2 are revised to read as follows:

§ 5–10.104–1 Construction contracts.

(a) Performance bonds as required by the Miller Act (40 U.S.C. 270a–270e), shall be provided in connection with all construction contracts that exceed $25,000, in accordance with § 1–10.104–1. This requirement is applicable to contracts awarded under Section 8(a) of the Small Business Act unless the bonding requirement has been waived by SBA pursuant to Section 8(a)(2) of the Small Business Act as amended by Pub. L. 98–47 of July 13, 1983.)

(b) Performance bonds may be required on a case-by-case basis for construction contracts which do not exceed $25,000 when it is determined in writing by the contracting officer and reviewed at a level above the contracting officer that such a requirement is in the best interest of the Government.

(c) Refer to § 1–10.104–1(b) for guidance on establishing the penal amount of the performance bond.

(d) The requirement for furnishing a performance bond shall be set forth in the Special Conditions of the solicitation document as prescribed in § 5–10.150(a).

§ 5–10.104–2 Other than construction contracts.

(a) Performance bonds shall not be required for other than construction contracts unless it is in the best interest of the Government. (See § 1–10.104–2.)

(b) Performance bonds may be required on a case-by-case basis for building service contracts in excess of $10,000, when it is determined in writing by the contracting officer and reviewed at a level above the contracting officer that it is essential to the best interest of the Government.

(c) Performance bonds shall not be required for building service contracts awarded under Section 8(a) of the Small Business Act, or contracts awarded to workshops for the blind or other severely handicapped under the Wagner O'Day Act.

(d) The penal amount of the performance bond generally shall be equal to from 10 to 50 percent of the contract price for the term of the contract at the time of the award. The contracting officer shall consider the circumstances and determine the amount of the performance bond on a case-by-case basis.

(e) The requirement for furnishing a performance bond shall be set forth in the solicitation document as prescribed in § 5–10.150(b)(2).

9. Sections 5–10.105–1 and 5–10.105–2 are revised as read as follows:

§ 5–10.105–1 Construction contracts.

(a) A payment bond shall be required, as provided by the Miller Act in connection with any construction contract exceeding $25,000, except as provided in § 1–10.105–1. This requirement is applicable to contracts awarded under Section 8(a) of the Small Business Act unless the bonding requirement has been waived by SBA pursuant to Section 8(a)(2) of the Small Business Act as amended by Pub. L. 98–47 of July 13, 1983. Payment bonds may be required on a case-by-case basis for construction contracts which do not exceed $25,000 when it is determined in writing by the contracting officer and reviewed at a level above the contracting officer that such a requirement is in the best interest of the Government.

(b) Refer to § 1–10.105–1(b) for guidance on establishing the penal amount of the payment bond.

(c) The requirement for furnishing a payment bond shall be set forth in the Special Conditions of the solicitation document as prescribed in § 5–10.150(a).

§ 5–10.105–2 Other than construction contracts.

(a) Payment bonds may be required for building service contracts when the head of the procuring activity determines in accordance with § 1–10.105–2 that such a requirement is in the best interest of the Government.

(b) The penal amount of the payment bond generally shall be equal to from 10 to 50 percent of the contract price for the term of the contract at the time of award. The contracting officer shall consider the circumstances and determine the amount of the payment bond on a case-by-case basis.

(c) The requirement for furnishing a payment bond shall be set forth in the solicitation document as prescribed in § 5–10.150(b)(3).

10. Section 5–10.109 is revised to read as follows:

§ 5–10.109 Execution and administration of bonds.

(a) Bid guarantees, other than corporate or individual sureties, shall be returned to unsuccessful offerors as soon as practicable after the opening of bids.

(b) A bid guarantee, other than corporate or individual sureties, submitted by a successful offeror shall be retained until the offeror has executed all contractual documents as may be required and has submitted an acceptable performance bond or performance and payment bonds if required.

(c) When a performance or payment bond or acceptable alternates are not furnished within the period specified by the terms of the contract, the contract may be terminated for default. (See

§§ 1–8.602–3, 1–10.103–3(a)(2) and 1–18.803–5.)

(d) In connection with any contract modification that alters the scope of work, the contracting officer shall obtain from the surety a consent statement whereby the surety agrees to be bound by the contract modification and agrees that its bond shall apply to the contract as modified. See GSPR 5–10.205. This is necessary to avoid effecting release of the surety from its obligations based upon the change of the contract scope.

(e) A surety is legally liable in the event the contractor fails to fulfill contractual obligations. To avoid the possibility of releasing a surety from liability for a contractor's default, it is necessary to furnish the surety with a copy of any notice sent to the contractor in addition to the default letter. When the Government terminates a contract for default, it is entitled to recover the excess costs involved in having the work completed except those administrative costs which are necessary for, and directly assignable to, completing the work following termination and which would not have been required had termination not been necessary. The surety must be advised of the default; it may elect to fulfill its obligations by obtaining another contractor to perform the balance of the contract work or it may reimburse the Government for any excess costs the Government incurs.

(f) A performance or payment guarantee, other than corporate or individual sureties, shall be returned to the contractor upon completing the obligations for which the guarantee was submitted.

11. In § 5–10.150, paragraphs (b)(1) and (3) are revised to read as follows:

§ 5–10.150 Solicitation provisions.

* * * * *

(b) *Other than construction contracts.* (1) When a bid guarantee is required under § 5–10.103–3, a provision substantially as follows shall be included on the solicitation along with the provision in § 1–10.103(a)(2).

Bid Guarantee

If the contract price is more than $10,000, bidders shall furnish a bid guarantee in a penal amount of —— percent of the bid price for the term of the contract (excluding options to extend the term of the contract, if any) or $3,000,000, whichever is less.

For bid guarantee purposes the amount of the bid shall be deemed to be the aggregate of each unit price bid multiplied by the applicable number of units shown on the bid form or in the method of award formula.

(End of Provision)

* * * * *

(3) When a contract requires a performance bond and a payment bond, a provision substantially as follows shall be included in the solicitation document in lieu of the provision contained in paragraph (2) of this subsection:

Performance and Payment Bonds

(a) The offeror to whom the award is made shall furnish a performance bond in an amount equal to —— percent of the contract price and a payment bond in an amount equal to —— percent of the contract price. As used herein the term "contract price" means the total amount of the contract for the term of the contract (excluding options to extend the term of the contract, if any). Bonds shall be provided within 15 calendar days after receiving the written award (or acceptance of offer) and bonding forms. The period of time for furnishing bonds may be extended for 10 calendar days, if fully justified in the opinion of the contracting officer, and if the request for the extension is received or confirmed in writing within the original 15 calendar day period.

(b) The performance and payment bonds shall be in the form of a firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashiers check, irrevocable letter of credit or, in accordance with Treasury Department regulations, certain bonds or notes of the United States.

(End of Provision)

§ 5–10.151 [Removed]

12. Section 5–10.151 is removed in its entirety.

13. Section 5–10.202 is revised and new §§ 5–10.201 and 5–10.203 are added, to read as follows:

§ 5–10.201 General.

This subpart supplements Subpart 1–10.2, Sureties on Bonds, and sets forth additional guidance on the requirements applicable to bonds furnished.

§ 5–10.202 Corporate sureties.

(a) Any corporate surety offered for a bond furnished the Government must appear on the list contained in the Department of Treasury Circular 570, entitled Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies. If the penal amount of a bond exceeds a surety's underwriting limit, as specified in Treasury Department Circular 570, the bond will be acceptable only under the conditions prescribed by § 1–10.202.

(b) Corporate surety bonds must be manually signed by the Attorney-in-Fact or officer of the surety company. The corporate seal of the surety company should be affixed. Failure of the surety to affix the seal may be waived as a minor informality. (See 75–2 CPD 9.) Copies of the powers of attorney from the surety company authorizing the Attorney-in-Fact to execute bonds may be requested by the contracting officer.

(c) Where a invitation for bid requires a bid be supported by a bid guarantee and an unacceptable corporate surety is submitted in fulfillment of the requirement, the bid shall be rejected as nonresponsive. A bidder shall not be permitted to substitute an acceptable surety after bid opening. (See 80–1 CPD 360.)

(d) Where a request for proposal requires a proposal be supported by a bid guarantee and an offeror does not comply, the proposal shall not be rejected since nonresponsiveness is not a criterion for negotiated procurements. During negotiations, deficiencies in a proposal in the competitive range, such as the failure to submit a bid guarantee, may be remedied by the offeror in a revised proposal. (See § 1–3.805.)

(e) A contractor submitting an unacceptable corporate surety in satisfaction of a performance or payment bond requirement may be permitted to substitute an acceptable surety for a surety previously determined to be unacceptable.

§ 5–10.203 Individual sureties.

(a) The contracting officer is responsible for making determinations regarding the acceptability of individual sureties.

(b) The following criteria shall be considered when making determinations regarding the acceptability of individual sureties:

(1) At least two individuals must execute the bond.

(2) The net worth of each individual must not be less than the penal amount of the bond. For example: If a bond in a penal amount of $50,000 is required, each individual surety must show a net worth of at least $50,000 to be considered acceptable.

(3) Each individual surety must execute a Standard Form 28, Affidavit of Individual Surety. If the SF 28 is not submitted with the offer, the contracting officer must request a SF 28. The SF 28 shall be reviewed to ascertain the net worth of the proposed individual surety. (See Block 7, line g, of SF 28.) However, the contracting officer should consider all relevant information furnished by the surety on SF 28 and make an independent determination of the surety's net worth based upon the contracting officer's best judgment.

(4) The number and amount of other bonds for which the surety is committed and the status of the contracts with

which the bonds were furnished must be considered. For example: the contracting officer may deduct the total amount of other bonds which the surety executed (Block 10 of SF 28) from the net worth figure entered in Block 7, line g, to arrive at a realistic net worth. Alternatively, the contracting officer may deduct nothing or only a portion of the amount entered in Block 10 if, upon inquiry, the contracting officer discovers that the contracts on which the bonds were written are completed in part.

(c) If the contracting officer is unable to make a determination of net worth from the SF 28, the individual surety shall be required to furnish additional information. Generally, supplementary information shall not be required unless the SF 28 is incomplete or improperly filled out or unless the contracting officer has reason to believe the surety's statement on the SF 28 does not reflect the true net worth.

(d) If the contracting officer determines that either surety's net worth is not equal to the penal amount of the bond, the bid of the firm utilizing the sureties shall be rejected as non-responsible. A finding of bidder nonresponsibility pursuant to § 1-1.1204, based on unacceptability of an individual surety need not be referred to the Small Business Administration for a competency review. (See Comp. Gen. B-203608 of June 15, 1982.)

(e) Under certain circumstances, such as when there is a record indicating a continuing pattern among certain individual sureties not to disclose outstanding bond obligations, the offeror's sureties may be rejected as unacceptable. (See Comp. Gen. B-205823, B-205843, B-206469 of Sept. 5, 1982.)

(f) In a formally advertised procurement (including restricted advertising) an offeror submitting an unacceptable surety in fulfillment of a bid guarantee may not substitute an acceptable individual surety after the bid opening is held. This holds even though the surety's acceptability is a matter of bidder responsibility. (See Comp. Gen. B-203608 of June 15, 1982.) When a negotiated procurement is involved, such a deficiency may be remedied by the offeror in a revised proposal.

(g) Any individual surety offered for a bond furnished GSA cannot have been excluded from acting as an individual surety by the Assistant Administrator for Acquisition Policy. (See § 5-10.251.) Any bid submitted in response to an invitation for bid which is accompanied by a bid guarantee backed by an individual surety who has been excluded shall be rejected as nonresponsive. When a negotiated procurement is involved, such a deficiency may be remedied by the offeror in a revised proposal.

(h) A contractor submitting an unacceptable individual surety in satisfaction of a performance or payment bond requirement may be permitted to substitute an acceptable surety for a surety previously determined to be unacceptable.

14. Sections 5-10.250 and 5-10.251 are added to read as follows:

§ 5-10.250 Acceptability of bonds and sureties.

(a) Every bond furnished in connection with a procurement must be supported by corporate or individual sureties or by other acceptable security such as postal money orders, certified check, cashier's check, irrevocable letter of credit or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Upon receipt of a required bond, the contracting officer shall ascertain the acceptability of the surety.

(b) When determining the acceptability of a bond, if there is a question of validity, the contracting officer shall seek the advice of legal counsel. For questions other than validity, the contracting officer may seek the advice of the appropriate credit and finance activity in determining acceptability.

(c) When a contracting officer has verified the acceptability of the surety on a bond, he shall so certify by placing the words Acceptability of Bond Verified, with his signature immediately thereunder, on the bond or on a properly indentified attachment. The bond shall be retained with the original of the contract. The contracting officer shall notify the contractor that the bond(s) has been accepted.

(d) Any contracting officer who becomes aware of circumstances which may serve as the basis for exclusion of an individual from acting as an individual surety on bonds submitted by offerors on GSA procurements shall refer those circumstances to the Assistant Administrator for Acquisition Policy through appropriate channels for consideration of exclusion action. (See § 5-10.251.) However, circumstances that involve possible criminal or fraudulent activities shall first be reported to the Assistant Inspector General for Investigations in the Central Office or to the appropriate special agent in charge in the regions; the Office of Inspector General may conduct an investigation and when appropriate report such apparent or suspected violations to the Assistant Administrator. Referrals for consideration of exclusion action as a minimum should include:

(1) The basis for exclusion (see § 5-10.251(b));

(2) A statement of facts;

(3) Copies of supporting documentary evidence;

(4) The individual's name and current or last known home and/or business address including zip codes;

(5) A statement of GSA's history with such individuals, if any; and

(6) A statement concerning any known active or potential criminal investigations or court proceedings.

§ 5-10.251 Exclusion of individual sureties.

(a) The Assistant Administrator for Acquisition Policy may exclude an individual from acting as an individual surety on bonds submitted by offerors on GSA procurements. Such an exclusion shall be initiated for the purpose of protecting the Government.

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

(1) Failure to fulfill its obligation under a bond.

(2) Willful failure to disclose other bond obligations.

(3) Misrepresentation of available assets.

(4) Any other cause affecting responsibility as a surety of such serious and compelling nature as may be determined by the Assistant Administrator to warrant exclusion.

(c) Exclusion of an individual shall continue until revoked by the Assistant Administrator. An exclusion shall only be revoked upon the submission of an application, support by documentary evidence of changed circumstances or of the elimination of the causes for which the exclusion was imposed.

(d) Prior to excluding an individual, the Assistant Administrator shall furnish the individual with a written notice stating that exclusion is being considered, setting forth the reasons for the proposed exclusion, and indicating that the individual may submit, within 30 calendar days, information in writing to explain why the exclusion should not be imposed.

(e) If the individual fails to respond to the notice of proposed exclusion outlined in (d) of this section within 30 calendar days of receipt of the notice, the exclusion shall be imposed. If a response is provided, the Assistant Administrator shall consider the information and issue a final decision on the matter.

(f) The Assistant Administrator shall be responsible for establishing and maintaining a system for distribution of information regarding individuals who have been excluded to GSA contracting activities.

Dated: September 7, 1983.

William B. Ferguson,

Acting Assistant Administrator for Acquisition Policy.

[FR Doc. 83-25364 Filed 9-16-83; 8:45 am]

BILLING CODE 6820-61-M

41 CFR Part 105-61

[GSA Order ADM 7900.2 CHGE. 19]

Public Use of Facilities of the National Archives and Records Service

AGENCY: National Archives and Records Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation revises procedures relating to the public use of auditoriums and other public spaces in the buildings and grounds of Presidential libraries operated by the National Archives and Records Service. Presidential libraries are not subject to the provisions of the Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 610a). Therefore, this regulation is intended to clarify those activities considered appropriate for use of public facilities in the Presidential libraries. This regulation affects organizations and groups that wish to use these facilities for lectures, seminars, meetings, and similar activities that relate to the mission and programs of the library.

EFFECTIVE DATE: September 19, 1983.

FOR FURTHER INFORMATION CONTACT: David S. Van Tassel, Office of Presidential Libraries (202-523-3212).

SUPPLEMENTARY INFORMATION:

List of Subjects in 41 CFR Part 106-61

Archives and records, Classified information, Freedom of information, Government property management, Privacy, Facilities, Presidential libraries.

1. The table of contents for Part 105-61 is amended by revising the entry for § 105-61.305-2 to read as follows:

Sec.

105-61.305-2 Auditoriums and other public spaces.

Subpart 105-61.3—Public Use of Facilities of the National Archives and Records Service

2. Section 105-61.305-2 is revised to read as follows:

§ 105-61.305-2 Auditoriums and other public spaces

(a) Presidential library auditoriums and other public spaces in the library buildings and the library grounds are intended primarily for the use of the library in carrying out its programs. These areas may also be used by other organizations for lectures, seminars, meetings, and similar activities when these activities are sponsored, cosponsored, or authorized by the Library director to further the library's interests and when such activities will not interfere with the normal operation of the library. Any activities, sponsored, cosponsored, or authorized by the library must be related to the mission and programs of the library and must be consistent with the public perception of the library as a research and cultural institution. Application for such use shall be made in writing to the library director.

(b) Use of the auditoriums and other public spaces will not be authorized for any profitmaking, commercial advertising and sales, sectarian, or similar purpose or for any use inconsistent with those authorized in paragraph (a) of this section.

(c) No admission fee will be charged except by the library, no indirect assessment fees will be made for admission, and no collections will be taken. The library director may assess additional charges to reimburse the Government for expenses incurred as a result of the use by groups of library facilities.

3. Section 105-61.305-3 is revised to read as follows:

§ 105-61.305-3 Supplemental rules.

Library directors may establish appropriate supplemental rules governing use of Presidential libraries and adjacent buildings. Additional conditions for the use of Presidential libraries set out in Subpart 101-20.3 (except those provisions referring to Subpart 101-20.7) are hereby adopted and incorporated by reference.

(Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)))

Dated: August 26, 1983.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 83-25365 Filed 9-16-83; 8:45 am]

BILLING CODE 6820-26-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[PR Docket No. 82-184; RM-3624; RM-3028]

Provision for a Temporary Permit for Additional Users of Authorized Mobile Relay Stations in the General Mobile Radio Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a paragraph designation in § 1.925 of the Commission's Rules. The erroneous paragraph designation occurred in the final rules adopted in PR Docket 82-184 on January 20, 1983 (48 FR 4783, February 3, 1983.) That proceeding established a new Temporary Permit for General Mobile Radio Service Systems.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, D.C. 20554, 9202) 632-4964.

Erratum

In the matter of amendment of Part 1 Subpart A, of the Commission's Rules to provide for a Temporary Permit for additional users of authorized mobile relay stations in the General Mobile Radio Service (GMRS) PR Docket 82-184; RM-3624, RM-3028.

Released: August 24, 1983.

PART 1—[AMENDED]

§ 1.925 [Corrected]

The Report and Order, adopted January 20, 1983, in this proceeding, added a new paragraph to § 1.925 of the Commission's Rules. Inadvertently, the new paragraph was designated as paragraph (h). The correct designation for the new paragraph added to § 1.925 is paragraph (i).

(Secs. 4,303, 48 Stat. as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 83-25400 Filed 9-16-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 83

[PR Docket No. 82-11]

Acceptable Level of Radiated Power on 500 kHz for Compulsory Telegraph Vessels

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This item amends the FCC's marine rules to require a minimum radiated power on the distress frequency 500 kHz for compulsory fitted radio telegraph vessels. Measurements indicate a progressive decline in radiated power aboard large oceangoing vessels. This action sets a minimum acceptable level of radiated power for the purpose of meeting the statutory transmission distance specified in the Communication Act.

EFFECTIVE DATE: October 14, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Walter E. Weaver, Private Radio Bureau, (202) 632-7175.

List of Subjects in 47 CFR Part 83

Ship stations, Telegraph, Radio.

Report and Order (Proceeding Terminated)

In the matter of amendment of Part 83 of the rules to require compulsory telegraph vessels to be capable of generating a specified minimum field strength at a distance of one nautical mile. (PR Docket No. 83-11).

Adopted: August 31, 1983.
Released: September 7, 1983.

By the Commission.

1. On January 27, 1983, the Commission released a Notice of Proposed Rule Making (FCC 83-6, 48 FR 4847) looking to amendment of Part 83 to require compulsory telegraph vessels to be capable of generating a specified minimum field strength on the international distress and calling frequency, 500 kHz. The time provided for comments and reply comments has passed.

Background

2. Public Law No. 97 was approved May 20, 1937, to add to Title III of the Communications Act of 1934 (Act), as amended, a new Part II entitled "Radio Equipment and Radio Operators on Board Ship." Part II [1] includes Section 355(e), which reads:

"(e) The main and reserve installations shall, when connected to the main antenna, have a minimum normal range of two hundred nautical miles and one hundred nautical miles, respectively; that is, they must be capable of transmitting and receiving clearly perceptible signals from ship to ship by day and under normal conditions and circumstances over the specified ranges."

3. On May 31, 1938, the Commission ordered [2] an investigation into the facts, circumstances and conditions affecting the determination of power required for ship radio transmitters in order to comply with the terms of paragraph (d) of Section 354 of the Act. A hearing, commonly referred to as the "Ship Power Hearing", was held November 14 through 18, 1938. The Report and Order [3] in this proceeding was adopted May 19, 1939 [5] and a further Order [4] in the same proceeding was adopted July 26, 1939.

4. On June 27, 1978, the Commission released a Notice of Proposed Rule Making [6] (Gen. Doc. No. 78-185) proposing to amend Part 83 to require all compulsory telegraph vessels to be capable of generating a field strength of 30 mv/m at a distance of one nautical mile for the main installation on 500 kHz, and a field strength of 10 millivolts per meter at one nautical mile for the reserve installation.

5. The Report and Order [7] in Gen. Doc. No. 78-185 explained the procedure by which the values of field strength for the main and reserve installation were developed. It responded to the comments filed and terminated the proceeding without decision, in order that additional information could be obtained regarding antennas currently installed aboard U.S. vessels. The Appendix to that Report and Order is a Public Notice expressing the Commission's intent to continue its consideration of this matter.

6. The additional measurement of U.S. shipboard installations was completed and the results were summarized in the Notice of Proposed Rule Making. Briefly, of the 32 vessels measured, only five vessels, all of which were fitted with long wire antennas, provided a field strength of 30 millivolts per meter at a distance of one nautical mile.

Problem

7. The problem was explained in paragraph 4 of the Notice of Proposed Rule Making, as follows:

> Over the past forty years most of the considerations leading to the established values have remained constant. The one exception is antenna efficiencies. During this period, with the swing first to singlewire antennas and then to vertical antennas there has been a progressive decline in the efficiency of antennas aboard the larger oceangoing vessels. This has continued to the point where the use of 200 and 25 watt transmitters in conjunction with presently used vertical and some longwire antennas no longer assures a field strength of 30 mv/m and 10 mv/m at a distance of one nautical mile.

Comments

8. Comments were filed by the American Institute of Merchant Shipping (AIMS), W. N. Nations and Associates (Nations), and the Radio Officers Union, District 3 of the National Marine Engineers Beneficial Association, AFL/CIO (the Union). Reply comments were filed by the Union. In its comments AIMS opposed adoption of the proposed rule; Nations and the Union supported adoption of the proposed rules; and the Union urged the period proposed for implementation be substantially reduced.

Proposed Rules for Assuring Transmission Distance

9. AIMS contends that the proposed field strength standard "offers a minimal return on a cost effective contribution to safety * * * " AIMS points to the fact that the world is now in the process of developing the Future Global Maritime Distress and Safety Systems (future distress plan). This future distress plan, according to AIMS, will replace the "outmoded" telegraphy-based safety system with "superior methods of distress calling by satellite or terrestrial communications." AIMS points out that introduction of the future distress plan on a mandatory basis is projected for

[1] The text quoted is as it was amended by Pub. L. 89-121, approved August 13, 1965 79 Stat. 516. The original text (as it appears in Pub. L. No. 97) in Sections 354(d) and (f), read as follows:

"(d) The main installation shall have a normal transmitting and receiving range of at least two hundred nautical miles, that is to say, it must be capable of transmitting and receiving clearly perceptible signals from ship to ship over a range of at least two hundred nautical miles by day under normal conditions and circumstances."

"(f) . . . For the emergency or reserve installation, the normal range as defined in subsection (d) of this section shall be at least one hundred nautical miles."

[2] In Docket No. 5212.

[3] 7 FCC 354, adopted May 19, 1939.

[4] 7 FCC 365, adopted July 26, 1939.

[5] The proceeding in Docket No. 5212 determined: (1) That a field strength of 82.5 microvolts per meter at a distance of 200 nautical miles represented a "clearly perceptible signal"; (2) That this field strength (82.5 uv/m) corresponded to a field strength of 30 millivolts per meter at one nautical mile; and (3) That a transmitter of 200 watts, using a median value of efficiency (16.3%) of shipboard antennas then existing, would produce a field strength of 82.5 microvolts per meter at 200 nautical miles. Further, for the reserve installation, (4) A field strength of 10 mv/m at one nautical mile would provide a "clearly perceptible signal" at 100 nautical miles; and (5) That a reserve transmitter of 25 watts, with an antenna efficiency of 16.3%, would produce a field strength of 10 mv/m at one nautical mile.

[6] Released June 27, 1981; FCC 78-435; 43 FR 28640.

[7] Released March 24, 1978; FCC 81-96; 46 FR 19007; 85 FCC 2d 686.

the year 1990; and on a voluntary basis for 1987. Thus, AIMS concludes, it would be inconsistent for the Commission to require implementation of the field strength standard at the time when the industry is beginning to fit with new equipment to implement the future distress plan.

10. The Union acknowledges the future distress plan, but vigorously disputes predictions of its early implementation. It points to the delays which are inherent in implementation of any worldwide system and to the fact that there will be considerable overlap of the two systems while the transition takes place. The Union contends that it cannot abide a continuing condition of reduced ability to transmit a distress signal the required distance and urges, in fact, that the Commission substantially shorten the implementation period.

Discussion

11. Our obligation is to implement the Communications Act, Section 335(e). Having concluded that a transmitter power standard is insufficient to assure the statutory transmission distances, we do not have the discretion to continue that standard in effect pending future developments which are uncertain and years off, at best.

12. AIMS contends that adoption of the field-strength standard would be tantamount to ordering replacement of transmitters and antenna feed lines aboard its members' vessels. AIMS points out that the radio installation aboard the cargo vessel "Star of Texas," which we cited as an example of an acceptable installation under the field-strength standard, features an impedance which is not the industry norm. Thus, AIMS argues, shipowners will be required to undertake costly replacement of existing transmitters and antenna feed systems in order to comply with the proposed standard.

13. The Union argues in reply that impedance matching technology is readily available and inexpensive. Commenter Nations, a maritime telecommunication consultant, agrees with AIMS that considerable modification may be necessary to duplicate the "Star of Texas" system but points out that the Antenna Engineering Department of Collins Government Telecommunciations Division of Rockwell International has developed an HF/MF Vertical Ship Antenna for the U.S. Department of Commerce, Maritime Administration (MARAD). The antenna, Collins Type 938G–1, was specifically designed to provide a 30 millivolt per meter (mv/m) field strength at a distance of one nautical mile. Performance tests have shown that this antenna will deliver [8] that field strength in most directions when a 200 watt transmitter is used. When a 350 watt transmitter is used, the antenna will deliver the 30 mv/m in all directions. Nations calculates that more than 90% of U.S. vessels are presently fitted with transmitters of more than 350 watts.

14. We conclude that switching to the field-strength standard would not involve wholesale replacement of the telecommunication equipment aboard U.S. vessels. As we pointed out when we began this proceeding, we believe that most of the present vertical antenna installations will meet the standard if the feed system is efficient. Some modification and equipment replacement may be required to be sure, but these costs are outweighed by the improvement in safety conditions which will result.

Certification

15. In paragraph 13 of the Notice of Proposed Rule Making we stated that we would consider comments in regard to a program of self-certification as an alternative method (to measurement by the Commission) by which a vessel may demonstrate that its radio installation transmits a clearly perceptible signal the required distances.

16. A self-certification proposal was submitted by AIMS. AIMS points out that, by law, vessels must communicate with a coast station 24 hours prior to arrival in port and log the communication. AIMS suggests that the FCC use the log as a basis for determining compliance with Section 355(e) of the Act. We are concerned, however, that the 500 kHz distress system is a ship-to-ship alerting system. The statutory transmission distances are between ships, not between a ship and a coast station. Coast stations may have much more elaborate and higher gain antenna facilities than ship stations. Any self certification procedure involving transmissions between a ship station and a coast station will not provide a valid basis for assuring compliance with Section 355(e) of the Act.

17. In their comments, Nations and the Union oppose the concept of self-certification by communication from ship to ship on the basis that the conditions would be different in each case. Further, such communications, if carried out on 500 kHz, could intensify congestion in areas which are now heavily congested and would degrade the usefulness of 500 kHz for distress

[8] The average value of field strength was greater than 30 mv/m.

communications. Nevertheless, there is no more valid proof of a vessel's communications range than actual tests at sea. Thus we will permit a vessel to evidence that it meets the standard by producing documentation of actual communication with another vessel over the required distance. Alternatively, we will accept a certification from a professional engineer as evidence that the vessel's communications system produces the field strength specified in the new rules.

Implementation Period

18. The Union after arguing in favor of the proposed rules, argues for an implementation period of the less than three years. The Union expresses the view that the issue of human safety is most important and demands immediate attention. Based on the Commission's tests, the Union calculates that distress signals from 474 of the 559 U.S. deep-draft oceangoing vessels would not be heard at normal ranges. The Union expresses alarm at the Commission's proposal to allow three years to modify current installations. AIMS opposed the proposed rules and did not separately discuss the length of any implementation period.

19. The three year period which we had proposed for implementation was intended to be a reasonable length of time to allow for sailing schedules, delivery time for parts and equipment and installation time. While the Union's safety concerns are sufficient to persuade us to adopt the new rules, they provide little aid in determining what a reasonable length of time may be for their implementation. Accordingly, we consider that three years is reasonable and sufficient time for whatever retrofitting may be necessary under the new standard. We fully expect, however, that vessel operators will utilize the first opportunity to bring their vessels into compliance, and that all subject vessels will be in compliance with the new rules at the end of this implementation period.

Conclusion

20. We conclude that the amendments proposed in the Notice of Proposed Rule Making, modified for the reasons discussed herein, to require compulsory telegraph vessels to be capable of generating a specified minimum field strength, would be in the public interest. Further, these rule amendments are necessary in order that the Commission may comply with the mandate under the provisions of Section 355(e) of the Act.

21. We have determined that Sections 603 and 604 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) do not apply to this proposed rule making proceeding because the only vessels affected are large oceangoing vessels compelled by law to be fitted with radiotelegraph equipment meeting certain specified standards. The operation of a single such vessel typically runs into millions of dollars per year. Therefore, if promulgated, it will not have a significant impact on a substantial number of small entities.

22. Regarding questions on matters concerned in this document contact Walter E. Weaver (202) 632–7175.

23. Accordingly, it is ordered, that under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), the Commission's rules are amended as set forth in the attached Appendix, effective October 14, 1983.

24. It is further ordered, that this proceeding is terminated.

25. It is further ordered, that a copy of this Report and Order shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

§ 83.441 [Amended]

1. Section 83.441 is amended by adding the following sentence at the end of paragraph (a):

§ 83.441 Inspection station.

(a) * * *

The minimum field strength capability of the main antenna (§ 83.444(a)) and of the reserve antenna (§ 83.446(a)(2)) may be evidenced by the licensee by either (1) Producing a record of communications on 500 kHz over a minimum distance of 200 nauttical miles for the main antenna and 100 nautical miles for the reserve antenna which demonstrates the transmission and reception of clearly perceptible signals from ship to ship by day and under normal conditions and circumstances, or (2) Providing documentation by a professional engineer not affiliated with the licensee or its service company that the installation produces at one natuical mile a minimum field strength of thirty (30) millivolts per meter for the main antenna and ten (10) millivolts per meter for the reserve antenna.

* * * * *

2. Section 83.444(a) is amended by revising the first sentence as follows:

§ 83.444 Requirements of main installation.

(a) The main antenna shall be as efficient as is practicable. It shall be installed and protected so as to ensure proper operation of the station. Effective October 1, 1986, the main antenna energized by the main transmitter on the frequency of 500 kHz shall produce at one nautical mile a minimum field strength of thirty (30) millivolts per meter. * * *

* * * * *

3. Paragraph (a)(2) of § 83.446 is revised to read as follows:

§ 83.446 Requirements of reserve installation.

(a) * * *

(2) The reserve antenna shall be as efficient as is practicable. It shall be adequately installed and protected so as to ensure proper operation in time of an emergency. Effective October 1, 1986, the reserve antenna energized by the reserve transmitter on the frequency of 500 kHz shall produce at one nautical mile a minimum field strength of ten (10) millivolts per meter.

* * * * *

[FR Doc. 83-25369 Filed 9-16-83; 8:45 am]

BILLING CODE 6712-01-M

OFFICE OF THE FEDERAL REGISTER

48 CFR

Federal Acquisition Regulations System; Editorial Note

A document published elsewhere in today's **Federal Register** establishes the Federal Acquisition Regulations (FAR) as a new Chapter 1 of Title 48, *Code of Federal Regulations.*

Individual agency regulations that implement or supplement the FAR will be published in the **Federal Register** over the next several months. The Office of the Federal Register has assigned Chapters 2 through 69 of Title 48 CFR, for these agency regulations.

The Office of the Federal Register anticipates that the first CFR edition of Title 48 will be published as of October 1, 1984. That edition will contain the basic FAR (48 CFR, Chapter 1) and those agency regulations (48 CFR, Chapters 2–69) published in the **Federal Register** up to and inclusive of that date.

Publication schedules for CFR volumes are announced in the Reader Aids Section of the **Federal Register** in the first issue of January, April, July and October. For further information, contact the CFR Unit, Office of the Federal Register on 202–523–3408.

BILLING CODE 1505-02-M

Proposed Rules

Federal Register
Vol. 48, No. 182
Monday, September 19, 1983

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

Dried Prunes Produced in California; Time for Filing Reports and Conforming Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would amend § 993.172(b) and (d) of the Administrative Rules and Regulations to change the time requirements for handlers to file the monthly "New Crop Supply and Inbound Prune Report" and the "Report of Shipments". This change would enable the Prune Marketing Committee (PMC) staff to prepare and release its statistical data on supply and shipments sooner each month, thereby better meeting the needs of the prune industry.

In addition, minor conforming changes would be made in the Administrative Rules and Regulations to reflect the change in the name of the Prune Administrative Committee to Prune Marketing Committee. This change was made when the marketing order was amended December 1981.

The information collection requirements contained in this proposal have been submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

DATES: Written comments on this proposal must be received by November 18, 1983.

ADDRESSES: Written comments should be submitted in duplicate to the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions will be available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)). Written comments also should be submitted in triplicate to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Charles Ellett, Room 3228, 726 Jackson Place, NW., Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Frank M. Grassberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447-5053.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The proposal under consideration would amend Subpart—Administrative Rules and Regulations (7 CFR 993.101—993.174) to change form filing deadline dates and to make minor conforming changes. This subpart is issued under the marketing agreement, as amended, and Order No. 993, as amended (7 CFR 993), regulating the handling of California dried prunes. The marketing agreement and order are collectively referred to as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The proposal is based on a recommendation of the PMC.

Currently, § 933172(b) requires handlers to file with the PMC, for each month, prior to the 10th calendar day of the next succeeding month a signed report on Form PMC 11.1 "New Crop Supply and Inbound Prune Report". Similarly, § 933.172(d) requires handlers to file with the PMC, for each month prior to the 10th calendar day of the next succeeding month, a signed report on Form PMC 12.1 "Report of Shipments". The proposal would require handlers to file the reports prior to the 5th working day of the next succeeding month, which in many cases would only be 2 or 3 days earlier than the 10th calendar day because of weekends.

The proposed date changes would enable the PMC staff to prepare its monthly reports on supply and shipments sooner than they can under the current provisions, and the proposed change would make this information available to the industry sooner each month. Both reports are authorized under § 933.72 of the order.

In addition, minor conforming changes in the Administrative Rules and Regulations should be made to reflect a change in the name of the Committee from the Prune Administrative Committee to the Prune Marketing Committee. This change was made when the order was amended on December 18, 1981 (47 FR 61635).

List of Subjects in 7 CFR Part 993

Marketing agreements and orders, Plums and prunes, California.

PART 993—[AMENDED]

Therefore, the proposal is to amend Subpart—Administrative Rules and Regulations (7 CFR 993.101—993.174) as follows:

§ 993.172 [Amended]

1. Section 993.172(b) is amended by changing the phrase "prior to the 10th calendar day" to "prior to the 5th working day", and by changing the phrase "Form PAC" to "Form PMC".

2. The introductory text of paragraph (d) in § 993.172 is revised to read as follows:

§ 993.172 Reports of holdings, receipts uses, and shipments.

* * * * *

(d) *Shipments by handlers.* Each handler shall file with the Committee for each month, prior to the 5th working day of the next succeeding month, a signed report on Form PMC 12.1 "Reports of Shipments" reporting shipments of prunes during the crop year through the last day of the immediately preceding month. Such report shall contain at least the following information.

* * * * *

§ 993.102 [Amended]

3. A conforming change in § 993.102 is made by changing the phrase "Prune Administrative Committee" to "Prune Marketing Committee".

§§ 993.149-993.174 [Amended]

4. Conforming changes should be made in §§ 993.149-993.174 by changing the phrase "Form PAC" to "Form PMC" wherever if appears in those sections.

Dated: September 13, 1983.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 83-25471 Filed 9-16-83; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 109

Employment Authorization

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations relating to employment authorization for aliens admitted to the United States. The rule would specify that temporary employment authorization is automatically terminated upon denial of the application. This rule clarifies and defines existing practice in the Service.

DATE: Comments must be received on or by: November 18, 1983.

ADDRESS: Please submit written comments in duplicate to the Director of Policy Directives and Instructions, Immigration and Naturalization Service, 425 I St., NW., Room 2011, Washington, D.C. 20536.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions Immigration and Naturalization Service 425 I Street, NW., Washington, D.C. 20536, Telephone (202) 633-3048.

For Specific Information: Craig O. Raynsford, Assistant General Counsel, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, Telephone: (202) 633-1266

SUPPLEMENTARY INFORMATION: On June 27, 1983 at 48 FR 29465, the Service published a final rule clarifying existing regulations relating to employment authorization. Section 109.1 (b)(2) and (b)(3) of this final rule were withdrawn at a later date for the purpose of republishing the revisions as a proposed rule to allow for public comments.

Sections 109.1 (b)(2) and (b)(3) would be amended to specify that temporary employment authorization is automatically terminated upon denial of the application.

Previously, these sections did not specifically state that employment automatically terminated upon denial of the application, but merely implied that fact. This led to different interpretations being given to these sections by different service offices: some offices interpreting § 109.1 (b) (2) and (3) as they were intended, other offices interpreting these sections to mean that the revocation procedures outlined in § 109.2 must be followed to teminate temporary employment in adjustment of status and asylum cases. The discrepancies indicated often occurred at different district offices due to localized conditions. This amendment was intended to clarify the Service policy in this regard.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, will not have a significant impact on a substantial number of small entities.

This order would not be a major rule within the definition of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 109

Aliens, Employment.

Accordingly, it is proposed to amend Chapter I of Title 8 of the Code of Federal Regulations as follows:

PART 109—EMPLOYMENT AUTHORIZATION

In § 109.1, paragraphs (b) (2) and (3) would be revised to read as follows:

§ 109.1 Classes of aliens eligible.

* * * * *

(b) * * *

(2) Any alien who has filed a nonfrivolous application for asylum under Part 208 of this title may be granted permission to be employed for the period of time necessary to decide the case; however, temporary employment authorization is automatically terminated upon denial of the application by the district director or immigration judge. If the application is approved, employment authorization would be continued under § 109.1(a)(4) of this title.

(3) Any alien who has properly filed an application for adjustment of status to permanent resident alien, or who has submitted an application for adjustment of status simultaneously with a visa petition under § 245.2(a)(2) of this title, may be granted permission to be employed for the period of time necessary to decide the case; however, temporary employment authorization is automatically terminated upon denial of the application by the district director or immigration judge. If the application is approved, employment authorization would be continued under § 109.1(a)(1) of this title.

* * * * *

(Secs. 103, 212, 245, Immigration and Nationality Act, as amended (8 U.S.C. 1103, 1182, 1255))

Dated: September 12, 1983.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 83-25455 Filed 9-16-83; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL RESERVE SYSTEM

12 CFR Part 210

[Docket No. R-0481]

Collection of Checks and Other Items and Wire Transfer of Funds; Midweek Closings and Nonstandard Holidays

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board proposes to amend Subpart A of Regulation J, governing the collection of checks and other items by Federal Reserve Banks, to permit a Reserve Bank to charge a paying bank for cash items made available to it by a Reserve Bank on a weekday that is a banking day for the Reserve Bank but not for the paying bank. Such days consist of "midweek closing days"—regular weekdays on which a depository institution chooses to close as permitted by state law and "nonstandard holidays"—days on which the paying bank is closed because of a state or local holiday but on which the Reserve Bank is open, generally because it is located in a different state or locality. Such payment would be required as a condition of Reserve Bank handling of items payable by the paying bank. A paying bank would not be required to open or to begin processing the items on such a weekday closing day, because the time for return of the items would not begin to run until the paying bank's next banking day. The Board has previously proposed this amendment to Regulation J for public comment in April 1982.

DATE: Comments must be received by October 14, 1983.

ADDRESS: Comments, which should refer to Docket No. 0481, may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments

received may also be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

FOR FURTHER INFORMATION CONTACT: Elliott C. McEntee, Assistant Director (202/452-2231) or Morgan J. Hallmon, Program Manager, Payments Mechanism Planning (202/452-3878), Division of Federal Reserve Bank Operations; Gilbert T. Schwartz, Associate General Counsel (202/452-3625), Daniel L. Rhoads, Attorney (202/452-3711), or Robert G. Ballen, Attorney (202/452-3265), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

SUPPLEMENTARY INFORMATION:

Background. The Monetary Control Act of 1980 (Pub. L. 96-221) ("MCA") requires that fees be established for Federal Reserve Bank services. The MCA requires that the Federal Reserve price for Federal Reserve float that remains after operational means to reduce float are implemented.[1]

In April 1982, the Board requested public comment on a proposal to amend Regulation J to require a depository institution to pay for checks delivered or made available to it on days the institution is closed and on which the Reserve Bank is open. Such days consist of "midweek closing days"—regular weekdays on which a depository institution chooses to close as permitted by state law and "nonstandard holidays"—days on which the paying institution is closed because of a state or local holiday. The proposal was intended to eliminate the float that results from granting credit to the sender for checks that could not be charged to the closed paying institution.

After review of the comments and issues raised therein, the Board in April 1983 decided not to adopt the proposed amendment. The Board noted at that time that the primiary impact of the midweek closing proposal would be on small institutions in small communities that are closed during the week. The Board also determined that adoption of the proposal could adversely affect the operations of some small institutions. There was no evidence to suggest that the bulk of these institutions were closed to avoid paying for checks or to create Federal Reserve float. Finally, depository institutions closed on nonstandard holidays generally do not have the opportunity to remain open.

Rather than adopt the proposal, the Board provided the Reserve Banks with three options to eliminate or price float arising from midweek closings and nonstandard holidays. First, a Reserve Bank could modify its availability schedule for deposits of local depositors so that credit for checks drawn on closed institutions would be deferred one additional day.[2] Second, a Reserve Bank could modify its current practice of posting funds received for the account of the institution on the day the institution is closed. Third, a Reserve Bank could price all or any remaining float arising from midweek closings or nonstandard holidays by adding the value of this float to the cost of the check collection service. These procedures are scheduled to be effective October 1, 1983.

As Reserve Banks have begun preparations to implement those procedures, several of them have indicated that depository institutions have raised concerns regarding all three of the alternative procedures. With regard to the alternative of modifying availability schedules for local depositors to delay credit for checks they deposit that are drawn on closed institutions, concerns have been raised as to the inequitable treatment of the local depositor relative to other depositors. Under this alternative, a local depositor would receive credit for its deposit of a check drawn on a closed institution one day later than would a non-local depositor of the same check. In addition, there has been some indication that this alternative is likely to result in circuitous routing as checks drawn on closed banks are sent for collection through non-local depository institutions for whom credit is not deferred.

Equity considerations have also been raised concerning the alternative of adding the value of this float to the cost of the check collection service. Forty percent of the depository institutions that close midweek are located in the Chicago Federal Reserve District, and 35 percent are located in the Atlanta Federal Reserve District. Concern has been expressed that it is unfair for depository institutions that do not choose to close midweek to bear a substantial portion of the float cost of midweek closing simply because they are located in a Reserve District with a disproportionately large number of insititutions that voluntarily close midweek. Local institutions would bear a disproportionate amount of the float cost because most of the checks deposited by a depository institution with the Federal Reserve for collection are drawn on another institution located in the same Federal Reserve office territory.

With regard to the alternative of deferring credits received for the account of the institution on the day the institution is closed, it has been suggested that closed institutions will avoid this deferral by directing their credits through correspondents.

In addition, the impact of the proposed amendment to Regulation J on paying banks may have changed since Board consideration of this matter in April 1983 in view of the substantial reduction in float resulting from midweek closings and nonstandard holidays. In 1982, float resulting from midweek closings was estimated to be $160 million (daily average) and float resulting from nonstandard holidays was estimated to be $100 million (daily average). Recent data indicate, however, that float resulting from midweek closings has fallen to $110 million (daily average) and float resulting from nonstandard holidays has fallen to under $10 million (daily average). This reduction results in a corresponding reduction in the burden on payor banks of the proposal to amend Regulation J to charge the payor bank for this float.

Board's proposal. Accordingly, the Board has determined to republish for public comment the proposed amendment of Regulation J to permit Reserve Banks to charge a depository institution for checks drawn or made available to it on days the institution is closed and on which the Reserve Bank is open. This republication will provide an opportunity for paying banks and others to reassess the impact on the proposed amendment to Regulation J in view of the recent reduction in float arising from midweek closings and nonstandard holidays.

In view of the concerns previously expressed by paying banks that charging their accounts for these items could have an adverse effect upon the management of their cash positions, the Board has also determined to solicit public comment on the option of permitting paying banks to pay for the float generated by their items rather than paying for the items themselves. The methods of payment for this float would be similar to those now offered to institutions in connection with paying for interterritory check float. 48 FR 10753 (March 14, 1983).

Under the proposed amendment, cash items would be made available to the paying banks so that they may begin processing if they desire to do so.

[1] 123 *Cong. Rec.* S3167 (daily ed. March 27, 1980) (Statement of Senator Proxmire).

[2] It was determined at that time that it would be operationally infeasible for Reserve Banks to delay credit on interterritory checks drawn or closed banks because each Reserve Bank would be required to keep track of every bank in the country that is closed.

However, the items would not be considered to be received for purposes of accountability under § 210.9(a) of Regulation J, or for purposes of beginning the running of the time for return under § 210.12(a) of Regulation J, until the institution's next banking day [3] on which it actually receives the cash letter. Accordingly, the proposed amendment would not require the paying bank to open on a weekday closing day or nonstandard holiday.

Effect on small institutions. The proposed amendment would not impose any additional reporting, recording, or other compliance requirements on any institutions and would not duplicate, overlap, or conflict with any other federal rule. The most significant economic impact of the proposal on any depository institution will be the reduction of earnings on funds that could have been invested in the federal funds market had the Reserve Bank not charged the institution's account until the next banking day or had it not paid for the float associated with the checks made available to it when it was closed. The amount of such reductions will vary widely among the institutions affected, regardless of an institution's size. Nevertheless, the Board recognizes that in some instances the economic impact on an institution may be significant. As discussed above, the alternatives to this proposed amendment that were adopted by the Board in April 1983 raise concerns of equity and feasibility. The Board does not believe that other alternatives to the proposed amendment designed to lessen its impact, such as exempting small depository institutions from its coverage, would be consistent with the requirement of the MCA that the Federal Reserve price for remaining Federal Reserve float or would serve the regulatory aims of the MCA (such as equal treatment for all depository institutions and reduction of Federal Reserve float).

List of Subjects in 12 CFR Part 210

Banks, banking, Federal Reserve System.

§ 210.9 Payment.

Pursuant to its authority under section 13 of the Federal Reserve Act (12 U.S.C. 342), section 16 of the Federal Reserve Act (12 U.S.C. 248(o), 12 U.S.C. 360), and section 11(i) of the Federal Reserve Act (12 U.S.C. 248(i)), the Board proposes to amend Regulation J (12 CFR Part 210) by revising in § 210.9 the undesignated paragraph following paragraph (a)(3) to read as follows:

(a) * * *

The proceeds of any payment shall be available to the Reserve Bank by the close of the Reserve Bank's banking day on the banking day of receipt of the item by the paying bank. If the banking day of receipt is not a banking day for the Reserve Bank, payment shall be made on the next day that is a banking day for the Reserve Bank. A paying bank that is closed on a day that is a banking day for the Reserve Bank must pay on that day for a cash item made available to it on that day by the Reserve Bank or compensate for the value of float associated with such items in accordance with procedures established by the Board, but the paying bank is not considered to receive the item until its next banking day.

* * * * *

By Order of the Board of Governors, September 13, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-25396 Filed 9-16-83; 8:45 am]

BILLING CODE 6210-01-M

[3] "Banking day" is defined in Regulation J as "a day during which a bank is open to the public for carrying on substantially all its banking functions." 12 CFR 210.2(d).

CIVIL AERONAUTICS BOARD

14 CFR Ch. II

[Docket 41686, EDR-466]

Computer Reservations Systems; Alleged Competitive Abuse and Consumer Injury

Dated: September 9, 1983.

AGENCY: Civil Aeronautics Board.

ACTION: Erratum to advance notice of proposed rulemaking.

SUMMARY: This erratum is being issued to correct an inadvertent typographical error on page 25 of EDR-466 (48 FR 41180, Sept. 14, 1983). The first sentence of the paragraph beginning "Accordingly, the Civil Aeronautics Board. . ." should read: "Accordingly, the Civil Aeronautics Board grants the petitions in Dockets 41369, 41621 and 41628, and asks for comments and proposals on the issues in those petitions and this notice." (EDR-466, 48 FR 41171, September 14, 1983)

Dated: September 13, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-25502 Filed 9-16-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-AGL-13]

Proposed Alteration of Control Zone; Columbus, Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Bolton Field Airport, Columbus, Ohio, control zone to revise the airspace currently designated for the control zone.

The intended effect of this action is to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before October 19, 1983.

ADDRESS: Send comments on the proposal in triplicate to FAA Office of Regional Counsel, AGL-7, Attention: Rules Docket Clerk, Docket No. 83-AGL-13, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

An informal docket will also be available for examination during normal business hours in the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: This action revises Bolton Field Airport control zone to accommodate existing airspace requirements. It expands the zone from a 3-mile radius to a 5-mile radius due to the instrument flight rule status of the airport while excluding portions northwest and east due to other existing airports. The revised description is presented in the text of this Notice.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate

the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83–AGL–13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2, which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Bolton Field Airport, Columbus, Ohio, control zone.

Section § 71.171 of Part 71 of the Federal Aviation Regulations was published in Advisory Circular AC 70–3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Control zones, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Columbus, Bolton Field, OH

Within a 5-mile radius of the center, latitude 39°54'07" N., longitude 83°08'12" W., of Bolton Field Airport, excluding that portion extending beyond a 2-mile radius of the Bolton Field bearing 270° clockwise to 325° and that portion beyond a 1.5-mile radius of the Bolton Field bearing 060° clockwise to 105°. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport Facility Directory.

(Sec. 313(a), 314(a), 601 through 610, and 1102, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983))

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, it is certified that this—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Des Plaines, Illinois, on August 26, 1983.

Monte R. Belger,

Acting Director, Great Lakes Region.

[FR Doc. 83-25409 Filed 9-16-83; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 250, 256a and 257

[Release No. 35-23049; File No. S7-990]

Rules Governing the Preservation of Records of Registered Holding Companies and their Mutual or Subsidiary Service Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Securities and Exchange Commission ("Commission") requests comments on a proposal to amend and restate its regulations concerning the preservation and destruction of records of registered holding companies and their mutual or subsidiary service companies. The proposed rule is directed to modernizing the rules under the Public Utility Holding Company Act of 1935 ("Act" or "1935 Act") in light of technological changes in record keeping, and changes in related regulations of the Commission and other regulatory authorities. In general, the amendments shorten required retention periods.

DATE: Comments must be received on or before November 4, 1983.

ADDRESS: Comments should be submittd in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washingtom, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Grant G. Guthrie (202 272–7677), Associate Director, Robert P. Wason (202 272–7649), Chief Financial Analyst, or James E. Lurie (202 272–7648), Special Counsel, Division of Corporate Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washingtom, D.C. 20549.

SUPPLEMENTARY INFORMATION: Section 15(a) of the 1935 Act requires that:

> Every registered holding company and every subsidiary company thereof shall make, keep and preserve for such periods, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books and other records as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or for the enforcement of the provisions of this title or the rules, regulations, or orders thereunder.

The Federal Energy Regulatory Commission ("FERC") has similar jurisdiction over the accounts and records of electric utility companies and interstate pipeline companies.[1] State commissions regulating electric and gas utility companies generally exercise comparable authority over local public-utility companies. This Commission has limited its specific prescriptions under

[1] FERC's authority is contained in section 301 of the Federal Power Act, 16 USC 825(a) (electric utility companies), and section 8(a) of the Natural Gas Act, 15 USC 717g(a) (pipeline companies). FERC has similar authority over oil pipelines, not relevant here.

the 1935 Act to registered holding companies and their service company subsidiaries, which are not subject to either FERC or state utility regulation.

The requirements concerning the preservation and destruction of records are contained in the appendices to the Uniform System of Accounts for Mutual and Subsidiary Service Companies (17 CFR Part 256a) and the Uniform System of Accounts for Public Utility Holding Companies (17 CFR Part 257, Appendix). When the Commission rescinded the holding company system of accounts in 1975,[2] and rewrote the service company system of accounts in 1979,[3] the appendices were left in effect, pending revision. It appears that duplication can be avoided by substituting a single regulation, proposed new Part 257, to govern record retention matters for both registered holding companies and their service company subsidiaries. The function of the holding company and the service company differ in an integrated system, the former being primarily the issuer of equity securities, policy maker and investor, while the latter provides technical and shared services to associate companies. These differences merely mean that some categories of the records in the schedules will exist in one kind of company and not the other, a difference without practical significance. The proposal thus involves rescission of the present record retention provisions and appropriate amendments to the cross references in Rules 26(d) and 93.

The principal purpose of retention requirements is to assure the availability of records of transactions of the holding and service companies with their controlled public utility companies when regulatory agencies need to verify such transactions, usually in the course of ratemaking proceedings. Historical data has an important role in ratemaking, and ratemaking procedures may postpone full examination for a substantial period of time after the transaction has occurred. Another purpose is to establish rights of security holders. Basic documents, such as articles of incorporation and indentures have a continuing significance.[4] Security holder accounts are numerous and can be the subject of dispute.

For these and similar reasons the preservation of records is important, both to the registered system and to those who deal with it. The period for preservation of particular records depends essentially on their continuing relevance to potential controversies. Statutes of limitation are an important factor, but vary from state to state and with type of transaction. The regulation prescribes minimuim retention periods. The company and its counsel are responsible for exercising judgment as to the possible need for particular records beyond that period

Important technological changes in data preservation systems make necessary a revision of the existing regulations.[5] The proposed rule recognizes preservation media currently in use, and makes clear that it is not intended to restrict further developments.

Records relating to transactions with controlled utility subsidiaries complement those of the utility company, showing the parts of the transaction, and of antecedent or otherwise related transactions, which are not a part of the utility company's records. Once the utility company's records are destroyed, the related records of associate companies would be of limited value, while authorizing their earlier destruction might impede or frustrate efforts to complete examination of the utility company's accounts.

Under the proposal, the Schedule would be simplified by appropriate modifications of the Instructions. For example, by defining the status of records of predecessors and of independent custodians in Instruction (a), and dealing generically with multipurpose records in Instruction (m), complex and repetitious special provisions, exceptions and cross references in the existing schedules become superfluous.[6] Instruction (a)(3) deals specifically with the possible overlap of service company and utility company functions. To the extent a company subject to this regulation has records of utility operations, property or obligations, those records are governed by Federal or state requirements applicable to the utility or nuclear licensee for which it acts.

The schedules have been comprehensively revised and shortened. It is proposed to delete several subjects included in the existing schedules, which have little, if any, relevance to cost of service. Payroll and personnel records included in the schedules have been limited to those required to verify time and cost data, and eliminate such items as garnishments and other personal deductions, employment applications, medical records, and disciplinary notices, which have personal implications and are governed by other laws, and claim records would no longer include investigative files.

The present schedules, developed when employee pensions were largely a matter of grace, ignore the distinction between direct employee benefit plans and the more common and important funded plans, which are separate legal entities, and many of which are now regulated under the Employment Retirement Security Act or other laws The development of a variety of plans for various purposes also was not anticipated. The proposed schedules again replace detailed specifications, which would have to be reconciled with existing or future regulation under other laws, in favor of focusing on records needed to verify cost of service. Direct benefits are merely one of the operating expenses included in proposed Item 8. Item 16(a) (payroll) has been modified to include, rather than exclude, direct pension or annuity payments. Records of employee stock plans, like dividend reinvestment plans, have been included (proposed Item 1(p)) as a category of security holder records. The company's computation of its contributions to funded plans, and any records maintained by the company with respect to benefit plans remain in proposed Item 17 (Payroll and Personnel Records). General Instruction (a)(3) will protect records maintained by the company for an associate company.

Of course, such deletions from the schedules will not actually reduce the volume of records kept by the regulated companies. The files referred to in the old schedules are business records, the need for which is self evident. But they do not seem to be useful in terms of the interests of investors or consumers under the Act. Inclusion of records of primary interest to tax collectors, employees, or tort claimants in a regulation under the Act involves judgments of relevance and importance

[2] HCAR No. 18963, May 1, 1975, 40 FR 28026 (June 20, 1975)

[3] HCAR No. 20910, Feb. 2, 1979, 44 FR 8247 (Feb. 9, 1979).

[4] The standard medium of utility debt financing is an open-end trust indenture, most of which were executed in the 1940's, but which secure numerous series of long-term bonds now extending past the year 2000. Many utility preferred stock series are perpetual. Although executed and issued by operating utility companies, the details of the creation and administration of thed issuer are often a service company function, and dividend reinvestment and employee stock ownership plans have proliferated.

[5] Liberal interpretations of references to "microfilm" in the existing schedules have permitted use of state of the art technology. But the case-by-case approach is administratively unsatisfactory

[6] For example, section 257(a)(2) (II) permitting conditional reliance on an indenture trustee's copies of the company's communications to it, is covered by the revised definition of "records" in Instruction (a), and the provisions as to duplicate records in (a)(6). These instructions also eliminate the risk of similar duplication with respect to transfer agents and other independent custodians.

which this Commission has no reason to make.

The retention periods involve two factors. Documents establishing rights, such as articles of incorporation, mortgages, title papers, and authorization are needed for as long as they are in effect, a very long period in many important areas. In addition, records of completed transactions must remain available for a reasonable audit period. The length of the retention periods proposed recognizes the significance of verified costs in utility ratemaking, and that there is a lag between the time of a transaction (or series of transactions) and its preservation in records, and the time at which it can become an issue in a test year for a ratemaking proceeding.

Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendment proposed herein will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

Statutory Basis

The Commission proposes to amend 17 CFR Parts 250, 256a and 257 pursuant to the authority contained in sections 15(a) and 20(a) of the Act, 15 U.S.C. 79o and 79t.

List of Subjects in 17 CFR Parts 250, 256a, and 257

Accounting, Reporting and recordkeeping requirements, Securities, Utilities.

Text of Proposed Amendments

In consideration of the foregoing, the Commission hereby proposes to amend Parts 250, 256a and 257 of Chapter II, Title 17, Code of Federal Regulations, as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. Paragraph (d) of § 250.26 is proposed to be revised to read as follows:

§ 250.26 Financial statement and recordkeeping requirements for registered holding companies and subsidiaries.

* * * * *

(d) No registered holding company which is not a public utility company shall dispose, without authorization from the Commission, of any accounts, books, or other records, except pursuant to 17 CFR Part 257.

* * * * *

2. Section 250.93 is proposed to be revised to read as follows:

§ 250.93 Accounts and records of mutual and subsidiary service companies.

Every mutual service company and every company whose organization and conduct of business the Commission has found, pursuant to § 250.88, to meet the requirements of section 13(b) (49 Stat. 825; 15 U.S.C. 79m) shall keep such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records in such manner and preserve them for such periods, as are prescribed in 17 CFR Part 257, and shall keep no other records with respect to the same subject matter except: (a) Records other than accounts, (b) records required by state law, (c) subaccounts or supporting accounts which are not inconsistent with the accounts required by the Uniform System of Accounts (17 CFR Part 256), and (d) such other accounts as may be authorized by the Commission.

PART 256a—[REMOVED]

3. Part 256a is proposed to be removed in its entirety.

4. The present Part 257—is proposed to be removed in its entirety and the following substituted therefor:

PART 257—PRESERVATION AND DESTRUCTION OF RECORDS OF REGISTERED PUBLIC UTILITY HOLDING COMPANIES AND OF MUTUAL AND SUBSIDIARY SERVICE COMPANIES

Sec.
257.1 General Instructions.
257.2 Schedule.

Authority: Secs. 15 and 20(a), Public Utility Holding Company Act of 1935, and § 250.26(d) and §250.93 of Title 17 CFR, thereunder.

§ 257.1 General instructions.

(a) *Scope of regulation.* The General Instructions and schedule apply to any holding company, except an electric or gas utility company, registered as a holding company under the Public Utility Holding Company Act of 1935, and to companies found by the Commission, pursuant to § 250.88 to meet the requirements of Section 13 of Act as mutual or subsidiary service companies.

(1) *Company* means a service company subject to § 250.93, or a holding company subject to § 250.26, which is not an electric utility company or a gas utility company, and any predecessor or inactive or dissolved associate company, the records of which are in the possession or control of such company.

(2) *Records* include any records prepared, maintained or held by any agent or employee of a company, including any such records of a stock transfer agent, registrar, paying agent, indenture trustee or other person employed by a company to perform services with respect to the securities of the company, insofar as such person is accountable to the company or to its security holders for such records.

The specification in the schedule of a record related to a type of transaction includes all documents and correspondence, not redundant or duplicative of other records retained, needed to explain or verify such transaction. Supporting documents such as checks or vouchers, which are separately scheduled may, nevertheless, be destroyed in accordance with the schedule for their respective class, when the company determines that the lapse of time has made it unlikely that it will need to prove the details evidenced thereby.

(3) Any company subject to this regulation, which, as agent, operator, lessor or otherwise, maintains or has possession of any records relating to the operation, property or obligations of an electric or gas utility company or natural gas company or a nuclear licensee, as defined in the Federal Power Act, the Natural Gas Act, the Atomic Energy Act or the laws of any state within which such utility company operates, shall comply with the laws or regulations as to record retention and destruction which would apply to such records if they were records of such utility company or licensee.

(4) Except for the certifications, indices and cross references specified herein, the regulation shall not be construed as requiring the preparation or maintenance of records not required to be prepared or maintained by other rules or regulations of the Commission.

(5) The regulation shall not excuse compliance with any other lawful requirement for the preservation of records for periods longer than those prescribed in the regulation.

(6) Duplicate copies of records which contain no significant information not shown on the copy preserved may be destroyed at any time. If the same document would be required under more than one scheduled item, such as an indenture also included as an exhibit in a filing required to be retained, only one copy need be preserved if cross

references are substituted for the additional copies.

(7) Notwithstanding the provisions of the regulation, the Commission may, upon the request of any company, authorize the destruction of any specified records of such company and the Commission, on its own motion or on the motion of any regulatory agency, may direct that receords which would be useful in developing facts relevant to any transaction recorded by the company be preserved for such period as the Commission may specify.

(b) *Designation of supervisory official.* Each company subject to the regulation shall designate one or more officials to supervise the preservation or authorized destruction of its records. Insofar as its records include those in the possession of a transfer agent, indenture trustee or other independent custodian, the terms of the agreement with the custodian may include provisions, not inconsistent with this regulation, for the preservation and destruction of such records by the custodian and the responsibility of the company's designated official shall be to make reasonable inquiry as to the due performance of the custodian's obligation.

(c) *Protection and storage of records.* The company shall provide reasonable protection from damage by fire, flood, and other hazards for records required by the regulation to be preserved and, in the selection of storage space, safeguard such records from unnecessary exposure to deterioration from excessive humidity, dryness, or lack of proper ventilation.

(d) *Index of records.* At each office of the company where records are kept or stored, such records as are required by the regulation to be preserved shall be so arranged, filed, and currently indexed that such records shall be readily available for inspection by authorized representatives of regulatory agencies concerned.

(e) *Defintion of record media.* (1) The data constituting the records listed in the schedules may be retained in any of the media forms in Figure 1 of this section, if the media selected has a standard life expectancy equal to or in excess of the specified retention period. In cases where media regeneration to achieve full length of period retention becomes necessary, the company shall take such action as procedure calls for and notify the Commission immediately thereafter. The specifications in Figure 1 are generic. At the request of a company, the Commission may authorize alternative media reasonably equivalent to those specified.

(2) If the media form of the record retained is other than a readable paper copy, then reader and/or printer equipment and related printout programs, if required, shall be provided by the company for data reference.

(3) The media form initially selected for the record becomes the "original" for that particular record. If subsequent conditions (e.g., improved media life expectancy, increased company resources, increased securities sales) require and the remaining retention period permits a change in the media forms, the company may convert to another media and dispose of its old equipment, provided the certification processes described in paragraph (f) of this section are observed and data referencing capability is maintained.

FIGURE 1—RECORD MEDIA

Record media/form	Media expected life	Comments and standards
1. Paper and card stock (hardcopy)	Archival permanency	For each document, paper stock should be selected with a life expectancy equal to or greater than the retention period specified for that document.
2. Tape:		
a. Magnetic (including video tape)	5 years	Assumes storage in a controlled environment with a temperature and humidity range of 60°-80°F. and 40-60% respectively. (Ref. instruction 8 for specific storage conditions).
b. Punched	Archival permanency	For each record, tape media (paper, mylar, metallic base) should be selected with a life expectancy equal to or greater than the retention period for that record.
3. Microforms:		
a. Microfilm (including Computer Output Microfilm ("COM"), Microfiche jackets and aperture cards).	Archival permanency	Assumes processing to standards and storage in a controlled environment with a temperature and humidity range of 60°-80°F. and 40-50%, respectively. (Ref. American National Standards Institute ("ANSI") standards PH 5.4-1970, PH 1.41-1976, PH 1.28-1979, PH 1.43-1981, or most current standards as accepted by the National Archives for use by federal agencies. (See 41 CFR § 101-11.5)
b. Metallic recording data strips	Archival permanency	Same storage conditions as for microfilm.

(f) *Microform and tape certification—*(1) *As the initial recording media.* (i) Each microform record series shall contain, at the beginning, a microform introduction stating the title of the record series, the date prepared, the name of the official responsible for validating or confirming the data contained therein. Each microform record series shall be closed with a clear and standard microform notation indicating the completion of the series and the date. If the microform record series is a product of Computer Output Microfilm ("COM"), the certification required of this section is not required if the series is prepared in accordance with written standard procedures developed by the company that ensure the integrity of record series which are the product of COM. Such procedures must include the name of the official responsible for validating or confirming the data contained in the record series and confirming that a particular COM record was produced in accordance with the standard procedures.

(ii) If a record series is a product of computer output paper or microfilm, any certification that may otherwise be required under paragraph (f)(1)(i) of this section is not required if:

(A) The series is prepared in accordance with written standard procedures developed by the company that ensure the integrity of record series that are the product of computer output; and

(B) Such procedures include the name or title of the official responsible for validating or confirming the data contained in the record series and confirming that a particular computer output record series was produced in accordance with the standard procedures.

(iii) Each tape record series shall be externally labeled and there shall be prepared for that series an introduction stating the record series title, date prepared, the name of the official responsible for vaildating or confirming the data contained therein and an index where appropriate. Each record series shall be closed with a clear and standard notation indicating the completion of that series and the date.

(2) *Conversion for other media.* (i) Each microform record series shall include, as an integral part, a certificate(s) stating that the microforms are direct and facsimile reproductions of the original records and that they have been made in accordance with prescribed instructions. Such certificate(s) shall be executed by a persons(s) having personal knowlege of the facts covered thereby.

(ii) Each microform record series shall commence and end with a statement as to the nature and arrangement of the records reproduced, and the date. Rolls

of film shall not be cut except to produce jacketed microfiche. Supplemental or retaken film, whether of misplaced or omitted documents or of portions of microform found to be defective, shall be attached to the beginning of the microform record series. If supplemental or retaken film of misplaced or omitted documents, or of portions of microfilm found to be defective, are attached to the microfilm record series, the certificate described in section (f)(1)(i) shall cover the supplemental or retaken film and shall state the reasons for the attachment. When a retrieval system (*e.g.*, image count indexing ("blipping")) is used, the supplemental or retaken film may be attached at the end of the series, if the provisions at the beginning of the series advise the viewer of the location of the problem frames and the supplemental or retaken images.

(iii) If, in accordance with the provisions of paragraph (g) of this section, the company elects to convert records to the tape media, the same certification provisions specified in paragraph (f)(1)(iii) of this section must be provided in the conversion program.

(g) *Change of media for existing records.* Those records prepared and maintained under previous regulations in a paper media and whose remaining retention period falls within the life expectancy range of any of the media detailed in Figure 1, may be converted to that media at the company's option, provided the applicable certification processes described in paragraph (f) of this section are observed and an audit referencing capability maintained.

(h) *Media.* (1) All records created or maintained in a media shall

(i) Be prepared, arranged, classified, identified, and indexed as to permit the subsequent location, examination, and reproduction of the record to a readable media;

(ii) Be stored in such a manner as to provide reasonable protection from hazards such as fire, flood, theft, etc., and be maintained in a controlled environment; and

(iii) Be regenerated, including proper certification, when damaged.

(2) The company shall be prepared to furnish, at its own expense, standard facilities for reading media and shall additionally provide, if the Commission so directs, copies of records in a readable form.

(3) All film stock shall be of approved operationally-permanent-record microcopying type, which meets the current specifications of the American National Standards Institute.

(4) Punched cards, tape or similar media used as intermediate records or steps in data processing for assembling data to be posted to the records of the company or used in a report or study can be destroyed at the option of the company.

(i) *Destruction of records.* The destruction of the records permitted to be destroyed under the provisions of the regulations in this part may be performed in any manner elected by the company. Precautions should be taken, however, to macerate or otherwise destroy the legibility of records, the content of which is forbidden by law to be divulged to unauthorized persons.

(j) *Premature destruction or loss of records.* When records are destroyed or lost before the expiration of the prescribed period of retention, a statement listing, as far as may be determined, the records destroyed and describing the circumstances of accidental or other premature destruction or loss shall be filed with the Commission within ninety (90) days from the date of discovery of such destruction or loss.

(k) *Schedule of records and periods of retention.* The schedules of records retention periods constitute a part of this regulation. The schedules prescribe the periods of time that designated records shall be preserved.

(l) *Retention periods designated "Destroy at Option".* Use of the retention period, "Destroy at option," in the regulation constitutes authorization for such destruction under the conditions specified for the particular types of records only if such optional destruction is based on a reasonable judgment that the records are unlikely to be needed and if such optional destruction is not in conflict with other legal retention requirements. Optional destruction of records relevant to pending or expected regulatory or legal actions is not authorized. "Destroyed at option after audit" requires retention until the company has received an opinion of its independent accountants with respect to the financial statements including the transactions to which such records relate.

(m) *Use of technical accounting terms.* For purposes of the schedules, traditional accounting terms such as ledgers, journals, registers and vouchers refer to the function rather than the form of the record. All refer to quasi-permanent records, designed to collect, classify and in some aspects summarize, various types of the company's transactions. They are interrelated and, in another traditional term, are the principal constituents of the books of account, including subsidiary ledgers and registers. The retention periods apply to records serving this function, regardless of form. A multiple purpose record, such as a service company stock stub which also serves as the shareholder's ledger, or a voucher file which also serves as the journal, referred to more than once in the schedule, is governed by the longest retention period applying to any of its functions. For brevity, the term "note" is used in the schedule to refer to an evidence of debt maturing within one year of its creation, which was not the subject of an offering registered under the Securities Act of 1933. The term "debenture" refers to a document evidencing any other unsecured debt. The term "mortgage" refers to any form of secured obligation, "bond" refers to a document evidencing a secured debt in whole or part, and "mortgagee" refers to the holder of a mortgage or bond and includes any person, such as an indenture trustee, authorized to act for a mortgagee.

§257.2 Schedule.

SCHEDULE OF RECORDS RETENTION PERIODS

Description of records	Retention period
Corporate and General	
1. Records of Securities:	
(a) Capital stock and debt ledgers.	3 years after the holder's account is closed.
(b) Subscription accounts, warrants requests for allotments and other essential papers related thereto.	2 years after settlement
(c) Stubs or similar records of the issuance of securities.	3 years after cancellation of certificate.
(d) Transfer registers or sheets or similar records.	3 years after last entry on page or sheet of the record.
(e) Papers supporting transfers.	Destroy at option or return to transferor.
(f) Cancelled capital stock certificates, bonds or debentures and coupons.	3 years after cancellation.
(g) Paid or cancelled notes	Destroy at option after changes are recorded
(h) Bonds of indemnity and affidavits covering issuances of securities to replace lost certificates.	3 years after expiration of bonds.
(i) Letters, notices, reports, statements and other communications distributed to all holders of a particular class:	
(1) Annual reports, notices of annual or special meetings of such class, solicitations of consents or waivers, notices of redemption or invitations for tender.	50 years.
(2) Interim reports, dividend notices, notices of change of corporate address, and similar communications of information of only current significance.	3 years after the date thereof.
(j) Dividend interest and coupon registers, lists or similar records.	3 years after payment.
(k) Paid dividend or interest checks.	3 years after issuance.
(l) Third party dividend orders	3 years after rescission of order.

Description of records	Retention period
(m) Trust indentures, loan agreements or other contracts or agreements securing debt securities issued.	3 years after redemption.
(n) Copies of reports, statements, letters or memoranda filed with Trustee(s) pursuant to provisions of trust indenture or other security instrument or agreement securing debt securities issued.	Do.
(o) Leases pertaining to rentals of property to or from others.	3 years after expiration.
(p) Contracts, agreements, and other records needed to administer or audit a dividend reinvestment plan or an employee benefit plan involving the purchase or issuance of securities.	6 years after expiration or cancellation.
2. Proxies and Voting Lists:	
(a) Executed proxies of holders of voting securities.	3 years after date of shareholders' meeting for which executed.
(b) Lists of holders of voting securities represented at meetings.	1 year.
3. Filings with and authorizations by regulatory agencies:	
(a) Applications, registrations or other documents filed by the company with any Federal or state regulatory agency for authorization or validation of transactions; the opinion, order or other document evidencing the agency's action thereon; and any report of consummation or compliance, with respect to:	
(1) The issue, pledge or sale of securities.	25 years or until all securities covered thereby are retired, whichever is shorter.
(2) The acquisition or disposition of assets or investments, including mergers.	25 years after close of fiscal year.
(3) Contracts with affiliates.	Do.
(4) Organization or conduct of business of the company and changes therein.	Life of corporation.
(b) Periodic or special reports filed by the Company in its own behalf with the Securities and Exchange Commission or with any other Federal or State rate-regulatory agency, including exhibits or amendments to such reports:	
(1) Annual financial, operating and statistical reports.	10 years after date of report.
(2) Monthly and quarterly reports of operating revenues, expenses, and statistics.	2 years after date of report.
(3) Transactions with associated companies.	6 years.
(4) Budgets of expenditures.	3 years.
(5) Accidents	6 years.
(6) Employees and wages.	5 years.
(7) Loans to officers and employees.	3 years after fully paid.
(8) Purchases and sales of property.	For period specified refer to property records (see item 16).
4. Organization Documents:	
(a) Titles, Franchises, and Licenses:	
(1) Certificates of incorporation, or equivalent agreements and amendments thereto.	Life of corporation.
(2) Deeds leases and other title papers (including abstracts of title and supporting data), and contracts and agreements related to the acquisition or disposition of property or investments.	6 years after property or investment is disposed of unless delivered to transferee.
(b) Minutes of stockholders, directors' and directors' committee meetings.	50 years.
(c) Minutes of meetings of system committees.	6 years after close of fiscal year.
(d) Organization Diagrams and Charts.	Destroy at option after expiration or supersession.
(e) Permits or Licenses:	
(1) Permits or licenses to conduct any part of the Company's business.	6 years after expiration.
(2) Permits or licenses for vehicles or equipment, or for other activities in business.	1 years after expiration or renewal.
5. Contracts and Agreements:	
(a) Contracts and agreements entered into by the Company for the procurement of services, such as management, consulting, accounting, legal, financial or engineering services.	6 years after cancellation or expiration.
(b) Contracts or agreements with individual employees, labor unions and other employee organizations relative to wage rates, hours and similar matters.	6 years after expiration of contract.
(c) Memoranda essential to clarify or explain provisions of contracts and agreements.	For same period as contract to which they relate.
(d) Card or book records of contracts or agreements showing renewal or expiration of same and records of performance.	Do.
Accounting	
6. Books of Account:	
(a) General and Subsidiary Ledgers.	50 years.
(b) Trial balance sheets of general and subsidiary ledgers or equivalent records.	2 years after data of trial balance.
(c) Journals: General and subsidiary journal or ledgers of originnal entry.	50 years.
(d) Cash books: General and Subsidiary or auxiliary books.	10 years.
(e) Voucher Registers: Voucher registers or similar records.	6 years.
7. Journal Vouchers and Other Papers Supporting Entries:	
(a) Vouchers supporting general and subsidiary journal entries and papers forming part of or necessary to support and explain vouchers relating to:	
(1) Organization, fixed assets, investments, issuance of capital stock, funded debt and related accounts.	50 years.
(2) All other accounts	6 years after settlement.
(b) Schedules for recurring journal entries.	6 years after settlement. Destroy when superseded if not a part of a journal entry in which event it 6(c) applies.
(c) Lists of standard journal entry numbers.	Destroy when superseded.
(d) Material and supplies disbursement and labor distribution recores.	6 years.
8. Vouchers Evidencing Disbursements:	
(a) Paid and cancelled vouchers, including analysis sheets showing detailed distribution of charges on individual vouchers and other supporting papers.	Do.
(b) Original bills and invoices for materials, services, etc., paid by vouchers.	Do.
(c) Authorization for the payment of specific voucbers.	Do.
(d) Lists of unaudited bills (accounts payable), lists of vouchers transmitted and memoranda recording changes in unaudited bills.	Do.
(e) Voucher indices	Destroy at option.
(f) Paid checks other than interest dividend and payroll checks. (See item 1(k) for interest and dividend checks and item 16(d) for payroll checks.	6 years.
(g) Purchases and stores records related to disbursement vouchers.	Do.
9. Accounts Receivable:	
(a) Records of all accounts receivable, indices to accounts receivable and summaries of distribution of such accounts.	3 years after settlement.
(b) Accounting department copies of invoices issued and supporting papers which do not accompany the original invoices and authorizations for charges including supporting papers. Insurance and Taxes	Do.
10. Insurance Records:	
(a) Records of insurance policies in force showing coverage, premiums paid and expiration date.	Destroy at option after expiration of such policies.
(b) Insurance Policies	Do.
(c) Records of self-insurance against (1) losses from fire and casualty, (2) damage to property of others and (3) personal injuries.	3 years after date of last accounting entry with respect thereto.
(d) Records of amounts recovered from insurance companies in connection with losses and records of claims against insurance companies including reports of losses and supporting papers.	6 years after settlement.
(e) Inspectors' reports and reports of condition of property.	Destroy when superseded.
(f) Reports of losses not covered by insurance.	Destroy at option after audit.
(g) Insurance maps of property and structures erected thereon.	Destroy when superseded.
(h) Records and statements relating to insurance requirements.	Destroy at option.
11. Injuries and Damages:	
(a) Claim registers, card or book indexes and similar record in connection with accidents resulting in damage to the property of others or personal injuries.	2 years after settlement.
(b) Detailed schedules or spread sheets of payments to others for personal injuries or for property damage.	Do.

Description of records	Retention period
12. Tax Records:	
(a) Copies of schedules, returns and supporting working papers to taxing authorities and records of appeals:	
(1) Federal income taxes	7 years after settlement.
(2) State or local income or property taxes.	Do.
(3) Other taxes	2 years after settlement.
(4) Agreements between and schedule of allocation by associate companies of consolidated federal income taxes.	7 years after settlement.
(b) Tax bills from taxing authorities and receipts for payment.	5 years after settlement.
(c) Summaries of taxes paid by classes of taxes, location or taxing authority.	Destroy at option.
Treasury	
13. Statements of Funds and Deposits:	
(a) Summaries and periodic statements of cash balances on hand and with depositories for Company or associate.	Do.
(b) Requisitions and receipts for funds furnished associates and others.	Destroy at option after funds have been returned or accounted for.
(c) Records of fidelity bonds of employees and others responsible for funds of the Company.	Destroy at option after liability of bonding company has expired.
14. Records of Deposits with Banks and Others:	
(a) Bank deposit slips or similar records, including authorizations for and statements of transfers of funds from one depository to another.	Destroy at option after audit.
(b) Statements from depositories showing the details of funds received, disbursed and transferred and balances on deposit.	Do.
(c) Bank reconcilement papers.	Do.
(d) Statements from banks of interest credits.	Do.
(e) Check registers or other records of checks issued, including correspondence.	6 years.
15. Records of Receipts and Disbursements:	
(a) Daily or other periodic statement of receipts or disbursements of funds.	Destroy at option after audit.
(b) Records of periodic statements of outstanding vouchers, checks, drafts, etc., issued and not presented.	Do.
(c) Reports of associates showing working fund transactions and summaries thereof.	Do.
Payroll and Personnel Records	
16. Payroll Records:	
(a) Payroll sheets or registers of payments of salaries and wages, pensions and annuities paid by company or by contractors for its account.	6 years.
(b) Records showing the distribution of salaries and wages paid for each monthly, semi-monthly or weekly payroll period and summaries or recapitulations of such distribution.	Do.
(c) Time tickets, timesheets, timecards, workmen's reports and other records showing hours worked, description of work and accounts to be charged.	Destroy at option if the basic information contained thereon is transferred to work orders or other records.
(d) Paid checks, receipts for wages paid in cash and other evidences of payment.	3 years.
(e) Authorizations for changes in wage and salary rates, summaries and reports of changes in payrolls and similar records.	Do.
(f) Payroll authorizations, records of authorized positions, and terminations.	Do.
(g) Comparative or analytical statements of payroll.	Do.
17. Personnel and Employee Benefit Records:	
(a) Records of employees' service, attendance and other essential data.	3 years after termination of employment.
(b) Detailed records of Company's computation for its contribution, plus a copy of plan.	6 years after termination of pension of annuity plan.
(c) Records pertaining to employees' benefit programs, including pension and profit sharing plans.	6 years after termination of program.
(d) Bulletins or memoranda of general instructions issued by the Company to employees pertaining to accounting, engineering, maintenance and construction methods and policies.	3 years after expiration or supersession.
Property, Depreciation and Investments	
18. Property Records:	
(a) Land and land rights records.	50 years.
(b) Building, permanent facilities and leasehold investment record.	6 years after disposition, termination of lease or write-off of property or investment.
(c) Operating equipment records.	3 years after disposition, termination of lease or write-off of property or investment.
(d) Office furniture and equipment records.	Do.
(e) Automobiles, other vehicles and related garage equipment records.	Do.
(f) Aircraft and airport equipment records.	Do.
(g) Other property records not defined elsewhere.	Do.
(h) Construction work in progress records, income ledgers, work order sheets, authorizations for expenditures, requisitions, performance reports and analysis or cost reports.	10 years after clearance to property accounts.
(i) Depreciation and amortization of property records.	Destroy at option after expiration of retention period a described for each respective type of property records in 18(a) through 18(i).
19. Investment Records:	
(a) Records of investment in associate companies.	3 years after disposition of investment.
(b) Records of other investments including temporary investments of cash.	Do.
20. Appraisals and valuations made by the company of its properties or investments or of the properties or investments of any associated companies.	3 years after disposition, termination of lease or write-off of property or investment.
Work Order and Job Order Records	
21. Work order and job order records including authorization documents, estimated cost memoranda, work order sheets for posting labor, material and other services, and summaries of expenditures for clearance to other accounts.	6 years after completion or work order.
22. Production maps, geological maps, reproductions, including aerial photographs, showing the location of all facilities the subject matter of which falls within the work orders of the company.	Do.
23. Engineering records, drawings, supporting data to include diagrams, profiles, photographs, field-survey notes, plot plans, detail drawing, and records of engineering studies that are part of or performed by the company within the work order system.	Do.
24. Records of building space occupied by various departments of the Company.	6 years.
Audit, Budget and Statistical Reports	
25. Financial, operating, and statistical reports:	
(a) Reports of examinations and audits by accountants and auditors not in the regular employ of the Company. (Including reports of public accounting firms and regulatory commission accountants.)	7 years after date of report.
(b) Internal audit reports and working papers.	Do.
(c) Annual reports regularly prepared in the course of business for internal administrative or operating purposes.	10 years after date of report.
(d) Quarterly, monthly or other periodic reports.	2 years after date of report.
26. Budgets and other forecasts (prepared for internal administrative or operating purposes) of estimated future income, receipts and expenditures in connection with financing, construction and operations and acquisitions or disposals of properties or investments by the Company and its associated companies, including revisions of such estimates and memoranda showing reasons for revisions; also records showing comparison of actual income and receipts and expenditures with estimates.	3 years.
27. Other Miscellaneous Records:	
(a) Copies of advertisements by the Company on behalf of itself or any associate company in newspapers, magazines and other publications including records thereof. (Excluding advertising of product, appliances, employment opportunities, services, territory, routine notices and invitations for bids for securities, all of which may be destroyed at option.)	6 years after date of publication.
(b) Indices of forms used by the Company.	Destroy at option when superseded.

By the Commission.

Date: September 7, 1983.

George A. Fitzsimmons,

Secretary.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to 17 CFR Parts 250, 256a, and 257 under the Public Utility Holding Company Act

of 1935 set forth in Holding Company Act Release No. 35-23049, if adopted, will not have a significant economic impact on a substantial number of small entities. The amendments deal with the preservation of records by public-utility holding companies registered under the Holding Company Act and their service company subsidiaries. The reason for this certification is that the proposed amendments will not affect a substantial number of small entities. There are presently 12 registered holding companies and 12 service company subsidiaries of such holding companies to which the rules would apply. None of these companies is a small entity as defined in Rule 110 under the Holding Company Act (17 CFR § 250.110). Thus the proposal will not affect any small entities.

Dated: September 7, 1983.

John S.R. Shad,

Chairman.

[FR Doc. 83-25030 Filed 9-16-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 76N-052B]

Cold, Cough, Allergy, Bronchodilator and Antiasthmatic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph for OTC Bronchodilator Drug Products; and Reopening of Administrative Record

Correction

In FR Doc. 83-23706 beginning on page 39242 in the issue of Tuesday, August 30, 1983, make the following correction. On page 39242, third column, in the "ADDRESS" section "(HFA-205)" should read "(HFA-305)".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-5-FRL 2433-2]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations: Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA proposes to change the designation for Allen County, Indiana from nonattainment to attainment for air quality attainment relative to ozone. This revision is based on a request from the State of Indiana to redesignate this area and on the supporting data the State submitted. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such change.

DATE: All comments must be received by October 19, 1983.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 S. Dearborn Street, Chicago, Illinois 60604

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206

Comments on this proposed rule should be addressed to: (Please submit an original and five copies if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886-6036.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962), pursuant to Section 107 of the Act, EPA designated Allen County, Indiana as nonattainment for ozone. In the February 3, 1982, **Federal Register** (47 FR 5440), EPA proposed to redesignate Allen County, Indiana from nonattainment to attainment/unclassifiable for ozone based upon monitored data from 1980. A discussion of the basis of EPA's action can be found in that Notice of Proposed Rulemaking.

Two comments were received by the Agency during the public comment period. The Northwestern Indiana Regional Coordinating Council supported the redesignation while the State of Connecticut opposed the redesignation based on the fact that the second highest ozone reading in 1980 was in excess of that allowable under the National Ambient Air Quality Standards (NAAQS). As a result of this public comment, EPA deferred rulemaking until new ozone data was received by the Agency. On March 31, 1983, the State of Indiana submitted new information to EPA and again requested redesignation of Allen County, Indiana from nonattainment to attainment for ozone. This request was based on monitored ozone concentrations during the period of 1980 through 1982.

When considering a redesignation request for ozone, a number of criteria must be considered. The most important is the ozone NAAQS which is specified in 40 CFR Part 50. The NAAQS for ozone is defined to be violated when the annual average expected number of daily exceedances of the standard (0.12 parts per million (ppm), one hour average) is greater than one (1.0). A daily exceedance occurs when the maximum hourly ozone concentration during a given day exceeds 0.124 ppm ("Guideline for the Interpretation of Ozone Air Quality Standards," EPA-450/4-79-003). The expected number of daily exceedances is calculated from the observed number of exceedances by making the assumption that the non-monitored days (invalid, missing, or incomplete) have the same fraction of daily exceedances as observed on monitored days (EPA-450/4-7-003).

EPA's policy on redesignations for ozone is discussed in memoranda from EPA's Office Air Quality Planning and Standards (OAQPS), dated December 7, 1979 and April 21, 1983. In keeping with the ozone NAAQS and with additional guidance provided in the "Guideline for the Interpretation of Ozone Air Quality Standards" (EPA-450/4-79-003), these memoranda recommend that the three most recent years of ozone monitoring data be considered. An area cannot be redesignated to attainment if the ozone NAAQS is violated at any site in the area.

During the 1980-1982 period, ozone was monitored at sites located at 17215 Woodburn and 2022 North Beacon. There were no exceedances recorded at the 17215 Woodburn monitor. The maximum highest ozone concentration recorded at the site was 0.116 ppm, which occurred in 1980. The second highest maximum ozone concentration was 0.108 ppm, which occurred in 1981.

Two exceedances of the ozone standard were recorded at the 2022 North Beacon site in 1980. Following procedures given in the "Guidelines for Interpretation of the Ozone Air Quality Standards", the expected exceedance was calculated to be 2.4 in 1980.

No exceedances of the ozone standard were recorded at this site in 1981 and 1982. Therefore, the average number of expected daily exceedances for 1980 through 1982 is 0.8. These data, in addition to the 17215 Woodburn data, demonstrate that no violations of the ozone NAAQS were observed in Allen County, Indiana during the period of 1980 through 1982.

In addition to this lack of violations, significant VOC emission reductions have occurred in the area during the most recent years as a result of the implementation of the Federal Motor Vehicle Control Program (IFMVCP). The FMVCP is expected to provide additional VOC emission reductions in future years, and will provide for maintenance of the ozone standard. Taking the above facts into consideration, EPA proposes to approve the redesignation of Allen County, Indiana to attainment for ozone.

All interested persons are inivited to submit written comments on the proposed redesignation. Written comments received by the date specified above will be considered in determining whether EPA will approve the redesignation. After review of all comments submitted, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the redesignation.

Under 5 U.S.C. Section 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709, March 1, 1983).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. (Section 107(d) of the Act, as amended (42 U.S.C. 7407)).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: July 8, 1983.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 83-25439 Filed 9-16-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 96

[Gen. Docket Nos. 82-243, 83-26 and 83-30]

Allocation of For Fixed Service Usage; Creation of a Private Radio Service; Creation of a Public Air-Ground Telephone System

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: This *Order* extends the time periods in which to file reply comments in response to the three *Notices of Proposed Rule Making* in General Docket Nos. 82-243, 83-26 and 83-30 (47 FR 23491, May 28, 1982, 48 FR 12228, March 23, 1983, 48 FR 12253, March 23, 1983, respectively). It is necessary to extend the reply comment period in each of these dockets in order to allow complete, comprehensive and definitive responses to various marketing, engineering and traffic studies set forth by numerous comments filed on July 15, 1983.

DATE: Reply comments may now be filed on or before September 30, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Special Services Division, Washington, D.C. 20554, (202) 632-4964.

Order

In the matter of amendment of Part 2 of the Commission's rules to provide for an allocation of 6 MHz to the Government and the non-Government for fixed service usage, Gen. Dkt. No. 82-243.

In the matter of creation of an additional private radio service, Gen. Dkt. No. 83-26, RM-4121.

In the matter of amendment of the Commission's rules to allocate spectrum for, and to establish other rules and policies pertaining to the use of radio in establishing a public air-ground telephone system, Gen. Dkt. No. 83-30, RM-3524.

Adopted: August 29, 1983.

Released: September 2, 1983.

By the Chief, Private Raido Bureau and the Chief Scientist.

1. The Commission has before it a *Motion for Extension of Time* filed by the Audio Electronics Products Department of the General Electric Company (GE). In its motion GE requests an extension of time in which to file reply comments in General Docket No. 83-26 from September 6, 1983 to September 30, 1983.

2. In support of its motion, GE stated that it needed a twenty-four day extension in order to provide complete, comprehensive and definitive responses to the various marketing, engineering and traffic studies set forth by numerous comments filed by other parties on July 15, 1983. Grant of the requested extension of time, according to GE, would serve the public interest by insuring a full and complete record before the Commission. GE also appended a letter from the Personal Communications Section of the Telecommunications Group, Electronic Industries Association (EIA's support of GE's motion.

3. For the reasons advanced by GE, and in order to allow all interested parties ample time to evaluate and respond to the marketing, engineering and traffic studies included in the many comments filed in General Docket No. 83-26 only July 15, 1983, we are granting all parties an extension of time to file reply comments in this proceeding until September 30, 1983.

4. Additionally, we note that the other two captioned proceedings (General Docket Nos. 82-243 and 83-30) also now before the public for comment propose allocating spectrum in other portions of the 900 MHz band. The Commission has stated its intention to consider all three of the captioned proposals in a coordinated manner prior to making final decisions on any of them. *See Notice of Proposed Rule Making*, General Docket No. 83-26, 48 FR 12228 (March 23, 1983), at para. 78. Accordingly, we are also granting an extension of time until September 30, 1983 in which to file reply comments in General Docket Nos. 82-243 and 83-30.

5. Ordinarily, prior to making a determination in this matter, we would allow a fifteen day period for comment and an additional ten day period for reply comment. However, the reply comment period in these proceedings expires on September 6. Allowing these time periods to run would moot GE's request.

6. Therefore, it is ordered that GE's *Motion for Extension of Time* is granted. It is further ordered that interested persons may file reply comments in General Docket Nos. 82-243, 83-26 and 83-30 on or before September 30, 1983.

7. This action is taken pursuant to authority found in Sections 4 (i) and (j), 302 and 303 of the Communications Act of 1934, as amended (47 U.S.C. 154 (i) and (j), 302 and 303), and §§ 0.131, 0.31, 0.241, 0.131, 0.331 and 0.332 of the Commission's Rules (47 CFR 0.31, 0.131, 0.241, 0.131, 0.331 and 0.332).

Federal Communications Commission.

Robert S. Foosaner,

Chief Private Radio Bureau.

Robert S. Powers,

Chief, Scientist.

[FR Doc. 83-25401 Filed 9-16-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-807; RM-4327]

Protection Standards for AM Stations in Alaska; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment/reply comment period.

SUMMARY: This action extends the time for filing comments and reply comments in response to the Notice of Proposed Rule Making concerning Protection Standards for AM Stations in Alaska. Clear Channel Broadcasting Service sought the additional time so that its engineering consultants might review the basis for the interm high latitude curve proposed in the Notice.

DATES: Comments in the above noted proceeding must be filed on or before October 12, 1983, and reply comments must be filed on or before October 27, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jonathan David, Mass Media Bureau, (202) 632-7792.

Order Extending the Time for Filing Comments and Reply Comments in Response to Notice of Proposed Rule Making.

In the matter of Protection Standards for AM Stations in Alaska; MM Docket No. 83-807, RM-4327. See 48 FR 36278, 8-10-83.

Adopted: September 8, 1983.

Released: September 12, 1983.

By the Chief, Policy and Rules Division.

1. On August 4, 1983, the Commission released a Notice of Proposed Rulemaking in the above matter inviting interested parties to file comments on or before September 12, 1983, and reply comments on or before September 27, 1983.

2. On September 2, 1983, Clear Channel Broadcasting Service ("CCBS") requested that the Commission extend the time for filing comments and reply comments in the above-noted matter. The request was made so that CCBS could have the opportunity to review the material from which the proposed interim high latitude curve had been derived. CCBS indicated that this material had not yet been made available for public inspection.

3. The Commission has received no objection from any other interested party to CCBS' request. It appears that the circumstances noted justify the extension, especially since no other party would be adversely affected by the extension.

4. Accordingly, it is ordered, that the dates for filing comments and reply comments in response to the Notice of Proposed Rule Making are extended respectively to and including October 12, 1983, and October 27, 1983.

5. This action is taken pursuant to authority found in §§ 4(i), 5(d)(1), 303 (g) and (r) of the Communications Act of 1934, as amended, and §§ 0.61, 01204(b) and 0.283 of the Commission's Rules.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-25402 Filed 9-16-83; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 30825-173]

Foreign Fishing

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA proposes to amend the foreign fishing regulations: (1) To establish the 1984 foreign fishing permit fee; (2) to clarify that permits will not be issued unless any financial assurances required by the Secretary of Commerce are paid and that permits may be effective for limited periods; and (3) to waive the surcharge for the Fishing Vessel and Gear Damage Compensation Fund (FVGDC) in 1984. The proposed rulemaking would (1) recover the administrative costs of processing foreign fishing permit applications; (2) allow foreign vessels to fish while protecting U.S. interests; (3) allow a period to monitor performance of the foreign vessels; and (4) recover only needed funds for the FVGDC.

DATE: Comments must be received on or before October 19, 1983.

ADDRESS: Send comments to Fees, Permits, and Regulations Division, F/M12, National Marine Fisheries Service, Washington, D.C. 20235. A draft regulatory impact review/initial regulatory flexibility analysis for this action is available at this address.

FOR FURTHER INFORMATION CONTACT: John D. Kelly, 202-634-7432.

SUPPLEMENTARY INFORMATION: NOAA will publish the fee schedule for 1984 in two segments. This is the first segment. The second segment will propose new poundage fees, and be published at a later date.

Permit fees. Since December 15, 1980, the National Marine Fisheries Service (NMFS) has determined foreign fishing permit application fees by estimating the cost of processing the applications for the calendar year (45 FR 82267, December 15, 1980). NMFS has estimated the costs of processing applications in 1984. The costs used to develop the proposed 1984 permit application fee are as follows:

Department of State:	
Salaries	$30,000
Duplicating	600
Mailing	700
Computer	3,500
Federal Register	4,100
Travel	900
Total	39,800
Department of Commerce:	
Salaries	32,000
Computer processing	20,000
Printing forms	200
Communications	200
Total	54,300
Grand total	94,100

The total estimated cost of processing permit applications in 1984 is $94,100. This total is apportioned by application by estimating that 1,100 applications will be received in 1984. NMFS is rounding the average unit cost of $86 per application, up from the 1983 fee of $73 per application. Foreign applicants would pay the $86 but no surcharge for applications in 1984. Applicants for 1984 permits should pay this amount, pending the final rule. If adjustments are necessary, they will be addressed in the final rule.

Surcharge. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that the Fishing Vessel and Gear Damage Compensation Fund established by the Fisherman's Protective Act (22 U.S.C. 1980 (10)(f)) is sufficiently capitalized to pay any claims in 1984. Capitalization of the fund is derived from a surcharge on the foreign fishing fees imposed under section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*). NOAA proposes to reduce this surcharge to zero percent, effectively waiving the surcharge in 1984. The appropriate change is proposed for § 611.22(b) by this notice. NOAA reserves the right to modify the surcharge at a later date if unanticipated claims occur.

Conditions for issuing permits. Section 204(b)(7) requires the Secretary of Commerce (Secretary) to establish certain conditions and restrictions which must be complied with by the owner or operator of the fishing vessel for which the permit is issued. NOAA will require certain financial assurances from a foreign nation in circumstances which warrant additional protection of U.S. interests. NOAA proposes to amend § 611.3(c)(3) to clarify that all fees, surcharges, and any other financial assurances required by the Secretary must be paid before fishing permits will

be issued by the Assistant Administrator.

Effective periods of permits. Foreign fishing permits are valid when issued but not earlier than January 1 of the year for which the permits are issued. Such permits are generally effective through December 31 of that year. Section 204(b)(7) of the Magnuson Act requires the Secretary to impose "any other condition and restriction on the permit related to fishery conservation and management which the Secretary prescribes as necessary and appropriate". Two situations have occurred in which the Secretary has limited the effective periods of some permits to periods less than the remainder of the calendar year. The first is the need to limit fishing operations to monitor performance of foreign joint venture vessels as a basis for continuing the permit for a succeeding period. The second is limiting fishing operations to monitor vessel compliance with the foreign fishing regulations. NOAA proposes to codify in § 611.3(f)(2) this authority under the Magnuson Act to limit fishing operations.

Two technical changes are proposed in §§ 611.20 and 611.22 to reflect current organizational titles. One technical change is proposed to divide paragraph 611.22(a) into two paragraphs and the last change is made to delete an unnecessary reference to Federally chartered banks.

Classification

NOAA has prepared a draft regulatory impact review initial regulatory/flexibility analysis (RIR/IRFA) that discusses the economic consequences and impacts of the proposed regulations. Copies of the RIR/IRFA are available at the above address. Based on the RIR/IRFA, the Administrator, NOAA, has determined that the proposed regulations do not constitute a major rule under E.O. 12291. The RIR/IRFA demonstrates that the proposed rules comply with the requirements of Section 2 of E.O. 12291.

These regulations will not have a significant impact on a substantial number of small entities, because the only impacts are on foreign entities. The costs to foreign vessels and their owners will be slightly increased, but the increases are only 0.2 percent of the total fishing fees projected to be paid in 1983 to the United States. The General Counsel of the Department of Commerce has certified this to the Small Business Administration.

This action does not constitute a major Federal action significantly affecting the quality of the human environment. These amendments are programmatic functions with no potential for environmental impacts under the National Environmental Policy Act.

These proposed rules have no information collection provisions, for purposes of the Paperwork Reduction Act, 44 U.S.C. 3510 *et seq.*

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: September 13, 1983.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 611—[AMENDED]

For the reasons set out in the preamble, 50 CFR Part 611 is proposed to be amended as follows:

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

2. Revise § 611.3 (c)(3), (f) (2) and (3) to read as follows:

§ 611.3 Permits for foreign fishing vessels.

* * * * *

(c) * * *

(3) The payment of the fees and assurances required by the Secretary, including any surcharge fees; and

* * * * * *

(f) * * *

(2) Permits are issued by the Assistant Administrator, through the Secretary of State, in Washington, D.C., U.S.A. Permits are valid when issued, but not earlier than January 1 of the year for which the permit is issued. Permits are valid only for the specific vessel(s) for which they are issued. A permit is effective through December 31 of the year for which it is issued, unless the effective period is restricted by additional conditions and restrictions attached to the permit. However, permits are not issued for small boats used for fishing which are launched from large vessels. Each such small boat is an extension of this mothership and any enforcement action or permit sanction which might result from the activities of any such small boat would be taken against the mothership. A permit specifies the permit number for each permitted vessel, the fisheries and activities authorized for each permitted vessel, any other activities authorized, any additional conditions and restrictions applicable to that permit and the date of issuance of the permit.

(3) A vessel may engage in fishing activities authorized in its permit within the effective period of the permit and only after:

* * * * *

§ 611.20 [Amended]

3. In § 611.20(c) revise "Office of Resource Conservation and Management, F/CM" to read "Office of Fishery Management, F/M1".

4. In § 611.22, designate the third sentence of § 611.22(a)(1)(ii) as § 611.22(a)(1)(iii); remove from the fourth sentence of paragraph (a)(2)(ii) the words "federally chartered"; and revise paragraphs (a)(1) and (b) to read as follows:

§ 611.22 Fee schedule for foreign fishing permits.

(a) * * *

(1) *Permit application fees.* (i) Each vessel permit application submitted under § 611.3 must be accompanied by a fee of $86 per vessel, plus the surcharge if required under paragraph (b) of this section, rounded to the nearest dollar. At the time the application is submitted to the Department of State, a check for the fees, made out to "NOAA—Department of Commerce", must be sent to: Division Chief, Fees, Permits and Regulations Division, F/M12, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C. 20235. The permit fee payment must be accompanied by a list of the vessels for which payment is made.

* * * * *

(b) The owner or operator of each foreign vessel who accepts and pays permit application or poundage fees under paragraph (a) of this section may also be required to pay a surcharge. The Assistant Administrator has waived the surcharge because he has determined that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently. The Assistant Administrator may reinstate or increase the surcharge during the year to a maximum level of 20 percent, if needed to maintain capitalization of the fund.

[FR Doc. 83-25422 Filed 9-16-83; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 611

[Docket No. 30826.174]

Proposed Foreign Fishing Vessel Observer Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA, Commerce).

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to establish a supplementary foreign fishing vessel observer program. This action is necessary to certify qualified supplementary observers, establish a reasonable fee schedule and monitor the performance of supplementary observers. This action is intended to provide for the orderly implementation of a supplementary observer program as required by law.

DATES: Comments on the proposed rule must be submitted on or before October 19, 1983.

ADDRESSES: Send comments to Gary A. Wood, National Marine Fisheries Service, F/Mx1, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Gary A. Wood, 202–634–7265.

SUPPLEMENTARY INFORMATION: Section 201(i)(1) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that a U.S. obeserver be stationed aboard each foreign fishing vessel while it is engaged in fishing in the fishery conservation zone, with certain exceptions. Section 201(i)(6) of the Magnuson Act requires the secretary to implement a supplementary observer program if the annual appropriation is insufficient to provide for full observer coverage as required by Section 201(i)(1). In implementing a supplementary observer program, the Magnuson Act requires that NOAA do the following:

1. Certify as supplementary observers only those individuals who are citizens or nationals of the United States, and who have the requisite education or experience to carry out the duties of an observer;

2. Establish standards of conduct for supplementary observers equivalent to those applicable to Federal personnel;

3. Establish a reasonable schedule of fees that certified observers or their agents must be paid by the owners and operators of foreign fishing vessels for observer services; and

4. Monitor the performance of supplementary observers to ensure that it meets the purposes of the Magnuson Act.

The size of the supplementary observer program is dependent on foreign fishing effort and the size of the appropriation for fiscal year (FY) 1984. Foreign fishing effort in 1984 is expected to equal foreign effort in 1983. The expected appropriation for the observer program in FY 1984 is $12 million. Under such circumstances, no supplementary observers would be needed because NOAA would have sufficient appropriation to achieve full observer coverage using in-house resources.

It is unlikely that foreign fishing effort will increase in 1984. A decrease in the FY 1984 appropriation could occur, but there is no way for NOAA to predict the likelihood or size of such a decrease.

Classification

The NOAA Assistant Administrator for fisheries (Assistant Administrator) has determined that this rule is consistent with the Magnuson Act and other applicable laws.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

The NOAA Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Exective Order 12291, because it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because it applies only to the owners or operators of foreign fishing vessels. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information for purposes of the Paper Reduction Act.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: September 13, 1983.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 611—[AMENDED]

For the reasons set forth in the preamble, 50 CFR Part 611 is amended as follows:

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.)

2. Section 611.8 is amended by adding a new paragraph (e) to read as follows:

§ 611.8 Observers.

* * * * *

(e) (1) In the event an observer is not available for assignment to a foreign fishing vessel because of an insufficient Congressional appropriation, the Assistant Administrator will assign a supplementary observer to that vessel.

(2) Supplementary observers must be certified before they are deployed to foreign fishing vessels. Persons wishing to be certified as supplementary observers will present to the appropriate NOAA personnel office, either directly or through an agent, the following:

(i) Proof of United States citizenship or nationality; and

(ii) A written summary of relevant education or experience.

(3) Upon receipt of the material required above, the NOAA personnel office will certify the applicant as qualified for the position of supplementary observer if the following conditions are met:

(i) The applicant is a citizen or national of the United States;

(ii) The applicant has education or experience equivalent to the education or experience required of persons hired as observers by NMFS as either Federal personnel or contract employees. The education and experience required for certification may vary according to the requirements of managing the foreign fishery in which the supplementary observer would be deployed.

(4) Prior to deployment to foreign fishing vessels, certified supplementary observers must satisfactorily complete a course of training approved by the Assistant Administrator as equivalent to that received by persons hired as observers by NMFS as either Federal personnel or contract employees. The course of training may vary according to the foreign fishery in which the supplementary observer would be deployed.

(5) Prior to deployment to foreign fishing vessels, certified supplementary observers must agree in writing to abide by standards of conduct equivalent to those applicable to Federal personnel.

(6) Persons acting as supplementary observers shall be paid fees and expenses by the owners and operators of the foreign fishing vessels to which they are deployed. Fees and expenses paid to supplementary observers will, as a minimum, include the following:

(i) Salary and benefits, including overtime, equivalent to the salary and benefits paid to observers employed by NMFS. Such salary and benefits may vary according to the fishery to which a supplementary observer is deployed;

(ii) The costs of any equipment, including safety equipment, necessary to perform the duties of observers. This

equipment will be specified by the Assistant Administrator according to the requirements of the fishery. The equipment will be equivalent to the equipment used in the fishery by observers employed by NMFS.

(iii) The costs of post-certification training required by paragraph (e)(4) of this section;

(iv) The costs of travel, transportation, and per diem associated with deploying supplementary observers to foreign fishing vessels, including the costs of travel, transportation, and per diem from the supplementary observer's post of duty to the point of embarkation to the foreign fishing vessel, and then from the point of disembarkation to the post of duty from whence the trip began. For the purposes of these regulations, the Assistant Administrator will designate posts of duty for supplementary observers;

(v) The cost for U.S. Customs inspection for observers disembarking after deployment; and

(vi) The costs of travel, transportation, and per diem associated with the debriefing by NFMS officials following deployment of a supplementary observer.

(7) The owners and operators of foreign fishing vessels shall also pay to NMFS as part of the surcharge required by Section 201(i)(4) of the Magnuson Fishery Conservation and Management Act, the following costs:

(i) The costs of certifying applicants for the position of supplementary observer;

(ii) The costs associated with communications with supplementary observers for transmission of data and routine messages;

(iii) The costs for the management and analysis of data collected by supplementary observers.

(8) In the event a supplementary observer is represented by an agent, the owners and operators of foreign fishing vessels shall pay a fee to the agent to cover the administrative and overhead costs for the agent's services. This fee is a negotiable item between the owners and operators of foreign fishing vessels and the agents with whom they contract for the services of a supplementary observer.

(9) The duties of supplementary observers and their deployment and work schedules will be specified by the Assistant Administrator.

(10) All data collected by supplementary observers will be under the exclusive control of the Assistant Administrator.

(11) Certification of a supplementary observer may be suspended or revoked by the Assistant Administrator under the following conditions:

(i) A supplementary observer fails to perform the duties specified by the Assistant Administrator as provided for by paragraph (e)(9) of this section; or

(ii) A supplementary observer fails to abide by the standards of conduct provided for by paragraph (e)(5) of this section.

(12) The suspension or revocation of the certification of a supplementary observer by the Assistant Administrator may be based on the following:

(i) Boarding inspection reports by authorized officers of the U.S. Coast Guard or NMFS that indicate the supplementary observer has failed to perform his/her specified duties, and/or has failed to abide by the established standards of conduct; or

(ii) An analysis by NMFS of the data collected by supplementary observers indicating improper or incorrect data collection or recording. The failure properly to collect or record data is sufficient to justify decertification of supplementary observer; no intent to defraud need be proved.

(13) Unless otherwise provided for in these regulations, no foreign fishing vessel may conduct fishing operations within the fishery conservation zone unless a U.S. observer employed by NMFS, or certified as a supplementary observer, is aboard.

[FR Doc. 83-25485 Filed 9-16-83; 8:45 am]
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[Docket No. 30810-155]

50 CFR Parts 611 and 675

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: Amendment 1 to the fishery management plan for the groundfish fishery in the Bering Sea and Aleutian Islands area (FMP) is approved. NOAA announces its availability and issues a proposed rulemaking to implement the amendment which (1) Establishes a multi-year, multi-species optimum yield for the Bering Sea and Aleutian Islands area groundfish complex, (2) Establishes a framework procedure for the determination and apportionment of amounts of groundfish specified for total allowable catch, domestic annual harvest, reserves, and total allowable level of foreign fishing, (3) Modifies domestic restrictions in the Winter Halibut Savings Area and Bristol Bay Pot Sanctuary, (4) Modifies foreign trawl restrictions in the area known as Petrel Bank, and (5) Modifies certain appendices and annexes to the FMP. This management approach is proposed in response to growing concern that the fishery management plan in its current form does not provide the flexibility necessary for efficient management of the groundfish resource and the fishery. The framework management approach proposed by this amendment will be administratively less cumbersome than the approach currently prescribed in the fishery management plan and will allow more timely implementation of management decisions made in response to the needs of the rapidly developing U.S. groundfish fishery and to changes in the condition of the groundfish resource itself.

DATE: Comments on the amendment and proposed rule are invited until November 3, 1983.

ADDRESSES: Comments may be mailed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, or delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska. Copies of the amendment, environmental impact statement, and the regulatory impact review/initial regulatory flexibility analysis may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510; telephone 907-274-4563.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson (Regional Plan Coordinator), 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The FMP was implemented on January 1, 1982 (46 FR 63295, December 31, 1981), by the NOAA Assistant Administrator for Fisheries (Assistant Administrator) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Nine amendments to the FMP have been adopted by the Council under the authority of the Magnuson Act. Four of these amendments have been implemented: Amendments 1a and 2 (47 FR 1295), Amendment 4 (48 FR 21336), Amendment 3 (48 FR 24719), and Amendment 7 (48 FR 34962); Amendment 5 was withdrawn because it was superceded by Amendment 3.

Amendment 1 to the FMP was adopted by the Council on March 27, 1981, and is the subject of this action. The amendment proposes to make the following changes to the management system prescribed in the FMP: (1) The

current optimum yield (OY) specifications for individual groundfish species are replaced by a combined OY for the entire Bering Sea and Aleutian Islands area groundfish resource, or "complex," with a total allowable catch (TAC) specified anually for each target species and for the "other species" category; (2) A new system is established for the annual determination of domestic annual harvest (DAH), total allowable level of foreign fishing (TALFF), and reserves, and for apportionment of reserves to DAH and TALFF and of the DAH that will not be harvested by U.S. fishing vessels to TALFF; (3) Domestic fishing restrictions stipulated in the FMP for the Bristol Bay Pot Sanctuary and the Winter Halibut Saving Area are changed to allow year-round fishing; (4) The time of the foreign trawl closure in Area "D", known as the Petrel Bank, is changed to coincide with the dates of the domestic king crab and Tanner crab fisheries, and to protect molting crab; and (5) Appendices and annexes to the FMP are revised to reflect changes made in the body of the FMP. These aspects of Amendment 1 are discussed further below.

OY of the Groundfish Complex

Amendment 1 replaces species-specific OYs with a combined OY specification for the entire Bering Sea and Aleutian Islands area groundfish complex. Commercial catch statistics and resource assessment surveys conducted by the National Marine Fisheries Service (NMFS) show that the groundfish complex of the Bering Sea and Aleutian Islands area can be treated as a distinct fishery management unit. The complex has more than ten commercially important species and many others of lesser or no commercial importance. It forms a large subsystem of the Bering Sea ecosystem with intricate interrelationships involving predators, prey, competitors, and the environment. The current practice of treating each species group as a management unit in relative isolation from other species groups ignors these demonstrated interrelationships, and limits the managing agencies' ability to respond quickly to fluctuations in the composition of the groundfish complex. Therefore, the productivity and maximum sustainable yeld (MSY) of groundfish species can best be determined for the groundfish complex as a unit, rather than for each of many individual species groups. OY is determined by adjusting MSY on the basis of relevant social and economic factors, in addition to short-term biological factors.

The most current information available shows that the combine MSY of target species and the "other species" fluctuates from year to year within the range of 1.7 to 2.4 million metric tons. This amount was derived by adding together the MSYs of each target species and the "other species" category, as defined in the FMP. These MSYs were estimated from a number of mathematical production models, from the examination of statistical trends relative to stock condition, and from the assessment of the overall condition of the groundfish stocks. The techniques used to analyze the data varied considerable from species to species, depending on the quality and completeness of the available data bases. The MSY of the "nonspecified species" category is established at any amount of this category that is taken incidentially to the harvest of the MSY of the target species and the "other species" categories. Nonspecified species have little or no economic value.

Amendment 1 sets the OY of the Bering Sea and Aleutian Islands area groundfish complex equal to 85 percent of the MSY range for the "target" and "other" species categories, (i.e., 1.4 to 2.0 million metric tons (mt) to the extent this can be harvested consistently with the management measures of the FMP plus the incidental harvest of the "nonspecified species" category. The deviation from the MSY reflects the combined influence of several factors that stem from the quality of the data used, condition of stocks, and inadequacies in population and ecosystem models. The OY range reflects the foreseeable variations in abundance levels of the various components of the groundfish complex induced by environmental factors and by predator/prey relationships. These variations, in turn, will affect the production from individual stocks, as well as the entire complex, that will be available for harvest from year to year.

The 1.4 to 2.0 million mt OT range approximates reported harvest levels by the Bering Sea and Aleutian Islands area groundfish fishery over the past 15 years. During this time, some groundfish stocks have declined, primarily during the late 1960s and early 1970s when, due to insufficient monitoring of the groundfish catch, annual harvests may have been much greater than the maximum reported catch of 2.4 million mt. Subsequent improvement of catch and effort data and a more conservative management regime resulted in the recovery of many affected stocks, primarily pollock and yellowfin sole. In addition, information from catch data and resource assessments indicates that the selective harvest of stocks of target species in the groundfish fishery has resulted in a change of species and stock composition in the Bering Sea. The most current information available indicates that the OY range proposed in Amendment 1 is compatible with these changes and the current status of the Bering and Aleutian Islands area groundfish resource.

Total Allowable Catch (TAC)

The annual TACs for the individual target species and for the "other species" category will be determined by the Alaska Regional Director of the National Marine Fisheries Service (NMFS) by the end of the preceding fishing year. The total TAC for all target species and the "other species" category will be within the OY range of 1.4 to 2.0 million mt, and will be subject to the management measures prescribed in the FMP. The TAC for the "nonspecified species" category equals the amount caught during the fishing year in the course of harvesting the TAC for the target and "other species" categories.

Before the Regional Director's determination, the Council will recommend to him TACs for the target species and the "other species" category based on the best available data concerning the stocks and the fisheries. These recommendations will be made available to the public for comment. If the Council does not recommend final TACs by December 15, the TACs already established will automatically constitute the Council's recommendation to the Regional Director for the new fishing year.

The Council's TAC recommendations will be based upon the following types of information:

Biological condition of the stocks. Resource assessment documents (RADs) will be prepared for the Council by July 1 of each year by the Council's Plan Maintenance Team in consultation with the Northwest and Alaska Fisheries Centers and other appropriate scientific agencies. These documents will provide information on:

a. Historical catch trend;

b. Updated estimates of MSY of the groundfish complex and of the component species groups;

c. Assessments on the stock condition of each target species and the "other species" category;

d. Assessments of the multi-species and ecosystem impacts of harvesting the groundfish complex at current levels given the assessed condition of stocks, including consideration of rebuilding depressed stocks; and

e. Alternative harvesting strategies and related effects on the component species groups.

Socioeconomic considerations. The Council's recommendation of TACs for each target species and the "other species" category will also be based on socioeconomic considerations that are consistent with the goals of the FMP, including:

a. The need to promote efficiency in the utilization of fishery resources including minimizing costs;

b. The need to manage for the optimum marketable size of a species;

c. The impact of groundfish harvests on prohibited species and the domestic target fisheries which utilize these species;

d. The desire to enhance depleted stocks;

e. Seasonal access to the groundfish fishery by domestic fishing vessels;

f. The commercial importance of a fishery to local communities;

g. The importance of a fishery to subsistence users; and

h. The need to promote domestic utilization of certain species.

Reserves

The groundfish reserve at the beginning of each fishing year will equal the sum of 15 percent of each TAC established for target species and the "other species" category's TAC. Thus, the initial TACs are automatically reduced by 15 percent from the amounts specified by the Regional Director for the year. The groundfish reserve is used for (a) Unexpected expansion of the domestic fishery, (b) Correction of operational problems of domestic and foreign fishing fleets, (c) Unexpected adjustments of species TACs according to the condition of stocks during the fishing year, and (d) Allocations.

The reserve is not designated by species or species group and will be apportioned to the fishery during the fishing year by the Regional Director in amounts and by species that he determines to be appropriate. The apportionment of the reserve to target species or to the "other species" category must be consistent with the most recent assessments of resource conditions, unless the Regional Director finds that the socioeconomic considerations listed above or specified fishery operational problems dictate otherwise. The Regional Director must also find that the apportionment of reserves will not result in overfishing as defined in the national standard guidelines for fishery conservation and management (48 FR 7402). The Regional Director may withhold reserves for conservation reasons.

Domestic Annual Harvest and Total Allowable Level of Foreign Fishing

Currently, Annex II of the FMP, "Derivation of DAH," specifies initial amounts of groundfish for the following three components of DAH: expected domestic annual processing (DAP), the domestic non-processing catch (DNP), and the U.S. harvest authorized for delivery to foreign processors (JVP). Under the current management regime, these amounts may not be adjusted without initiating the lengthy and cumbersome plan amendment process. As a result, DAH cannot be readily updated in response to the rapidly developing domestic groundfish fishery. In addition, the current total DNP amount of 1,500 mt was originally established in the FMP without prior knowledge or record of the amount of groundfish actually used by U.S. fishermen for bait or personal consumption, and in all likelihood does not truly reflect the amount of groundfish used for these purposes. Furthermore, the monitoring of the small amount of groundfish specified as DNP is not practicable and is not done.

In view of these problems, Amendment 1 eliminates Annex II to the FMP and establishes a procedure for determining DAH so that it may be updated each year without undergoing the cumbersome amendment process. First, the DNP will no longer be specified, but is assumed to be included in the estimate of DAP. Second, the DAP and JVP amounts for each target species and the "Other species" category will equal the amount harvested and processed by solely domestic and joint venture fisheries during the previous year, plus any additional amounts the Regional Director projects will be used by the U.S. fishing industry during the coming year. This projection will be based on projected increases in U.S. processing and harvesting during the coming year. These projections will be based upon the latest reliable information that is available, including industry surveys, market data, and stated intentions of representatives of the U.S. groundfish industry.

The TALFF for each target species and for the "other species" category at the beginning of the fishing year is the remainder of each TAC after subtracting the DAH and the 15 percent of the TAC which is credited to the reserve. The TALFFs may be increased during the year by apportionments of reserves and surplus DAH. The TALFF for the "nonspecified species" category equals the amount of that category caught during the fishing year while harvesting the TALFFs for the target species and "other species" categories.

The Regional Director's proposed estimates of DAP and JVP, together with his proposed deteminatons of TAC, reserves, and TALFF, will be made available for public review and comment.

Reapportionment of Reserve and Unneeded DAH

Under the current FMP, surplus DAH and reserves are reapportioned to TALFF according to a set schedule and limitations are placed on the amount of reserves that may be released to TALFF at any one time. This schedule of apportionment has been found to be too rigid for timely and efficient management of the groundfish fishery. Therefore, Amendment 1 modifies the procedure for apportioning reserves and unneeded DAH as follows.

As soon as practicable after April 1, June 1, and August 1, and on such other dates as are determined appropriate, the Regional Director will apportion to DAH any amounts from the reserve that are needed in order to prevent a closure of the domestic fishery. He will also assess the progress of the domestic and foreign fisheries and apportion to TALFF any portion of DAH or the reserve that he determines will not be harvested by U.S. fishing vessels during the remainder of the fishing year, except that no transfer of surplus DAH to TALFF may be made if that transfer is likely to have an adverse biological, economic, or social consequence. As stated above, the Regional Director can withhold reserves for conservation reasons only.

Domestic Fishing Area Limitations

Amendment 1 modifies the restrictions on the domestic fishery in the Bristol Bay Pot Sanctuary and the Winter Halibut Savings Area and reduces the size of the latter area by eliminating the "Misty Moon" grounds south of the Pribilof Islands. The FMP currently states that (1) Domestic trawling in the Bristol Bay Pot Sanctuary is allowed only during open seasons of the U.S. Bering Sea crab fisheries; (2) Domestic trawling in the Winter Halibut Savings Area is allowed from December 1 through May 31 until the domestic trawl catch reaches 2,000 metric tons; and (3) Domestic longlining in the Winter Halibut Savings Area is allowed landward of the 500 meter isobath until the total U.S. longline catch (excluding Pacific halibut) reaches 2,000 metric tons. These restrictions were initially imposed on the domestic groundfish fishery in order to reduce the mortality of juvenile halibut while still allowing

the fishing of groundfish for crab bait and some development of a domestic food fishery. Subsequent growth of the domestic groundfish fishery was accompanied by protests from domestic fishermen that current FMP provisions unreasonably hinder further development of the domestic groundfish fishery.

In view of these concerns, the Council adopted modifications to the restrictions on the domestic groundfish fishery and incorporated these changes as part of Amendment 1. When the FMP was implemented, the Assistant Administrator gave effect to the Council's intent and accommodated the concerns of the U.S. fishing industry by deleting from the implementing rules for the FMP any provision that would implement restrictions in the FMP on domestic groundfish fishing in the Bristol Bay Pot Sanctuary and Winter Halibut Savings Area. Amendment 1 now proposes to formally delete these restrictions from the FMP itself by (1) Eliminating the "Misty Moon" grounds south of the Pribilof Islands from the Winter Halibut Savings Area; (2) Allowing an experimental year-round domestic trawl fishery in the Winter Halibut Savings Area that will be monitored to the extent possible by observers; and (3) Allowing year-round domestic trawling in the Bristol Bay Pot Sanctuary and year-round domestic longlining in the Winter Halibut Savings Area.

Foreign Fishing Area Limitations

The FMP currently stipulates that Area "D", known as Petrel Bank, is closed to foreign trawling landward of 12 nautical miles from January 1 through June 30. Amendment 1 proposes to modify this restriction by closing the entire Petrel Bank to foreign trawling from seven days before the opening of the domestic king crab fishery, for which the exact date is set annually by the State of Alaska, through June 30. This closure will (1) Provide the flexibility necessary to accommodate any changes in the king crab fishing season without having to amend the FMP to support changes in regulations; (2) Maintain protection against gear conflict and groundfish preemption problems in the growing domestic Tanner crab fishery which currently operates from November 10 through June 15 in the western Aleutian Islands area; and (3) Mitigate the trawl mortality of king crab during their molting period which occurs during the spring months.

FMP Information Base

The current Annex I to the FMP, "Derivation of Acceptable Biological Catch (ABC)", is a summary of information on the status of stocks of various species and species groups which existed before 1979. This information is based mainly on single species stock assessment studies, and contains estimates of MSY, equilibrium yield (EY), and ABC. Because Amendment 1 will implement a multi-species, ecosystem approach to management, single species stock assessments by themselves will not provide sufficient biological information for determining TACs.

Amendment 1 substitutes a new Annex I to the FMP which is a description of the RAD. The RADs will be prepared annually by the Council's Plan Maintenance Team in consultation with the Northwest and Alaska Fisheries Center and other appropriate scientific agencies. The RADs will provide information on (1) The historical catch trend; (2) An updated estimate of the MSY of the groundfish complex and its component species groups; (3) Assessments of the stock condition of each target species and the "other species" category; (4) Assessments of the multi-species and ecosystem impacts of harvesting the groundfish complex at current levels given the assessed condition of stocks, including considerations of rebuilding depressed stocks; and (5) Alternative harvesting strategies and related effects on the component species groups.

The current Annex I serves two main purposes: (1) To provide readers and reviewers of the FMP with knowledge of its factual content; and (2) To illustrate the manner in which new data are used to obtain individual species groups' estimates of MSY, EY and ABC. The RAD will also serve these two purposes and will expend the biological information base necessary to form the basis for specifying TACs under a multi-species ecosystem management system.

The RADs are not part of the FMP proper, but rather are annual updates of biological information which the Council will make available to the publaic for review. This will ensure that the best available scientific information is used as the basis for establishing TACs and that the OY range for the taraget species and the "other species" categories is appropriate.

Amendment 1 also updates other appendices and annexes to the FMP to reflect the most current scientific information as of the time of the amendment's adoption. Many of these changes have no regulatory effect, and are provided for informational and illustrative purposes.

Classification

The Administrator of NOAA (Administrator) has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. Amendment 1 will encourage development of the domestic groundfish industry and the expansion of the U.S. fishing industry as a whole by providing more access to the Bristol Bay Pot Sanctuary and the Winter Halibut Savings Area and by allowing managing acencies to be more responsive to the needs of domestic fishermen and processors. This amendment can, therefore, be expected to reduce costs for consumers and producers in that industry and to enhance the competitive position of the U.S. fishing industry relative to the fishing industries of other nations.

This proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. The regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) prepared on the proposed rule developed three possible five-year scenarios for the domestic groundfish fishery in the Bering Sea and Aleutian Islands area and analyzed the ex-vessel economic impacts of the proposed amendment under each scenario. According to the analysis, by 1986 the total U.S. catch of Bering Sea Aleutian Islands area groundfish could range between 470,000 mt and 870,000 mt. Based on 1981 price data, these domestic harvest levels would represent between $96.2 and $130 million at the ex-vessel level, alone. The management flexibility inherent In Admendment 1 would facilitate such increases in DAH and would allow more timely and efficient implementation of other management decisions made in response to the needs of the U.S. fishing industry and to changes in the condition of the groundfish resource itself. As a reslult, the economic environment necessary for the continued rapid growth of a domestic groundfish industry would be enhanced and *all* sectors of the U.S. fishing industry which utilize Bering Sea and Aleutian Island are groundfish would benefit from the implementation of the proposed amendment. A copy of the RIR/IRFA may be obtained from the Council at the address given above.

The Regional Director has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska and has submitted

this determination for review by the responsible State agency under section 307 of the Coastal Zone Management Act. The State Division of Policy Development and Planning concurred in the Council's determination on March 7, 1983.

The Regional Director has determined that Amendment 1 to the FMP (1) Is necessary and appropriate for the conservation and management of fishery resources in the Bering Sea and Aleutian Islands area and (2) Is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. He has therefore, under the Magnuson Act, approved Amendment 1. The environmental impact statement (EIS) written for the FMP also addresses Amendment 1 and is available from the Council at the address set forth above.

The proposed rulemaking does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

List of Subjects

50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: September 13, 1983.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Parts 611 and 675 are proposed to be amended as follows:

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. *et seq.*, unless otherwise noted.

2. In § 611.93, Paragraphs (a)(3), (b)(1)(i), (b)(2), (b)(3)(ii)(A), (c)(2)(i) are revised, paragraph (c)(2)(ii)(D) is redesignated as (c)(2)(ii)(E) and the references to paragraph "(c)(2)(ii)(D)" in paragraph (c) are changed to "(c)(2)(ii)(E)", and a new paragraph (c)(2)(ii)(D) is added to read as follows:

§ 611.93 Bering Sea and Aleutian Island Area.

(a) * * *

(3) The optimum yield for the fishery regulated by this section and by 50 CFR Part 675 is a range of 1.4 to 2.0 million mt for target species and the "other species" category in the management area (to the extent this amount can be harvested consistently with this part and 50 CFR Part 675), plus the amounts of "nonspecified species" taken incidentally to the harvest of target species and the "other species" category. For a definition of the categories of species involved in the fishery, see Table 1 of this section.

(b) *Authorized fishery.* (1)(i) See 50 CFR Part 675 Subpart B for procedures to determine total allowable catch (TAC), reserve, domestic annual harvest (DAH), and total allowable level of foreign fishing (TALFF).

* * * * *

(2) For apportionment to TALFF of Reserves and surplus DAH, see 50 CFR Part 675, Subpart B.

(3) * * *

(ii) * * *

(A) *Attainment of quota.* If the amount of "other species" or any target species, except sablefish, turbots, or Pacific cod, that is apportioned to the fishery will be reached, the Regional Director will prohibit foreign trawling in all or part of the management area until January 1. If the amount of sablefish, turbots, or Pacific cod that is apportioned to the fishery will be reached, the Regional Director will prohibit all foreign harvesting in all or part of the management area until January 1.

* * * * *

(c) * * *

(2) *Trawling.* (i) Trawling by foreign vessels between 3 and 12 nautical miles from the baseline use to measure the territorial sea is allowed (A) at all times in the area bounded by 170°00' W. and 172°00' W. longitude south of the Aleutians and between 170°30' W. and 170°00' W. longitude north of the Aleutians, (B) on Petrel Bank from July 1 to seven days before the opening of the U.S. king crab fishery, and (C) from May 1 through December 31 in other areas west of 178°30' W. longitude. Petrel Bank is bordered by straight lines connecting the following coordinates in the order listed:

Latitude	Longitude
52°51' N.	178°30' W.
52°51' N.	179°00' E.
51°15' N.	179°00' E.
51°15' N.	178°30' W.
51°15' N.	178°30' W.

(ii) * * *

(D) From seven days before the opening of the U.S. king crab fishery, through June 30 in the area known as Petrel Bank, described in paragraph (c)(2)(i) of this section.

* * * * *

3. The authority citation for Part 675 is revised to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 675.20, paragraphs (a) and (b) are revised, a new paragraph (d) is added, Table 1 is revised to read as follows:

§ 675.20 General limitations.

(a) *OY, TAC, Reserve, DAH, and TALFF*— (1) *Optimum yield.* The optimum yield (OY) for the fishery regulated by this section and by 50 CFR 611.93 is a range of 1.4 to 2.0 million mt for target species and the "other species" category in the management area (to the extent this amount can be harvested consistently with this part and 50 CFR Part 611), plus the amounts of "nonspecified species" taken incidentally to the harvest of target species and the "other species" category. The species categories are defined in Table 1 of this section.

TABLE 1—CATEGORIES OF SPECIES INVOLVED IN THE BERING SEA AND ALEUTIAN ISLANDS FISHERY

Unallocated species[1]	Target species	Other species	Non-specified	Groundfish
Salmonids, halibut, herring, king crab, Tanner crab, coral, shrimp, horsehair crab, lyre crab, scallops, snails, dungeness crab, surf clams.	Pollock, cod, other flatfishes, Atka mackerel, sablefish, turbots, squid, Pacific ocean perch, other rockfish, yellowfin sole.	Sculpins, sharks, skates, eulachon, smelts, capelin, octopus.	All species not included in previous categories.	Target, "other" and non-specified species.

[1] Salmonids, Pacific halibut, Tanner crab, and any other unallocated species the retention of which is prohibited by other applicable law, must be returned to the sea with a minimum of injury.

(2) *TAC.* The Secretary of Commerce, after consultation with the North Pacific Fishery Management Council (Council), will specify the total allowable catch (TAC) for each calendar year for each target species and for the "other species" category. The sum of the TACs established must be within the OY range of 1.4–2.0 million mt for target species and the "other species" category.

(i) The annual determination of the TAC for each target species and the "other species" category, the apportionment of reserves to these species, and the reapportionment of

surplus domestic annual harvest (DAH) to total allowable level of foreign fishing (TALFF) shall be based upon and be consistent with two types of information:

(A) Biological condition of groundfish stocks as set forth in the resource assessment documents prepared annually for the Council. These documents shall provide information on historical catch trend; updated estimates of the maximum sustainable yield of the groundfish complex and its component species groups; assessments of the stock condition of each target species and the "other species" category; assessments of the multi-species and ecosystem impacts of harvesting the groundfish complex at current levels given the assessed condition of stocks, including consideration of rebuilding depressed stocks; and alternative harvesting strategies and related effects on the component species groups.

(B) Socioeconomic considerations that are consistent with the goals of the fishery management plan for the groundfish fishery of the Bering Sea and Aleutian Islands area, including the need to promote efficiency in the utilization of fishery resources, including minimizing costs; the need to manage for the optimum marketable size of a species; the impact of groundfish harvests on prohibited species and the domestic target fisheries which utilize these species; the desire to enhance depleted stocks; the seasonal access to the groundfish fishery by domestic fishing vessels; the commercial importance of a fishery to local communities; the importance of a fishery to subsistence users; and the need to promote utilization of certain species.

(3) *Reserve.* Fifteen percent of the TAC for each target species and the "other species" category is automatically placed in a reserve, and the remaining 85 percent of the TAC for each target species and the "other species" category is apportioned between DAH and TALFF. The reserve is not designated by species or species group and any amount of the reserve may be apportioned to a target species or the "other species" category provided that such apportionments are consistent with paragraph (a)(2)(i) of this section and do not result in overfishing of a target species or the "other species" category.

(4) *DAH.* (i) The initial amounts for the two components of DAH, i.e., expected domestic annual processing (DAP) and U.S. harvest authorized for delivery to foreign processors (JVP), will be determined each year by the Regional Director. The DAP and JVP amounts for each target species and for the "other species" category shall equal the actual DAP and JVP of the previous year plus any additional amounts the Regional Director projects will be used by the U.S. fishing industry during the coming fishing year. This projection shall be based upon the latest reliable information that is available, including industry surveys, market data, and stated intentions by representatives for the U.S. fishing industry.

(ii) The DAH for the "nonspecified species" category equals the amount of that category caught during the fishing year while harvesting the DAH for the target species and "other species" categories.

(5) *TALFF.* The TALFF for each target species and for the "other species" category at the beginning of the fishing year is 85 percent of each TAC minus DAH. The TALFF for the "nonspecified species" category equals the amount caught during the fishing year while harvesting the TALFF for the target species and "other species" categories.

(6) *Notices.* As soon as is practicable after October 1 of each year, the Secretary of Commerce (Secretary), after consultation with the Council, shall publish in the **Federal Register** preliminary TAC, Reserve, DAP, JVP, and TALFF amounts for each target species and for the "other species" category for the next calendar year. Public comment on these amounts shall be accepted by the Secretary for a period of 30 days after the amounts have been published in the **Federal Register.** The Secretary shall consider all timely comments when determining, after consultation with the Council, the final annual TAC, initial DAH, and initial TALFF for each target species and the "other species" category for the next year. These figures shall be published in the **Federal Register** as soon as practicable after December 15 and made available to the public through other suitable means by the Regional Director.

(7) When the combined catch by foreign and U.S. vessels in the fishery or applicable sub-area of the fishery reaches the amount of a target species or the "other species" category that is apportioned to the fishery, further fishing by U.S. vessels that involves the taking of that species is prohibited in the management area or applicable sub-area for the remainder of the fishing year.

(b) *Apportioning the reserve and surplus DAH*—(1) *Dates.*—(i) *Reserve to DAH and TALFF.* As soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines appropriate, the Secretary shall apportion to DAH and TALFF all or part of the reserve in accordance with paragraphs (a)(3) and (b)(2) of this section. The Secretary shall apportion to DAH the amount of reserve that he finds will be harvested by U.S. vessels during the remainder of the year and shall apportion to TALFF the remaining portion of the reserve that will not be apportioned to DAH. Part or all of the reserve may be withheld if an apportionment would adversely affect the conservation of groundfish resources or prohibited species.

(ii) *DAH to TALFF.* As soon as practicable after April 1, June 1, and August 2, and on such other dates as he determines appropriate, the Secretary shall reassess and shall apportion to TALFF the part of DAH that he determines will not be harvested by U.S. vessels during the remainder of the fishing year. All or part of the DAH may not be apportioned to TALFF if that action would adversely affect the conservation of groundfish or prohibited species or would have an adverse impact on the socioeconomic considerations set forth in paragraph (a)(2)(i)(B) of this section.

(2) *Procedure.* (i) The Secretary shall provide all interested persons an opportunity to comment on the proposed apportionments under paragraph (b)(1) of this section before such apportionments are made, unless he finds that there is good cause for not providing a prior comment opportunity, and publishes the reasons therefore in the notice of apportionment. No apportionment may take effect until it has been published in the **Federal Register** with a statement of the findings upon which the apportionment is based. Comments provided for in this paragraph must be received by the Secretary not later than 5 days before April 1, June 1, and August 1. If the Secretary determines for good cause that a notice of apportionment must be issued without providing interested persons a prior opportunity for public comment, he shall receive comments on the apportionment for a period of 15 days after its effective date. The Secretary shall consider all timely comments in deciding whether to make a proposed apportionment or to modify an apportionment that has previously been made, and shall publish responses to those comments in the **Federal Register** as soon as it is practicable.

(ii) Comments provided for in paragraphs (a)(6) and (b)(2)(i) of this section should be addressed to Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802. The Regional Director will make available to the public during business hours the aggregate data upon which any preliminary TAC, DAH, or

TALFF figure is based or the data upon which any apportionment of surplus DAH or reserve was or is proposed to be based at the National Marine Fisheries Service Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska. These data will be available for a sufficient period to facilitate informed comment by interested persons.

* * * * *

(d) The Secretary of Commerce shall make appropriate arrangements to place observers aboard U.S. trawl vessels operating in the Winter Halibut Savings Area from December 1 through May 31. The Winter Halibut Savings Area is bounded by straight lines connecting the following coordinates in the order listed:

Latitude	Longitude
54°36' N.	164°55'42" W. (Cape Sarichef Light)
52°48' N.	170°00' W.
55°30' N.	170°00' W.
55°30' N.	168°47' W.
56°00' N.	167°45' W.
56°00' N.	166°00' W.
56°30' N.	166°00' W.
56°30' N.	163°00' W.
56°20' N.	163°00' W.
55°16' N.	166°10' W.
54°36' N.	164°55'42" W.

[FR Doc. 83-25424 Filed 9-16-83; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 651

[Docket No. 30818-168]

Atlantic Groundfish (Cod, Haddock and Yellowtail Flounder)

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to amend the final regulations implementing the Interim Fishery Management Plan for Atlantic Groundfish (Interim Plan). This rulemaking clarifies the definition of the cod end, and describes the method an authorized officer may follow when inspecting cod ends for compliance with regulated mesh size. This rule will eliminate differences of interpretation of the cod end definition contained in the regulations with regard to compliance and enforcement.

DATE: Comments must be received on or before October 19, 1983.

ADDRESSES: Send comments to National Marine Fisheries Service, Fisheries Management Division, State Fish Pier, Gloucester, Massachusetts 01930, Attention: Groundfish Comments.

FOR FURTHER INFORMATION CONTACT: Richard Whittaker, Supervisory Special Agent, 617-281-3600.

SUPPLEMENTARY INFORMATION: NOAA issued final rules to implement the Interim Plan on October 4, 1982 (47 FR 43705). Since then, varying interpretations have occurred within the fishing community of the definition of "cod end" contained in the regulations. These varying interpretations could hinder NMFS' enforcement of the minimum mesh size requirement for cod ends. Therefore, NMFS has decided to clarify the cod end definition and the procedure an authorized officer will follow to measure cod ends to eliminate any confusion about the minimum cod end standards with which a fishing master and fishing vessel must comply.

Classification

The Secretary of Commerce issues this proposed rule to clarify the meanings of §§ 651.2 and 651.20(d)(1) of the Interim Plan regulations (47 FR 43705, October 4, 1982) for Atlantic Groundfish. Documents already submitted for the final Interim Plan regulations (see 47 FR 43709 at "Classification") concluded that the regulations were non-major under Executive Order 12291 and assessed the economic impacts on small entities under the Regulatory Flexibility Act. A final environmental impact statement (FEIS) was filed with EPA on June 11, 1982, concerning the final Interim Plan regulations which this proposed rule would amend. The amendment proposed today does not alter the context or intensity of the impacts described in the original EIS and RIR/RFA, and therefore no additional analyses have been performed. The proposed rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR 651

Fish, Fisheries, Reporting requirements.

Dated: September 13, 1983.

Wiliam G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 651—[AMENDED]

For the reasons set out in the preamble, 50 CFR Part 651 is amended as follows:

1. The authority citation for Part 651 is as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 651.2 [Amended]

2. In § 651.2 Definitions, delete the word "normally" from the definition of cod end.

§ 651.20 [Amended]

3. In § 651.20(d)(1), the third sentence is removed and a new sentence is added, to read: * * * An authorized officer will begin measuring the mesh at the most forward portion of the cod end that contained fish during a haulback, and continue measurement aft toward the rings.

[FR Doc. 83-25423 Filed 9-16-83; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 48, No. 182
Monday, September 19, 1983

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Information Collection Requirements Submitted To OMB for Review

AGENCY: ACTION.

ACTION: Information Collection Request Under Review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the national volunteer agency.

Background

Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on proposed collect of information and recordkeeping requirements. Copies of the proposed forms-and supporting documents [request for clearance (SF 83), supporting statement, instructions, transmital letter and other documents] may be obtained from the agency clearance officer.

Information About This Proposed Collection

Agency Clearance Office—William W. Lovelace, 202–254–8523.

Agency Address: ACTION, 806 Connecticut Ave., NW., Washington, D.C. 20525.

OFFICE Of ACTION Issuing Proposal: Office of Policy and Planning, Evaluation Division.

Title of Form: Impact Evaluation of the Foster Grandparent Program on Foster Grandparents—Phase III.

Type of Request: Reinstatement.

Frequency of Collection: Nonrecurring.

General Description of Respondents: Individuals: Participants and corresponding comparison groups of the Foster Grandparent Program.

Estimated Number of Annual Response: 504.

Estimated Annual Report or Disclosure Burden: 378 hours.

Respondent's Obligation to Reply: Voluntary.

Person responsible for OMB Review: James L. Thomas, 202–395–6880.

Williamd W. Lovelace,

ACTION Clearance Officer.

[FR Doc. 83-25447 Filed 9-16-83; 8:45 am]

BILLING CODE 6050-01-M

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

National Plant Genetic Resources Board; meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Cooperative State Research Service announces the following meeting:

Name: National Plant Genetic Resources Board.

Date: October 6 and 7, 1983.

Time and place: 8:30 a.m. October 6—12:00 noon October 7, Student Union, University of California (Davis, CA).

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review matters that pertain to plant germplasm in the United States and possible impacts on related National and international programs; and discuss other initiatives of the Board.

Contact person: C. O. Grogan, Executive Secretary, National Plant Genetic Resources Board, Cooperative State Research Service, U.S. Department of Agriculture, Room 219, West Auditor's Building, Washington, D.C. 20250, telephone (202) 447–6195/(703) 235–2628.

Done at Washington, D.C., this 14th day of September 1983.

C. I. Harris,

Acting Administrator, Cooperative State Research Service.

[FR Doc. 83-25487 Filed 9-16-83; 8:45 am]

BILLING CODE 3410-22-M

Rural Electrification Administration

East River Electric Power Cooperative, Inc.; Environmental Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of No Significant Impact.

SUMMARY: REA has made a Finding of No Significant Impact concerning the construction and operation of several electric transmission lines in eastern South Dakota in Aurora, Brule, Buffalo, Codington, Grant, Hyde, Kingsbury, Lake and Robert Counties proposed by East River Electric Power Cooperative, Inc. (East River), of Madison, South Dakota. These projects are 69 kV transmission lines 41.8 kilometers (26 miles), 45.1 kilometers (28 miles), 34.6 kilometers (21.5 miles) and 33.8 kilometers (21 miles) long. East River plans to request financing assistance from REA for the proposed projects.

FOR FURTHER INFORMATION CONTACT: Copies of REA's Finding of No Significant Impact and Environmental Assessment (EA) and East River's Borrower's Environmental Report (BER) may be obtained at the Office of the Director, North Central Area-Electric, Room 0230, South Agriculture Building, Washington, D.C. 20250, telephone (202) 382–1400, or the East River Electric Power Cooperative, Inc., P.O. Drawer E, Madison, South Dakota 57042, telephone (605) 256–4536.

SUPPLEMENTARY INFORMATION: REA's Finding of No Significant Impact incorporates REA's EA and East River's BER. REA's independent evaluation of the proposed projects concudes that approval of the projects would not be a major Federal action that would significantly affect the quality of the human environment.

Alternatives discussed in the EA are no action, alternative routes, underground construction, and new generation facilities. The no action alternative would do nothing to alleviate inadequate power supply and replace deteriorated line. The alternative routes investigated were all in the same counties, generally followed nearby or adjacent section lines across similar types of land, and were approximately equal in length and environmental impact. In the Switch 248 to Madison project, route recommended by several

Federal and State agencies to avoid sensitive wetlands was selected. Underground construction was considered, but not selected, because of the greater cost and technical problems inherent in underground construction. New small-scale electric generation facilities in the vicinity of the proposed facilities would be more expensive and would still require new transmission lines, and thus offered no advantages. Although a small amount of important farmland will be removed from agricultural use, there is no practicable alternative which entirely avoids important farmlands. REA has determined that the proposed projects are acceptable alternatives because they would avoid, to the extent practicable, cultural resources, important farmland, threatened and endangered species and critical habitat, wetlands, and floodplains.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: September 13, 1983.

Harold V. Hunter,

Administrator.

[FR Doc. 83-25486 Filed 9-16-83; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Indian Brook Watershed, New Hampshire; Deauthorization of Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Indian Brook Watershed project, Coos County, New Hampshire, effective on August 19, 1983.

FOR FURTHER INFORMATION CONTACT: David L. Mussulman, State Conservationist, Soil Conservation Service, Federal Building, Madbury Road, Durham, New Hampshire 03824, (603) 868-7581.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

David L. Mussulman,

State Conservationist.

September 12, 1983.

[FR Doc. 83-25434 Filed 9-16-83; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations (See, 14 CFR 302.1701 et seq.); Week Ended September 9, 1983

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Sept. 6, 1983	41680	Eastern Air Lines, Inc., Miami International Airport, Miami, Florida 33148. Conforming Application of Eastern Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations applies for amendment of its certificates of public convenience and necessity for Route 131 so as to authorize service between the terminal point Miami, Florida and the terminal point San Jose, Costa Rica. Answers may be filed by September 20, 1983.
Sept. 6, 1983	41681	Baker Aviation, Inc., c/o Marjorie L. Baker, P.O. Box 116, Kotzebue, Alaska 99752. Application of Baker Aviation, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations applies for a certificate of public convenience and necessity for an indefinite term to perform scheduled interstate air transportation of persons, property, and mail between the terminal point of Kotzebue to the intermediate points of Ambler, Buckland, Cape Lisburne, Deering, Kiana, Kivalina, Kobuk, Noatak, Noorvik, Point Hope, Selawik and Shungnak, Alaska. Conforming Applications, Motions to Modify Scope and Answers may be filed by October 4, 1983.
Sept. 6, 1983	41682	Capitol Air, Inc., c/o Mark S. Kahan, Law Offices of Fred D. Thompson, 1919 Pennsylvania Avenue, N.W., Suite 850, Washington, D.C. 20006. Application of Capitol Air, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations applies for an amendment of its existing certificate of public convenience and necessity over Route 191-F, or for a new certificate, sufficient to authorize air transportation of persons, property, and mail as follows: Between San Juan and Caracas, Venezuela—Conforming Applications, Motions to Modify Scope and Answers may be filed by October 4, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-25501 Filed 9-16-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Preliminary Determination of Sales at Less Than Fair Value: Chloropicrin From the People's Republic of China

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value: Chloropicrin from the People's Republic of China.

SUMMARY: We preliminarily determine that chloropicrin from the People's Republic of China (PRC) is being sold, or is likely to be sold, in the United States at less than fair value. Therefore, we have notified the United States International Trade Commission (ITC) of our determination, and we have directed the United States Customs Service to suspend liquidation of all entries of the subject merchandise. We have directed the U.S. Customs Service to require a cash deposit or the posting of a bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

We found that "critical circumstances" exist with respect to imports of chloropicrin from the PRC; therefore, the suspension of liquidation is retroactive to 90 days prior to the date of publication of this notice.

If this investigation proceeds normally, we will make our final determination by November 28, 1983.

EFFECTIVE DATE: September 19, 1983.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-2613.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that there is a reasonable basis to believe or suspect that chloropicrin from the PRC is being sold, or is likely to be sold, in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act).

For chloropicrin sold by China National Chemicals Import and Export Corporation (SINOCHEM), the only known exporter of the subject merchandise, we have found that the foreign market value exceeded the United States price on 100 percent of sales compared.

There was only one sale to the United States during the period of investigation. The margin of dumping on this single sale was 222 percent.

Case History

On April 6, 1983, we received a petition from counsel for LCP Chemicals & Plastics, Inc. and Niklor Chemical Company, Inc. filed on behalf of the United States Chloropicrin industry. In accordance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of chloropicrin from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports are materially injuring, or threaten to materially injure, a United States industry. The petitioners also alleged that critical circumstances exist with respect to imports of chloropicrin from the PRC.

After reviewing the petition, we determined that it contained sufficient grounds to initiate an antidumping investigation on chloropicrin. We notified the ITC of our action and initiated the investigation on May 2, 1983 (48 FR 19765). On June 2, 1983, the ITC found that there is a reasonable indication that imports of chloropicrin are materially injuring a United States industry (48 FR 24798).

A questionnaire was presented to counsel for SINOCHEM on June 3, 1983. A response was received on August 15, 1983.

As discussed under the "Foreign Market Value" section, we determined that the PRC is a state-controlled-economy country for the purposes of this investigation.

Scope of Investigation

The merchandise covered by this investigation is chloropicrin, also known as trichloronitromethane. A major use of the product is as a pre-plant soil fumigant. Chloropicrin is currently classifiable under item numbers 408.1600, 408.2900 and 425.5290 of the *Tariff Schedules of the United States Annotated* (TSUSA).

This investigation covers the period from November 1, 1982, to April 30, 1983. SINOCHEM is the only known PRC exporter of chloropicrin to the United States. We examined 100 percent of SINOCHEM's sales to the United States made during the period of investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As Provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the FOB Chinese port price to the unrelated purchaser. We made a deduction for PRC inland freight.

Foreign Market Value

The petitioner alleged that the economy of the PRC is state controlled to the extent that sales of the subject merchandise from that country do not permit a determination of foreign market value under 19 U.S.C. 1677b(a). After analyzing the PRC's economy and considering briefs submitted by the parties, we conclude that the PRC is a state-controlled-economy country for purposes of this investigation. Among the factors we considered were that output quotas for purchase by the state are set and that prices are administered at lease up to the quota level.

As a result, section 773(c) of the Act requires us to use prices or the constructed value of such or similar merchandise in a "non-state-controlled-economy" country. Our regulations established a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a "non-state-controlled-economy" country at a stage of economic development comparable to the country with the state-controlled economy

Japan and France are the only non-state-controlled-economy-countries other than the United States which produce chloropicrin. Yet neither Japan or France is a suitable surrogate for purposes of this preliminary determination, because neither country is at a stage of economic development comparable to the PRC.

We therefore attempted to construct a value (in accordance with § 353.8(c) of the Commerce Regulations) based on specific components or factors of production in the PRC, valued on the basis of prices and costs in a non-state-controlled-economy country "reasonably comparable" in economic development to the PRC. Pursuant to our request, SINOCHEM provided its factors of production. However, in the short time available to us we were unable to find values of these factors in a non-state-controlled-economy country reasonably comparable to the PRC. Therefore, for the purposes of this preliminary determination we have foreign market value on the best information available pursuant to section 776(b) of the Act. In this instance the best information available was the petitioner's data with respect to the price of chloropicrin produced and sold for consumption in Japan.

We will try further to value the PRC factors of production using prices and costs in a suitable surrogate country.

Affirmative Determination of Critical Circumstances

Counsel for petitioner alleged that imports of chloropicrin from the PRC present "critical circumstances." Under section 773(e)(1) of the Act, critical circumstances exist when the Department has a reasonable basis to believe or suspect that: (1)(a) There is a history of dumping in the United States or elsewhere of the merchandise under investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value;

and (2) there have been massive imports of the merchandise under investigation over a relatively short period.

To determine whether there is a history of dumping of chloropicrin from the PRC in the U.S. or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping orders. There have been no past United States antidumping determinations on chloropicrin from the PRC. We also reviewed the antidumping action of other countries made available to us through the Antidumping Code Committee established by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. We found no history of dumping of this product from the PRC.

To determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise at less than fair value,we considered all information on the record.

The industry which buys and sells chloropicrin is extremely small and closely knit. The chloropicrin consumed in the United States is either produced in the United States or imported from the PRC. There were no other sources of chloropicrin imports during the period of investigation. Petitioners allege that the PRC exporter sold chloropicrin at prices substantially below those charged by domestic producers of chloropicrin. The price differential was about 25 percent. In view of the small size of the industry and the substantial variation between the Chinese and United States prices, we preliminarily determine there is a reasonable basis to believe or suspect that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise at less than fair value, even though the importers could not anticipate the basis of our fair value determination in a state-controlled-economy case.

In preliminarily determining whether there is a reasonable basis to believe or suspect that there have been massive imports over a relatively short period, we considered recent import penetration levels and whether imports have surged recently.

Based upon our analysis of the information, we preliminarily determine that imports of the products covered by this investigation do appear massive over a relatively short period (March through August 1983).

For the reasons described above, we preliminarily determine that critical circumstances do exist with respect to chloropicrin from the PRC.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in reaching a final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of chloropicrin from the People's Republic of China which are entered, or withdrawn from warehouse, for consumption, on or after the date which is 90 days before publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average margin amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The suspension of liquidation will remain in effect until further notice. The weighted-average margin applicable to all shipments of chloropicrin from the PRC to the United States is 222 percent of the FOB Chinese port price.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with § 353.47 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on October 25, 1983, at the United States Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Depty Assistant Secretary by October 18, 1983. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

This determination is being published pursuant to section 733(f) of the Act (19 U.S.C. 1673(b)).

Judith Hippler Bello,

Acting Deputy Assistance Secretary for Import Administration.

September 13, 1983.

[FR Doc. 83-25417 Filed 9-16-83; 8:45 am]

BILLING CODE 3510-25-M

Fall-Harvested Round White Potatoes From Canada; Postponement of Final Determination and Postponement of Hearing

AGENCY: International Trade Administration, Commerce.

ACTION: Postponement of final antidumping determination and postponement of hearing.

SUMMARY: This notice informs the public that the final antidumping determination in this case and the hearing on the preliminary affirmative antidumping determination are postponed. Counsel for respondents requested postponement of the final determination, and counsel for both petitioner and respondents requested postponement of the hearing. We will now hold our hearing on September 20, 1983, and issue our final antidumping determination no later than November 4, 1983.

EFFECTIVE DATE: September 19, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Vincent Kane or Mrs. Julia E. Hathcox, Office of Investigations, Import Administration, International Trade Administration, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 377-5414 or (202) 377-0184.

SUPPLEMENTARY INFORMATION: On August 2, 1983, we published in the **Federal Register** our preliminary determination that fall-harvested round white potatoes from Canada are being, or are likely to be, sold in the United States at less than fair value. In our preliminary antidumping determination

we determined that critical circumstances do not exist for fall-harvested round white potatoes from Canada. In that notice, we explained on a company-by-company basis the methodology we used in calculating dumping margins for grower/distributors of fall-harvested round white potatoes from Canada. Margins ranged from 1 to 124.8 percent with a weighted-average margin of 17.3 percent.

Prior to this preliminary antidumping determination, we received, on February 9, 1983, a petition filed by counsel on behalf of the Maine Potato Council. In accordance with the filing requirements of § 353.36 of the Commerce Department Regulations (19 CFR 353.36), the petitioner alleged that fall-harvested white potatoes from Canada are being, or are likely to be sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a United States industry. Petitioner also alleged that sales are being made at less than cost of production in Canada and that "critical circumstances" exist, as defined in section 733(e) of the Act. Fall-havested round white potatoes are currently classified under items 137.20, 137.21, 137.25 or 137.28 of the *Tariff Schedules of the United States*.

Postponement of Final Antidumping Determination

We received from counsel for the respondents in this case a request for a postponement of our final antidumping determination. Under the Tariff Act of 1930, as amended (the Act), respondents of petitioners may request a postponement of a final antidumping determination up to a maximum of 135 days from the date of publication of the preliminary determination. Counsel for the respondents requested an extension until November 16, 1983, but subsequently agreed to a lesser extension until November 4, 1983. We, therefore, will postpone our final antidumping detemination to no later than November 4, 1983.

Postponement of Hearing

We have received requests from counsel for petitioner and respondents for the postponement of the hearing on this case. The hearing has been rescheduled for September 20, 1983, at 10 a.m. in room 3708 of the Commerce Department, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

This notice is published pursuant to section 733(e) and 733(d) of the Act.

Judith Hippler Bello,

Acting Deputy Assistant Secretary for Import Administration.

September 13, 1983.

[FR Doc. 83-25162 Filed 9-16-83; 8:45 am]

BILLING CODE 3510-25-M

Foreign-Trade Zones Board

[Docket No. 34-83]

Foreign-Trade Zone 2, New Orleans, Louisiana; Application for Relocation

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Commissioners of the Port of New Orleans (the Port), grantee of Foreign Trade Zone 2, requesting authority to relocate its general-purpose foreign-trade zone to include industrial park space in New Orleans, Louisiana, within the New Orleans Customs port of entry. The application was submitted pursuant to the provisions of the Foreign Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 12, 1983. The applicant is authorized to make this proposal under Act No. 173 of the 1934 Regular Session of the Louisiana Legislature.

On July 16, 1946, the Port received authority from the Board to establish a foreign-trade zone in the New Orleans area (Board Order 12, 11 FR 8235, 7/31/46). While there have been a number of boundary modifications over the years, the project has remained at its original location and today includes a warehousing/distribution facility on a 19-acre site adjacent to the Napoleon Avenue Wharf on the Mississippi River. During the past 5 years, there has been a 37 percent increase in the value of merchandise handled and there have been increased inquiries for industrial uses. The facility has space for warehousing and processing activities, but lacks space for growth and cannot accommodate significant industrial activity. The Port has worked closely with New Orleans development officials in devising a new zone plan and is now requesting a reorganization of its project to a new industrial park.

The Port's new zone site will cover 76 acres in the Almonaster-Michoud Industrial District, the City's 12,000-acre industrial development project located at the intersection of the Inner Harbor Navigation Canal and Mississippi River-Gulf Outlet in eastern New Orleans. Cabot, Cabot, and Forbes has been selected as operator and will be responsible for improving the site, developing general-purpose warehousing facilities, and for providing individual parcels to firms requiring separate facilities. The existing zone facility would retain zone status for a transitional period of five years.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Max G. Willis, District Director, U.S. Customs Service, South Central Region, 423 Canal Street, New Orleans, LA 70130; and Colonel Robert C. Lee, District Engineer, U.S. Army Engineer District New Orleans, P.O. Box 60267, New Orleans, LA 70160.

Comments concerning the proposed zone relocation are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 19, 1983.

A copy of the application is available for public inspection at each of the following locations:

District Director's Office, U.S. Dept. of Commerce District Office, 432 International Trade Mart, No. 2 Canal Street, New Orleans, Louisiana 70130; or

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1872, 14th and Pennsylvania, NW., Washington, D.C. 20230.

Dated: September 13, 1983.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 83-25443 Filed 9-16-83; 8:45 am]

BILLING CODE 3510-25-M

[Order No. 224]

Approval for Expansion of Foreign-Trade Zone No. 27, Boston, Massachusetts, Within the Boston Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Wheras, the Massachusetts Port Authority (Massport), Grantee of Foreign-Trade Zone 27, Boston, has applied to the Board for authority to

expand its zone to include a site at Boston's Logan International Airport, within the Boston Customs port of entry;

Whereas, the appplication was accepted for filing on March 1, 1983, and notice inviting public comment was given in the **Federal Register** on March 9, 1983 (Docket No. 2–83, 48 FR 9895);

Whereas, as examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to provide zone space to new tenants whose operations cannot be accommodated within existing zone space; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisified, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed March 1, 1983 (Doc. #2–83). The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations not mentioned in the application. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, D.C. this 13th day of September 1983.

Lawrence J. Brady

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 83-25442 Filed 9-16-83; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

[Modification No. 2 to Permit No. 354]

Marine Mammal Permit Applications; Dr. Donald B. Siniff

Notice is hereby given that pursuant to the provisions of § 216.33 of the Regulations Governing the Taking and Importing of Marine Mammals, Scientific Research Permit No. 354 issued to Dr. Donald B. Siniff, Department of Ecology and Behavioral Biology, University of Minnesota, Minneapolis, Minnesota 55455, on October 15, 1981 (46 FR 51629) is modified to allow the radio tagging of 110 newly independent young Weddell seals, in lieu of adult Weddell seals.

Accordingly, Section A–1a. of Permit No. 354 is deleted and replaced by:

"a. 130 adults may also be instrumented with radio frequency and/or sonic tags; and 110 newly independent young may be fitted with radio frequency tags as described in the modification request."

This modification becomes effective upon publication in the **Federal Register.**

The Permit, as modified, is available for review in the following office:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

Dated: September 9, 1983.

Richard B. Roe,

Acting Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 83-25425 Filed 9-16-83; 8:45 am]

BILLING CODE 3510-22-M

Receipt of Application for Permit; Marineland S.A., et al.

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:
   a. Name: Marineland S.A. (P72C).
   b. Address: Costa d'en Blanes, Palma Nova, Mallorca, Spain.
2. Type of Permit: Public Display.
3. Name and number of Animals: Atlantic bottlenose dolphin (Tursiops truncatus) 2.
4. Type of Take: To take from the wild Atlantic bottlenose dolphins from the Mississippi Sound area of the Gulf of Mexico.
5. Location of Activity:
6. Period of Activity: 2 years.

As a request for a permit to take living marine mammals to be maintained in areas outside the jurisdiction of the United States, this application has been submitted in accordance with National Marine Fisheries Service policy concerning such applications (40 FR 11619, March 12, 1975). In this regard, no application will be considered unless:

(a) It is submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, through the appropriate agency of the foreign government;

(b) It includes:

i. A certification from such appropriate government agency verifying the information set forth in the application;

ii. A certification from such government agency that the laws and regulations of the government involved permit enforcement of the terms of the conditions of the permit, and that the government will enforce such terms;

iii. A statement that the government concerned will afford comity to a National Marine Fisheries Service decision to amend, suspend or revoke a permit.

In accordance with the above cited policy, the certification and statements of the Ministry of Agriculture and Fishing in the Balearic Islands have been found appropriate and sufficient to allow consideration of this permit application.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: September 13, 1983.

R. B. Brumsted,

Acting Chief, Protected Species Division, National Marine Fisheries Service.

[FR Doc. 83-25495 Filed 9-16-83; 8:45 am]

BILLING CODE 3510-22-M

Issuance of Permit To Take Marine Mammals and Endangered Species; Dr. William H. Hamner

On August 5, 1983, Notice was published in the **Federal Register** (48 FR 35694), that an application had been filed with the National Marine Fisheries Service by Dr. William H. Hamner, for a Scientific Research and Scientific Purposes Permit to take an unspecified number of marine mammals by harassment.

Notice is hereby given that on September 9, 1983, the National Marine Fisheries Service issued a Scientific Research and Scientific Purposes Permit as authorizd by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) to Dr. William H. Hamner subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) Was applied for in good faith; (2) Will not operate to the disadvantage of the endangered species which are the subject to this Permit; (3) Will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with, and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: September 9, 1983.

Richard B. Roe,

Acting Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 83-25426 Filed 9-16-83; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Sea World, Inc.

On August 10, 1983, Notice was published in the **Federal Register** (48 FR 36304) that an application had been filed with the National Marine Fisheries Service by Sea World, Inc., 1720 South Shores Road, Mission Bay, San Diego, California 92109, for a permit to import twelve (12) Commerson's dolphin (*Cephalorhynchus commersonii*) for public display.

Notice is hereby given that on September 12, 1983, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a permit for the importation of twelve (12) Commerson's dolphin to Sea World, Inc., subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administration for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C. 20235;

Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: September 12, 1983.

Richard B. Roe,

Acting Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 83-25427 Filed 9-16-83; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The North Pacific Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Public Law 94–265, as amended), has established Plan Management Teams for Fishery Management Plans initiated by the Council.

The Plan Management Team for the Gulf of Alaska Fishery Management Plan will hold a Team meeting at the offices of the North Pacific Fishery Management Council, 605 W. 4th Ave., Anchorage, Alaska, on September 26, 1983. The purpose of the meeting is to review assessments of the Gulf of Alaska stocks to determine current estimates of biomass, possible revisions to maximum sustainable yields (MSY), preliminary equilibrium yield and annual surplus production for 1984. Plan Team meetings are open to the public and may be shortened or lengthened as necessary. Meeting time will be posted in the Council offices.

FOR FURTHER INFORMATION CONTACT: Jim H. Branson, Executie Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

Dated: September 13, 1983.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 83-25428 Filed 9-16-83; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Regional Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The Council was established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265, 16 U.S.C. 1852), to manage and conserve America's fisheries as specified by the Act.

Meeting Agenda: Review and discuss options for Pelagic management; discuss Spiny Lobster Amendments #1 (complementary State regulations) and #2 (trap size) and the Precious Corals FMP; discuss status of FY84 Administrative Budget; review foreign fishing permit applications; discuss foreign and domestic enforcement of Billfish FMP and Spiny Lobster FMP, respectively; elect officers for 1983–1984; and conduct other Council business.

DATES: September 28–29, 1983 (9 a.m. to 3 p.m., September 28, in Tamuning, Guam; 9 a.m. to 3 p.m., September 29, in Rota, CNMI.)

ADDRESS: The meeting will take place at the Pacific Islands Hotel, Tamuning, Guam, and Rota Paupau Hotel, Rota, CNMI. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Western Pacific Fishery Management Council, Room 1608, 1164 Bishop Street, Honolulu, Hawaii 96813, Telephone (808) 523–1368.

Dated: September 13, 1983.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 83-25429 Filed 9-16-83; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange; Proposed Amendments Relating to the Live Hogs Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Mercantile Exchange has submitted a proposal to revise its live hog futures contract. The Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of that proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before October 19, 1983.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the CME live hog futures contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C., (202) 254–6990.

SUPPLEMENTARY INFORMATION: The Chicago Mercantile ("CME" or "Exchange") is proposing to revise its live hog futures contract. The CME proposal would eliminate the delivery of U.S. No. 4 grade hogs on the contract, reduce the number of U.S. No. 3 grade hogs allowed to be delivered at par and in the total delivery unit, increase the par weight range of hogs, designate a new delivery point at Sioux Falls, South Dakota, and increase the discount for hogs delivered at the St. Paul, Minnesota delivery point.

The current live hog contract specifies the par delivery unit to be 30,000 pounds of USDA Grade No. 1, 2, 3 and 4 hogs (barrows and gilts) in the weight range of 200 to 230 pounds. The contract stipulates that the average weight of the hogs in the delivery unit and at least 90 hogs in each delivery unit must fall within the 200 to 230 pound weight range. Delivery units containing live hogs weighing under 200 pound but not less than 190 pounds and weighing over 230 pounds but not more than 240 pounds are deliverable on the current contract with a discount of 50¢ per hundredweight based on the weight of such hogs delivered. Hogs weighing less than 190 or over 240 pounds are not deliverable. Under the existing contract, delivery units containing more than 90 head of USDA Grade No. 3 hogs are deliverable at a discount of 50¢ a hundredweight for the entire delivery unit with no limit on the total number of USDA No. 3 hogs. Delivery units containing up to eight head of USDA Grade No. 4 are deliverable at a discount of $2.00 per hundredweight for each such hog. Units containing more than 8 head of USDA Grade No. 4 are not deliverable on the current contract.

Under the Exchange's proposal, No. 4 grade hogs would no longer be deliverable on the contract, and fewer U.S. No. 3 grade hogs (barrows and gilts) could be delivered at par and in the total delivery unit. Delivery units containing more than 10 but not more than 30 U.S. No. 3 grade hogs would be deliverable at a discount of $2.00 per hundredweight for the U.S. No. 3 grade hogs. Units containing more than 30 U.S. No. 3 grade hogs would not be deliverable under the revised contract.

The par weight per hog would increase from a range of 210 to 240 pounds from the current 200 to 230 pounds. The revised contract would require both the average weight of hogs in the delivery unit and at least 90 hogs to fall within the 210 to 240 pound weight range. However, hogs weighing under 210 pounds but not less than 200 pounds and weighing over 240 pounds but not more than 250 pounds would be deliverable at a discount of 50¢ per hundredweight for such hogs. Hogs weighing under 200 pounds or over 250 pounds would not be deliverable.

The Exchange submits that the proposed changes in the contract's delivery units would reflect current conditions and practices in the cash hog markets. The CME states that in recent years there has been an improvement in the quality of hogs being marketed commercially. The Exchange maintains that eliminating No. 4 grade hogs from the contract, decreasing the number of U.S. No. 3 grade hogs to 10 head in a CME par delivery load, and allowing no more than 30 head of U.S. No. 3 grade hogs to be deliverable, at a discount of $2.00 a hundredweight, would make the contract more consistent with commercial hog sales than the currently allowable 90 head of U.S. No. 3 grade hogs (approximately 64 percent of the unit) in a par delivery load and the 100 percent U.S. No. 3 hogs deliverable at a discount. In addition, the Exchange notes an increased demand for a heavier weight hog. The Exchange indiates that the preferred commercial sale load consists of animals averaging in weight from 210 to 240 pounds. The Exchange maintains that an increase in the current par delivery weight range from 200–230 pounds to 210–240 pounds would reflect the average current commercial slaughter weight. The Exchange also states that allowing a 50¢ per hundredweight discount for hogs under 210 pounds but not less than 200 pounds and weighing over 240 pounds but not more than 250 pounds would adequately reflect the cash market discount for hogs in these weight groups. The Exchange believes that these revisions to the contract's delivery unit would have virtually no effect on deliverable supplies and would make commercial longs more satisfied with standing for delivery on the contract.

The Exchange's proposal also includes the designation of an additional delivery point at Sioux Falls, South Dakota with a 50¢ per hundredweight discount for hogs delivered at this location. The CME believes that there is an adequate deliverable supply of and demand for hogs as well as sufficient stockyards facilities at the proposed delivery point. The Exchange indicates that Sioux Falls serves hog producers in the states of Iowa, Minnesota and South Dakota, which combined accounted for approximately one-third of the total U.S. hog production during the past decade and one-third of the total U.S. hog slaughter in 1980. In addition, the CME states that the Sioux Falls terminal market is the largest hog market in the United States and that its stockyard has the physical capacity to handle approximately 35 CME hog deliveries a day, which is comparable to the physical capacity of the seven existing delivery points. The CME maintains that the addition of Sioux Falls as a delivery point would not subject commercial hogs standing for delivery to additional transport and/or resale costs because numerous primary slaughterhouse operations in the current delivery area also have slaughter facilities in the Sioux Falls area. The Exchange further indicates that the addition of the Sioux Falls delivery point would not generate increased basis variability because cash hog prices at Sioux Falls are highly correlated with cash hog prices at other CME delivery points. The Exchange states that the 50¢ discount at Sioux Falls would be consistent with the cash market locational differentials at Sioux Falls and the other six non-par delivery points.

Due to Exchange concerns over the large share of hog deliveries tendered at the St. Paul, Minnesota delivery point, the CME's proposal includes an

amendment to raise the St. Paul discount from 25¢ per hundredweight to 75¢ per hundredweight. The Exchange states that over the past four years 32 to 65 percent of annual hog deliveries on the contract occurred at St. Paul. The CME believes that this high percentage of hog deliveries at St. Paul is because the St. Paul delivery point is insufficiently discounted. The Exchange maintains that an evaluation of the cash price differentials at each of the contract's current non-par delivery points relative to the contract's par delivery point at Peoria, Illinois over the period 1977–1982 indicates that the contract discount for St. Paul has been significantly and consistently too small. The Exchange believes that an increase in the St. Paul discount to 75¢ would reduce the skewed distribution of hog deliveries among the delivery points because no location would be insufficiently discounted and attract a large volume of deliveries in relation to all other delivery points. The Exchange further believes that raising the St. Paul discount to 75¢ would have a positive impact on the live hog contract because there would be no clear economic advantage in making delivery at any given delivery point.

The proposed amendments to the live hog contract would become effective immediately after Commission approval for all contract months subsequently listed by the Exchange for trading, but would not be applicable to currently listed months.

In accordance with Section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (Supp. 1982), the Commission has determined that the proposal submitted by the CME concerning its live hog futures contract is of major economic significance. Accordingly, the CME's proposal will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the proposed rules may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1982)). Requests for copies of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitted written data, views or arguments on the proposed amendments should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by October 19, 1983. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C. on September 14, 1983.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 83-25406 Filed 9-16-83; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Flood Reduction Project at Grundy, Virginia

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement.

SUMMARY: 1. The Grundy formulation studies are being conducted in response to authorization of Section 202 of the Energy and Water Development Appropriation Act of 1981 (Pub. L. 96–367). Study objectives are to determine the best means of affording the Town of Grundy flood damage reduction measures.

2. The alternatives to be considered in detail will include that of no action, channelization of Levisa Fork at Grundy, floodproofing, and relocation of flood-prone development into flood-safe areas.

3. Public activities will deal with the overall flood damage reduction plan. Potential alternatives have been discussed with elected officials of the study area and will be presented to civic groups, private organizations, and interested individuals as detailed studies progress.

a. A formal meeting will be scheduled to provide for discussion and imput to evaluation of alternative plans and plan selection.

b. Significant issues to be analyzed in depth in the DEIS will be the impact of floods on the existing environment and the effects of alternative plans. The plans may include channelization for Levisa Fork, floodproofing, and relocations to new housing and community development sites.

c. Consultation shall be conducted with the U.S. Fish and Wildlife Service during the final planning process pursuant to the requirements of the Fish and Wildlife Coordination Act 16 U.S.C. 661 et seq. (Pub. L. 85–624) and the Endangered Species Act 16 U.S.C. 1531 et seq. (Pub. L. 93–205) and the National Park Service and State Historic Preservation Office(s) pursuant to the National Historic Preservation Act of 1966 (80 STAT 915) (Pub. L. 89–655) the Preservation of Historic and Archeological Data (88 STAT 174) (Pub. L. 93–291), and EO 11593.

4. A public meeting will be held in the community of Grundy to present the tentatively selected plan as well as other alternatives, and hold discussions with local officials and any other interested parties.

5. It is anticipated that the DEIS will be available for public review in July 1984.

Questions concerning the proposed action and DEIS can be answered by:

Mr. Jim Twohig (Study Manager)
Mr. John Wright (Environmentalist),
Huntington District, Corps of Engineers, 502 Eighth Street, Huntington, West Virginia 25701

Dated: September 1, 1983.

John O. Roach II,

Department of the Army Liaison Officer With the Federal Register.

[FR Doc. 83-25042 Filed 9-16-83; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF EDUCATION

Education Statistics Advisory Council; Meeting

AGENCY: Advisory Council on Education Statistics.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: October 6 and 7, 1983.

ADDRESS: 1200 19th Street NW., Room 823, Washington, D.C. 20208.

FOR FURTHER INFORMATION CONTACT: Robena S. Gore, Executive Director, 1200 19th Street NW., (Brown Building) Room 723–B, Washington, D.C. 20208. Telephone—(202) 254–8227.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education

Statistics is established under section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93-380. The Council is established to review general policies for the operation of the National Center for Education Statistics and is responsible for establishing standards to insure that statistics and analyses disseminated by the Center are of high quality and are not subject to political influence.

The meeting of the Council is open to the public. The proposed agenda includes:

Report and discussion *A Nation at Risk*, report of the National Commission on Excellence in Education, and other reports on school quality (1st day).

Review of Quality Control Proposed Study and Actions and VEDS data.

A report by the Administrator, National Center for Education Statistics, on recent activities of the Center.

A report on the state of the Department of Education by the Chairman, Dr. Donald J. Senese, Assistant Secretary, Office of Educational Research and Improvement.

Such old business and new business as the chairman or membership may put before the Council.

Records are kept of all Council proceedings, and are available for public inspection at the office of the Executive Director, Advisory Council on Education Statistics, 1200 19th Street NW. (Brown Building), Room 723-B, Washington, D.C. 20208.

Dated: September 14, 1983.

Donald J. Senese,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 83-25452 Filed 9-16-83; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs

International Atomic Energy Agreements; Proposed Subsequent Arrangements; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above mentioned agreement involve approval of the following sales:

Contract Number S-EU-784, to the Atomic Energy Research Establishment, Harwell, the United Kingdom, 0.002 grams of plutonium-240, for use as standard reference material.

Contract Number S-EU-785, to the Transuranium Institute, Karlsruhe, the Federal Republic of Germany, 0.002 grams of uranium, enriched to 33 percent in U-235, and 0.002 grams of uranium-233, for use as standard reference materials.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of these nuclear materials will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: September 14, 1983.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-25472 Filed 9-16-83; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreement; Proposed Subsequent Arrangement; Japan Atomic Energy Research Center

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale:

Contract Number S-JA-336, to the Japan Atomic Energy Research Center, Tokai-mura, Japan, 2 grams of uranium, depleted in the isotope U-235, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: September 14, 1983.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-25473 Filed 9-16-83; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; Transuranium Institute

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract Number S-EU-783, to the Transuranium Institute, Karlsruhe, the Federal Republic of Germany, 25 milligrams of thorium-230, for use as an analytical standard for mass spectrometry.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice

For the Department of Energy.

Dated: September 14, 1983.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-25474 Filed 9-16-83; 8:45 am]

BILLING CODE 6450-01-M

Proposed Contract Awards

AGENCY: Department of Energy.

ACTION: Notice of Proposed Contract Awards.

SUMMARY: In accordance with Department of Energy (DOE) Procurement Regulations relating to organizational conflicts in interest, 41 CFR 9-1.5409, published in the **Federal Register** on January 11, 1979 (44 FR 2556), DOE gives public notice that contracts are being awarded, recognizing the existence of a potential organizational conflict of interest, because this is determined to be in the best interest of the United States.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Croxton, Office of Inspector General, Room 5A–179, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–1943.

Findings, Mitigation and Determination

Under section 19 of the Federal Nonnuclear Energy Research and Development Act, Pub. L. 93–577, and section 33 of the Federal Energy Act of 1974, Pub. L. 93–275, the Department of Energy is subject to strict requirements intended to avoid organizational conflicts of interest in the award and performance of contracts for technical and management support services. An organizational conflict of interest (OCI) is considered to exist when a contractor "has past, present, or currently planned interests, that, either directly or indirectly, through a client relationship, relate to the work to be performed under a Department contract and which (1) may diminish its capacity to give impartial, technically sound, objective assistance and advice, or (2) may result in it being given an unfair competitive advantage." DOE Procurement Regulations, 41 CFR 9–1.5403. Pursuant to these statutory provisions, a contract may not be awarded unless the Secretary or his designee has made a determination that it is unlikely that an OCI would exist, or that a conflict has been avoided after inclusion of appropriate conditions in the contract. If an OCI is determined to exist and cannot be avoided, the contract may be awarded only if the Secretary or his designee determines that award would be in the best interest of the United States and includes appropriate provisions in the contract to mitigate the OCI.

Based on the following findings and determination, the proposed contracts described below will be awarded on or after September 26, 1983, after taking into account the existence of Organizational Conflicts of Interest, because the procurements are determined to be in the best interests of the United States, pursuant to the authority of Department of Energy Procurement Regulation 41 CFR 9–1.5409(a)(3). Any comments should be provided before that date to the official identified above.

Findings

1. The Department of Energy (DOE) accomplishes a major part of its mission through contractors that operate Government-owned facilities under long term cost-type contracts. These contractors, usually referred to as integrated contractors, account for and report on DOE funds, property, and cost of operations in accordance with DOE accounting and reporting systems and procedures. For Fiscal Year 1982, the combined obligations of the 45 integrated contractors was $7.9 billion.

The DOE Office of Inspector General is responsible for performing financial and compliance audits of these integrated contractors. Staffing limitations prevent the Office of Inspector General staff from performing financial statement examinations at many of the integrated contractors. To fulfill its audit oversight responsibility, the Inspector General seeks to supplement audit coverage by engaging independent public accountants (IPA's) to perform financial and compliance audits of several integrated contractors.

2. Therefore, a competitive procurement (DE–RP01–831G00031, Financial and Compliance Audit Coverage on Selected Contractors) was initiated in June 1983 to solicit IPA assistance. Offerors were requested to propose on ten groupings (designated A through J) of integrated contractors. Each group contained two integrated contractors, for a total of 20 of the Department's 45 integrated contractors. A separate contract will be awarded for each grouping.

Under the proposed DOE contracts, IPA's shall perform a financial and compliance audit (subject to scope limitations establishments by the IG) of the financial statements (balance sheet, related statement of operations, and Voucher Accounting for Net Expenditures Accrued for fiscal years ending September 30, 1983 and/or 1982 in accordance with applicable standards prescribed in the General Accounting Office *Standards for Audit of Governmental Organizations, Programs, Activities and Functions—1981 Revision* (GAO Standards)). The compliance examination is directed toward determining whether the integrated contractor has complied with the terms of the contract between DOE and the integrated contractor.

3. Based on a comprehensive evaluation of its technical proposal, Deloitte, Haskins, and Sells (DH&S) has been recognized as possessing the required auditing, staffing and background experience for performing financial and compliance audits of integrated contractors. In addition, DH&S proposed the lowest cost for two of the groups:

Group	Integrated Contractor
E	Los Alamos National Laboratory, EG&G (Nevada).
F	Brookhaven National Laboratory, NLO, Inc.

DH&S' cost proposal for group E was substantially lower than the next lowest cost proposal for that group. DH&S' proposal for group F was substantially lower than the next lowest cost proposal for group F.

4. In accordance with 41 CFR 9–1.5405, DH&S disclosed that the firm is, and has been, the independent public accountant engaged to perform an examination of financial statements by:

a. The University of California which operates Los Alamos National Laboratory, and

b. Associated Universities, Inc., which operates Brookhaven National Laboratory.

5. In order to comply with the 41 CFR 9–1.5405 disclosure requirement and to aid in the information gathering process, oral discussions were held with all proposers who had submitted technically acceptable proposals. Questions were posed concerning the nature of their business and how various aspects (e.g., organizational, financial, past or current contracts) would contribute to a possible organizational conflict of interest.

Responses in the orals were followed by best and final offer submissions from the contractors. Analyses of this information and comparisons with the work to be performed under the contract were made.

6. Based on an evaluation of the facts contained in DH&S' disclosure statement and subsequent information obtained from orals, the Department of Energy believes that there is a minor conflict of interest under 41 CFR 9–1.5409(a) although DH&S meets the independence standards set by the GAO and AICPA as described below. In performing an audit under the broad requirements contemplated by this procurement, particularly the heavy emphasis on contractual compliance, DH&S may find, and be expected to pursue and report to the IG, items of noncompliance with the terms of the DOE contract. Any questioned items (such as questioned costs) would be of potential detriment to the two parent organizations (the University of California and Associated Universities, Inc.) if subsequently sustained by the DOE contracting officer.

7. As noted above, however, DH&S meets the high standards of independence that are set by the American Institute of CPA's (AICPA). the AICPA Code of Professional Ethics requires IPA's to be independent when

expressing an opinion of financial statements, notwithstanding the fact that the IPA is remunerated by the auditee. In fact, independence in such audits is the very cornerstone of the profession.

GAO Standards state that "public accountants will be considered independent if they are independent under the AICPA Code of Professional Ethics." Additionally, GAO Standards consider three general classes of impairments to independence: personal, external and organizational. None of these conditions was considered to exist so as to affect DH&S' ability to do their work and report their findings impartially.

In view of the above, the Department of Energy believes that the national interest would not be served by the disqualification of Deloitte Haskins and Sells from contract award in accordance with 41 CFR 9-1.5409(a)(1) and award to another IPA at a substantially higher price.

Mitigation

While the Department believes that the degree of actual conflict of interest is minor, the contracts have been drafted in such a way that anomalies in performance may be detected. The contracts call for:

(a) An advance review of DH&S' compliance audit plan by the Office of Inspector General;

(b) Submission of monthly progress reports by DH&S to the Office of Inspector General;

(c) Attendance by representatives of the Office of Inspector General at formal conferences between DH&S and the auditee;

(d) Delivery of audit workpapers by DH&S. These workpapers will be reviewed by the Office of Inspector General;

(e) Inclusion in the contract of the organizational conflict of interest special clause entitled "Organizational Conflicts of Interest."

Determination

In light of the above Findings and Mitigations and in accordance with 41 CFR 9-1.5409(a)(3), the proposed contract awards are in the best interest of the United States.

Dated: September 12, 1983.

James R. Richards,

Inspector General.

[FR Doc. 83-25470 Filed 9-16-83; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board, Technical Panel on Magnetic Fusion; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Technical Panel on Magnetic Fusion of the Energy Research Advisory Board (ERAB).

Date and time: October 4, 1983 from 9 a.m. to 4 p.m.

Place: Seminar Room, Fusion Energy Building, 104 Union Valley Road, Valley Industrial Park, Oak Ridge, TN 37831.

Contact: Thomas J. Kuehn, U.S. Department of Energy, Office of Energy Research (ER-6), 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: 202/252-8933.

Purpose of the technical panel: To perform a review of the conduct of the national magnetic fusion energy program and make recommendations to the Energy Research Advisory Board. After consideration of the Panel report, the Board shall submit such report, together with any comments that the Board deems appropriate, to the Secretary of Energy. The purpose of the Energy Research Advisory Board is to advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

TENTATIVE AGENDA:

- Fusion Technology Programs
- Environmental Impacts
- Discussion of Final Report Outline and Contents
- Public comment (10 minute rule)

Public participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Thomas J. Kuehn at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. Persons desiring information locally may contact Zee Buchanan, Division of Fusion Energy, Oak Ridge National Laboratory, 615/574-0988. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 14, 1983.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 83-25473 Filed 9-16-83; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPRM-FRL 2435-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the Federal Register a notice of proposed information collection requests that have been forwarded to the Office of Management and Budget (OMB) for review. The information collection requests listed are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: David Bowers; Office of Standards and Regulations; Information Management Section (PM-223); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Grants Programs

- Title: General Regulation for Assistance (EPA #0938).

Abstract: EPA requires parties to its grants/cooperative agreements to submit to EPA certain information on grant related projects, employee training, financial data qualifications of employees, etc. EPA uses the data to determine awards and award payments, and to verify that Federal funds are used correctly.

Respondents: Individuals, State and local governments, businesses, non-profit institutions and organizations.

- Title: Cost or Price Format for Subagreements Under U.S. EPA Grants (EPA #0256).

Abstract: EPA requires, in compliance with OMB Circular A-102, that recipients of EPA assistance maintain a cost/price analysis on file. If the recipient does not certify its procurement system in conformance with 40 CFR 33 § 33.110, it must submit the documented analysis to EPA upon request. The Agency uses the data to

negotiate procurements and to verify that cost/prices are reasonable.

Respondents: Recipients of EPA assistance.

Toxics Programs

• Title: Evaluation of Asbestos-in-Schools Identification and Notification Rule (EPA #1077).

Abstract: EPA is conducting a one-time survey of local education agencies to evaluate compliance with the Asbestos-in-Schools Identification and Notification Rule.The Agency will use the survey results to determine (a) exposure to materials containing friable asbestos and (b) possible follow-up action.

Respondents: Schools and state/local governments.

Water Programs

• Title: Supplementary Report on Oil or Hazardous Substance Spills (EPA #0823).

Abstract: EPA and/or the U.S. Coast Guard usually investigates spills of oil or hazardous substances into navigable waters. When an on-scene investigation cannot be conducted, EPA may request information from those responsible for the spill. The Agency uses the data to determine whether (a) cleanup effort are satisfactory and (b) any enforcement action is necessary.

Respondents: Businesses, State/local governments, and other organizations.

* * * * *

Agency PRA Clearance Requests Completed by OMB

Except as noted, the following ICRs were cleared on 25 August 1983:

EPA #0987, Survey of Economic Costs of Guidance for Non-Ionizing Radiation (OMB #2060–0045).

EPA #1050, NSPS Storage Vessels for Petroleum Liquids (OMB #2060–0024).

EPA #1051, NSPS Portland Cement Plan Monitoring Provisions (OMB #2060–0025).

EPA #1052, NSPS Emission & Fuel Monitoring for Fossil Fuel-Fired Steam Generators (OMB #2060–0026).

EPA #1053, NSPS Emission Monitoring & Reporting Requirements for Electric Utility Steam Generating Unit (OMB #2060–0023).

EPA #1054, NSPS Petroleum Refineries, Excess Emission Report (OMB #2060–0022).

EPA #1055, NSPS Excess Emissions Report & Recordkeeping Requirements for New Modified Kraft Pulp Mill (OMB #2060–0021).

EPA #1056, NSPS Emission Monitoring for Nitric Acid Plants (OMB #2060–0019).

EPA #1057, NSPS Emission Monitoring for Sulfuric Acid Plants, was cleared on August 29 (OMB #2060–0041).

EPA #1058, NSPS Incinerator Monitoring Provisions (OMB #2060–0040).

EPA #1059, NSPS Monitoring Requirements for Lime Manufacturing Plants (OMB #2060–0039).

EPA #1061, NSPS Monitoring Requirements for Phosphate Fertilizer Plants (OMB #2060–0037).

EPA #1062, NSPS Monitoring Requirements for Coal Preparation Plants (OMB #2060–0036).

EPA #1063, NSPS Monitoring Requirements for Sewage Treatment Plants (OMB #2060–0035).

EPA #1064, NSPS Automobiles and Light Duty Truck Surface Coating (OMB #2060–0034).

EPA #1065, NSPS Emission & Operations Monitoring Requirements for Ferroalloy Production Facilities (OMB #2060–0033).

EPA #1066, NSPS Excess Emission Report for New, Modified or Reconstructed Ammonium Sulfate Plants (OMB #2060–0032).

EPA #1068, NSPS Primary Copper, Lead & Zinc Smelters Monitoring Requirements (OMB #2060–0030).

* * * * *

Comments on all parts of this notice should be sent to:

David Bowers (PM–223), U.S. Environmental Protection Agency, Office of Standards and Regulations, 401 M Street, SW., Washington, D.C. 20460

and

Don Arbuckle, Vartkes Broussalian or Anita Ducca, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, D.C. 20503

Dated: September 12, 1983.

N. Phillip Ross,

Chief, Statistical Policy Staff.

[FR Doc. 83-25317 Filed 9-16-83; 8:45 am]

BILLING CODE 6560-50-M

[Notice No. III-404 CRP-BKW; WIT-FRL-2435-3]

Proposed Determination To Prohibit, or Deny the Specification, or the Use for Specification, of an Area as a Disposal Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Determination.

SUMMARY: Section 404(c) of the Clean Water Act (33 U.S.C. 1251 *et seq.*) provides that, if the Administrator of the U.S. EPA determines that unacceptable adverse effects on shellfish beds, fishery areas and wildlife would result from the discharge of dredged or fill material, he may exercise his authority to withdraw or prohibit the defined area from specification as a disposal site. In effect, the Administrator would be vetoing a permit issued by the Corps of Engineers. The procedures for implementation of 404(c) are set forth in 40 CFR 231. This notice is being published in accordance with § 231.3(2) by the Regional Administrator of Region III.

On September 26, 1980, the Corps of Engineers advertised permit application No. NABOP–FR 80–0789 for the impoundment of the upper St. Mary's River. The applicant is the Maryland Department of Natural Resources, Capital Programs Administration, Tawes State Office Building, Annapolis, Maryland 21401. The proposed project site is located in the St. Mary's River and adjacent wetlands, approximately 450 yards north of Maryland Route 471, St. Mary's County, Maryland.

FOR FURTHER INFORMATION CONTACT: Karen M. Wolper, Records Clerk, Wetlands Review Section (3WM13), Environmental Protection Agency, Region III, Sixth and Walnut Streets, Philadelphia, PA 19106, (215–597–3357).

SUPPLEMENTARY INFORMATION:

Background

Under Section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) any person who wishes to discharge dredge or fill material into the waters, including wetlands, of the United States must first obtain a dredge or fill permit from the Secretary of the Army, acting through the Chief of Engineers.

During the public interest review of this permit application, EPA requested that an Environmental Assessment (EA) be performed (October 20, 1980). The request was made because the Corps' public notice did not provide sufficient information. EPA's major concerns were relative to project justification and the inadequacy of the resource assessment.

On December 18, 1980, EPA evaluated the Environmental Assessment (EA) submitted by the Corps. This document, prepard by the applicant, also proved to be inadequate. Subsequently, in response to indications that significant wetland areas would be inundated by project implementation, EPA requested (January 6, 1981) that a wetland inventory be conducted. A January 13, 1981 site inspection by EPA personnel

confirmed the presence of an extensive, diverse wetland area that would be destroyed should the proposed project be implemented.

A wetland inventory was submitted by the applicant on February 27, 1981. It was based on the U.S. Fish and Wildlife Service National Wetland Inventory maps of the area. This inventory revealed that at least 111 acres of wetlands were to be destroyed at the project site. The inventory was forwarded to EPA by the Corps on March 11, 1981.

On July 10, 1981, EPA recommended that the Corps' permit authorization be denied. Furthermore, EPA suggested that the project merited the preparation of an Environmental Impact Statement, pursuant to the National Environmental Policy Act, because of the involvement of Federal permitting authorities and the expenditure of Federal funds. (The project is to be funded largely through the Soil Conservation Service of the U.S. Department of Agriculture.) The original EIS was a two page document, written in 1970, which concluded that "no adverse effects on the environment have been identified." The U.S. Fish and Wildlife Service also recommended denial of permit authorization on July 24, 1981.

EPA staff then initiated an intensive wetland inventory of the entire project area. Aerial survey and photographic analysis, follwed by field evaluations were performed during March through June of 1982. These field exercises revealed a wetland system that is much more complex and diverse than had been indicated earlier. The wetland area also proved to be more extensive than previously estimated. EPA estimates that at least 170 acres of wetland would be destroyed by the project.

Proposed mitigation measures for the project were evaluated at this time and these measures were determined to be inadequate for replacement of the extensive, high quality wetlands that now exist at the project site.

The Corps of Engineers held a public hearing on September 7, 1982. Testimony was given at the hearing by representatives of the Soil Conservation Service, the Department of Natural Resources and local citizens. Subsequent to the public hearing the District Engineer decided to issue the permit, and notification of intent to issue was forwarded to EPA on September 28, 1982. Accordingly, on September 29, 1982, the Regional Administrator notified EPA headquarters of his intention to elevate the permit decision to higher authorities at EPA and the Corps, renewing Region III's objections to issuance of permit NABOP-FR 80-0789. Pursuant to the EPA-Corps memorandum of agreement, EPA headquarters submitted a 404(q) referral to the Assistant Secretary of the Army on October 27, 1982. The COE granted limited acceptance of the elevation and agreed to investigate only the mitigation issue. On January 28, 1983 the Corps notified EPA that the permit would be issued, notwithstanding EPA's objections. The permit was forwarded for signature to the State of Maryland, at which time the Chesapeake Bay Foundation filed suit against the Corps of Engineers to enjoin permit issuance.

On May 17, 1983, the permit was accepted and endorsed by the State of Maryland. On May 27, 1983, EPA Region III prepared to initiate 404(c) proceedings by notifying the Corps of Engineers of the Region's intent to issue a public notice of a proposed determination to prohibit or deny the specification, or use for specification as a disposal site of the area covered by the proposed permit No. NABOP-FR 80-0789. The Corps had 15 days to respond to EPA's letter of intent to prohibit implementation of the St. Mary's impoundment site as a disposal area through Section 404(c) proceedings. However, on June 10, 1983, a 7 day comment time extension was requested by the Corps and verbally granted by EPA. The Corps response, dated June 21, 1983, acknowledged the 404(c) action undertaken by EPA, and placed the Maryland DNR permit in an inactive status until the resolution of the 404(c) proceeding. On June 23, 1983, the Soil Conservation Service (SCS) issued a notice of intent to supplement the previous EIS concerning the St. Mary's Watershed. SCS expects to have a draft EIS completed by October 1, 1983. EPA will consider the supplemental EIS associated with the project prior to making final its 404(c) determination. Normally, at the conclusion of the public comment/public hearing period, the Regional Administrator will decide whether to recommend that the determination be made final by the Administrator or to withdraw the proposed determination. However, Region III will reopen the comment period to evaluate all information, including the supplemental EIS, prior to its 404(c) determination. In the event the applicant or the project sponsor decides not to proceed with the project, the Regional Administrator will withdraw the proposed determination. If the proposed determination becomes final by action of the EPA Administrator, it will prevent the subsequent discharge of fill material at this site.

Impoundment of the upper St. Mary's River under proposed permit No. NABOP-FR 80-0789 would have an unnecessary and unacceptable adverse impact on the fisheries, shellfisheries, wildlife, and wetland resources of the St. Mary's River Watershed. Palustrine wetland losses caused by the inundation of wetlands on the project site and by the isolation of other upstream wetland areas from the estuarine processes of the St. Mary's River Watershed total approximately 344 acres. Those losses of wetland values, combined with the estimated 198 acres already destroyed or isolated by a nearby (SCS/MD DNR) impoundment, will account for the elimination of 57% of the watershed's palustrine wetland resource.

Purpose of the Public Notice

Region III would like to obtain public comments on whether or not the impacts of the impoundment of an ecologically contributing wetland system represent an unacceptable adverse effect as described in 404(c) of the Clean Water Act. Any interested persons may submit written comments on the proposed determination. Comments should be directed to whether the proposed determination should become the final determination or whether corrective action could be taken to reduce the adverse impact of the discharge. All such comments will be considered in preparing the recommended determination. Any interested person, affected land owner, or permit applicant or holder may request a hearing by submitting a written request during the public comments period. All comments and/or requests for a hearing should be submitted no later than 60 days from the date of this notice, to Karen M. Wolper, Records Clerk, Wetlands Review Section (3WM13), Environmental Protection Agency, Region III, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-3357.

Interested persons may obtain additional information including copies of the proposed determination.

Dated: September 1, 1983.

Thomas P. Eichler,

Regional Administrator, Region III.

[FR Doc. 83-25440 Filed 9-16-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 83-955; File No. BR-801201VG et al.]

Daniel Meister, Trustee in Bankruptcy for New Haven Radio, Inc., et al.; Hearing Designation Order

In re applications of Daniel Meister, Trustee In Bankruptcy For New Haven Radio, Inc., MM Docket No. 83-955, File No. BR-801201VG; Has: 1340 kHz, 250 W, 1 kW-LS, U; For Renewal of License of Station WNHC, New Haven, Connecticut; Daniel Meister, Trustee In Bankruptcy For New Haven Radio, Inc. (Assignor), MM Docket No. 83-956, File No. BAL-821118GB; and Wardoco, Inc. (Assignee) For Consent to the Assignment of License of Station WNHC New Haven, Connecticut; Southern Connecticut Radio New Haven, Connecticut, MM Docket No. 83-957, File No. BP-810302AB; Req: 1340 kHz, 250 W, 1 kW-LS, U; For a Construction Permit.

Adopted: July 22, 1983.

Released: September 14, 1983.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration: (1) the license renewal application of Daniel Meister, Trustee in Bankruptcy for New Haven Radio, Inc. (hereinafter "licensee" or "trustee"), for AM radio station WNHC, New Haven, Connecticut; (2) an application for consent to the assignment of the WNHC license from the trustee to Wardoco, Inc. ("Wardoco"); and (3) the mutually-exclusive application of Southern Connecticut Radio ("Southern Connecticut") for a construction permit for a radio station specifying WNHC's frequency and facilities. Also before us are a petition to deny the WNHC license renewal application, filed on March 2, 1981, by Carl Grande and Stanley Scholsohn, the principals of Southern Connecticut, and a petiton to dismiss or deny the Southern Connecticut application filed by Meister on October 6, 1981.

Procedural Matters

2. *Southern Connecticut's Petition to Deny.* Grande and Scholsohn did not support their petition with an affidavit demonstrating personal knowledge of the facts alleged, nor did they indicate that a copy of the petition was served upon licensee. Accordingly, it does not meet the statutory requirements for a petition to deny. 47 U.S.C. 309(d) (1). Moreover, that pleading is essentially a petition to specify issues. Since the Commission's *Report and Order* in re *Revised Procedures for the Processing of Contested Broadcast Applications; Amendments of Part 1 of the Commission's Rules*, 72 FCC 2d 202 (1979), directed the deletion of all issue pleadings in pending cases, the matters sought to be raised in this petition have not been considered. Accordingly, an opportunity to raise any allegations contained therein will be afforded the parties post-designation pursuant to Section 1.229 of the Commission's Rules.

3. *Trustee's Petiton to Dismiss or Deny.* The trustee filed a "petition to Dismiss or Deny" the Southern Connecticut application five months after the deadline for petitions to deny. The trustee claims it should be considered timely since he filed it within thirty days after becoming licensee of WNHC. However, that assertion is without merit, as Section 73.3584(a) of the Commission's Rules states that petitions to deny new applications must be filed by the "cut-off" date specified in the FCC public notice, *i.e.*, May 1, 1981. While it is true that Meister was not yet licensee on that date, WNHC did have as licensee another trustee who filed the WNHC renewal application and could have timely filed a petition against Southern Connecticut's application. This truatee has failed to meet the standards established by Section 73.3584(a), which provides that extensions of time to file petitions to deny will only be granted if all parties consent or a compelling showing is made that unusual circumstances made the filing of a timely petition impossible. Accordingly, the petition will be dismissed and considered as an informal objection. The matters sought to be raised in the trustee's pleading comprise, essentially, a petition to specify issues and, accordingly, such matters have not been considered. While Southern Connecticut's application is deficient in certain respects requiring the specification of issues for hearing, see paragraph 12 *infra*, the application for purposes of filing was substantially complete and therefore, properly accepted. An opportunity to raise the other matters contained in the trustee's pleading will be afforded post-designation pursuant to Section 1.229 of the Commission's Rules. See para. 2, *supra*.

4. *Other Matters.* The WNHC license was formerly held by New Haven Radio, Inc., until September 10, 1980, when its president and sole shareholder, Anthony R. Martin-Trigona, filed a petition for voluntary reorganization pursuant to the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. On October 10, 1980, that Court appointed Nicholas J. Bua trustee. Bua, as trustee, succeeded by operation of law on the date of his appointment to all the duties of a Commission licensee, including the responsibility of filing a license renewal application as he did on December 1, 1980, as required by the Commission's Rules. On December 8, 1980, Bua's appointment was terminated and Trigona was placed as debtor in possession until January 20, 1981, when Daniel Meister was approved trustee by the Bankruptcy Court. On February 19, 1981, Meister requested that his name be substituted as trustee on the WNHC renewal application. Although Trigona, on December 1, 1980, tendered to the Commission a license renewal application for WNHC on behalf of New Haven Radio, Inc., that corporation was not the licensee of the station on that date. Therefore, the renewal application submitted by Trigona will be dismissed. In addition, related pleadings filed by Trigona, a "Petition to Deny and Demand for Hearing," a "Motion to Dismiss Application," a "Petition to Deny Renewal of License," a "Motion to Bar Commission Staff Members from Making Anonymous Comments to the News Media," a "Petition to Deny" the application of Daniel Meister for assignment of the license of WNHC to Wardoco Inc., and a "Motion to Dismiss Application as Fraudulent and Unauthorized," will also be dismissed.[1]

The Competing Applications

5. *Southern Connecticut.* Southern Connecticut estimates that it will require $260,125 to construct its proposed station and operate it for three months. In order to meet those costs, it intends to rely on existing capital of $200,000 and a bank loan of $135,000. However, the applicant has failed to provide any documentation for the bank loan. In addition, the application states that there are no funds on deposit in a bank or other depository and there is no balance sheet submitted to show the existence of the claimed capital. Morever, the financial statements of Southern Connecticut's two principals do not show sufficient liquid assets to provide the necessary funds for initial construction and operation.[2] Thus, the material submitted in the application does not demonstrate Southern Connecticut's financial qualifications.

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[1] These pleadings for the most part raise matters addressed herein in the context of the trustee's and Southern Connecticut's petition. Allegations not addressed here may only be raised if Trigona is granted party status. See Section 1.223(b) of the Commission's Rules.

[2] Both have not properly described or shown the ready marketability of their non-cash assets. In addition, Grande has failed to demonstrate that his real and personal property can be relied upon to provide a readily available source of funds.

Consequently, an appropriate issue will be specified.

6. Applicants for new broadcast stations are required by Section 73.3580(f) of the Commission's Rules to give local notice of the filing of their applications. We have no evidence that Southern Connecticut published the required notice. To remedy this deficiency, Southern Connecticut must publish local notice of its application, if it has not already done so, and so inform the presiding Administrative Law Judge.

7. *WNHC.* The WNHC renewal application and the Southern Connecticut proposal are mutually exclusive in that they both seek authorization for the same frequency in New Haven. Generally, when the Commission receives an application for a new broadcast facility whose proposal would interfere with the operation of an existing station for which a renewal application is on file, a comparative hearing must be held to determine which applicant would better serve the public interest. See Section 309(d)(1) of the Communications Act of 1934, as amended (47 U.S.C. § 309(d)(1)). However, in this case, the WNHC license is held by the trustee, who is charged with operating the station until assignment of that license can be made to a qualified assignee. The trustee, therefore, seeks to renew the WNHC license in order to assign it to Wardoco. Thus, the question arises as to which proposals are to be compared in this proceeding.

8. In analogous tripartite situations, the Commission has stated that "the public interest would better be served by comparing the qualifications of the two parties intending to operate the station; namely the prospective assignee and the construction permit applicant . . ." *1400 Corp.*, 4 FCC 2d 715, 716 (1966). See also, *Cleveland Board of Education*, 87 FCC 2d 9, 10) (1981); *Bronco Broadcasting Co., Inc., et al.*, 50 FCC 2d 529, 536 (1974). Consequently, because this trustee has been under a continuing obligation to effectuate an assignment of the WNHC license, we find that the most appropriate comparison under the current circumstances would be between Wardoco, as the proposed assignee of the license, and Southern Connecticut, the applicant for a construction permit. If Southern Connecticut prevails in the hearing, it will be awarded a construction permit and the renewal application will be denied. If Wardoco prevails, the renewal and assignment applications will be granted.[3]

9. Review of the assignment application indicates that Wardoco is legally, financially, technically and otherwise qualified to operate the station as proposed. The assignment as proposed will not only fulfill the Order of the bankruptcy court, but will also permit Wardoco to participate in a comparative hearing with Southern Connecticut to determine which applicant for the WNHC facilities will provide better service to the New Haven community.

10. Accordingly, it is ordered, that the petition to dismiss or deny the Southern Connecticut application filed by the trustee is denied; the motion to dismiss and petition to deny the Southern Connecticut application, with a demand for hearing, filed by Anthony R. Martin-Trigona are dismissed; the petition to deny the renewal application of New Haven Radio, Inc., filed by Grande and Scholsohn is dismissed; the petition to deny the renewal application being prosecuted by the trustee filed by Anthony R. Martin-Trigona is dismissed; and the "Motion to Bar Commission Staff Members from Making Anonymous Comments to the News Media" filed by Anthony R. Martin-Trigona is dismissed. Additionally, the petition to deny the application of Daniel Meister for assignment of the license of WNHC to Wardoco, Inc., and the "Motion to Dismiss Application as Fraudulent and Unauthorized" are dismissed.

11. Except as indicated by the issues specified below, the applications of Southern Connecticut Radio and Wardoco, Inc. demonstrate that the applicants are legally, financially, technically and otherwise qualified to operate as proposed. A hearing will be held to compare their qualificaitons. If Southern Connecticut prevails in that hearing, it will be awarded the construction permit and the renewal application will be denied. If Wardoco prevails, the renewal and assignment applications will be granted.[4]

12. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications of Southern Connecticut Radio and Wardoco, Inc. Are designated for a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine (a) the sources and availability of Southern Connecticut's assets, and (b) in light thereof, whether Southern Connecticut is financially qualified.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest; and

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications, if any, should be granted.

13. It is further ordered, That Southern Connecticut Radio shall inform the presiding Administrative Law Judge within 30 days of the release of this Order as to whether it has complied with the public notice requirements of Section 73.3580(f) of the Commission's Rules, or an appropriate issue will be specified by the Judge.

14. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

15. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

16. It is further ordered, That the Mass Media Bureau shall send, by Certified Mail—Return Receipt Requested, a copy of this Hearing Designation Order to each of the parties to this proceeding.

Federal Communications Commission.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 83-25407 Filed 9-16-83; 8:45 am]

BILLING CODE 6712-01-M

[3] Thus, the trustee's renewal application will be held in abeyance pending resolution of the comparative hearing. See paragraph 11, *infra*.

[4] We are also consolidating the renewal application for the sole purpose of permitting action on that application in accordance with paragraphs 8, above.

[File No. BPH-810909AJ; MM Docket No. 83-958 et al.]

Applications for Consolidated Hearing; Juarez Communications Corp. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Juarez Communications Corporation	Atlanta, Michigan	BPH-810909AJ	83-958
B. Barr Broadcasting Corporation	do	BPH-820120AM	83-959
C. Telecommunications Partners, Ltd.	do	BPH-820415AF	83-960
D. Richard D. Stone and Clara Scatchedason d.b.a. Northland Communications.	do	BPH-820415AO	83-961
E. Up North Broadcasting Company	do	BPH-820211AL	83-962

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), A
2. Comparative, A, B, C, D, E
3. Ultimate, A, B, C, D, E

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix—Issue(s)

To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph 8 *, the applicant (s) is financially qualified: A (Juarez).

[FR Doc. 83-25406 Filed 9-16-83; 8:45 am]

BILLING CODE 6712-01-M

* Paragraph 8 reads as follows: The material submitted by the applicant(s) below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency: *Applicant(s)*—A (Juarez); *Deficiency*—Neither bank commitment letter nor equipment supplier letter contains specific terms.

[File No. BPH-820317 AH; MM Docket No. 83-966 et al.]

Applications for Consolidated Hearing; Read Broadcasting et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Thomas W. Read, d.b.a. Read Broadcasting	Spokane, Washington	BPH-820317AH	83-966
B. John Russo and A. Michael Siegel, d.b.a. Pacific Metrocom Northwest.	do	BPH-820929AO	83-967
C. Claire Cordon	do	BPH-820929AR	83-968

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A, B, C
2. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 83-25406 Filed 9-16-83; 8:45 am]

BILLING CODE 6712-01-M

[File No. BPH-811201AP; MM Docket No. 83-964 et al.]

Applications for Consolidated Hearing; Roy Roehl and Associates et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Roy Roehl and Associates	Anchorage, Alaska	BPH-811201AP	83-964
B. Last Frontier Broadcasting, Inc.	do	BPH-820623AN	83-965

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Comparative, A, B
Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Audio Services Division, Mass Media Bureau.

[FR Doc. 83-25404 Filed 9-16-83; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 83-789; File No. BPCT-821230KF et al.]

South Bay Broadcasting Co., Inc., et al., Hearing Designation Order

In re applications of South Bay Broadcasting Company, Inc., Rancho Palos Verdes, California; MM Docket No. 83-789, File No. BPCT-821230KF;

Sam Sangmyun Choi, Rancho Palos Verdes, California; MM Docket No. 83-790, File No. BPCT-830314KH;

Channel 44 Associates, a Limited Partnership, Rancho Palos Verdes, California; MM Docket No. 83-791, File No. BPCT-830325KE;

Springfield Television Corporation of California, Inc., Rancho Palos Verdes, California; MM Docket No. 83-792, File No. BPCT-830325KF;

Rancho Palos Verdes Broadcasters, Inc., Rancho Palos Verdes, California; MM Docket No. 83-793, File No. BPCT-830325KG;

Palos Verdes Broadcasting Company, Rancho Palos Verdes, California; MM Docket No. 83-794, File No. BPCT-830325KH;

California Telecasters, Rancho Palos Verdes, California; MM Docket No. 83-795, File No. BPCT-830325KI;

Channel 44, Inc., Rancho Palos Verdes, California; MM Docket No. 83-796, File No. BPCT-830325KJ; For Construction Permit.

Adopted: July 28, 1983.
Released: September 12, 1983.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 44, Rancho Palos Verdes, California; a petition for leave to amend filed by Springfield Television Corporation of California Inc. (Springfield) [1]; a petition for leave to amend filed by Palos Verdes Broadcasting Company [2] and related pleadings.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the areas and population that the respective applicants propose to serve. Consequently, for the purpose of comparison, the areas and population which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television services of 64 dBu (Grade B) or greater intensity, will be considered under the standarad comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. Springfield Television Corporation of California, Inc. (Springfield), Rancho Palos Verdes Broadcasters, Inc. (RPVB, Inc.) and California Telecasters all specify the same transmitter site. On May 20, 1983, RPVB, Inc. filed an amendment to its application, which included a copy of a letter from the attorney for Santa Catalina Island Conservancy (Conservancy), owner of the proposed site. The letter, which was addressed to South Bay Broadcasting Company, Inc. (also applicant for Channel 30) indicates that the specified transmitter site is not available. Accordingly, an appropriate issue will be specified.

4. No determination has been made that the tower heights and locations proposed by Rancho Palos Verdes Broadcasters, Inc.,[3] and California Telecasters would not constitute a hazard to air navigation. Since a question exists as to whether a site on Santa Catalina Island would be available to either of these applicants, it would be futile to specify the conventional air hazard issue. Therefore, a contingent air hazard issue will be specified which will require trial of the issue only if it has been established that a site on the Island would, in fact, be available. If it is found that no site would be available on the Island to any of the applicants, each of the applicants would have to amend its application to propose a different site and obtain FAA approval for the new height and location. In that event, the presiding officer would need to specify an air hazard issue with respect to those applicants who are unable to obtain FAA approval.

5. No determination has been made that the tower heights and locations proposed by South Bay Broadcasting Company, Inc., Palos Verdes Broadcasting Company, and Channel 44, Inc. would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

6. Section 73.685(e) of the Commission's Rules states that stations operating on Channels 14-83 with transmitters delivering a peak visual power of more than one kilowatt may employ directive transmitting antennas with a maximum to minimum ration in the horizontal plane of not more than 15 dB. California Telecasters and Channel 44, Inc. each proposes a directional antenna with a maximum to minimum radio in excess of 15 dB. However, each has requested a waiver of Section 73.685(e). Accordingly, an issue will be specified to determine if circumstances exist to warrant waiver of Section 73.685 of the Rules.

7. Sam Sangmyun Choi, Springfield Television Corporation of California, Inc., Palos Verdes Broadcasting Company, California Telecasters and Channel 44, Inc. each proposes a

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[1] On May 26, 1983, Springfield petitioned for leave to amend to change its name from Springfield Television Corporation and to reflect changes in ownership. The petition will be granted and the amendment will be accepted for Section 1.65 purposes only.

[2] On June 17, 1983, Palos Verdes Broadcasting Company filed a petition for leave to amend to correct a mnor error in its application. The amendment is accepted for Section 1.65 purposes only.

[3] The Commission is not in receipt of the Federal Aviation Administration's study for Rancho Palos Verdes Broadcasters, Inc.

transmitter site that is located 1.08 miles from Station KBRT(AM), Avalon, California. Because of the proximity of the proposals to KBRT(AM), grant of a construction to permit to any of these applicants will be conditioned to ensure that KBRT's radiation pattern is not adversely affected by the construction of the proposed facility.

8. The information submitted by Springfield Television of California, Inc. (Springfield) and California Telecasters in Section V–C of their respective applications, regarding the overall tower height above ground (AGL), does not agree with the data that each of these applicants specified in Section V–G of their applications and filed with the Federal Aviation Administration (FAA). South Bay and Springfield each specifies 236.4 feet as its tower height AGL in Section V–C. However, each of their Sections V–G specifies an AGL of 242.8 feet. This is also the AGL they submitted to the FAA. California Telecasters specifies an AGL of 237 feet in Section V–C. However, Section V–G shows an AGL 247 feet, which it also filed with the FAA. Each of these applicants will be required to correct its discrepancies and submit its amendment to the presiding Administrative Law Judge within 20 days after this Order is released.

9. Section 73.636(a)(1) of the Commission's Rules states that no license for a television broadcast station shall be granted to any party if such party directly or indirectly owns, operates, or controls one or more television broadcast stations and the grant of such license will result in any overlap of the Grade B contours of the existing and proposed stations. Walter F. Ulloa, General Partner of Channel 44, Associates, a limited partnership, is employed by Spanish International Communications Corp., licensee of KMEX–TV, Channel 34, Los Angeles, California. Mr. Ulloa has been employed at KMEX–TV since 1975 in a variety of positions. From 1979 to the present Mr. Ulloa has been at various times an account executive and local sales manager. Los Angeles is within the predicted Grade A contour of Channel 44, Associates proposed facility. Accordingly, an issue will be specified to determine whether Mr. Ulloa's association with KMEX–TV, Los Angeles, California, and his interest in Channel 44, Associates' application is inconsistent with the rule; and if so, whether common ownership, operation, or control of KMEX–TV and the proposed television station would be consistent with the public interest.

10.Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

11. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Springfield Television Corporation of California, Inc., Rancho Palos Verdes Broadcasters, Inc. and California Telecasters whether any of them have reasonable assurance of the availability of a transmitter site.

2. In the event that it is determined, pursuant to issue 1, above, that there is reasonable assurance that the transmitter sites proposed by Rancho Palos Verdes Broadcasters, Inc., and California Telecasters on Catalina Island will be available, to determine whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

3. To determine, with respect to South Bay Broadcasting Company Inc., Palos Verdes Broadcating Company, and Channel 44, Inc. whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

4. To determine, with respect to California Telecasters and Channel 44, Inc. whether circumstances exist to warrant a waiver of Section 73.685 of the Commission's Rules.

5. To determine with respect to Channel 44, Associates whether Mr. Ulloa's association with KMEX–TV, Los Angeles California, and his interest in the applicant are inconsistent with Section 73.636 of the Rules, and, if so, whether common ownership, operation, or control of KMEX–TV and the proposed television station would be consistent with the public interest.

6. To determine which of the proposals would, on a comparative basis, best serve the public interest.

7. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

12. It is further ordered, that, in the event of a grant of a construction permit to Sam Sangmyun Choi, Springfield Television Corporation of California, Inc., Palos Verdes Broadcasting Company, California Telecasters or Channel 44, Inc. the construction permit will be conditioned as follows:

Prior to construction of the tower authorized herein, permittee shall notify AM Station KBRT so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority from the Commission in Washington, D.C. to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by Section 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission.

13. It is further ordered, that Springfield Television of California, Inc. and California Telecasters shall each verify or correct the overall tower height above ground specified in Section V–C, FCC Form 301 and the corresponding data filed with FAA and submit an appropriate amendment to the presiding Administrative Law Judge within 20 days after this Order is released.

14. It is further ordered, that Springfield Television Corporation of California, Inc.'s and Palos Verdes Broadcasting Company's petitions for leave to amend are granted and their amendments are accepted for Section 1.65 purposes only.

15. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 2.

16. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party rspondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

17. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 83-25403 Filed 9-16-83; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies; Elm Bancshares, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Elm Bancshares, Inc.*, Elmhurst, Illinois; to acquire 100 percent of the voting shares or assets of Bank of Clarendon Hills, Clarendon Hills, Illinois. Comments on this application must be received not later than October 13, 1983.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *ABC Bancshares, Inc.*, McAlester, Oklahoma; to acquire 12 percent of the voting shares or assets of Wilburton State Bancshares, Inc., Wilburton, Oklahoma. Comments on this application must be received not later than October 13, 1983.

Board of Governors of the Federal Reserve System, September 13, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-25393 Filed 9-16-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; Pocohontas Bankshares Corp. et al.

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

1. *Pocahontas Bankshares Corporation*, Bluefield, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Bluefield, Bluefield, West Virginia. Comments on this application must be received not later than October 13, 1983.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *County Financial Corporation*, North Miami Beach, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of County National Bank of South Florida, North Miami Beach, Florida. Comments on this application must be received not later than October 12, 1983.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Peoples First Bancorp of Madisonville, Inc.*, Madisonville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to Peoples Bank and Trust Company, Madisonville, Kentucky. Comments on this application must be received not later than October 5, 1983.

Board of Governors of the Federal Reserve System, September 13, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-25394 Filed 9-16-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities; Fleet Financial Group, Inc., et al.

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve bank not later than the date indicated.

A. **Federal Reserve Bank of Boston.** (Richard E. Randall, Vice President), 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet Financial Group, Inc.*, Providence, Rhode Island (consumer finance, mortgage banking and

insurance agency; Florida): To engage *de novo* through its indirect subsidiary, Fleet Finance, Inc. in the origination of first and second real estate mortgage loans and the purchase of real estate mortgages, the origination of consumer loans and the purchase of sales finance contracts and acting as agent for the sale of credit life insurance, credit accident and health insurance and credit property insurance. The credit life and credit accident and health insurance which would be sold would be underwritten by an affiliate, Consumer Life Insurance Company, Inc. The sale of property insurance in connection with the extensions of credit by Fleet Finance, Inc., is grandfathered under section 601(D) of the Garn-St Germain Depository Institutions Act. These activities would be conducted from a *de novo* office located in Inverness, Florida serving Citrus County, Florida, and surrounding areas. Comments on this application must be received not later than October 7, 1983.

B. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *The Bank of New York Company, Inc.*, New York, New York (mortgage banking activities; New York): To engage, through its wholly-owned subsidiary Arcs Mortgage, Inc., in the following activities: making loans secured by first and second mortgages on real estate consisting of one-to-four family residential properties. Such activities would be conducted at its branch in Westbury, New York, with a primary service area of the greater New York City metropolitan area and the State of New York. Comments on this application must be received not later than October 13, 1983.

2. *Bankers Trust New York Corporation*, New York, New York (execution and clearance of futures contracts; United States and abroad): To engage through its wholly-owned subsidiary, BT Futures Corp., in executing and clearing futures contracts on U.S. government and GNMA securities, negotiable money market instruments, foreign exchange and bullion on the major commodity exchanges and their affiliated clearing associations. These activities would be conducted from offices of New York, New York and Houston, Texas, serving customers in the United States and abroad. Comments on this application must be received not later than October 13, 1983.

3. *Norstar Bancorp, Inc.*, Albany, New York (investment advisory activities; northeastern United States): To engage through its subsidiary, Norstar Investment Advisory Services Inc., in the business of acting as an investment or financial advisor to the extent permitted by section 225.4(a)(5) of Regulation Y. These activities will be conducted from an office in Rochester, New York, serving Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island and Vermont. Comments on this application must be received not later than October 13, 1983.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Bancgroup-Alabama, Inc.*, Mobile, Alabama (insurance activities; Alabama): To engage, through its subsidiary, FBG Insurance Agency, Inc., in the following activities; acting as insurance agent or broker. The types of insurance will include credit life insurance, accident and health insurance, property damage insurance that is directly related to an extension of credit by bank or nonbank subsidiaries of First Bancgroup-Alabama, Inc. These activities would be performed from the offices of First National Bank of Russellville, Russellville, Alabama, servicing the city of Russellville, and the surrounding area of Franklin County, Alabama. Comments on this application must be received not later than October 11, 1983.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California (mortgage and servicing activities; Wyoming): To engage through its subsidiary, Security Pacific Mortgage Corporation in the origination and acquisition of mortgage loans, including development and construction loans on multi-family and commercial properties for Security Pacific Mortgage Corporation's own account or for sale to others; and the servicing of such loans for others. These activities would be conducted from an office of Security Pacific Mortgage Corporation in Cheyenne, Wyoming, serving the State of Wyoming. Comments on this application must be received not later than October 12, 1983.

Board of Governors of the Federal Reserve System, September 13, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-25395 Filed 9-16-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Blood Products Advisory Committee

Date, time, and place. October 6 and 7, 8:30 a.m., Rm. 121, Bldg. 29, Office of Biologics, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, October 6, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 11:30 a.m.; closed presentation of data, 1 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 4:30 p.m.; closed committee deliberations, October 7, 8:30 a.m. to 12 m.; Mary Ann Tourault, National Center for Drugs and Biologics (HFN-830), Food and Drug Administration, Bldg. 29, 8800 Rockville Pike, Bethesda, MD 20205, 301-496-5241.

General function of the committee. The committee reviews and evaluates data on the safety, effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The theme of the meeting will be the use of marker viruses to quantitate the infectivity of plasma derivatives.

Closed presentation of data. The committee will hear trade secret or confidential commercial information from individual manufacturers relevant to pending biological license applications for plasma derivative products and on new drug applications

for plasma expanders. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will review trade secret or confidential commercial information relevant to pending biological license applications for plasma derivative products and on new drug applications for plasma expanders. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Gastroenterology-Urology Device Section of the General medical Devices Panel

Date, time, and place. October 13 and 14, 9 a.m., Rm. 1207, 8757 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, October 13, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 11 a.m.; closed presentation of data, 11 a.m. to 12 m.; open committee discussion, 1 p.m. to 2 p.m.; closed presentation of data, 2 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 4 p.m.; open committee discussion, October 14, 9 a.m. to 11 a.m.; closed presentation of data, 11 a.m. to 12 m.; open committee discussion, 1 p.m. to 4 p.m.; Norman T. Welford, National Center for Devices and Radiological Health (HFK-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 30, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications (PMA) for a plasmapheresis filter and control system for therapeutic purposes and for a laser for surgical purposes.

Closed presentation of data. The committee will discuss trade secret data presented by sponsors of PMA's for a plasmapheresis filter and control system for therapeutic purposes and a laser for surgical purposes. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Circulatory System Devices Panel

Date, time, and place. October 14, 8:30 a.m., Rm. 703-727A, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, October 14, 8:30 a.m. to 11 a.m.; open committee discussion, 11 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; Glenn A. Rahmoeller, National Center for Devices and Radiological Health (HFK-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7559.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 30, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss (1) a petition for the reclassification of cardiopulmonary bypass oxygenators from class III to class II, submitted by the Health Industry Manufacturers Association; and (2) a premarket approval application for the Diplos-03 dual chamber (sensing and pacing) pacemaker pulse generator and EPR-400 programmer, submitted by Biotronik Sales, Inc.

Closed committee deliberations. The panel may discuss (1) certain trade secret or confidential commercial information concerning the premarket approval application and (2) certain investigational device exemptions for devices that will be the subject of future premarket approval applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Immunology Device Section of the Immunology and Microbiology Devices Panel

Date, time, and place. October 17 and 18, 9 a.m., Rm. 703-727A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, October 17, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 p.m.; closed presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 5 p.m.; open committee discussion, October 18, 9 a.m.to 11 a.m., closed presentation of data, 11 a.m. to 1 p.m.; closed committee deliberations, 1 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 5 p.m.; Srikrishna Vadlamudi, National Center for Devices and Radiological Health (HFK-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 5, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application (PMA) for a tumor marker test kit for use as an aid in the management of cancer patients.

Closed presentation of data. Representatives of the manufacturer will present information to the committee containing trade secret data regarding the PMA. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will review and discuss trade secret information regarding the PMA. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however,

that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

Dated: September 13, 1983.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 83-25397 Filed 9-14-83; 2:54 pm]

BILLING CODE 4160-01-M

[Docket No. 83N-0.115; DESI 12368]

Isoproterenol Hydrochloride for Oral Use; Drug Efficacy Study Implementation; Withdrawal of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the new drug application for Proternol (controlled release) Tablets containing isoproterenol. FDA is withdrawing approval because the drug product lacks substantial evidence of effectiveness for its labeled indication. The drug product has been used for the treatment of heartblock and Adams-Stokes syndrome.

EFFECTIVE DATE: October 19, 1983.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific drug product should be identified with Docket No. 83N-0115 and reference number DESI 12368 and directed to the Division of Drug labeling compliance (HFN-310), national Center for Drugs and Biologics, food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, National Center for Drugs and Biologics (HFN-8), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of May 20, 1983 (48 FR 22601), the Director of the National Center for Drugs and Biologics revoked the temporary exemption that had allowed isoproterenol hydrochloride (controlled release) tablets to remain on the market beyond time limits established under the Drug Efficacy Study Implementation program. That notice also proposed to withdraw approval of the new drug application that provided for the product and offered an opportunity for hearing on the proposal. The basis of the proposal was a lack of substantial evidence of effectiveness as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and 21 CFR 314.111(a)(5). Neither the holder of the new drug application nor any other person filed a written notice of appearance and request for hearing as provided by the May 20, 1983 notice. The failure to file such an appearance constitutes an election by such persons not to avail themselves of the opportunity for hearing. Accordingly, approval of the following new drug application is being withdrawn:

NDA 12-368; Proternol (controlled-release) Tablets containing isoproterenol hydrochloride; Key Pharmaceuticals, Inc., 300 Northeast 59th St., Miami, FL 33137.

Any drug product that is identical, related, or similar to the drug product named above and is not the subject of an approved new drug application is covered by the new drug application reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address given above).

The Director of the National Center for Drugs and Biologics, under the

Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053 as amended (21 U.S.C. 355)), and under the authority delegated to him (21 CFR 5.82) finds that on the basis of new information before him with respect to this drug product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the drug product will have the effects it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 12–368 and all its amendments and supplements is withdrawn effective October 10, 1983.

Shipment in interstate commerce of the product named above or of any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: September 9, 1983.

Harry M. Meyer, Jr.,

Director, National Center for Drugs and Biologics.

[FR Doc. 83-25413 Filed 9-16-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgement of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) notice is hereby given that the Seminole Nation of Florida, c/o Messrs. Robert T. Coulter and Curtis Berkey, Indian Law Resource Center, 601 E Street, SE, Washington D.C. 20003; has filed a documented petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition, which was signed by members of the group's governing body, was received by the Bureau of Indian Affairs on August 5, 1983.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) of this title, interested parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs files.

The petition may be examined by appointment in the Division of Tribal Government Services, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20242.

Kenneth Smith,

Assistant Secretary, Indian Affairs.

[FR Doc. 83-25433 Filed 9-16-83; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Colorado; Filing of Plats of Survey

September 6, 1983.

The plats of survey of the following described lands were officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., September 6, 1983.

Sixth Principal Meridian

T. 4 S., R. 81 W.

The plat, in two sheets, representing the dependent resurvey of the Tenth Guide Meridian West (east boundary), the west and north boundaries, a portion of the subdivisional lines, and the survey of the subdivision of certain sections, T. 4 S., R. 81 W., Sixth Principal Meridian, Colorado, Group 558, was accepted August 15, 1983.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

New Mexico Principal Meridian

T. 41 N., R. 10 E.

The plat representing the dependent resurvey of a portion of the west boundary of Luis Maria Baca Grant No. 4, a portion of the Tenth Standard Parallel North (south boundary), and a portion of the subdivisional lines, T. 41 N., R. 10 E., New Mexico Principal Meridian, Colorado, Group 716, was accepted August 16, 1983.

T. 42 N., R. 9 E.

The plat representing the dependent resurvey of a portion of the east boundary, and a portion of the subdivisional lines, T. 42 N., R. 9 E., New Mexico Principal Meridian, Colorado, Group 716, was accepted August 16, 1983.

T. 42 N., R. 10 E.

The plat representing the dependent resurvey of a portion of the west boundary of Luis Maria Baca Grant No. 4, a portion of the south boundary, and a portion of the subdivisional lines, T. 42 N., R. 10 E., New Mexico Principal Meridian, Colorado, Group 716, was accepted August 16, 1983.

T. 43 N., R. 9 E.

The plat representing the dependent resurvey of a portion of the south boundary, a portion of the east boundary, and a portion of the subdivisional lines, T. 43 N., R. 9 E., New Mexico Principal Meridian, Colorado, Group 716, was accepted August 16, 1983.

T. 43 N., R. 10 E.

The plat representing the dependent resurvey of a portion of the south boundary, and a portion of the subdivisional lines, T. 43 N., R. 10 E., New Mexico Principal Meridian, Colorado, Group 716, was accepted August 16, 1983.

These surveys were executed to meet certain administrative needs of the Bureau of Reclamation.

All inquiries about these lands should be sent to the Colorado State Office, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202.

Kenneth D. Witt,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 83-25438 Filed 9-16-83; 8:45 am]

BILLING CODE 4310-84-M

[C-28333 and C-28334]

Colorado; Proposed Continuation of Withdrawals

Dated: September 8, 1983.

In accordance with the provisions of Section 204 of the Federal Land Policy and Management Act, the Bureau of Land Management (BLM) is reviewing possible continuation of existing Naval Oil Shale Reserve No. 1 and Naval Oil Shale Reserve No. 3 withdrawals made by virtue of the authority vested in the President.

1. Executive Order of December 6, 1916, as amended by Restoration Order of June 12, 1919, created Naval Oil Shale Reserve No. 1. The following described lands are currently proposed for withdrawal continuation:

(C-28333)

Sixth Principal Meridian

Description as conformed to latest plats of survey:

T. 5 S., R. 94 W.,
- Sec. 2, lots 2 to 7, inclusive, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
- Sec. 3, lots 1 to 4, inclusive, S½N½, and S½ (all);
- Sec. 4, lots 1 to 4, inclusive, S½N½, and S½ (all);
- Sec. 5, lots 1 to 4, inclusive, S½N½, and S½ (all);
- Sec. 6, lots 4 to 10, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼ (all);

Sec. 7, lots 1 to 4, inclusive, E½W½, and E½ (all);
Sec. 8, N½, N½S½, S½SW¼, and *patented lands with minerals reserved to United States in S½SE¼;
Sec. 9, 10, and 11;
Sec. 13, W½NW¼, SW¼, and SW¼SE¼;
Secs. 14 and 15;
Sec. 16, N½N½, S½S½, and *patented lands with minerals reserved to United States in S½N½ and N½S½;
Sec. 17, W½, S½SE¼, and *patented lands with minerals reserved to United States in NE¼ and N½SE¼;
Secs. 18 to 35, inclusive;
Sec. 36, N½NE¼, SW¼NE¼, NW¼, N½SW¼, and SW¼SW¼.

T. 6 S., R. 94 W.,
Sec. 5, lots 3 and 4, and SW¼NW¼;
Sec. 6, lots 4 to 10, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;

By Protraction Diagram No. 5,

Sec. 7, NE¼NW¼ and W½NW¼.

T. 5 S., R. 95 W.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½ (all);
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½ (all);
Sec. 11 to 14, inclusive, secs. 23 to 26, inclusive, and secs. 35 and 36.

T. 6 S., R. 95 W.,
Sec. 1, lots 3 to 14, inclusive, and S½ (all);
Sec. 2, lots 1 to 12, inclusive, and S½ (all);
Sec. 3, lots 1 to 12, inclusive, E½SE¼, and *patented lands with minerals reserved to United States in SW¼ and W½SE¼;
Sec. 4, lots 1 to 12, inclusive, SW¼, W½SE¼, and *patented lands with minerals reserved to United States in E½SE¼;
Sec. 5, lots 1 to 12, inclusive, and S½ (all);
Sec. 6, lots 3 to 16, inclusive, E½SW¼, and SE¼ (all);
Sec. 7, lots 1 to 8, inclusive, W½NE¼, E½NW¼, and ****patented lands by metes and bounds in remainder of section;
Sec. 8, lots 1 to 4, inclusive, and ****patented lands by metes and bounds in remainder of section;
Sec. 9, lots 1 to 4, inclusive, and ****patented lands by metes and bounds in remainder of section;
Sec. 10, lots 1 to 7, inclusive, and E½NE¼, subject to Mineral Entry application C–012327 for lots 4 and 6, and for portions of lots 1 and 5, and E½NE¼ in unpatented Mineral Survey No. 20819, and ****patented lands by metes and bounds in remainder of section;
Sec. 11, lots 1 to 5, inclusive, N½, and N½SW¼, subject to Mineral Entry application C–012327 for lots 1, 2, 4, and 5, and for portions of lot 3, N½, and N½SW¼ in unpatented Mineral Survey No. 20819, and ****patented lands by metes and bounds in remainder of section;
Sec. 12, lots 1 and 2, N½, and NE¼SW¼, subject to Mineral Entry application C–012327 for portions of lot 1, NW¼, and NE¼SW¼ in unpatented Mineral Survey No. 20819, and ****patented lands by metes and bounds for portions of W½SW¼ south and west of lots 1 and 2;
Sec. 14, ****patented lands in N½NE¼, SW¼NE¼, W½, and NW¼SE¼;
Sec. 15, lots 2to 5, inclusive, W½SW¼, and ****patented lands by metes and bounds in remainder of section, excluding portions of SW¼NW¼ north of lot 1;
Sec. 16, **** patented lands in N½N½ and S½NW¼;
Sec. 17, lots 1 and 2, and **** patented lands by metes and bounds in remainder of section, excluding SE¼SW¼ and portions of SW¼SE¼ west of lot 3;
Sec. 18;
Sec. 19, lots 1 to 7, inclusive, and **** patented lands by metes and bounds in remainder of section;
Sec. 20, **** patented lands in W¼NW¼;
Sec. 22, lots 1, 2, and 4, E½NW¼, and **** patented lands by metes and bounds for portions of N½NE¼, SW¼NE¼, and NW¼SE¼;
Sec. 30, lots 3 and 4.

* Patented lands with all oil and gas and all shale or other rock valuable as a source of petroleum and nitrogen reserved to United States: 960.00 acres.

**** Patented lands with no minerals reserved to United States: Public lands: 4,819.49 acres, 35,587.66 acres.

The area described aggregates 41,367.15 acres in Garfield County.

Patented lands with mineral reservations to the United States are included in the continuation of the withdrawal. Lands patented subsequent to the order as amended, with no mineral reservations to the United States, are included in the continuation of the withdrawal until such time as a formal relinquishment of the order is applied to the lands. Public lands which contain unpatented mineral surveys and valid mining claims in litigation are included in the continuation of the withdrawal until such time as vested rights attach.

2. Executive Order of September 27, 1924, created Naval Oil Shale Reserve No. 3, subject to any valid existing claim and insofar as title therein remains in the United States. The following described lands are currently proposed for withdrawal continuation:

(C–28334)

Sixth Principal Meridan

Description as conformed to latest plats of survey:

T. 5 S., R. 93 W.,
Sec. 6, lots 8, 9, 10, and 12, and *** patented lands with minerals reserved to United States in SE¼NW¼;
Sec. 7, lots 5 to 8, inclusive, W½SE¼, ** patented lands with minerals reserved to United States in lots 1 to 4, inclusive;
Sec. 8, SE¼SW¼;
Sec. 17, NW¼NE¼, E½NW¼, SW¼ SW¼, and *patented lands with minerals reserved to United States in SE¼SW¼;
Sec. 18, lots 1 to 12, inclusive, and NE¼ (all);
Sec. 19, lots 1, 2, and 3, NW¼NE¼, and **patented lands with minerals reserved to United States in lot 4, NE¼NW¼, SE¼SW¼, and SW¼SE¼;
Sec. 20, lots 1 to 4, inclusive, S½NE¼, and S½;
Sec. 29, lots 1 to 8, inclusive, NE¼, and W½W½ (all);
Sec. 30, lot 4, S½SW¼, SW¼SE¼, and **patented lands with minerals reserved to United States in lot 3, N½SW¼, and NW¼SE¼;
Sec. 31, lots 1 to 4, inclusive, W½E½, and W½ (all);
Sec. 32, lots 1 to 4, inclusive, W½E½, and W½ (all).

T. 5 S., R. 94 W.,
Sec. 1, lots 5 to 13, inclusive;
Sec. 2, lot 1;
Sec. 12, lots 3 and 4, S½N½, S½, and **patented lands with minerals reserved to United States in lots 1 and 2;
Sec. 13, NE¼, E½NW¼, N½SE¼, and SE¼SE¼;
Sec. 36, SE¼NE¼, SE¼SW¼, and N½ SE¼.

T. 6 S., R. 94 W.,
Sec. 2, S½NW¼ and NW¼SW¼;
Sec. 3, lots 2 and 3, S½NE¼, NW¼SW¼, S½S½, and NE¼SE¼;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½ (all);
Sec. 5, lots 1 and 2, S½NE¼, SE¼NW¼, and S½;

By Protraction Diagram No. 5,

Sec. 7, NE¼, SE¼NW¼, and S½;
Sec. 8;
Sec. 9, N½, SW¼, N½SE¼, and SW¼ SE¼;

Surveyed,

Sec. 10, NW¼NE¼ and NW¼;
Sec. 17, lots 2 to 6, inclusive, 11, and 12;
Sec. 18, lots 1 to 4, inclusive, NE¼, E½ W½, and NE¼SE¼;
Sec. 19, lots 3 to 8, inclusive, 13, 14, and 15.

T. 5 S., R. 95 W.,
Sec. 3, lots 4 and 6, subject to Mineral Entry application C–034271, **** patented lands in NE¼SW¼, S½S½, and N½ SE¼, excluding portions of N½NE¼ SW¼, and N½N½SE¼ by metes and bounds as reconveyed to the United States with all minerals in C–25650, and ***** formerly patented lands in lots 1, 2, 5, S½NE¼, S½NE¼NW¼, SE¼NW¼, and portions of N½NE¼SW¼ and N½ N½SE¼ by metes and bounds as reconveyed to the United States with all minerals in C–25650;
Sec. 4, lots 1 to 4, inclusive, W½SW¼, NE¼SE¼, and S½SE¼, subject to Mineral Entry application C–07667 for lot 1, S½ of lot 2, S½ of lot 3, and lot 4;
Sec. 10, ****patented lands (all);
Sec. 15, ****patented lands N½N½;
Sec. 32, ****patented lands in S½;
Sec. 33, ****patented lands in S½;
Sec. 34, ****patented lands in SW¼;

T. 6 S., R. 95 W.,
Sec. 12, SE¼SW¼ and SE¼;
Sec. 13, lots 1 to 4, inclusive, E½W½, and E½;
Sec. 15, lot 1;
Sec. 16, lots 1 to 5 inclusive, and S½S¼;
Sec. 17, lot 3 and SE¼SE¼;

Sec. 20, lots 1 to 9, inclusive, NE¼NE¼, S½NE¼, and N½SE¼;
Sec. 21, lots 1 to 4, inclusive, N½, and N½ S½ (all);
Sec. 22, lots 3, 5 to 6, inclusive, W½NW¼, and N½SW¼;
Sec. 23, lots 1 to 10, inclusive, SE¼NE¼, NE¼SW¼, and N½SE¼;
Sec. 24, lots 1 to 5, inclusive, NE¼, NE¼ NW¼, S½NW¼, and N½S½;
Sec. 25, NW¼NE¼, N½NW¼, SW¼ NW¼, and NW¼SW¼;
Sec. 26, lots 1 to 8, inclusive, N½S½, and SW¼SE¼;
Sec. 27, lots 1 to 8, inclusive, N½S½, and SE¼SE¼;
Sec. 28, lots 1 to 4, inclusive, W½W½, and N½SE¼;
Sec. 29, lots 1 to 12, inclusive, and SE¼ (all);
Sec. 30, lots 1, 2, 5, 6, and 7, S½NE¼, SE¼ NW¼, E½SW¼, and SE¼;
Sec. 31, lots 1 to 12, inclusive, N½SE¼, and SW¼SE¼;
Sec. 32, N½NE¼, SW¼NE¼, and NW¼;
Sec. 33, NW¼NW¼ and SE¼NW¼.
T. 7 S., R. 95 W., sec. 6, lot 4.
T. 8 S., R. 96 /W.,
Sec. 1, ****patented lands in lots 3, 4, 5, 8 to 13, inclusive;
Sec. 2, ****patented lands in lots 4;
Sec. 24, ****patented lands in NE¼;
Sec. 25, lot 1, SE¼SW¼, and S½SE¼;
Sec. 26, lots 5, 6, and 7, SE¼NE¼, and N½ SE¼;
Sec. 35, lots 1 to 7, inclusive;
Sec. 36, lots 1, 2, and 7, NE¼, E½NW¼, and NE¼SE¼.
T. 7 S., R. 96 W., sec. 1, lot 1.

*Patented lands with all oil and gas and all shale or other rock valuable as a source of petroleum and nitrogen reserved to United States: 40.00 acres.

**Patented lands with all oil and gas reserved to United States: 522.74 acres.

***Patented lands with all coal reserved to United States: 40.00 acres.

****Patented lands with no minerals reserved to United States: 2,430.81 acres.

*****Patented lands reconveyed to United States with all minerals: 294.25 acres.

Public lands (total includes *****patented lands reconveyed): 19,569.54 acres.

The area described aggregates 22,603.09 acres in Garfield County.

Patented lands with mineral reservations to the United States are included in the continuation of the withdrawal. Lands patented subsequent to the order, with no mineral reservations to the United States, are included in the continuation of the withdrawal until such time as a formal relinquishment of the order is applied to the land. Public lands which contain valid mining claim in litigation are included in the continuation of the withdrawal until such time as vested rights attach.

Certain lands, patented in fee subsequent to the order, have been reconveyed to the United States with all minerals by an exchange procedure. Such lands were within the withdrawal initially, had never been formally relinquished, and are thus subject to the order upon reconveyance to the United States. The reconveyed lands are included in the continuation of the withdrawal. Certain lands, patented prior to the order with no mineral reservations to the United States and erroneously withdrawn by the order in 1924, are included in the continuation of the withdrawal until a formal relinquishment of the order is applied to the land.

The Department of Energy proposes continuation of the withdrawals for 20 years. The purpose of the withdrawals is to allow the development and use of oil shale deposits for the benefit of the United States Navy.

The Bureau of Land Management manages the surface resources of the Naval Oil Shale Reserves through an interagency agreement with the Department of Energy. The subsurface minerals remain under direct Department of Energy supervision. The custody of the property is vested in the Department of Energy. The withdrawals closed the lands to all forms of appropriation under the public land laws, including the mining laws and mineral leasing laws. No change in the segregative effect or use of the land would be affected by the continuations.

Notice is hereby given that a public hearing may be afforded in connection with the proposed withdrawal continuations. All interested persons who desire to be heard on the proposal must submit a written request for a hearing to the undersigned within 90 days of the publication of this notice. Upon a determination by the State Director, BLM, that a public hearing should be held, a notice will be published in the **Federal Register** giving the time and place of such hearing. Public hearings will be scheduled and conducted in accordance with BLM Manual 2351.16B. Additionally, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned authorized officer of the BLM within 90 days of the date of publication of this notice.

The authorized officer of the BLM will undertake such investigations as are necessary and prepare a report for consideration by the Office of the Secretary of the Interior. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

All communications in connection with these proposed withdrawal continuations should be addressed to the undersigned officer, Bureau of Land Management, Colorado State Office, 1037—20th Street, Denver, Colorado 80202.

Robert D. Dinsmore,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 83-25432 Filed 9-16-83; 8:45 am]

BILLING CODE 4310-84-M

[Serial No. I-20193C]

Conveyance of Public Lands; Blaine County, Idaho

September 7, 1983.

Notices is hereby given that pursuant to the Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713), a patent was issued to Alvin G. Puckett and Garnet Kidd, Kimberly, Idaho, for the following-described public land:

Boise Meridian, Idaho

T. 2 S., R. 17 E.,
Sec. 1, lot 51.

Containing .078 acres.

The purpose of this notice is to inform the public and interested State and local governmental officials of the conveyance.

Louis B. Bellesi,

Deputy State Director for Operations.

[FR Doc. 83-25431 Filed 9-16-83; 8:45 am]

BILLING CODE 4310-84-M

[M55891]

Montana; Conveyance of Public Land

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Conveyance of Public Land in Jefferson County, Montana.

SUMMARY: Notice is hereby given that pursuant to Section 203 of the Act of October 21, 1976 (43 U.S.C. 1713 (1976)), the following described land was conveyed to Dorothy Anne Hil:

Principal Meridian, Montana

T. 9 N., R 3 W.,
Sec. 17, lot 17.

The area described contains 2.56 acres.

The purpose of this notice is to inform State and local governmental officials and other interested parties of the conveyance of the land to Dorothy Anne Hill.

Dated: September 2, 1983.

Edgar D. Stark,

Chief, Lands Adjudication Section.

[FR Doc. 83-25435 Filed 9-16-83; 8:45 am]

BILLING CODE 4310-84-M

[W-81674]

Noncompetitive Sale of Public Lands in Hot Springs County, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described land has been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value.

Sixth Principal Meridian, Wyoming

T. 46 N. R. 99 W.,
Section 13: S½S½S½SE¼SE¼SE¼ = 1.25 acres.
Section 24: Lot 3 = 2.50 acres.
Total = 3.75 acres.

The above described land is being offered as a direct, noncompetitive sale to Conrad and Dorcas V. Soderstrom, owners of the improvements on the sale tract. Soderstroms' own a large, quonset type building valued at $100,000 which is located mainly on their private land, but a small area of the building and access road extend onto public land. The building and other facilities house an oil field service business. Disposal by direct sale will protect their equity investment in the improvements on the land and eliminate any undue hardship if they were compelled to remove or otherwise dispose of the improvements. The land is not suitable for management by another Federal agency and disposal of the parcel will resolve an inadvertent unauthorized occupancy of the land. The land, because of its location or other characteristics, is dufficult and uneconomical to manage as part of the public lands and does not have legal public access. Disposal would not have any significant effect on resource values, and the public interest would best be served by this action. The sale is consistent with Bureau programs and has been discussed with the Hot Springs County Commissioners. The land will not be offered for at least sixty (60) days after the date of this notice.

The following terms and conditions will be applicable to this sale:

1. All minerals in the lands will be reserved to the United States in accordance with Section 209(a) of the Federal Land Policy and Management Act of 1976.

2. Right-of-way for ditches and canals will be reserved to the United States.

3. Patent will be issued subject to all valid existing rights and reservation of record including the following:

a. Drainage facility right-of-way W-81671—Hot Springs County School District Number 1.

b. Power distribution line right-of-way W-80343—Pacific Power and Light Company.

4. The unauthorized occupancy be resolved by payment of fair market rental from date of construction to date of sale.

Detailed information concerning this sale, including the environmental assessment, is available at the Worland District Office, Bureau of Land Management, 1700 Robertson, Worland, Wyoming 82401 (307/347-6151).

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this Realty Action. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of the Interior, and the required payment will be requested of Mr. and Mrs. Soderstrom.

DATE: Sixty days after the date of this notice.

ADDRESS:

Bureau of Land Management, 1700 Robertson Avenue, Worland, Wyoming.

FOR FURTHER INFORMATION CONTACT: Joseph M. Wichman, Grass Creek Area Manager, Bureau of Land Management, 1700 Robertson, Worland, Wyoming 82401, Telephone: (307) 347-6151.

Dated: September 7, 1983.

Edward L. Fisk,

Associate District Manager.

[FR Doc. 83-25419 Filed 9-16-83; 8:45 am]

BILLING CODE 3410-84-M

Rawlins District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Rawlins District Office, Rawlins, Wyoming

ACTION: Notice of meeting of the Rawlins District Grazing Advisory Board.

SUMMARY: Notice is hereby given in accordance with Public Law 94-463 that a meeting of the Rawlins District Grazing Advisory Board will be held.

DATE: October 20, 1983.

ADDRESS: Rawlins District Office, 1300 N. 3rd Street, P.O. Box 670, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: David J. Walter, District Manager, Rawlins District, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301 (307) 324-7171.

SUPPLEMENTARY INFORMATION: The meeting will begin at 9 a.m. in the conference room of the Rawlins District Office. The agenda for this meeting will include:

(1) Cooperative Management Agreements;
(2) Range improvements for Fiscal Year 84;
(3) The Divide Environmental Impact Statement and Range Program Summary (RPS);
(4) Wild horse roundups;
(5) Seven Lakes RPS Update;
(6) Range improvement policy;
(7) Wyoming Stewardship Program;
(8) Public sale program.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3 and 3:30 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager on or before October 13, 1983. Depending on the number of persons wanting to make statements, a time limit may be established.

Summary minutes of the meeting will be kept in the district office and will be available during regular business hours for public review. Copies may be obtained for the cost of duplication.

David J. Walter,

District Manager.

[FR Doc. 83-25430 Filed 9-16-83; 8:45 am]

BILLING CODE 4310-84-M

[M 57659]

Conveyance of Public Land; Montana

September 12, 1983.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of conveyance of public land in Jefferson County, Montana.

SUMMARY: Notice is hereby given that pursuant to Section 203 of the Act of October 21, 1976 (43 U.S.C. 1713 (1976)), the following described land was conveyed to William J. and Cincoona S. Foster:

Principal Meridian, Montana

T. 9 N., R. 2 W.,
Sec. 9, E½E½SW¼SE¼ and NW¼SE¼SE¼;

Sec. 15, lot 5.

The area described contains 26.77 acres.

The purpose of this notice is to inform State and local governmental officials and other interested parties of the conveyance of the land to the Fosters.

Edgar D. Stark,

Chief, Lands Adjudication Section.

[FR Doc. 83-25444 Filed 9-16-83; 8:45 am]

BILLING CODE 4310-84-M

Environmental Impact Statement; Las Cruces/Lordsburg Resource Area; Final Management Framework Plan Amendment

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the BLM has prepared a Final Management Framework Plan Amendment/Environmental Impact Statement (MFPA/EIS) for the Las Cruces/Lordsburg Resource Area in southwestern New Mexico. The MFPA/EIS proposes to reconsider constraints on energy minerals leasing imposed by existing decisions for the Las Cruces/Lordsburg Resource Area (Dona Ana, Grant, Luna, and Hidalgo Counties), to implement a rangeland management for the 3-County Area (Luna, Hidalgo, and Grant Counties), and to consider the designation of three Areas of Critical Environmental Concern (Gila Lower Box Riparian Area, Gila Middle Box Wildlife Area, and Organ Mountain Scenic Area). The Final MFPA/EIS contains the Proposed Plan for the Las Cruces/Lordsburg Resource Area. The Proposed Plan is a refinement of the Preferred Alternative presented in the Draft MFPA/EIS published in March 1983. The Proposed Plan is BLM's proposed action. All parts of the Proposed Plan may be protested. The protest should include the following information: (1) The name, mailing address, telephone number, and interest of the person filing the protest; (2) a statement of the issue or issues being protested; (3) a statement of the part or parts being protested; (4) a copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the records; and (5) a concise statement explaining why the BLM New Mexico State Director's decision is wrong. At the end of the 30-day protest period, the Proposed Plan, excluding any portions under protest, shall become final. Approval shall be withheld on any portion of the plan under protest until final action has been completed on such protest. The approval process and the final plan will be published with the Record of Decision in January 1984.

DATE: Protests on the Proposed Plan must be received no later than 30 days from this notice.

ADDRESS: Protests should be sent to the Director, Bureau of Land Management, 18th and C Streets NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mary Austin, MFPA/EIS Team Leader, BLM Las Cruces District Office, P.O. Box 1420, Las Cruces, New Mexico 88004, (505) 524-8551 or FTS 571-8312.

SUPPLEMENTARY INFORMATION: Copies of the Final MFPA/EIS have been distributed to a mailing list of identified interested parties. A limited number of additional copies are available at the Las Cruces District Office, 317 N. Main, P.O. Box 1420, Las Cruces, New Mexico 88004. Public reading copies are available for review at the BLM State Office, Office of Public Affairs, Joseph M. Montoya Federal Building and U.S. Post Office, Santa Fe, New Mexico, and public and university libraries in Las Cruces, Deming, Silver City, Lordsburg, Albuquerque, New Mexico, and El Paso, Texas. A short final was prepared for this statement; therefore, the Draft and the short Final constitute the Final MFPA/EIS.

Charles W. Luscher,

State Director.

[FR Doc. 83-25360 Filed 9-16-83; 8:45 am]

BILLING CODE 4310-84-M

[OR-36282, OR-36283, OR-36284, OR-36285, OR-36286, OR-36287]

Sale of Public Lands; Lake County; Oregon

The following described parcels of land have been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 STAT. 2750, 43 USC 1713) at no less than the appraised fair market value:

Parcel No.	Legal description	Acreage
1, OR-36282	T. 25 S., R. 18 E., Willamette Meridian, Oregon.	
	Sec. 21, W½NW¼	80
2, OR-36283	T. 25 S., R. 19 E., Willamette Meridian, Oregon.	
	Sec. 29, SW¼ SW¼	40
3, OR-36284	T. 25 S. R. 19 E., Willamette Meridian, Oregon.	
	Sec. 29, SW¼SE¼E¼, E½SE¼	120
4, OR-36285	T. 25 S., R. 19 E., Willamette Meridian, Oregon.	
	Sec. 28, NE¼	160
5, OR-36286	T. 26 S., R. 18 E., Willamette Meridian, Oregon.	
	Sec. 13, S½	320
6, OR-36287	T. 28 S., R. 16 E., Willamette Meridian, Oregon.	
	Sec. 1, Lots 1, 2, 3, 4, SW¼NE¼, S½NW¼.	
	Sec. 2, Lot 1	199.49

Bids are being solicited for each parcel offered for sale. Appraised values are not being published in this Notice of Realty Action. The value will be disclosed only at the conclusion of the sale and only for those parcels for which acceptable bids were received; i.e., appraised value or higher.

The sale will be held on Wednesday, November 16, 1983, at 10:00 a.m., Bureau of Land Management Conference Room, 1000 South Ninth Street, Lakeview, Oregon 97630.

The above described land will be sold at public auction through a competitive bid type sale.

The sale is consistent with publicly supported Bureau planning. The sale involves isolated land completely surrounded by provate land, that is difficult and uneconomical to manage as part of the public lands, and is not suitble for management by another Federal department or agency. The public interest will be served by offering this land for sale.

Federal law requires that all bidders be U.S. citizens, 18 years of age or more, a state or state instrumentality authorized to hold property, or in the case of corporations, be authorized to own real estate in the state in which the sale land is offered.

Sealed written bids will be considered only if received by the Bureau of Land Management, 1000 South Ninth Street, P.O. Box 151, Lakeview, Oregon 97630, prior to 10:00 a.m., Wednesday, November 16, 1983. A separate written bid should be submitted for each sale parcel desired. Each written sealed bid must be accompanied by a certified check, postal money order, bank draft or cashiers check, made payable to the Department of the Interior—BLM for at least twenty percent (20%) of the amount bid and shall be enclosed in sealed envelope clearly marked, "Bid for Public Land Sales OR-36282, OR-36283, OR-36284, OR-36285, OR-36286, OR-36287, Sale Parcel Number ——, Lake County, Oregon, November 16, 1983". The written sealed bids will be opened and publicly declared at the beginning of each sale. If 2 or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid, shall be by drawing.

Subnmission of a sealed written bid is not required in order to participate in oral bidding procedures.

If sealed bids are received, oral bidding will be entertained after public declaration of the high sealed bid. If no sealed bids are received, oral bidding will commence and all oral bids shall be made in increments of $50.00. After oral bids are entertained, the successful bidder shall submit by cash, personal check, bank draft, money order, or any combination thereof, twenty percent (20%) of the purchase price immediately following the close of the sale. The terms and conditions applicable to the sale are:

1. The apparent high bidder submit the remainder of the full bid price within 30 days from the date of sale. Failure to submit the full bid price within 30 days from the date of sale shall result in sale cancellation of the specific parcel and the twenty percent (20%) deposit shall be forfeited.

2. The authorized officer may reject the highest qualified bid and release the bidder from his/her obligation and withdraw any tract from the sale, if he determines that consummation of the sale would be inconsistent with the provisions of any existing law, or collusive or other activities have hindered or restrained free and open bidding, or consummation of the sale would encourage or promote speculation in public lands.

3. The patents will contain a reservation to the United States for ditches and canals.

4. The sale is for surface estate only. The patents will contain a reservation to the United States for all minerals.

5. The sale will be subject to all valid existing rights.

Parcels not sold on the day of the sale will remain available for sale until sold or withdrawn. Bids will be solicited on these parcels at the Lakeview District during regular business hours, (7:45 a.m. to 4:30 p.m.). Interested parties bidding on these parcels shall be informed of the appraised value only when an acceptable bid has been received; i.e., appraised value or higher.

Detailed information concerning the sale, including the planning documents, environmental assessment and the record of public involvement, is available for review at the Lakeview District Office, Bureau of Land Management, 1000 South Ninth Street, Lakeview, Oregon 97630.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Lakeview District Office, Bureau of Land Management, P.O. Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630. Any adverse comments received as a result of the Notice of Realty Action or notification to the congressional committees and delegations pursuant to Pub. L. 97-394, will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of any changes.

Dated: September 8, 1983.

Dick Harlow,

Acting District Manager.

[FR Doc. 83-25446 Filed 9-16-83; 8:45 am]

BILLING CODE 4310-84-M

[INT FEIS 83-43]

Proposed Livestock Grazing Management for the South Sierra Foothills Planning Area, Bakersfield District, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement (FEIS) on the Livestock Grazing Management Program in the South Sierra Foothills Planning Area.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a final environmental impact statement concerning a proposed grazing management program for the South Sierra Foothills Planning Area in Kern and Tulare Counties in California. The proposed action would continue present livestock grazing management practices on the approximately 198,113 acres presently under grazing authorization. Other alternatives analyzed include: Livestock Maximization, Resource Protection, Balanced Resource Use, and No Domestic Livestock Grazing.

The FEIS contains only comments, responses, and minor changes to the Draft Environmental Impact Statement (DEIS) and should be used together with the DEIS. This revised procedure has saved substantial time, money, and paperwork and is authorized under 40 CFR 1503.4(c). The DEIS was made available to the public on April 30, 1983, with comments due by June 13, 1983.

A limited number of copies of the document are available upon request at the Bakersfield District Office, 800 Truxtun Avenue, Room 302, Bakersfield, CA 93301; (805) 861-4191, and the California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, CA 95825; (916) 484-4701.

In addition to the above offices, copies of this EIS are available for public reading and review at:

Division of Rangeland Management, Bureau of Land Management, Premier Building, Room 909-H, Washington, D.C. 20006;
Caliente Resource Area Office, 520 Butte Street, Bakersfield, CA 93305;
Beale Memorial Library, 1315 Truxtun Avenue, Bakersfield, CA 93301; or
Tulare County Library, 200 W. Oak, Visalia, CA 93279

FOR FURTHER INFORMATION CONTACT: Glenn A. Carpenter, Area Manager, ATTN: SSF Team Leader, 520 Butte Street, Bakersfield, CA 93305.

Dated: September 13, 1983.

Ed Hastey,

State Director, California.

[FR Doc. 83-25597 Filed 9-16-83; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Upper Delaware National Scenic and Recreational River; Meeting

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: September 23, 1983, 7 p.m.

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764-0159, (717) 729-7135.

SUPPLEMENTARY INFORMATION: The advisory council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include discussion of Draft Management Plan.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Council c/o Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764–0159. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware National Scenic and Recreational River, River Road, 1¾ miles north of Narrowsburg, N.Y., Damascus Township, Pennsylvania.

Dated: August 30, 1983.

Myra F. Harrison,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 83-25488 Filed 9-16-83; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-111 (Sub-6)]

Railroad Services Abandonment; Detroit, Toledo and Ironton Railroad Co., Henry County, OH; Exemption

September 14, 1983.

Detroit, Toledo and Ironton Railroad Company (applicant) has filed a notice of exemption for an abandonment under 49 CFR Part 1152, Subpart F—*Exempt Abandonments*. The line to be abandoned runs from milepost 7.1 to milepost 8.4 on the Tecumseh Branch in Henry County, OH.

Applicant has certified (1) That no local traffic has moved over the line for at least 2 years and any overhead traffic on the line can be rerouted over other lines, and (2) That no formal complaint filed by a user of rail service on the line regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Ohio has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on October 19, 1983 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed within 10 days after publication and petitions for reconsideration, including environmental, energy and public use concerns, must be filed within 20 days after publication. If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-25456 Filed 9-16-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-111 (Sub-5)]

Railroad Services Abandonment; Detroit, Toledo and Ironton Railroad Co., Fayette County, OH; Exemption

September 14, 1983.

Detroit, Toledo and Ironton Railroad Company (applicant) has filed a notice of exemption for an abandonment under 49 CFR Part 1152, Subpart F—*Exempt Abandonments*. The line to be abandoned runs from milepost 236.0 to milepost 237.5 on the former main line in Fayette County, OH.

Applicant has certified (1) That no local traffic has moved over the line for at least 2 years and any overhead traffic on the line can be rerouted over other lines, and (2) That no formal compliant filed by a user of rail service on the line regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Ohio has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on October 19, 1983 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed within 10 days after publication and petitions for reconsideration, including environmental, energy and public use concerns, must be filed within 20 days after publication. If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-25461 Filed 9-16-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-31 (Sub-11)]

Railroad Services Abandonment; Grand Trunk Western Railroad Co., Oakland County, MI; Exemption

September 14, 1983.

Grand Trunk Western Railroad Company (applicant) has filed a notice of exemption for an abandonment under 49 CFR Part 1152, Subpart F—*Exempt Abandonments*. The line to be announced runs from the Michigan Air Line Branch (MALB) Junction milepost 0.0 for 1.13 miles to the end of the MALB track in Oakland County, MI.

Applicant has certified (1) That no local traffic has moved over the line for at least 2 years and any overhead traffic on the line can be rerouted over the other lines, and (2) That no formal complaint filed by a user of rail service on the line regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Michigan has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on October 19, 1983 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed within 10 days after publication and petitions for reconsideration, including environmental, energy and public use concerns, must be filed within 20 days after publication. If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-25460 Filed 9-16-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-31 (Sub-13)]

Railroad Services Abandonment; Grand Trunk Western Railroad Co., Saginaw County, MI; Exemption

September 14, 1983.

Grand Trunk Western Railroad Company (applicant) has filed a notice of exemption for and abandonment under 49 CFR Part 1152, Subpart F—*Exempt Abandonments*. The line to be abandoned is that portion of the former Michigan Central Mackinaw Branch known as the Superior Street Spur in Saginaw Country, MI.

Applicant has certified (1) That no local traffic has moved over the line for at least 2 years and any overhead traffic on the line can be rerouted over other lines, and (2) That no formal complaint filed by a user of rail service on the line regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Michigan has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on October 19, 1983 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed within 10 days after publication and peitions for reconsideration, including environmental, energy and public use concerns, must be filed within 20 days after publication. If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-25462 Filed 9-16-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-31 (Sub-14]

Railroad Services Abandonment; Grand Trunk Western Railroad Co.; Saginaw County, MI; Exemption.

September 14, 1983.

Grand Trunk Western Railroad Company (applicant) has filed a notice of exemption for an abandonment under 49 CFR Part 1152, Subpart F—*Exempt Abandonments*. The line to be abandoned is that portion of the former Michigan Central Mackinaw Branch known as the Winkler Lucas Spur in Saginaw County, MI.

Applicant has certified (1) That no local traffic has moved over the line for at least 2 years and any overhead traffic on the line can be rerouted over other lines, and (2) That no formal compliant filed by a user of rail service on the line regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Michigan has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on October 19, 1983 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed within 10 days after publication and petitions for reconsideration, including environmental, energy and public use concerns, must be filed within 20 days after publication. If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-25463 Filed 9-16-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-31 (Sub-15]

Railroad Services Abandonment; Grand Trunk Western Railroad Co., Saginaw County, MI; Exemption

September 14, 1983.

Grant Trunk Western Railroad Company (applicant) has filed a notice of exemption for an abandonment under 49 CFR Part 1152; Subpart F—*Exempt Abandonments*. The line to be abandoned is that portion of the former Michigan Central Mackinaw Branch known as the (Eastern Portion) Germain Lead in Saginaw County, MI.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and any overhead traffic on the line can be rerouted over other lines, and (2) that no formal compliant filed by a user of rail service on the line regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Michigan has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on October 19, 1983 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed within 10 days after publication and petitions for reconsideration, including environmental, energy and public use concerns, must be filed within 20 days after publication. If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exmption is conditions upon environmental or public use conditions.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-25464 Filed 9-16-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-31 (Sub-17)]

Railroad Services Abandonment; Grand Trunk Western Railroad Co., Saginaw County, MI; Exemption

September 14, 1983

Grand Trunk Western Railroad Company (applicant) has filed a notice of exemption for an abandonment under 49 CFR Part 1152, Subpart F— *Exempt Abandonments*. The line to be abandoned runs from milepost 91.8 to milepost 92.5 on the former Michigan Central Saginaw Branch in Saginaw County,MI.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and any overhead traffic on the line can be rerouted over other lines, and (2) that no formal complaint filed by a user of rail service on the line regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Michigan has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on October 19, 1983 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed within 10 days after publication and petitions for reconsideration, including environmental, energy and public use concerns, must be filed within 20 days after publication. If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-25465 Filed 9-16-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-31 (Sub-10)]

Railroad Services Abandonment; Grand Trunk Western Railroad Co., Oakland and Livingston Counties, MI; Exemption

September 14, 1983.

Grand Trunk Western Railroad Company (applicant) has filed a notice of exemption for an abandonment under 49 CFR Part 1151, Subpart F—*Exempt Abandonments*. The line to be abandoned runs from milepost 60.3 to milepost 70.3 on the Jackson Subdivision in Oakland and Livingston Counties, MI.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and any overhead traffic on the line can be rerouted over other lines, and (2) that no formal complaint filed by a user of rail service on the line regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Michigan has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on October 19, 1983 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed within 10 days after publication and petitions for reconsideration, including environmental, energy and public use concerns, must be filed within 20 days after publication. If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-25455 Filed 9-16-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-31 (Sub-16)]

Railroad Services Abandonment; Grand Trunk Western Railroad Co., Saginaw and Bay Counties, MI; Exemption

September 14, 1983.

Grand Trunk Western Railroad Company (applicant) has filed a notice of exemption for an abandonment under 49 CFR Part 1152, Subpart F—*Exempt Abandonments*. The line to be abandoned runs from milepost 44.0 to milepost 50.6 on the Saginaw Subdivision in Saginaw and Bay Counties, MI.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and any overhead traffic on the line can be rerouted over other lines, and (2) that no formal complaint filed by a user of rail service on the line regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Michigan has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on October 19, 1983 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed within 10 days after publication and petitions for reconsideration, including environmental, energy and public use concerns, must be filed within 20 days after publication. If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-25454 Filed 9-16-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30262]

Rail Carriers; Oregon-Washington Railroad and Navigation Co. and Union Pacific Railroad Co.—Exemption for Abandonment and Discontinuance in Shoshone County, ID

AGENCY: Interstate Commerce Commission

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903 *et seq.* the physical abandonment by Oregon-Washington Railroad and Navigation Company of, and the discontinuance of service by Union Pacific Railroad Company over, 6.78 miles of railroad extending from milepost 80.36 at Wallace to milepost 87.14 at Burke, in Shoshone County, ID, subject to standard labor protective conditions.

DATES: This exemption will be effective on October 19, 1983. Petitions to stay the effectiveness of this decision must be filed by September 29, 1983, and petitions for reconsideration must be filed by October 11, 1983.

ADDRESSES: Send pleadings to referring Finance Docket No. 30262 to:

(1) Office of the Secretary, Interstate Commerce Commission, Washington, D.C.20423

(2) Petitioner's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403.

Dated: September 13, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Chairman Taylor was absent and did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-25415 Filed 9-16-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30241]

Rail Carriers; Southern Pacific Transportation Co.—Exemption for Abandonment in Fresno County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903 *et seq.*, the abandonment by Southern Pacific Transportation Company of 2.16 miles of track from milepost 208.73 to milepost 206.57, in Fresno County, CA, subject to standard labor protection.

DATES: This exemption will be effective on October 19, 1983. Petitions to stay the effectiveness of this decision must be filed by September 29, 1983, and petitions for reconsideration must be filed by October 11, 1983.

ADDRESS: Send pleadings referring to Finance Docket No. 30241 to:

(1) Office of Secretary, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403.

Dated: September 12, 1983.

By the Commission, Chariman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-25414 Filed 9-16-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30258]

Rail Carriers; Western Pacific Railroad Co.—Exemption for Abandonment in San Joaquin County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Western Pacific Railroad Company from the requirements of 49 U.S.C. 10903 *et seq.*, in connection with the abandonment of 1.87 miles of railroad in San Joaquin County, CA, subject to the standard labor protective conditions.

DATES: This exemption will be effective on October 19, 1983. Petitions to stay the effect of this decision must be filed by September 29, 1983 and petitions for reconsideration must be filed by October 11, 1983.

ADDRESSES: Send pleadings referring to Finance Docket No. 30258 to:

(1) Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403.

Decided: September 7, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Chairman Taylor would include the requirement that the Commission be notified of consummation

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-25416 Filed 9-16-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

Proposed Consent Decree in Resource Conservation and Recovery Act Enforcement Action

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed consent decree in *United States* v. *Chemical Recovery Systems, Inc.*, Civil Action No. C 80–1858 has been lodged with the United States District Court for the Northern District of Ohio. The consent decree requires Chemical Recovery to excavate contaminated soil, to fill and grade the site so as to slope it towards the Black River and to plant a vegetation cover on the site. Chemical Recovery is also required to monitor the Black River for the next two years for PCBs and priority pollutants. The decree notes that Chemical Recovery has removed all drums of chemicals from the site,

removed the two distillation units previously there, and fenced the site. Stipulated penalities are provided for in the event of future noncompliance with the decree.

The consent decree may be examined at (1) the office of the United States Attorney, Northern District of Ohio, Suite 500, 1404 E. 9th Street, Cleveland, Ohio 44114, (2) the office of Regional Counsel, United States Environmental Protection Agency, 16th Floor, 230 South Dearborn Street, Chicago, Illinois 60604, and (3) the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail at the Environmental Enforcement Section at a cost of one dollar per copy.

The Department will receive comments concerning the decree for thirty (30) days from the date of this notice. Comments should be addressed to the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530 and reference *United States v. Chemical Recovery Systems, Inc.*, DOJ No. 90-7-1-47.

F. Henry Habicht II,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 83-25426 Filed 9-16-83; 8:45 am]

BILLING CODE 4410-01-M

MOTOR CARRIER RATEMAKING STUDY COMMISSION

Public Hearing

Date: Friday, October 14, 1983.

Place: John W. McCormack Post Office and Courthouse, Post Office Square, Room 208, Boston, Massachusetts 02109.

Time: 8:30 a.m.

Purpose: To receive testimony, as mandated by the Bus Regulatory Reform Act of 1982, from various parties on: (1) Collective ratemaking in the bus industry and (2) the impact of implementation of the Bus Regulatory Reform Act of 1982 on persons over the age of 60.

Anyone who is interested in submitting written testimony for the record of the Study Commission may do so by sending same to: Gary D. Dunbar, Executive Director, Motor Carrier Ratemaking Study Commission, 100 Indiana Avenue, NW., Washington, D.C. 20001.

For further information, contact: Name: Gary D. Dunbar, Title: Executive Director, Phone No.: (202) 724-9600.

Submitted this, the 14th day of September, 1983.

Gary D. Dunbar,

Executive Director.

[FR Doc. 83-25457 Filed 9-16-83; 8:45 am]

BILLING CODE 6820-BD-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

Date: September 29, 1983.
Time: 9:00 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications submitted for Constitutional Fellowships (College Teachers), Division of Fellowships, for projects beginning after January 1, 1984.

The proposed meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 83-25467 Filed 9-16-83; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Limerick Generating Station Units 1 and 2, Meeting

The ACRS Subcommittee on Limerick Generating Station Units 1 and 2 will hold a meeting on October 7 and 8, 1983, at the Holiday Inn at Pottstown, Route 100 at West King Street, Pottstown, PA. The Subcommittee will review the application of the Philadelphia Electric Company (PECO) for an operating license.

In accordance with the procedures outlined in the **Federal Register** on October 1, 1982 (47 FR 43474), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Cognizant Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Friday, October 7, 1983—2:00 p.m. until the conclusion of business

Saturday, October 8, 1983—8:00 a.m. until the conclusion of business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Philadelphia Electric Company, NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements

and the time allotted therefor can be obtained by a prepaid telephone call to the Cognizant Designated Federal Employee, Dr. Richard Savio (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: September 13, 1983.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 83-25494 Filed 9-16-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-409]

Dairyland Power Cooperative, LaCrosse Boiling Water Reactor; Exemption

I

Dairyland Power Cooperative (the licensee) (DPC) is the holder of Provisional Operating License No. DPR-45 which authorizes operation of the LaCrosse Boiling Water Reactor. This provides, among other things, that it is subject to all rules, regulations and orders of the Commission now or hereafter in effect. The facility is a boiling water reactor rated at 50 MW(e) and is located at the licensee's site located in Vernon County, Wisconsin.

II

The regulation, 10 CFR 50.54(w), requires that each commercial power reactor licensee shall, by June 29, 1982, have taken reasonable steps to obtain on-site property damage insurance available at reasonable cost and on reasonable terms from private sources or to demonstrate to the satisfaction of the Nuclear Regulatory Commission (the Commission) (NRC) that it possesses an equivalent amount of protection covering the facility, provided, among other things, that "this insurance must have a minimum coverage limit no less than the combined total of: (i) That offered by either American Nuclear Insurers (ANI) and Mutual Atomic Energy Reinsurance Pool (MAERP) jointly or Nuclear Mutual Limited (NML); plus (ii) that offered by Nuclear Electric Insurance Limited (NEIL), the Edison Electric Institute (EEI), ANI and MAERP jointly, or NML as excess property insurance."

On June 29, 1982, the licensee filed a Request for Exemption from the provisions of 10 CFR 50.54(w) in excess of $65 million. (10 CFR 50.54(w) currently requires licensees to be insured for a minimum of $500 million in primary coverage plus $68 million in excess property coverage.) In support of this request, the licensee submitted an estimate of decontamination and cleanup costs following a Three Mile Island, Unit 2 (TMI-2) type accident of between $5 million and $39 million. The licensee indicated that it would obtain primary property insurance covering damages up to $65 million but that it did not believe that coverage in excess of that amount was justified. The staff requested additional information from the licensee to support its estimates. This information was solicited by letters to the licensee dated August 2, 1982 and October 25, 1982. The licensee responded to these requests by letters dated September 13, 1982 and March 7, 1983. The March 7, 1983 response included a more detailed study than earlier submissions and increased its estimates of cleanup to $42.5 million in 1982 dollars.

Despite the licensee's original exemption request and two supplemental responses to NRC questions, the Commission concludes that the licensee has failed to provide adequate justification for exemption from the requirements for property insurance above $65 million. First, Dairyland has made certain assumptions in its request that appear to be unwarranted. Specifically, Dairyland asumes that no more than 10.7% of the fuel rods will rupture and that no fuel melting will occur, even in a maximum credible accident. Consistent with this is Dairyland's assumption that LaCrosse's emergency core cooling system will function adequately after an accident. In evaluating the licensee's March 7, 1983 submittal the staff found that the maximum credible accident (MCA) assumed by DPC appears to be equivalent to a design basis loss of coolant accident (LOCA) assuming a single failure evaluated to show conformance with 10 CFR 50 Appendix K. While no check has been made of the level of fuel failures for this accident, it is the staff's judgment that the stated failure level of about 10% may not be conservative, since clad failure for all rods experiencing departure from nucleate boiling may be possible. Since the intent of 10 CFR 50.54(w) is to provide for insurance in the case of core damage accidents of at least the TMI-2 severity, if not worse, the licensee has not shown anything unique in LaCrosse's design that would justify the request for an exemption on the basis of the low cleanup costs. It is clear from the statement of consideration promulgating 10 CFR 50.54(w) (47 FR 13750) that property insurance was intended by the NRC to cover at least TMI-2 type accidents. As stated in that notice, "* * * The Commission disagrees with the position taken by some commenters that it is unfair to many owners of smaller power reactors to require insurance greatly exceeding the cost of replacing the facility. A TMI-2 type accident could well require coverage approaching $1 billion, no matter what the original or size of the facility * * * Until completion of studies evaluating the cost of cleaning up accidents of varying severity, it is prudent to require for all power reactors a reasonable amount of insurance for decontamination expense" (47 FR 13752).

Finally, in a parallel situation, on November 3, 1982, the Commission granted to Consumers Power Company an exemption from the excess property insurance requirements of 10 CFR 50.54(w). Consumers Power Company operates the Big Rock Point Plant (Docket 50-155), a 72 MW(e) BWR, and found, in a comprehensive analysis of a maximum credible accident, that cleanup costs would not exceed $470 million. The staff concludes that it would not be technically consistent in granting Dairyland's full exemption request while requiring seven times the insurance coverage for Big Rock Point.

Although there is no basis for the Commission to approve the licensee's entire exemption request, there is adequate justification to exempt the licensee from the excess property insurance requirements of 10 CFR 50.54(w). Exemption from such excess requirments would be compatible both with the conclusions of Consumers Power Company's findings with respect to its Big Rock Point Plant and with findings of a study developed for the Commission *(Technology, Safety and Costs of Decommissioning Reference Light Water Reactors Following Postulated Accidents*, NUREG/CR-2601, Pacific Northwest Laboratory, November 1982). This report considers three accident scenarios with a TMI-2 type accident considered to be of intermediate severity. The information developed from these scenarios indicates that although there is some relationship between size of a reactor and accident cleanup costs, certain of the major costs involved with accident cleanup—such as defueling a damaged reactor, activities to maintain a facility in cold shutdown, and construction of new treatment facilities—are not strictly power level dependent. But because there are steps in the cleanup process where cost is directly related to core size, lower overall costs can be expected for cleanup of reactors of the size of LaCrosse. The NRC concludes that LaCrosse would be expected to encounter, in the extreme, cleanup costs that would be substantially similar to

those estimated by Consumers Power Company for its Big Rock Point Plant.

In addition, to obtain either insurance or some other method of protection such as a line or letter of credit for the $68 million required excess protection, the licensee would have to pay an additional annual premium of at least $200,000. When such excess insurance or protection is not required to cover the costs of cleanup of a maximum credible accident, the NRC believes that the cost of such insurance or protection is too burdensome.

In sum, the Commission concludes that the licensee has not provided adequate justification for being exempted from all insurance requirements of 10 CFR 50.54(w) above $65 million. Therefore, the licensee's request for exemption from the primary level of property insurance in excess of $65 million is denied. However, there is adequate justification for exemption from the excess insurance requirements of CFR 50.54(w)(1)(ii). Although a closed relation between reactor size and accident decontamination cost has not been found to exist as yet, sufficient information is available to determine that decontamination and cleanup costs occurring as a result of an accident at a reactor of LaCrosse's small size would, with a reasonable degree of assurance, be covered by $500 million insurance.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12 an exemption, in part, is authorized by law and will not endanger life or property or the comon defense and security and is otherwise in the public interest. Therefore, the Commission hereby approves the following exemption:

The licensee is exempt until further notice from the requirements of 10 CFR 50.54(w)(1)(ii), with respect to excess property insurance offered by Nuclear Electric Insurance Limited (NEIL), the Edison Electric Institute (EEI), American Nuclear Insurers (ANI) and Mutual Atomic Energy Reinsurance Pool (MAERP) jointly, or Nuclear Mutual Limited (NML). The licensee continues to be required to maintain, at a minimum, total primary insurance coverage or equivalent protection offered by ANI and MAERP jointly or NML pursuant to 10 CFR 50.54(w)(1)(ii).

The NRC staff has determined that granting this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.54(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 12th day of September, 1983.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 83-25480 Filed 9-16-83; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision or extension:* Extension.

2. *The title of the information collection:* NRC Form 313M, "Application for Materials License—Medical".

3. *The form number if applicable:* NRC Form 313M.

4. *How often the collection is required:* For an initial license and for renewals every five years.

5. *Who will be required or asked to report:* Applicants for a specific license to possess and use byproduct material in humans.

6. *An estimate of the number of responses:* 600.

7. *An estimate of the total number of hours needed to complete the requirement or request:* 12,000.

8. *An indication of whether Section 3504(h), Pub. L. 96-511 applies:* Not applicable.

9. *Abstract:* Applications for specific licenses to possess and use byproduct material in humans are required to be filed on NRC Form 313M. Information submitted on the form is used to evaluate the applicant's experience, training, facilities and procedures for adequacy to protect health and safety.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 12th day of September 1983.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 83-25491 Filed 9-16-83; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision or extension:* Extension.

2. *The title of the information collection:*

—DOE/NRC Forms 741 and 741A—Nuclear Material Transaction Report and NUREG/BR-0006, instructions for completing forms 741, 741A, and 740M

—DOE/NRC Form 740M—Concise Note

—IAEA Form N-71—Design Information Questionnaire

3. *The form number if applicable:* Same as item 2 above.

4. How often the collection is required:

—DOE/NRC Form 741/741A: As occasioned by special nuclear material (SNM) or source material transfers, receipts, or inventory changes that meet certain criteria.

—DOE/NRC Form 740M: When specified in Facility Attachments or Transitional Facility Attachments, or as necessary to inform the U.S. or IAEA of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the US/IAEA Safeguards Agreement.

—IAEA Form N-71: Once.

5. *Who will be required or asked to report:* Persons licensed to possess specified quantities of special nuclear material or source material, and in the case of IAEA Form N-71, licensees of facilities on the U.S. eligible list who have been notified in writing by the Commission to submit the form.

6. *An estimate of the number of responses:*

—DOE/NRC Form 741/741A: 126,000

—DOE/NRC Form 740M: 2,580

—IAEA Form N-71: 2

7. *An estimate of the total number of hours needed to complete the requirement or request:*
—DOE/NRC Form 741/741A: 126,000
—DOE/NRC Form 740M: 2,580
—IAEA Form N–71: 720

8. *An indication of whether Section 3504(h), Pub. L. 96–511 applies:* Not Applicable.

9. *Abstract:*
—NRC and Agreement State licensees are required to make inventory and accounting reports on DOE/NRC Forms 741/741A for certain source or special nuclear material inventory changes, for transfers or receipts or special nuclear material, or for transfers or receipts of 1 kilogram or more of source material.

—Licensees affected by 10 CFR Part 75 and related sections of Parts 40, 50, 70, and 150 are required to submit DOE/NRC Form 740M to inform the U.S. or the IAEA of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the U.S./IAEA Safeguards Agreement.

—Licensees of facilities that appear on the U.S. eligible list, pursuant to the U.S./IAEA Safeguards Agreement, and who have been notified in writing by the Commission, are required to complete and submit a Design Information Questionnaire, IAEA Form N–71.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 12th day of September 1983.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 83–25492 Filed 9–16–83; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision or extension:* Extension.

2. *The title of the information collection:* Medical License ALARA Program.

3. *The Form number, if applicable:* Not applicable.

4. *How often the collection is required:* Once. Additional submissions are needed only if changes occur.

5. *Who will be required or asked to report:* Applicants for or holders of a specific medical license for human use of byproduct material.

6. *An estimate of the number of responses:* 200 per year.

7. *An estimate of the total number of hours needed to complete the requirement or request:* 4 hours each, total 800.

8. *An indication of whether Section 3504(h), Pub. L. 96–511 applies:* Not applicable.

9. *Abstract:* Respondents are requested to establish and submit a formal program for maintaining occupational exposures as low as reasonably achievable (ALARA).

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 12th day of September 1983.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 83–25493 Filed 9–16–83; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–278]

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Unit 3); Order Confirming Licensee Commitments on Pipe Crack Related Issues

I

The Philadelphia Electric Company (the licensee) and three other co-owners are the holders of Facility Operating License No. DPR–56 which authorizes the operation of the Peach Bottom Atomic Power Station, Unit 3 (the facility), at steady-state power levels not in excess of 3293 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in York County, Pennsylvania.

II

During the current 1983 refueling outage at Peach Bottom, Unit 3, augmented inservice inspection was performed on the recirculation and residual heat removal (RHR) system piping in accordance with Office of Inspection and Enforcement Bulletin 83–02. The original sample size was expanded to 112 welds after ultrasonic (UT) indications were reported on welds in the original sampling. This represents a total of 75% of all welds in these systems. A total of 37 welds in the recirculation and RHR systems were not inspected. Examinations of these uninspected welds were either not necessary (e.g., conforming material as per NUREG–0313, Revision 1), or not practicable (e.g., high radiation, etc.). The licensee also provided information on welds on the Reactor Water Clean-up (RWCU) and Core Spray Systems. Both systems have had substantial portions of their piping replaced with conforming material to reduce susceptability to intergranular stress corrosion cracking (IGSCC). A total of 25 non-conforming welds have not been inspected in these two systems. The licensee provided technical justification for not inspecting these welds. The staff has reviewed the licensee's submittal and has concluded that the uninspected welds are not likely to be cracked to the extent of compromising the safety of the plant.

Overall, out of a total of 112 welds inspected, a total of 15 were found to show linear indications: ten 12-inch riser to elbow welds, and five residual heat removal (RHR) system 20-inch suction line welds. All indications were in the weld heat-affected-zone. In the 10 12-inch riser welds, all indications are oriented in an axial direction. The deepest indication reported in the 12-inch riser welds is 92% of wall thickness with a length of about 0.75 inches. The deepest indication in the large-size pipe welds is 40% of the wall thickness in a 20-inch RHR weld with a length of about 32 inches. In the five 20-inch RHR welds, the indications are oriented predominately in a circumferential direction.

Evaluation by the licensee, submitted by letters dated August 9, 1983, August 22, 1983 and August 30, 1983, indicates that the projected crack sizes, due to intergranular stress corrosion cracking (IGSCC) and fatigue crack growth, in two if the 20-inch RHR welds at the end of an 18-month fuel cycle would be within the ASME Code limits.

The licensee's evaluation also showed that the 10 12-inch riser welds and the three 20-inch RHR suction line welds

required repair for continued service because their calculated projected cracks would exceed the Code limits at the end of an 18-month fuel cycle.

However, all five RHR suction line welds and the ten 12-inch riser welds were repaired using a weld overlay process. The minimum overlay thickness for the riser welds is 0.25-inch and for the 20-inch RHR weld it varies from 0.25-inch to 0.5-inch. The overlay thickness is designed to meet the Code allowable limits in the new ASME Code Section XI IWB 3600 assuming the presence of through-wall cracks. The length of the overlay varies approximately from 4 to 7 inches and is designed to reduce the stress at the end of the overlay acting on the crack location. RHR welds 10–0–7, 10–0–10, and 10–0–15 are bi-metallic welds (carbon steel to stainless steel) and the overlay is applied only to the stainless steel side of the welds. Personnel of Region I confirmed that the weld overlay repairs were performed in accordance with the qualified and approved procedures consistent with ASME Code requirements.

The staff has reviewed the licensee's submittals including analysis of weld overlay design and the calculation of IGSCC crack growth, based on current crack growth data, to support the continuing service for an 18-month fuel cycle with the 15 overlay repaired welds. Region I personnel confirmed that the licensee's UT procedures, calibration standards, equipment and IGSCC detection capabilities were acceptably demonstrated in accordance with IE Bulletin 83–02.

The licensee's overlay design analysis performed by General Elecric is based on the conservative assumption that all cracks are through-wall cracks. Consequently, its analysis did not depend on any assumptions concerning UT sizing and the IGSCC crack growth rate. The required minimum overlay thickness for each defective weld is calculated by using the methodology allowed in the new ASME Code Section XI IWB 3600 to meet the required Code safety margin. For normal and upset condition, a safety margin of three is required and for the faulted and emergency condition, a safety margin of 1.5 is requried. Because the acceptable flaw in the normal condition based on new IWB 3600 is more limiting, the acceptable flaw for the faulted condition need not be considered.

For RHR welds 10–0–5 and 10–0–6, the allowable flaw depth based on new IWB 3600 is conseratively calculated to be 75.5 percent and 78.1 percent of wall thickness respectively. This calculation assumes the flaws to be fully circumferential in length and through the original pipe thickness in depth. This assumption is very conservative because the worst reported UT indication in these two welds is about 40 percent through-wall in depth and less than half of the full circumference in length. The General Electric analysis has shown that a minimum overlay thickness of 0.5 inch is more than enough to make the assumed through-wall cracks (63 percent and 65 percent of the overlay repaired wall thickness) in these two welds meet the new calculated Code allowable limits (75 percent and 78 percent). An allowable flaw depth of 82 percent was similarly calculated for RHR weld 10–0–7. This weld has a worst reported flaw with about 35 percent of wall thickness in depth and about 7 inches in length. With a minimum overlay thickness of 0.35 inch applied to this weld, the assumed fully circumferential through-wall crack (73 percent of the overlay repaired wall thickness) is well within the new calculated Code allowable limit (82 percent).

The indications reported by General Electric on RHR welds 10–0–10, and 10–0–15 may be overcalls because two independent UT examinations on the same two welds did not find any reportable indications. However, the licensee decided to apply an overlay with a minimum thickness of 0.25 inch to these two welds to increase the safety margin in structural strength and to prevent any potential leakage.

We reviewed the weld overlay design calculation made by General Electric. We concur in their conclusion that the overlay used will provide adequate reinforcement with Code required safety margin for at least the next fuel cycle of operation.

III

Although the calculations discussed above indicate that the cracks in the 15 overlay repaired welds will not progress to the point of leakage during the next fuel cycle, and margins are expected to be maintained over crack growth which could compromise safety, uncertainties in crack sizing and growth rate still remain. Further, not all welds were examined, and significant cracks could be present in welds that were not examined.

Because of these uncertainties, we have determined that improvements in the monitoring in the containment for unidentified leakage are required; therefore, new limiting conditions for operation and surveillance requirements have been developed. These enhanced surveillance measures will provide adequate assurance that possible cracks in pipes will be detected before growing to a size that will compromise the safety of the plant.

The staff also has some concern regarding the long-term growth of IGSCC cracks and its effect on the long-term operation of the plant. Therefore, we have determined that plans for corrective action or modification including replacement of the recirculation and other reactor coolant pressure boundary piping systems during the next refueling outage must be submitted for staff review at least three months before the start of the next refueling outage.

By letters dated August 9, 1983 and August 24, 1983, the licensee committed to the above described conditions on leakage monitoring and early submittal of inspection and/or modification plans. I have determined that the public health and safety requires that these commitments should be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to Section 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that:

1. The licensee shall operate the reactor in accordance with the present requirements on coolant leakage in Sections 3.6.C and 4.6.C of the Technical Specifications, as modified by Attachment A to this Order.

2. Plans for corrective actions and/or modification, including replacement of the recirculation and other reactor cooling pressure boundary piping systems during the next refueling outage shall be submitted for NRC review at least three months before the start of the next refueling outage.

3. The Director, Division of Licensing, may in writing relax or terminate any of the above provisions upon written request from the licensee, if the request is timely and provides good cause for the requested action.

V

The licensee may request a hearing within twenty (20) days of the date of publication of this Order in the **Federal Register**. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy shall also be sent to the Executive Legal Director at the same address. A request for a hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 1st day of September 1982.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

Attachment A

SURVEILLANCE AND LIMITING CONDITION OF OPERATION FOR PEACH BOTTOM ATOMIC POWER STATION, UNIT 3

Limiting conditions for operation	Surveillance requirements
3.6.C. *Coolant Leakage* 1. Any time irradiated fuel is in the reactor vessel and reactor coolant temperature is above 212 degress F, the rate of reactor coolant leakage to the primary containment from unidentified sources shall not exceed 5 gallons per minute. The rate of change of unidentified leakage shall not exceed 2 gallons per minute per 24 hour surveillance period when the reactor is operated in the "Run" mode. In addition, the total reactor coolant system leakage into the primary containment shall not exceed 25 gpm averaged over any 24 hour surveillance period. 2. The primary containment (Drywell) sump collection and flow monitoring system shall be operable during reactor power operation. From and after the time that this system is made or found to be inoperable for any reason, reactor power operation is permissible only during the succeeding 24 hours unless the system is made operable sooner. For purposes of this paragraph, the primary containment (Drywell) sump collection and flow monitoring system operability is defined as the ability to measure reactor coolant leakage. 3. If the conditions in 1 or 2 cannot be met, an orderly shutdown shall be initiated and the reactor shall be in at least Hot Shutdown within the next 12 hours and in Cold Shutdown Condition within the following 24 hours.	4.6.C. *Coolant Leakage* 1. Reactor coolant system leakage shall be determined by the primary containment (Drywell) sump collection and flow monitoring system and recorded every 4 hours or less.

[FR Doc. 83-25490 Filed 9-16-83; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Fish Propagation Panel; Meeting Notice

AGENCY: Fish Propagation Panel of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of field trip to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I. 1–4. Activities will include:

- Tour habitat improvement projects on South Fork of the John Day River
- Tour of North and Middle Forks of the John Day River

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming field trip of its Fish Propagation Panel.

DATE: September 20–21, 1983, 8:00 a.m.–6 p.m.

ADDRESS: The field trip will be held in the John Day River area.

FOR FURTHER INFORMATION CONTACT: Curt Marshall, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 83-25458 Filed 9-16-83; 8:45 am]

BILLING CODE 0000-00-M

Fish Propagation Panel; Meeting Notice

AGENCY: Fish Propagation Panel of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I. 1–4. Activities will include:

- Approval of minutes
- Staff update
- Report on reprogramming work session
- Status report on prioritization questionnaire responses
- Discussion of panel's role in amendment process
- Other
- Public comment

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Fish Propagation Panel.

DATE: September 22, 1983, 9:30 a.m.

ADDRESS: The meeting will be held in the Morning Star Room of the Statehouse Inn, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Curt Marshall, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 83-25459 Filed 9-16-83; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–8231]

Computone Systems, Inc.; Application To Withdraw From Listing and Registration

September 13, 1983.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Computone Systems, Inc. ("Company") common stock is listed and registered on the BSE. The Company has decided to include its stock in NASDAQ. In this regard, the Company has determined that continued listing on the BSE is not necessary. The BSE has not posed an objection to this matter.

Any interested person may, on or before October 4, 1983, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-25500 Filed 9-16-83; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-8207]

The Home Depot, Inc.; Application to Withdraw from Listing and Registration

September 13, 1983.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Home Depot, Inc. ("Company") common stock is listed and registered on the BSE and is also traded over-the-counter through NASDAQ. In this regard, the Company has determined that continued listing on the BSE is not necessary. The BSE has not posed an objection to this matter.

Any interested person may, on or before October 4, 1983, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-25490 Filed 9-16-83; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 12; Revision 2, Amendment 2]

Associate Administrator for Finance and Investment; Delegation of Authority

Correction

In the issue of Friday, September 9, 1983, page 40810, first column, FR Doc. 83-24603 is a duplicate of FR Doc. 83-16635 which was published Wednesday, June 22, 1983, on page 28599.

The republication of this document on September 9, 1983, was inadvertent.

BILLING CODE 1505-01-M

[Delegation of Authority No. 12-C; Amendment 1]

Deputy Associate Administrator for Disaster Assistance; Delegation of Authority

Correction

In the issue of Friday, September 9, 1983, page 40810, first and second columns, FR Doc. 83-24604 is a duplicate of FR Doc. 83-16634 which was published on June 22, 1983, on page 28599.

The republication of this document on September 9, 1983, was inadvertent.

BILLING CODE 1505-01-M

[License No. 04/04-0221]

Mighty Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

Correction

In the issue of Friday, September 9, 1983, page 40810, middle column, FR Doc. 83-24605 is a duplicate of FR Doc. 83-16958 which was published on June 22, 1982, page 28770.

The republication of this document on September 9, 1983, was inadvertent.

BILLING CODE 1505-01-M

[License No. 09/09-0319]

CFB Venture Capital Corp.; Issuance of a License To Operate as a Small Business Investment Company

On April 28, 1983, a notice was published in the **Federal Register** (47 FR 19282), stating that CFB Venture Capital Corporation, located at 350 California Street—Mezzanine, San Francisco, California 94104-1476, had filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1983), for a license to operate as a small business investment company under the provisions of Section 301(c) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on May 13, 1983, and no significant comments were received.

Notice is hereby given that considering the application and other information, SBA has issued License No. 09/09-0319 to CFB Venture Capital Corporation.

Dated: September 12, 1983.

Edwin T. Holloway,

Associate Administrator for Finance & Investment.

[FR Doc. 83-25482 Filed 9-16-83; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-5330]

Fook Wah Company, Inc.; Issuance of a License To Operate as a Small Business Investment Company

On May 10, 1983, a notice was published in the **Federal Register** (48 FR 21039), stating that Fook Wah Company, Inc., located at 738 Washington Street, San Francisco, California 94105, had filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1983), for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on May 25, 1983, and no significant comments were received.

Notice is hereby given that considering the application and other information, SBA has issued License No. 09/09-5330 to Fook Wah Company, Inc.

Dated: September 12, 1983.

Edwin T. Holloway,

Associate Administrator for Finance & Investment.

[FR Doc. 83-25483 Filed 9-16-83; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0324]

Latigo Capital Partners; Issuance of a License To Operate as a Small Business Investment Company

On June 23, 1983, a notice was published in the **Federal Register** (47 FR 28770), stating that Latigo Capital Partners, located at 23410 Civic Center Way, Suite E-2, Malibu, California 90265, had filed an application with the Small Business Administration pursuant to 13 CFR 107.102(1983), for a license to operate as a small business investment company under the provisions of Section 301(c) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on July 8, 1983, and no significant comments were received.

Notice is hereby given that considering the application and other information, SBA has issued License No. 09/09-0324 to Latigo Capital Partners.

Dated: September 12, 1983.

Edwin T. Holloway,

Associate Administrator for Finance & Investment.

[FR Doc. 83-25480 Filed 9-16-83; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-5323]

Los Angeles Capital Corp.; Issuance of a License To Operate as a Small Business Investment Company

On April 21, 1983, a notice was published in the **Federal Register** (47 FR 17168), stating that Los Angeles Capital Corporation, located at 1177 Myra Avenue, Suite A, Los Angeles, California 90029, had filed an application with the Small Business Administration pursuant to 13 CFR 107.102(1983), for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on May 6, 1983, and no significant comments were received.

Notice is hereby given that considering the application and other information, SBA has issued License No. 09/09-5323 to Los Angeles Capital Corporation.

Dated: September 12, 1983.

Edwin T. Holloway,

Associate Administrator for Finance & Investment.

[FR Doc. 83-25484 Filed 9-16-83; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0312]

Sun Belt Capital Corp.; Issuance of a License To Operate as a Small Business Investment Company

On May 13, 1983, a notice was published in the **Federal Register** (Vol. 48, No. 94), stating that Sun Belt Capital Corporation, located at 14255 North 76th Place, Scottsdale, Arizona 85260, had filed an application with the Small Business Administration pursuant to 13 CFR 107.102(1983), for a license to operate as a small business investment company under the provisions of Section 301(c) of the Small Business Investment Act of 1958, as amended.

Interested parties were given 15 days from the date of publication, to submit their comments to SBA. No comments were received.

Notice is hereby given that considering the application and other information, SBA has issued License No. 09/09-0312 to Sun Belt Capital Corporation.

Dated: September 12, 1983.

Edwin T. Holloway,

Associate Administrator for Finance & Investment.

[FR Doc. 83-25479 Filed 9-16-83; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0322]

Wesco Capital, Ltd.; Issuance of a License To Operate as a Small Business Investment Company

On July 19, 1983, a notice was published in the **Federal Register** (Vol. 46, No. 139), stating that Wesco Capital Ltd., located at 3471 Via Lido, Suite 204, Newport Beach, California 92663, had filed an application with the Small Business Administration pursuant to 13 CFR 107.102(1983), for a license to operate as a small business investment company under the provisions of Section 301(c) of the Small Business Investment Act of 1958, as amended.

Interested parties were given 15 days from the date of publication, to submit their comments to SBA. No comments were received.

Notice is hereby given that considering the application and other information, SBA has issued License No. 09/09-0322 to Wesco Capital, Ltd.

Dated: September 12, 1983.

Edwin T. Holloway,

Associate Administrator for Finance & Investment.

[FR Doc. 83-25481 Filed 9-16-83; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Atlanta, will hold a public meeting from 1:00 P.M. on Thursday, October 20, 1983, through 12:00 Noon on Friday, October 21, 1983, at the Holiday Inn of Jekyll Island, 200 South Beachview Drive, Jekyll Island, Georgia 31520, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Clarence B. Barnes, District Director, U.S. Small Business Administration, 1720 Peachtree Road, NW., Atlanta, Georgia 30309—(404) 881-4749.

September 13, 1983.

Jean M. Nowak,

Director, Office of Advisory Councils

[FR Doc. 83-25477 Filed 9-16-83; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of the Lower Rio Grande Valley of Texas, will hold a public meeting at 1:30 p.m. on Friday, October 7, 1983, at Pan American University, Administration Building, Regents Room, in Edinburg, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Rodney W. Martin, District Director, U.S. Small Business Administration, 222 E. Van Buren, Suite 500, Harlingen, Texas (512) 423-8933.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 13, 1983.

[FR Doc. 83-25478 Filed 9-16-83; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council, Public Meeting

The Small Business Administration Region IX Advisory Council, located in the geographical area of Phoenix, Arizona, will hold a public meeting at 10:30 a.m., on Thursday, October 6, 1983, at the Doubletree Inn, 212 West Osborn, Phoenix, Arizona, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Walter Fronstin, District Director, U.S. Small Business Administration, 3030 North Central Avenue, Suite 1201, Phoenix, Arizona 85012—(602) 241-2206.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 13, 1983.

[FR Doc. 83-25476 Filed 9-16-83; 8:45 am]

BILLING CODE 80 25-01-M

[Declaration of Disaster Loan Area No. 2102]

Virginia; Delaration of Disaster Loan Area

Clifton District of Alleghany County in the State of Virginia constitutes a disaster area as a result of damage caused by a tornado which occurred on August 11, 1983. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 4, 1983.

and for economic injury until the close of business on June 4, 1984, at the address listed below:

U.S. Small Business Administration, Federal Building, Room 3015, P.O. Box 10126, 400 North Eighth Street, Richmond, Virginia 23240

or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are as follows:

	Percent
Homeowners with credit available elsewhere	11.625
Homeowners without credit available elsewhere	5.875
Businesses with credit available elsewhere	11.000
Businesses without credit available elsewhere	8.000
Businesses (EIDL) without credit available elsewhere	8.000
Other (non-profit organizations including charitable and religious organizations)	11.375

It should be noted that assistance for agricultural enterprises is the primary responsibility of the Farmers Home Administration as specified in Pub. L. 96-302.

(Catalog of Federal Domestic Assistance Programs 59002 and 58008)

Dated: September 2, 1983.

James C. Sanders,

Administrator.

[FR Doc. 83-25496 Filed 9-16-83; 8:45 am]

BILLING CODE 6025-01-M

TENNESSEE VALLEY AUTHORITY

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms under review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, attention: Desk Officer for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: John O. Catron, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2523, FTS 858-2523.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Title of Information Collection: TVA Fishing Census.

Frequence of Use: Weekly.

Type of Affected Public: Individuals or Households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 24,000.

Estimated Total Annual Burden Hours: 2,400.

Estimated Annual Cost to TVA: $16,000.

Need For and Uses of Information: Creel surveys are conducted to provide benchmark information for better aquatic resource management, and assessment of benefits and impacts on the aquatic resources which result from reservoir operations and shoreline development activities.

Dated: September 12, 1983.

John W. Thompson,

Assistant General Manager, Senior Agency Official.

[FR Doc. 83-25445 Filed 9-16-83; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. S-741]

Participation by Vessels Built With Construction-Differential Subsidy in the Carriage of Crude Oil in the Domestic Trade; Application of ARCO Transportation Company

Notice is hereby given that by application of August 30, 1983, ARCO Transportation Company (ARCO) requested permission under section 506 of the Merchant Marine Act, 1936, as amended, and Part 250 of Title 46 of the Code of Federal Regulations, for its owned vessel, ARCO *Independence* to operate for six months in the Alaskan oil trade. The 262,000 deadweight ton ARCO *Independence* which was built with construction-differential subsidy (CDS), would carry crude oil from Valdez Alaska, to Panama for oncarriage only to a U.S. port. The vessel would be under time charter to Exxon Shipping Company, U.S.A. (Exxon) during the six-month period and would commence Alaskan service on or about October 15 to November 15, 1983.

The applicant states that *Exxon* has an ongoing, long-term need for VLCC size tonnage in order to assure that its requirement to move Alaskan North Slope crude will be met. The ARCO *Independence* is needed to replace the ARCO *Spirit* whose domestic trading waiver expires in September 1983. To the best knowledge of Exxon and Arco, there is no suitable Jones Act tonnage available which can provide the full shipping capacity required by Exxon in the Alaska/Panama oil trade.

Interested parties may inspect the application in the Office of the Secretary, Maritime Administration Room, 7300A, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

Any person, firm, or corporation who is a "competitor," as defined in § 250.2 of the regulations as set forth in 46 CFR 250 published in the **Federal Register** issue of June 29, 1977 (42 FR 33035), and desires to protest such application for carriage of oil in the domestic trade from Alaska to Panama should submit such protest in writing, in triplicate, to the Secretary, Maritime Administration, Washington, D.C. 20590.

Protests must be received within five working days after the date of publication of this Notice in the **Federal Register**. If a protest is received, the applicant will be advised of such protest by telephone or telegram and will be allowed three working days to respond in a manner acceptable to the Maritime Administrator. Within five working days after the due date for the applicant's response, the Maritime Administrator will advise the applicant, as well as those submitting protests, of the action taken, with a concise written explanation of such action. If no protest is received concerning the application, the Maritime Administrator will take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.800 Construction-Differential Subsidy (DCS))

By Order of the Maritime Administrator.

Dated: September 14, 1983.

Georgia P. Stamas,

Secretary.

[FR Doc. 83-25493 Filed 9-16-83; 8:45 am]

BILLING CODE 4910-81-M

Notice; Maritime Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Maritime Advisory Committee will meet on September 14, 1983, from 3 p.m. to 5 p.m. in the Nassif Building, 400 7th Street SW., Washington, D.C. 20590.

in a closed session. This closed session will follow the previously announced meeting which is open to the public commencing at 10 a.m. the same day.

The entire agenda for the closed meeting will consist of discussions impacting on U.S. national security interests and sealift strategies. These matters constitute classified information that is specifically authorized by executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such executive order. Accordingly, the Maritime Administrator, in full cooperation with the Department of the Navy, has determined in writing that the public interest requires that the 3 p.m. meeting be closed to the public because it will be concerned with matters listed in section 552(b)(c)(1) of title 5, United States Code.

The need for, and availability of, U.S. Navy personnel to assist the Committee on the basis of classified data was not apparent at the time of publication of the open meeting notice.

For further information concerning this meeting, contact Bruce Carlton in the Nassif Building, 400 7th Street SW., Room 7206, Washington, D.C. 20590. Phone (202) 426-5827.

By Order of the Maritime Administrator.

Dated: September 14, 1983.

Georgia P. Stamas,

Secretary.

[FR Doc. 83-25497 Filed 9-16-83; 8:45 am]

BILLING CODE 4910-81-M

[Docket No. S-742]

Boston VLCC Tankers, Inc., VI; Application for Permission Under Section 506 of the Merchant Marine Act, 1936, as Amended for its Vessel "Maryland" To Operate in Domestic Trade

Notice is hereby given that Boston VLCC Tankers, Inc., VI (Boston VI) has applied for written permission under section 506 of the Merchant Marine Act, 1936, as amended (Act), for its vessel, *Maryland*, to operate in the Alaskan oil trade for six months. The 265,000 deadweight ton *Maryland*, which was built with construction-differential subsidy, would carry crude oil from Valdez, Alaska, to Panama for transshipment and/or from Valdez direct to the U.S. Gulf or Caribbean for oncarriage only to a U.S. port. Boston VI State that suitable Jones Act vessels of competitors will not be available for the carriage of this cargo.

The *Maryland* would operate under time charter to Exxon Shipping Company. First loading of the vessel at Valdez would commence on or about October 18, 1983.

Interested parties may inspect the application in the Office of the Secretary, Maritime Administration Room 7300A, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

Any person, firm, or corporation who is a "competitor," as defined in § 250.2 of the regulations as set forth in 46 CFR Part 250 published in the **Federal Register** issue of June 29, 1977 (42 FR 33035), and desires to protest such application for carriage of oil in the domestic trade from Alaska to Panama should submit such protest in writing, in triplicate, to the Secretary, Maritime Administration, Washington, D.C. 20590.

Any person, firm or corporation who desires to protest such application for carriage of oil in the domestic trade from Alaska directly to the U.S. Gulf should submit such protest in writing, in triplicate, to the Secretary, Maritime Administration, Washington, D.C. 20590.

Protests must be received within five working days after the date of publication of this Notice in the **Federal Register.** If a protest is received, the applicant will be advised of such protest by telephone or telegram and will be allowed three working days to respond in a manner acceptable to the Maritime Administrator. Within five working days after the due date for the applicant's response, the Maritime Administrator will advise the applicant, as well as those submitting protests, of the action taken, with a concise written explanation of such action. If no protest is received concerning the application, the Maritime Administrator will take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.800 Construction-Differential Subsidy (CDS))

By Order of the Maritime Administrator.

Dated: September 15, 1983.

Georgia P. Stamas,

Secretary.

[FR Doc. 83-25632 Filed 9-16-83; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular, Public Debt Series—No. 30-83]

Washington, September 14, 1983.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $3,500,000,000 of United States securities, designated Treasury Bonds of 2003 (CUSIP No. 912810 DG 0). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated October 5, 1983, and will bear interest from that date, payable on a semiannual basis on May 15, 1984, and each subsequent 6 months on November 15 and May 15 until the principal becomes payable. They will mature November 15, 2003, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Thursday, September 22, 1983. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, September 21, 1983, and received no later than Wednesday, October 5, 1983.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 95.000. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Wednesday, October 5, 1983. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, October 3, 1983. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number of an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appears in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities

must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Carole J. Dineen,

Fiscal Assistant Secretary.

[FR Doc. 83-25553 Filed 9-15-83; 12:24 pm]

BILLING CODE 4810-40-M

[Department Circular, Public Debt Series—No. 29-83]

Treasury Notes of October 15, 1990; Series F-1990

Washington, September 14, 1983.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $5,000,000,000 of United States securities, designated Treasury Notes of October 15, 1990, Series F-1990 (CUSIP NO. 912827 QA 3). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated October 5, 1983, and will bear interest from that date, payable on a semiannual basis on April 15, 1984, and each subsequent 6 months on October 15 and April 15 until the principal becomes payable. They will mature October 15, 1990, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Wednesday, September 21, 1983. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, September 20, 1983, and received no later than Wednesday, October 5, 1983

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.4. Tenders will be received without deposit for their own account from commerical banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commerical bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.250. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g.

99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Wednesday, October 5, 1983. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, October 3, 1983. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Carole J. Dineen,

Fiscal Assistant Secretary.

[FR Doc. 83-25554 Filed 9-15-83; 12:34 pm]

BILLING CODE 4810-40-M

[Department Circular, Public Debt Series—No. 28-83]

Treasury Notes of September 30, 1987, Series K-1987

Washington, September 14, 1983.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $5,750,000,000 of United States securities, designated Treasury Notes of September 30, 1987, Series K–1987 (CUSIP No. 912827 PZ 9). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Baks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Securities will be dated September 30, 1983, and will bear interest from that date, payable on a semiannual basis on March 31, 1984, and each subsequent 6 months on September 30 and March 31 until the principal becomes payable. They will mature September 30, 1987, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any state, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Tuesday, September 20, 1983. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, September 19, 1983, and received no later than Friday, September 30, 1983.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from other must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.000. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender alloted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all of most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notifed only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for alloted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities alloted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Friday, September 30, 1983. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, September 28, 1983. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securites allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public annoucements of such changes will be promptly provided.

Carole J. Dineen,

Fiscal Assistant Secretary.

[FR Doc. 83-25555 Filed 9-15-83; 12:34 pm]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 182
Monday, September 19, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

COMMODITY CREDIT CORPORATION

TIME AND DATE: 2 p.m., September 26, 1983.

PLACE: Room 104–A, Administration Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED: Agenda to be announced.

CONTACT PERSON FOR MORE INFORMATION: Ray F. Voelkel, Secretary, Commodity Credit Corporation, P.O. Box 2415, Room 3090 South Building, U.S. Department of Agriculture, Washington, D.C. 20013; telephone (202) 447–3451.

[S–1310–83 Filed 9–15–83; 10:28 am]

BILLING CODE 3410–05–M

2

CONSUMER PRODUCT SAFETY COMMISSION

Commission Meeting

TIME AND DATE: 10 a.m., Wednesday, September 21, 1983.

LOCATION: Third floor hearing room, 1111 18th Street NW., Washington, D.C.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Uninvented Gas-Fired Space Heaters: Proposed Revocation*
   The Commission will consider a draft **Federal Register** notice proposing revocation of the Commission's mandatory standard requiring the oxygen depletion sensor on unvented gas-fired space heaters (16 CFR Part 1212).
2. *Metal Chimneys—Briefing*
   The staff will brief the Commission on the safety of factory-built metal chimneys for wood-burning appliances.

Closed to the Public:

3. *Enforcement Matter (OS# 5083)*
   The staff will brief the Commission on Enforcement Matter OS# 5083.
4. *Enforcement Matter (OS# 3391)*
   The staff will brief the Commission on Enforcement Matter OS# 3391.

For recorded message containing the latest agenda information call 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207; 301–492–6800.

[S–1316–83 Filed 9–15–83; 4:10 pm]

BILLING CODE 6355–01–M

3

CONSUMER PRODUCT SAFETY COMMISSION

Commission Meeting

TIME AND DATE: 10 a.m., Thursday, September 22, 1983.

LOCATION: Third floor hearing room, 1111 18th Street NW., Washington, D.C.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Strong Sensitizers—Briefing*
   The staff will brief the Commission on a draft proposal to revoke the definition of "strong sensitizer" in 16 CFR Part 1500.3(c)(5) Federal Hazardous Substances Act Regulations.
2. *Preview of TAB Recommendations—Briefing*
   The staff will brief the Commission on the final report of the Toxicological Advisory Board and the staff analysis of the report.
3. *Apparel Revisions: Final Amendment*
   The Commission will consider proposed amendments of rules establishing requirements for testing and record-keeping to support guarantees for 16 CFR Part 1610—Standard for the Flammability of Clothing Textiles.

For a recorded message containing the latest agenda information: call 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207; 301–492–6800.

[S–1317–83 Filed 9–15–83; 4:10 pm]

BILLING CODE 6355–01–M

4

FEDERAL HOME LOAN BANK BOARD

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 40974, Monday, September, 1983.

PLACE: Board room, sixth floor, 1700 G Street NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee, (202–377–6679).

CHANGES IN THE MEETING: The following item has been withdrawn from the Bank Board meeting scheduled Thursday, September 15, 1983.

Management Official Interlocks

[No. 52, September 15, 1983]

[S–1315–83 Filed 9–15–83; 3:42 pm]

BILLING CODE 6720–01–M

5

POSTAL SERVICE

(Board of Governors)

Amendment to Notice of Vote to Close Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 41551, September 15, 1983.

PREVIOUSLY ANNOUNCED DATE OF MEETING: September 30, 1983.

CHANGE: Meeting rescheduled for October 3, 1983. (*See* **Federal Register** notice in this issue.)

CONTACT PERSON FOR MORE INFORMATION: David F. Harris (202) 245–3734.

David F. Harris,

Secretary.

[S–1313–83 Filed 9–15–83; 2:21 pm]

BILLING CODE 7710–12–M

6

POSTAL SERVICE

(Board of Governors)

Vote to Close Meeting

At its meeting on September 7, 1983, the Board of Governors of the United States Postal Service unanimously voted to close to public observation its meeting, scheduled for October 3, 1983, in Washington, DC. The meeting will involve: (1) Consideration of the August 26, 1983, recommended decision of the Postal Rate Commission on third-class bulk rates for nonprofit mail in Docket R80–1 (rescheduled from September 30, 1983); (2) consideration of an anticipated issuance by the Postal Rate Commission of its Recommended Decision in Docket No. MC 83–2 (ZIP + 4); (3) a discussion of strategic planning in connection with

possible future rate adjustments; and (4) a discussion of possible strategies in anticipated collective bargaining negotiations, pursuant to chapter 12 of title 39 United States Code, involving parties to the 1981 National Agreements, between the Postal Service and four labor organizations representing certain postal employees, which are scheduled to expire in July 1984.

The meeting is expected to be attended by the following persons: Governors Hardesty, Babcock, Camp, Hughes, McKean, Ryan, Sullivan and Voss; Postmaster General Bolger; Deputy Postmaster General Finch; Secretary of the Board Harris; General Counsel Cox; Senior Assistant Postmasters General Coughlin and Jellison; and Counsel to the Governors Califano.

As to the first three of these agenda items, the Board is of the opinion that public access to the discussions would be likely to disclose information that will become involved in future rate or classification litigation.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, these portions of the meeting are exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b[b]), because they are likely to disclose information in connection with proceedings under chapter 36 of title 39 (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code. The Board has determined further, that pursuant to section 552b(c)(10) of title 5, United States Code, and section 7.3(j) of title 39, Code of Federal Regulations, the discussions are exempt, because they are likely to specifically concern the participation of the Postal Service in a civil action or proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

As to the fourth agenda item, the Board is of the opinion that public access to any discussion of possible strategies that Postal Service management may decide to adopt, or the positions it may decide to assert, in any collective bargaining sessions that may take place would be likely to frustrate action to carry out those strategies or assert those positions successfully. In making this determination, the Board is aware that the effectiveness of the collective bargaining process in labor-management relations has traditionally depended on the ability of the parties to prepare strategies and formulate positions without prematurely disclosing them to the opposite party. The public has a particular interest in the integrity of this process as it relates to the Postal Service, since the outcome of the negotiations between the Postal Service and the various postal unions, and consequently the cost, quality and efficiency of postal operations, may be adversely affected if the process is altered.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting to be closed is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552[b]), because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code. The Board has determined further that, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Rgulations, the discussion is exempt, because it is likely to disclose information the premature disclosure of which is likely to frustrate significantly proposed Postal Service action. Finally, the Board of Governors has determined that the public has an interest in maintaining the integrity of the collective bargaining process and that the public interest does not require that the Board's discussion of its possible collective bargaining strategies and positions to be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting to be closed may properly be closed to public observation, pursuant to section 552b(c)(3), (9)(B) and (10) of title 5 and section 410(c) (3) and (4) of title 39, United States Code, and section 7.3(c), (i) and (j) of title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

[S-1314-83 Filed 9-15-83; 2:21 pm]

BILLING CODE 7710-12-M

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SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (To be published.)

STATUS: Closed meeting.

PLACE: 450 5th Street NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Thursday, September 8, 1983.

CHANGE IN THE MEETING: Deletion/additional item. The following item was not considered at a closed meeting scheduled on Tuesday, September 13, 1983, at 9 a.m.

Settlement of administrative proceeding of an enforcement nature.

The following additional item will be considered at a closed meeting scheduled for Thursday, September 15, 1983, following the 2:30 p.m. open meeting.

Formal order of investigation.

Chairman Shad and Commissioners Longstreth and Treadway determined that Commission business required the above change that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: JoAnn Zuercher at (202) 272-2014.

September 14, 1983.

[S-1312-83 Filed 9-15-83; 12:12 pm]

BILLING CODE 8010-01-M

Federal Register

Monday
September 19, 1983

Part II

Environmental Protection Agency

Nonferrous Smelter Orders Covering the Period January 1, 1983, to January 1, 1988; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 57

[AH-FRC 2330-1]

Nonferrous Smelter Orders Covering the Period January 1, 1983 to January 1,1988

AGENCY: Environmental Protection Agency.

ACTION: Proposed rules.

SUMMARY: The regulation proposed today would establish the minimum required contents of primary nonferrous smelter orders (NSOs) issued under Section 119 of the Clean Air Act and covering the period of time from the date of promulgation through January 1, 1988. The regulation also establishes the criteria and procedures EPA will use in issuing NSOs and in evaluating NSOs issued by States. Under Section 119, NSOs may be granted to eligible smelters by States, with EPA approval, or directly by EPA. An NSO permits a smelter to defer complying with its State Implementation Plan (SIP) emission limitation for sulfur dioxide for the period of the order. During this deferral, the smelter is required to use an interim level of constant control technology in combination with dispersion techniques to maintain the national ambient air quality standards (NAAQS) for sulfur dioxide (SO_2).

DATES: Public comment is invited. Written public comments should be addressed to the information contact named below and cited for insertion into docket number A-82-35. They must be postmarked no later than 30 days from the date of the conclusion of the Public Hearing discussed below (Minimum 60 day total comment period).

An informal hearing will be held on these proposed rules on or about October 19, 1983, tentatively in Phoenix, Arizona. Please contact Mr. Roy Rathbun at (202) 382-2887 within five (5) days if possible of this notice to assure that you will receive the information concerning the exact date, time and location of this hearing. Those who wish to make oral comments at the public hearings must, at least ten days before the date of the hearing, contact Mr. Rathbun to register.

ADDRESSES: Docket Numbers A-82-35 and DSSE 78-1 contain the documents upon which these rules are based. Those dockets are open for public inspection and copying between 8:00 A.M. and 4:00 P.M. Monday through Friday at: U.S. Environmental Protection Agency, Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C., 20460.

All comments on this proposed rule should be sent to the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Rathbun, Stationary Source Compliance Division (EN 341), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Telephone (202) 382-2887.

SUPPLEMENTARY INFORMATION: The remainder of this notice discusses the background of this rulemaking and the basis, purpose and contents of the regulation. The text of the proposed regulation follows this discussion.

Collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be directed to the Office of Information and Regulatory Affairs, Office of Managemnent and Budget, attention: Desk Officer for EPA.

Under Executive Order 12291, EPA must judge whether this regulation requires a Regulatory Impact Analysis. EPA has determined that this regulation is not major and thus does not require a Regulatory Impact Analysis because it merely provides for interim relief for some entities and it requires no expenditures other than those already required under existing regulations promulgated under the Clean Air Act. Therefore, the Agency has not prepared a Regulatory Impact Analysis for this Regulation. EPA has submitted this regulation to the Office of Management and Budget (OMB) for review in accordance with Executive Order 12291.

Regarding public comments on this proposed rule, interested persons are reminded that section 307(d) (7) (B) of the Act provides, with limited exceptions, that objections to proposed rules must be raised with reasonable specificity during the comment period for those objections to be cognizable during judicial review. In the view of EPA, this requires comments of a technical nature to be accompanied by sufficiently detailed supporting documentation to permit the Agency's technical staff to evaluate the comments in detail. This is particularly important where the information necessary to evaluate the comments properly is in the control of the commenters. Smelter owners and others are therefore encouraged to submit any detailed analyses of technical issues they believe may assist EPA in responding to their concerns.

Background

Section 119 was added to the Clean Air Act when the Act was amended in 1977. A very thorough discussion of the history and content of Section 119 and how it fits into the overall air pollution control strategy governed by the Clean Air Act was published in the Preamble to the proposed first NSO regulation. Please refer to 44 FR 6284-6286 (January 31, 1979) for that complete discussion. A brief summary of that discussion follows:

Under Title I of the Clean Air Act, EPA has set national ambient air quality standards (NAAQS) for certain pollutants ("criteria pollutants") including sulfur dioxide. Title I also requires the NAAQS to be met through the establishment of state implementation plans (SIPs) governing emission sources of these pollutants.

Emissions of sulfur dioxide by industrial sources generally fall into two categories: Stack emissions and fugitive emissions. Fugitive emissions are generally defined as those released through leaks or at transfer points. Because stack emissions are responsible for the great majority of sulfur dioxide emissions, control efforts have traditionally been directed primarily at stack emissions.

The effects of stack emissions on ambient air quality can be mitigated by either constant emission reduction or dispersion techniques. Constant emission reduction techniques diminish the overall atmospheric loading of pollutants through the use of technologies or raw materials (including fuels) that prevent pollutants from being generated or that remove pollutants from waste gas on a continuous basis.

Dispersion techniques, on the other hand, do not reduce total emissions into the atmosphere on a continuous basis. Dispersion techniques include tall stacks, which disperse emissions over a wide geographic area and supplementary control systems (SCS) which vary emissions over time depending on meteorological conditions.

Reflecting Congress' concern about the potential adverse environmental effects resulting from the use of dispersion techniques, the 1977 amendments sharply restrict the permissible use of dispersion techniques in place of constant controls to meet national ambient air quality standards. However, because of its concern about the unusual economic and technological problems facing the primary nonferrous metals industry, Congress, in Section 119, permitted a limited exemption from the requirement for constant controls for

nonferrous smelters. Specifically, Section 119 permits issuance of a "primary nonferrous smelter order" (NSO) to a primary nonferrous smelter if no constant control method applicable to the smelter which would enable it to meet the applicable SO_2 SIP emission limit has been adequately demonstrated to be reasonably available (as determined by the Administrator, taking into account the cost of compliance, nonair quality health and environmental impact, and energy consideration). Under an NSO, a qualifying smelter may temporarily defer compliance with its SIP sulfur dioxide emission limitation and instead meet ambient standards through the use of dispersion techniques together with interim constant controls. Section 119 provides for up to two NSO's, the first expiring on January 1, 1983, and the second on January 1, 1988.

On June 24, 1980, EPA promulgated national regulations to implement the first NSO period of Section 119 (See 45 FR 42514). The regulations comprise Part 57 of Title 40 of the Code of Federal Regulations and include criteria for determining whether a smelter is eligible for a first period NSO. Under the first period NSO rules, a smelter was eligible for a first period NSO if the Administrator determined, based on the financial information submitted in the smelter owner's application, that the constant control equipment necessary for it to meet the SO_2 SIP emission limit was not adequately demonstrated to be reasonably available taking into account cost and other factors.

The regulations also provided for the establishment of interim requirements to minimize emissions and further ensure that the smelter's emissions did not result in violations of the NAAQS for SO_2. Those requirements included the use of dispersion-dependent techniques (tall stacks and supplementary control systems), the assumption of legal liability by a smelter relying on such techniques for violations of the NAAQS in the area affected by its emissions, the evaluation and control of fugitive emissions, and related monitoring and reporting requirements. The regulations also required the efficient use of an interim level of continuous emission reduction technology, and established criteria and procedures for a waiver of that requirement for a smelter without such controls which would be forced to close by the imposition of the interim control requirement.

The smelter was also required, during the first NSO period, to conduct a research and development (R&D) project that was designed to produce technology that would aid both the smelter and the industry in general in complying with SO_2 SIP limitations.

The regulations proposed by today's notice set out the requirements for obtaining an NSO which will be effective during the second NSO period, running from the date of promulgation through January 1, 1988. EPA has retained much of the first period regulations because they are also applicable to this NSO period. Some changes are being proposed in this notice in order to implement the specific second period NSO requirements contained in Section 119.

Certain changes also necessitated by the recent court decision in *Kennecott Corp.* v. *EPA*, 684 F.2d 1007 (D.C. Cir. 1982). The court vacated and remanded that part of the regulations dealing with the eligibility test and it also ruled that molybdenum roasters were incorrectly excluded from NSO coverage. Changes reflecting the Court's decision are included in this notice of proposed rulemaking. Other changes were also made in order to streamline the application process and reduce paperwork for both EPA and applicant smelters. These changes are described below. The reader should refer to the detailed discussion in the preamble to the proposed and final first period NSO regulations for complete explanations of individual sections of the first period regulations (See 45 FR 42514, June 24, 1980, 44 FR 6284, January 31, 1979 and EPA docket number DSSE–78–1). In light of these detailed discussions, this preamble does not discuss some portions of the first period NSO regulations which are retained in either identical or similar form in the second period NSO regulations proposed by this Notice.

1.a. Outline of Determination of NSO Eligibility

A smelter desiring an NSO must establish its eligibility by demonstrating to the Agency that there is no "adequately demonstrated" SO_2 control technology which is economically "reasonably available" for use in bringing the smelter into compliance with its SO_2 SIP emission limits by the compliance date specified in the SIP. This determination is made as follows:

A smelter applies for an NSO to the state or local air pollution control agency in which the smelter is located or to EPA with a proposal to install constant control technology selected from the list of adequately demonstrated technologies. The constant control technology selected must have the potential to bring the smelter into compliance with the SIP emission limits and must be the most cost effective which is technically feasible to implement at the smelter. A discussion of what constitutes adequately demonstrated control technology is contained in Section. 1.b.

The smelter must demonstrate that this technology is not reasonably available in light of the economic impact of installing the adequately demonstrated technology at the smelter. The NSO eligibility tests serve as the basis for determining what is reasonably available for the applicant (See Section 1.c.) If the least costly adequately demonstrated technology which would allow the smelter to comply with the SIP emission limits by the date required in the SIP is found not to be reasonably available, the smelter qualifies for an NSO.

b. Determination of Adequately Demonstrated Control Technology

As discussed above, in Section 1.a., the first step in determining eligibility for an NSO is for a smelter to select an adequately demonstrated control technology that will bring it into compliance with the SIP emission limit. Under the proposed regulations, "adequately demonstrated control technology" encompasses those control technologies which are or have been used in full scale smelting operations or in pilot smelters, in foreign or domestic locations and include but are not limited to those listed below. A determination that any control technology is adequately demonstrated must take into account nonair quality health and environmental impact and energy considerations, but not the cost of compliance. The Agency today proposes several adequately demonstrated technologies which encompass those current control technologies which have the potential capability to bring sources into compliance with the levels of constant control required in SIPs. In developing this list, the Agency believes that it has considered all control technologies used in full and/or pilot scale primary nonferrous smelting operations within the U.S.A. and in foreign countries. In addition the Agency has considered nonair quality health and environmental impacts of the listed technologies. None of the listed technologies are expected to have significant adverse impacts in these areas. Discussions of the availability of the different technologies and their nonair quality health and environmental and energy impacts can be found in the docket to this proposed regulation and in the Preamble and docket to the first period NSO regultion (#DSSE 78–1). The technologies could be categorized into

retrofit control technologies and replacement or process modification technologies. The list of technologies in each group is as follows:

(i) Retrofit Control Technologies:

(1) Sulfuric acid plant
(2) Magnesium oxide (concentration) scrubbing
(3) Lime/limestone scrubbing
(4) Ammonia Scrubbing
(5) Citrate Scrubbing
(6) DMA (N, N-dimethylanilene) scrubbing
(7) Strong stream/weak stream gas blending
(8) Coal reduction
(9) Double alkali FGD

(ii) Replacement or Process Modifications:

(1) Flash smelting
(2) Oxygen enrichment or oxygen sprinkle smelting
(3) Supplemental sulfur burning in conjunction with acid plant
(4) Electric Furnace
(5) Noranda process
(6) Fluid bed roaster
(7) Continuous smelting (Mitsubishi) process

A smelter must justify use of the chosen technology on the basis that it is the most cost effective for that particular smelter. Several technologies may be combined such that the most cost effective combination will be used. A smelter may propose use of other technologies, not mentioned in the above list, if it can demonstrate that the technology is adequate to bring the smelter into compliance with its SIP emission limit and it does not cause unreasonable adverse nonair quality health, environmental or energy impacts. However, if this technology is less cost effective than those listed in the regulations, a detailed explanation must be provided to EPA justifying its use and the reasons why it was selected. Similarly, a less cost effective technology than another *within* the proposed list of technologies must also be justified. Those requirements are intended to ensure the validity of the eligibility determination.

EPA solicits comment on this approach to the selection of control technologies as well as suggestions on other technologies which should be allowed for use in the NSO process.

c. Financial Eligibility Test To Determine Whether Any Adequately Demonstrated Technology Is Reasonably Available

Once a smelter selects the most cost effective adequately demonstrated constant control technology in the manner discussed above, it must demonstrate that the cost of such technology is economically unreasonable in order to be eligible for an NSO under Section 119(b)(3). In *Kennecott Corp.* v. *EPA*, the court interpreted Section 119(b)(3) as mandating an NSO eligibility standard short of a closure test (i.e., short of a test which would require installation of all constant control technology necessary to attain the SO_2 SIP emission limits unless such a requirement would result in a smelter shutdown). Beyond that, however, neither the court nor Congress defined "economically unreasonable." Moreover, "economically unreasonable" is not defined by economic or financial theory. Therefore, in the Agency's judgment, Section 119(b)(3) does not mandate the use of some unique NSO eligibility test. Rather, the Agency has considerable discretion in structuring an eligibility test which it deems to be fair so long as such test is short of a closure test.

The first NSO regulations adopted as an eligibility test the Net Income Test under which a smelter would be eligible for an NSO if installation of required constant controls would reduce the present value of its forecast net income to less than its liquidation value. This Net Income Test was interpreted by the court in the *Kennecott* case to be a closure test and therefore inconsistent with the intent of Congress.

In response to the *Kennecott* decision, EPA is now proposing two financial eligibility tests, the Rate of Return Test and the Profit Protection Test. If a smelter passes either test, it would be financially eligible for an NSO. The Agency believes that the tests provide a fair benchmark for determining whether the costs of installing adequately demonstrated control technologies are economically reasonable. Neither test uses closure as a benchmark for NSO eligibility, and therefore neither test is a closure test. The two tests together assure that primary nonferrous smelters will not be forced to close because of pollution control requirements, and also protect smelters from unreasonable reductions in profits and other unreasonable economic consequences which might result from pollution control requirements. The two financial eligibility tests are discussed in more detail below. Please also refer to the docket to these proposed regulations for a complete discussion of the assumptions which underly these proposed financial eligibility tests.

1. The Rate of Return Test

The Rate of Return Test compares a smelter's estimated rate of return earned on the smelter's book value of net investment [1] with the required rate of return for the nonferrous metals industry. If the estimated rate of return with constant controls is less than the required rate, a smelter passes the Rate of Return Test.

The determination of whether a smelter's rate of return with constant controls is less than the required rate of return is made as follows. The required rate of return is a weighted average of the required rates of return for equity and debt for the nonferrous metals industry as described in Section 2.6 of the Appendix.[2] The smelter's future cash flows, taking into account expenditures for constant controls, are then estimated for a seven year forecast period beyond the time of application for and NSO and for a horizon period extending 15 years beyond the last forecast year. Cash flows [3] during the forecast period are determined from historical data and projection provided by the applicant for the NSO and from certain data provided by EPA. Specifically, EPA has provided (see Appendix A) forecasts of copper smelting charges and annual percentage rates of change of wages, energy prices and gross national product price deflator. Applicant smelters must provide other financial data including, for example, production volumes, operating costs, and depreciation schedules.

Estimates of cash flows during the horizon period are based on the last two years of the forecast period.

The estimated future cash flows with constant controls are discounted at the required rate of return as described in Section 2.6.2 of the Appendix. This discounted value of future cash flows is then compared to the smelter's book value of net investment. If the discounted value of future cash flows is less than book value, then the estimated rate of return earned on the smelter's book value is less than the required rate of return and the smelter is eligible for an NSO.

The consequence of a reduction in the rate of return to less than the required rate is a reduced ability to attract capital. Investors will direct their funds away from investments earning less than the required rate toward those that

[1] Book value of net investment is defined as total assets minus current liabilities plus the depreciation of post-1977 pollution control investments. (The addition of post-1977 depreciation of pollution control investments raises the total book value and thereby does not penalize a smelter for making pollution control investments.)

[2] The required Rate of Return is the same as the weighted average cost of capital.

[3] Cash flows are defined as after tax net income plus depreciation minus investment in constant control minus sustaining capital investment.

earn the required rate or more. A significant impairment of the ability of an enterprise to attract capital would be expected to significantly impair the long term viability of that enterprise by reducing the enterprise's ability to make necessary sustaining capital investments. The Agency believes that the Rate of Return Test being proposed would assure that a smelter's ability to attract capital will not be unreasonably impaired as a result of constant control requirements.

It should be noted that the Rate of Return Test being proposed would always protect a smelter from economic consequences short of closure as a result of control requirements so long as book value is greater than liquidation value. The Agency believes that book value is higher than liquidation value generally for the nonferrous smelter industry because smelters should have relatively low liquidation values as a result of the very limited alternative use for them. Accordingly, the Agency believes that the proposed Rate of Return Test should afford an applicant smelter protection from adverse economic consequences short of closure.

2. The Profit Protection Test

The Profit Protection Test evaluates the impact of installing constant controls on pre-tax net income. The test requires that a smelter forecast its future income under two conditions: (1) Continued operation without constant SO_2 controls and (2) immediate installation of constant SO_2 controls. A smelter passes the Profit Protection Test if the present value of its forecasted pre-tax profits are estimated to fall by more than 50 percent as a result of installing the required constant controls.

Passage of the Profit Protection Test is positively correlated with passage of the Rate of Return Test. That is, a smelter passing one test is likely to pass the other test as well. However, the agency has decided to provide the Profit Protection Test as an alternative to the Rate of Return Test because there may be some circumstances in which a smelter may fail the Rate of Return Test and yet still find its profits reduced by a substantial percentage as a result of pollution control requirements.

The Agency believes that its consideration of profit reduction *per se* is consistent with § 119(b)(3) because reduction in profits is one of the examples of adverse economic consequences which Congress suggested might be considered in determining the reasonableness of constant control requirements. (See, *Kennecott* v. *EPA*, cited earlier). Moreover, a substantial reduction in profits in and of itself may significantly impair an enterprise's viability. The Agency believes that greater than 50 percent reduction in profits would be unreasonable and that the Profit Protection Test therefore protects against unreasonable reductions in profits.

Other Changes to Test—Calculating Smelter Revenues

EPA has also changed the procedure by which smelter revenues are calculated. When completing applications for the first NSO, smelters were provided forecasts of copper prices, aggregate demand, capacity utilization, and certain cost indices. Smelters were to use these forecasts, in conjunction with their own estimates of concentrate costs and other factors, to arrive at *pro forma* income and cash flows.

This procedure has been revised for the second NSO. Under the new procedure, each smelter derives its revenue estimates as though it were a toll smelter. EPA will no longer provide forecasts of copper prices, aggregate demand, or capacity utilization. Instead, the Agency will provide a forecast of copper smelting changes and a procedure by which the applicant smelter can use that forecast as an input to its own revenue estimates.

The new procedure eliminates the requirement to forecast refined copper and concentrate prices. The price fluctuations in the world copper market make accurate forecasting of these variables extremely difficult. The smelting charge approach parallels the system now used by toll smelters. It is also used as the basis for estimating customs smelter revenues and as a mechanism for determining the value that an integrated operation derives from its smelter facility.

Smelting charges will be provided only for copper smelters. Other primary nonferrous smelters must provide their own forecasts and documentation to support their forecasts.

Note.—EPA will reevaluate the economic data forecasts during the time period between this Notice of Proposed Rulemaking and the final promulgation of these regulations. If the forecasts are significantly different, EPA will make them available to the public prior to promulgation by publishing a Notice of Availability in the **Federal Register.**

2. Placement of Smelters on Compliance Schedules

a. Once a smelter has qualified for an NSO based on the evaluation made in Section 1.a. and 1.c., the issuing Agency will perform the financial eligibility test in order to determine if adequately demonstrated technology is reasonably available and can be installed before January 1, 1988. In accordance with Section 119(c)(1) of the Act, if EPA or the issuing Agency determines that such installation is reasonably available by January 1, 1988, based on an analysis using both of the financial eligibility tests, then the smelter will be placed on a compliance schedule to meet the appplicable SO_2 SIP emission limits as expeditiously as practicable, but in no event later than January 1, 1988. A smelter is excused from the obligation to submit a proposed compliance schedule if application of either of the financial eligibility tests show that the compliance technology is not reasonably available to permit compliance by Janaury 1, 1988.

Under Sections 119(c)(1) and 119(e) of the Clean Air Act, EPA or the issuing agency may evaluate at any time during the duration of a second NSO whether changed economic factors, availability of technology or other conditions would warrant placing a smelter on a SIP compliance schedule. Accordingly, the regulations provide that if an NSO were initially issued without a SIP compliance schedule on the basis of a determination that adequately demonstrated technology would not be reasonably available to permit compliance by January 1, 1988, EPA or the issuing agency may reevaluate that determination at any time during the duration of the NSO. If EPA or the issuing agency determines on the basis of such reevaluation, that adequately demonstrated technology is reasonably available to permit compliance on or before January 1, 1988, the NSO shall be amended within three months to include an appropriate SIP compliance schedule.

b. It is conceivable that some smelters may not, prior to January 1, 1988, be found able to implement adequately demonstrated technology which is reasonably available. These smelters, although they will not be placed under compliance schedules to meet SIP requirements, are still required by Section 119(c)(2) of the Clean Air Act to be in compliance with the SIP on or before January 1, 1988. A primary nonferrous smelter not meeting its SIP emission limitation by January 1, 1988, is subject to enforcement actions pursuant to Sections 113 and 120 of the Clean Air Act.

3. Interim SO_2 Controls

a. *Requirements During NSO's*

In accordance with the requirements of Section 119(d)(1)(c), except, as noted in Preamble Section 3.b, all smelters

operating under NSOs must use interim continuous reduction technology on all strong SO_2 gas streams. These control technologies must be well maintained and operated for maximum efficiency, and must not be bypassed during scheduled maintenance or where process off-gas exceeds the acid plant capacity. The validity of the Agency's prohibition against bypassing of continuous emission reduction technology during the first period NSO regulations was at issue in the *Kennecott* case and was explicitly affirmed by the Court's decision.

A smelter must also assume responsibility for maintaining the NAAQS in its designated liability area (DLA). This must be accomplished through continued operation of a supplementary control system or other method of intermittent control. EPA will determine chargeable NAAQS violations based on current applicable regulations and policy.

A total plantwide emission limit is also imposed which restricts the smelter's SO_2 stack emissions to that level which would have been associated with production at the smelter's maximum production capacity as of August 7, 1977 (the date of enactment of Section 119 of the Clean Air Act). The purpose of the plantwide emission limit is to prevent the use of dispersion as a substitute for constant control of emissions resulting from capacity expansions. Because the plantwide limit is calculated at actual capacity, it will not require any production curtailment.

In order for the optimum maintenance of the NAAQS within a smelter's DLA, these proposed regulations require certain reporting and recordkeeping requirements in connection with the SCS operations, and require the installation and operation of continuous sulfur dioxide monitors on a smelter's main stack.

b. *Waiver of Interim SO_2 Controls*

Smelters which did not possess continuous control technology (as of August 7, 1977) on strong SO_2 streams (here defined as above 3.5% SO_2 by volume) may apply for an Interim Waiver of Constant SO_2 Controls. The data required for this analysis is the same as that required under the NSO eligibility test, although the test itself is different. The test, implementing Section 119(d)(2), assesses whether the smelter would be required to close for at least one year if it had to make the expenditures necessary to meet the interim control requirements.

4. Fugitive Controls and Research and Development Requirements

A smelter issued an NSO which does not contain a compliance schedule to meet SIP requirements must, as was the case during the first period NSO regulations, conduct or participate in a specific research and development program designed to develop more effective means of compliance with the SO_2 control requirements of the applicable SIP that presently exists. Such a smelter is also subject to extensive fugitive emissions evaluation and control requirements.

A smelter which is issued an NSO that contains a compliance schedule to meet SIP requirements would not be subject to the fugitive control and research and development requirements of these regulations. The exemption from the fugitive emission control provisions is reasonable because the SIP compliance schedule itself would require fugitive emissions evaluation (if necessary) and control. The exemption from the research and development provisions is reasonable because the smelters on compliance schedules will know what they must do to achieve compliance and hence, will not need to do further R&D.

5. Notice and Opportunity for a Hearing

EPA will not grant or approve any second period NSO unless either EPA or the issuing agency has first provided notice and opportunity for a public hearing with regard to such NSO. Such a hearing must be preceded by submission of an application under these regulations. The Agency understands that all states which are likely to grant an NSO already require public hearings before issuance of an NSO. Notice and opportunity for public hearing must also be provided before issuance of any major NSO amendments.

6. Amendments to NSO

The regulations require the amendment of an NSO subsequent to initial issuance in certain situations. In addition, states and local issuing agencies are authorized to amend an NSO, subject to EPA approval. The requirements and necessary procedures are specified in § 57.104. For purposes of Section 110, 304 and 307 of the Clean Air Act, an NSO issued by a state, and necessdarily, an amendment thereto, becomes part of the applicable implementation plan (see Section 119(a)(3)). Consistent with EPA's authority to revise a state implementation plan, or portion thereof, under Section 110(c), the regulations provide that in the event an issuing agency fails to issue a required amendment, EPA may issue such amendment.

Applicability of the Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (15 USC 601), the Agency has reviewed the impact of this regulation on small entities. I hereby certify that this rule, if promulgated, will not have a significant impact on a substantial number of small entities. This rule affects fewer than ten entities and merely provides interim relief to the entities affected, from expenditures already required under existing regulations promulgated under the Clear Air Act.

List of Subjects in 40 CFR Part 57

Administrative practice and procedure, Air pollution control, Metals research.

September 7, 1983.

William D. Ruckelshaus,

Administrator.

These regulations revise Part 57, Subparts A–H, as promulgated on June 24, 1980 (45 FR 43514) and as subsequently amended, as follows:

PART 57—PRIMARY NONFERROUS SMELTER ORDERS

Subpart A—General

Sec.

Subpart B—The Application and the NSO Process

Subpart C—Constant Controls and Related Requirements

Authority: Clean Air Act, (40 U.S.C. 7419).

Subpart A—General

§ 57.101 Purpose and scope.

(a) Applicability of the regulations. The regulations in Subparts A through H govern:

(1) The eligibility of smelters for a primary Nonfereous smelter Order (NSO) under Section 119 of the Clean Air act;

(2) The procedures through which an NSO can be approved or issued by EPA: and

(3) The minimum contents of each NSO required for EPA issuance or approval under section 119. Subparts I et seq., will contain NSOs in effect for individual smelters.

(b) State authority to adopt more stringent requirements. Nothing in this part shall preclude a State from imposing more stringent requirements, as provided by Section 116 of the Clean Air Act.

§ 57.102 Eligibility.

(a) A primary copper, lead, zinc, molybdenum, or other nonferrous smelter is eligible for an NSO if it meets the following conditions:

(1) The smelter was in existence and operating on August 7, 1977;

(2) The smelter is subject to an approved or promulgated sulfur dioxide (SO_2) State Implementation Plan (SIP) stack emission limitation which is adequate to ensure that National Ambient Air Quality Standards (NAAQS) for SO_2 are achieved without the use of any unauthorized dispersion techniques; and

(3) The Administrator determines, based on a showing by the smelter owner, that no means of emission limitation applicable to the smelter which would enable it to comply with its SIP stack emission limitation for SO_2 has been adequately demonstrated to be reasonably available (taking into account the cost of compliance, nonair quality health and environmental impact, and energy considerations).

(b) For the purposes of these regulations:

(1) Adequately Demonstrated Control Technology encompasses those control technologies which are or have been used in full scale smelting operations or in pilot project smelters, at foreign or domestic locations and include but are not limited to those listed below. A determination that any control technology is adequately demonstrated must take into account nonair quality health and environmenalt impact and energy considerations, but not the cost of compliance.

(i) Retrofit Control Technologies:

(A) Sulfuric acid plant.

(B) Magnesium oxide (concentration) scrubbing.

(C) Lime/limestone scrubbing.

(D) Ammonia Scrubbing.

(E) Citrate Scrubbing.

(F) DMA (N, N-dimethlylanilene) scrubbing.

(G) Strong stream/weak stream gas blending.

(H) Coal reduction.

(I) Double alkali FGD.

(ii) Replacement or Process Modifications:

(A) Flash smelting.

(B) Oxygen enrichment or oxygen sprinkle smelting.

(C) Supplemental sulfur burning in conjuction with acid plant.

(D) Electric Furnace.

(E) Noranda process.

(F) Fluid bed roaster.

(G) Continuous smelting (Mitsubishi) process.

(2) Each adequately demonstrated means of emission limitation which would enable a smelter to comply with its SIP emission limitation for SO_2 shall be considered applicable to the smelter unless the smelter operator demonstrates that the use of a particular system at that smelter is technically unreasonable, for reasons specific to that site.

(3) An applicable means of emission limitation which would enable a smelter to comply with its SIP emission limitation for SO_2 shall be considered adequately demonstrated to be reasonable available to the smelter (taking into account the cost of compliance) if the information submitted under § 57.107(a) and § 57.203(b) (plus any necessary supplemental information) shows, according to the criteria, procedures, and tests contained in Appendix A to this part, that either of the following two tests are met.

(i) The rate of return test. The present value of the smelter's future net cash flow (during and after investment in constant control technology) is more than the book value of the smelter's net investment.

(ii) The profit protection test. The constant control technology expenditure reduces the present value of the smelter's forecast pretax profits by less than 50%.

(c) When applying for an NSO, a smelter must establish that, for purpose of applying the financial eligibility tests, which adequately demonstrated constant control technology applicable to that smelter is the most economically feasible for use at that smelter.

§ 57.103 Definitions.

(a) *The Act* means the Clean Air Act, as amended.

(b) *Active use* refers to an SO_2 constant control system installed at a smelter before August 7, 1977 and not totally removed from regular service by that date.

(c) *Adequate SO_2 emission limitation* means a SIP stack emission limitation which was approved or promulgated by EPA as adequate to attain and maintain

the NAAQS in the areas affected by the stack emissions without the use of any unauthorized dispersion technique.

(d) *Administrative Law Judge* means an administrative law judge appointed under 5 U.S.C. 3105 (see also 5 CFR Part 930, as amended by 37 FR 16787), and is synonymous with the term "Hearing Examiner" as formerly used in Title 5 of the United States Code.

(e) *The Administrator* means the Administrator of the United States Environmental Protection agency, or the Administrator's authorized representative.

(f) *Ambient air* shall have the meaning given by 40 CFR 50.1(e), as that definition appears upon promulgation of this subpart, or as hereafter amended.

(g) *Ambient air quality* refers only to concentrations of sulfur dioxide in the ambient air, unless otherwise specified.

(h) *An approved measure* refers to one contained in an NSO which is in effect.

(i) *Assistant Administrator for Air, Noise and Radiation* means the Assistant Administrator for Air, Noise and Radiation of the United States Environmental Protection Agency.

(j) *Constant controls, control technology, and continuous emission reduction technology* means systems which limit the quantity, rate, or concentration, excluding the use of dilution, of emissions of air pollutants on a continuous basis.

(k) *Effective date of an NSO* means the effective date listed in the **Federal Register** publication of EPA's issuance or approval of an NSO.

(l) *EPA and the Agency* means the Administator of the United States Environmental Protection Agency, or the Administrator's authorized representative.

(m) *Fugitive emissions* means any air pollutants emitted to the atmosphere other than from a stack.

(n) *Issuance* of an NSO means the final transmittal of the NSO pursuant to § 57.107(a) by an issuing agency (other than EPA) to EPA for approval, or the publication of an NSO issued by EPA in the **Federal Register.**

(o) *Issuing agency*, unless otherwise specifically indicated, means the state or local air pollution control agency to which a smelter's owner has applied for an NSO, or which has issued the NSO or EPA, when the NSO application has been made to EPA. Any showings or demonstrations required to be made under this part to the issuing agency, when not EPA, are subject to independent determinations by EPA.

(p) *Judicial Officer* means an attorney who is a permanent or temporary employee of the United States Environmental Protection Agency.

(q) *Malfunction* means any unanticipated and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor design, poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions. A malfunction exists only for the minimum time necessary to implement corrective measures.

(r) *Maximum production capacity* means either the maximum demonstrated rate at which a smelter has produced its principal metallic final product under the process equipment configuration and operating procedures prevailing on or before August 7, 1977, or a rate which the smelter is able to demonstrate by calculation is attainable with process equipment existing on August 7, 1977. The rate may be expressed as a concentrate feed rate to the smelter.

(s) *NAAQS and National Ambient Air Quality Standards*, unless otherwise specified, refer only to the National Primary and Secondary Ambient Air Quality Standards for sulfur dioxide.

(t) *Scheduled maintenance* means any periodic procedure, necessary to maintain the integrity or reliability of emissions control performance, which can be anticipated and scheduled in advance. In sulfuric acid plants, it includes among other items the screening or replacement of catalyst, the re-tubing of heat exchangers, and the routine repair and cleaning of gas handling/cleaning equipment.

(u) *Smelter owner and operator* means the owner or operator of the smelter, without distinction.

(v) *Supplementary control system* (SCS) means any technique for limiting the concentration of a pollutant in the ambient air by varying the emissions of that pollutant according to atmospheric conditions. For the purposes of this part, the term supplementary control system does not include any dispersion technique based solely on the use of a stack the height of which exceeds good engineering practice (as determined under regulations implementing section 123 of the Act).

(w) *Unauthorized dispersion technique* refers to any dispersion technique which, under section 123 of the Act and the regulations promulgated pursuant to that section, may not be used to reduce the degree of emission limitation otherwise required in the applicable SIP.

(x) Unless otherwise specified in this part, all terms shall have the same meaning given them by the Act.

§ 57.104 Amendment of the NSO

An NSO shall be amended whenever necessary for compliance with the requirements and purposes of this part.

(a)(1) *Issuance of amendment.* A state or local issuing agency may issue an amendment of any NSO it has issued. Any amendment issued by a State or local issuing agency shall be subject to approval by EPA to the same extent as was the original NSO. Any smelter owner may apply to the agency which originally issued its NSO for an amendment of the NSO at any time. Such an application shall be accompanied by whatever documentation is required by that agency (or EPA) to support the requested amendment.

(2)(i) Notwithstanding the requirements of paragraph (a)(1) of this section, amendments to SIP compliance schedule interim compliance dates in State-issued NSO's need not be submitted for EPA approval if the amendment does not delay the interim date by more than three months from the date as approved by the Administrator and if the final compliance date is unchanged. Delays longer than 3 months shall be handled according to the provisions of § 57.104(a)(1).

(ii) Changes made in accordance with this subparagraph may be effective immediately but must be submitted to EPA within seven days. EPA will give public notice of receipt of such changes by publication of a Notice in the **Federal Register.**

(3) In any case in which the issuing agency fails to issue an amendment necessary for compliance with the requirements and purposes of this Part, EPA may, after first giving the issuing Agency notice, issue such amendment.

(b) *Revision of SCS Manual.* Operation in accordance with the revised provisions of an SCS operational manual (see § 57.402(e)) shall not be considered a violation of an NSO while the application for approval of those revisions as NSO amendments is pending before the issuing agency (or EPA) for approval: Provided, that:

(1) No violations of NAAQS occur in the smelter's Designated Liability Area during that time; and

(2) The smelter operator has not been informed by the issuing agency or EPA that its application is not adequately documented, unless such deficiency has been remedied promptly.

(c) *Notice and opportunity for hearing.* Notice and opportunity for public hearing shall be provided before issuance of all major amendments.

§ 57.105 Submittal of required plans, proposals, and reports.

(a) The failure of a smelter owner to submit any plan, report, document or proposal as required by its NSO or by this part shall constitute a violation of its NSO.

(b) If the Administrator determines that a nonferrous smelter is in violation of a requirement contained in an NSO approved under these regulations, the Administrator shall, as provided by section 119(f) of the Act: (1) Enforce such requirement under section 113 (a), (b), or (c) of the Act; (2) revoke the order after notice and opportunity for hearing; (3) give notice of noncompliance and commence action under section 120 of the Act; or (4) take any appropriate combinations of these actions.

(c) Under section 304 of the Act, any person may commence a civil action against an owner or operator of a smelter which is alleged to be in violation of any order approved under this part.

§ 57.106 Expiration date.

Each NSO shall state its expiration date. No NSO issued under this regulation shall expire later than January 1, 1988.

§ 57.107 The state or local agency's transmittal to EPA.

(a) *Content and bases of the State or local agency's NSO.* Issuance of an NSO by a State or local agency shall be completed by the issuing agency's transmittal to the appropriate EPA Regional Office of:

(1) The text of the NSO;

(2) The application submitted by the smelter owner, except for Appendix A to this part, all correspondence between the issuing agency and the applicant relating to the NSO, and any material submitted in support of the application;

(3) A concise statement of the State or local agency's findings and their bases; and

(4) All documentation or analyses prepared by or for the issuing agency in support of the NSO.

(b) *The State or local agency's enforcement plan.* The transmittal under paragraph (a) of this section shall be accompanied by a description of the issuing agency's plans for monitoring compliance with and enforcement of the NSO. The transmittal shall also include a description of the resources which will be used to implement those plans. If the enforcement plans appear inadequate, EPA may require that the NSO be modified such that the NSO will be adequately enforced.

§ 57.108 Comparable existing SIP provisions.

Notwithstanding any other provision of this part, an NSO may contain provisions to which the affected smelter is subject under the applicable EPA-approved state implementation plan (SIP) for sulfur dioxide in lieu of the corresponding provisions which would otherwise be required under this part if the Administrator determines that those SIP provisions are substantially equivalent to the corresponding NSO provisions which would otherwise be required, and if the Administrator determines that the smelter is in substantial compliance with those SIP provisions. For the purposes of this section, provisions to which the affected smelter is subject under the applicable EPA-approved State Implementation Plan are those which became effective before the smelter owner applied for the NSO.

§ 57.109 Maintenance of pay.

The Administrator will not approve or issue an NSO for any smelter unless he has approved or promulgated SIP provisions which are applicable to the smelter and which satisfy the requirements of section 110(a)(6) of the Clean Air Act.

§ 57.110 Reimbursement to State or local agency.

As a condition of issuing an NSO, any issuing agency may require the smelter operator to pay a fee to the State or local agency sufficient to defray the issuing agency's expenses in issuing and enforcing the NSO.

§ 57.111 Severability of provisions.

The provisions promulgated in this part and the various applications thereof are distinct and severable. If any provision of this part or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions, or the application of such provisions to other persons or circumstances, which can be given effect without the invalid provision of application.

Subpart B—The Application and the NSO Process

§ 57.201 Where to apply.

Any eligible smelter may apply for an NSO to the appropriate EPA Regional Office or the appropriate State or local air pollution control agency.

(a) When application is made to EPA, all parts of the application required to be submitted under this subpart shall be sent directly to the Director, Stationary Source Compliance Division (EN-341), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, Attention: Confidential Information Unit. In addition, the smelter owner shall send a copy of the application, except that part required to be submitted under § 57.203(b) (eligibility), directly to the appropriate EPA Regional Office.

(b) When application is made to the appropriate State or local agency, the smelter owner shall submit one complete copy of all parts of the application required to be submitted under this subpart to that agency, in addition to the application requirements contained in § 57.201(a), above. If the smelter owner is requesting an advance eligibility determination pursuant to § 57.203(b), such request must be made in writing and shall accompany the copy of the application being sent to the Director of the Stationary Source Compliance Division of the Environmental Protection Agency

(c) If the smelter owner is requesting a waiver of the interim constant control requirement of § 57.301, such request must be sent directly to the Director, Stationary Source Compliance Division, at the time of application, in accordance with § 57.802.

(d) *The NSO Process.* (1) A smelter desiring an NSO shall apply for an NSO by submitting an application under Subpart B including the financial information required in Appendix A. The issuing agency shall analyze the financial information according to the financial eligibility test prescribed by Subpart A and described in Appendix A. The issuing Agency shall then determine whether the smelter is able to comply with its SIP on or before the date required in the SIP by installing adequately demonstrated technology which is reasonably available. See also § 57.102(a)(3). If the test demonstrates that adequately demonstrated technology is not reasonably available to the smelter to allow it to comply with the SIP by the required compliance date, the smelter is eligible for an NSO.

(2)(i) If the smelter is determined to be eligible for an NSO under § 57.104(d)(1), the issuing Agency shall apply the Appendix A financial eligibility tests again before issuing an NSO in order to determine if the smelter can comply with its SIP requirements on or before January 1, 1988 by installing adequately demonstrated technology which is reasonably available.

(ii) If application of the tests shows that the smelter could comply by or

before January 1, 1988, the issuing agency shall notify the smelter of this determination, and shall not issue an NSO to the smelter unless the NSO contains a SIP compliance schedule meeting the requirements of 57.705. Such a compliance schedule must provide for compliance with the smelter's SO_2 SIP as expeditiously as practicable and in no case later than January 1, 1988. A smelter must submit to the issuing agency information necessary to determine a compliance schedule meeting the requirements of § 57.705. This information shall be submitted by a smelter within thirty days after the smelter is notified by the issuing agency that a SIP compliance schedule is required. The Administrator may consider an NSO application to be withdrawn for SIP enforcement purposes if a smelter fails to submit such information within the time required under this paragraph.

(iii) If no adequately demonstrated technology is found to be reasonably available to enable a smelter to comply by January 1, 1988, it would be excused from the compliance schedule requirement and it would be subject to reevaluation of its ability to comply by that date at any time during the term of the NSO. (See § 57.201(d)(3)).

(3) At any time during the term of an NSO which does not contain a SIP compliance schedule, EPA or the issuing agency may reevaluate the availability of technology to the smelter. If EPA or the issuing agency determines that adequately demonstrated technology is reasonably available to permit the smelter to comply with its SIP by or before January 1, 1988, the NSO shall be amended within 3 months time after such determination. The amendment shall require compliance with all SIP requirements by or before January 1, 1988, and shall include a compliance schedule meeting the requirements of 57.705. The determination that adequately demonstrated technology is reasonably available shall be made by reapplying the same Appendix A financial eligibility tests required by Subpart B, updated by economic data reflecting current operating conditions and currently demonstrated control technology. Any such determination and amendment shall be governed by the provisions of this Part and Section 119 of the Clean Air Act.

(4) Notice and opportunity for public hearing must be provided before issuance of any NSO.

(e) A smelter which does not possess constant SO_2 controls may apply for an interim waiver of interim constant controls by submitting an application under Subpart H. EPA then must determine the smelter's ability to afford installation of interim constant SO_2 controls at the smelter based on financial eligibility information analyzed according to the financial test prescribed in Appendix A. A waiver of the interim constant control requirement will be granted if EPA determines in accordance with the procedures of Subpart H that imposition of this requirement would necessitate closure of the smelter for at least one year.

§ 57.202 How to apply.

(a) *Letter of intent.* To initiate an application for an NSO, the owner or operator of a smelter shall send a letter of intent to an appropriate air pollution control agency. The letter of intent shall contain a statement of the owner's intent to apply for an NSO, and an agreement to provide any information required under this part. The letter of intent shall be signed by a corporate official authorized to make such commitments. Upon receipt of any letter of intent by the issuing agency, the SIP emission limitation for sulfur dioxide, as to that applicant, shall be deemed suspended for 90 days. The 90 day period may be extended for good cause at the discretion of the Administrator.

(b) *Complete application.* (1) Within the period referred to in paragraph (a) of this section, the smelter owner shall submit its completed application pursuant to § 57.201. Receipt of all parts of a substantially complete application postmarked within the original or extended application period shall be deemed to continue the suspension of the SIP emission limitation for SO_2 until the issuing agency issues or declines to issue an NSO. This suspension shall in all cases terminate, however, 90 days after receipt of the substantially completed application, unless extended for good cause at the discretion of the Administrator. If, in the Administrator's judgement, good faith effort has been made to submit a complete application, additional time may be granted to allow for correction of minor deficiencies.

(2) If an issuing agency transmits an NSO to EPA for approval before the expiration of the suspension of the federal SIP emission limitation, the suspension shall continue until EPA approves or disapproves the NSO.

§ 57.203 Contents of the application.

(a) *Claim of confidentiality.* The smelter owner may make a business confidentiality claim covering all or part of the information in the NSO application in accordance with 40 CFR Part 2, Subpart B (41 FR 36906 *et seq.*, September 1, 1976 as amended by 43 FR 39997 *et seq.*, September 8, 1978). A claim is effective only if it is made at the time the material is submitted to the issuing agincy or EPA. A claim shall be made by attaching to the information a notice of confidentiality. Information claimed as confidential will be handled by EPA under the provisions of 40 CFR Part 2, Subpart B. If no claim accompanies the information, it may be made available to the public without further notice.

(b) Each smelter owner shall make the showing required by § 57.102(a)(3) by completing and submitting Appendix A to this part and any necessary supplemental information to the issuing agency as a part of its application. Any smelter owner or State may, at its option, simultaneously submit this material to EPA for an advance eligibility determination.

(c) *Current operating information.* A complete NSO application shall also contain the following information:

(1) A process flow diagram of the smelter, including current process and instrumentation diagrams for all processes or equipment which may emit or affect the emission of sulfur dioxide; the characteristics of all gas streams emitted from the smelter's process equipment (flow rates, temperature, volumes, compositions, and variations over time); and a list of all monitoring data and strip charts, including all data, charts, logs or sheets kept with respect to the operation of any process equipment which may emit or affect the emission of sulfur dioxide;

(2) The smelter's maximum daily production capacity (as defined in § 57.103(r)), the operational rate (in pounds of concentrate charged to the smelting furnace per hour) of each major piece of process equipment when the smelter is operating at that capacity; and the smelter's average and maximum daily production rate for each product, co-product, or by-product, by year, for the past four years;

(3) The optimal conversion efficiency (defined in terms of percent of total SO_2 removed from the input flow stream) of any acid plant or other sulfur dioxide control system under the normal process operating conditions (excluding malfunctions) most conducive to optimal conversion efficiency;

(4) The average conversion efficiency of any acid plant or other sulfur dioxide control system during normal process operations (excluding malfunctions), by month, during the past four years;

(5) The percent of the time the acid plant or other control system was available for service during each month for the past four years, excluding downtime for scheduled maintenance.

and a full explanation of any major or recurring problems with the system during that time;

(6) The frequency and duration of times during the past four years when the SO_2 system was unavailable because of scheduled maintenance of the system;

(7) A description of all scheduled, periodic shutdowns of the smelter during the past four years, including their purpose, frequency and duration; and the same information with respect to unscheduled shutdowns;

(8) The gas volume, rates, and SO_2 concentration which the control system was actually designed to accommodate, taking into account any modifications made after its installation;

(9) The average monthly sulfur balance across the process and control equipment, including fugitive emissions, for the past 4 years; and

(10) A description of engineering techniques now in use at the smelter to prevent the release of fugitive emissions into the atmosphere at low elevations.

(d) *The smelter owner's proposals.* The smelter owner shall submit as part of its application, draft NSO provisions which would implement the requirements of Subparts C through G of this part. The issuing agency may use these proposals as the basis for any NSO that may be granted, or may modify these proposals in any way it deems necessary in order to comply with the requirements of this part.

(e) A smelter may submit as part of its application, information necessary to determine any SIP compliance schedule which might be required under § 57.201(d)(2).

(f) *Additional information.* The smelter owner shall designate in its application a corporate officer responsible and authorized to supply supplemental technical and economic information and explanations as required by the issuing agency during the formulation of the NSO. Failure to supply such information and explanations shall constitute a failure to submit a complete application.

(g) *Request for a waiver of constant controls.* Any request for a waiver of the interim constant control requirement of § 57.301 shall be made in accordance with § 57.802. The criteria and procedures for granting the waiver are governed by Subpart H of this part.

(h) Unless a smelter applies for a waiver in accordance with Subpart H, a smelter shall submit as part of its application a proposed schedule for compliance with the interim constant control requirements of Subpart C which satisfies the requirements of § 57.702.

Subpart C—Constant Controls and Related Requirements

§ 57.301 General requirements.

Each NSO shall require an interim level of sulfur dioxide constant controls to be operated at the smelter, unless a waiver of this requirement has been granted to the owner under Subpart H of this part. Except as otherwise provided in § 57.304, the interim constant controls shall be properly operated and maintained at all times. The NSO shall require the following gas streams to be treated by interim constant controls:

(a) In copper smelters, off-gases from fluidized bed roasters, flash furnaces, NORANDA reactors, electric furnaces and copper converters;

(b) In lead smelters, off-gases from the front end of the sintering machine and any other sinter gases which are recirculated;

(c) In zinc smelters, off-gases from multi-hearth roasters, flash roasters and fluidized bed roasters, and;

(d) In all primary nonferrous smelters, all other strong SO_2 streams.

(e) In all primary nonferrous smelters, any other process streams which were regularly or intermittently treated by constant controls at the smelter as of August 7, 1977.

§ 57.302 Performance level of interim constant controls.

(a) *Maximum feasible efficiency.* Each NSO shall require: that the smelter operate its interim constant control systems at their maximum feasible efficiency, including the making of any improvements necessary to correct the effects of any serious deficiencies; that the process and control equipment be maintained in the way best designed to ensure such operation; and that processs operations be scheduled and coordinated to facilitate treatment of process gas streams to the maximum possible extent. Maximum feasible efficiency shall be expressed in the NSO in the form of a limitation on the concentration of SO_2 in the tail gas of each individual control system in combination with an appropriate averaging period, as provided below in paragraphs (b) and (c) of this section.

(b) *The limitaition level for SO_2 concentration in the control system tail gas.* The level at which the concentration limitation is set shall take into account fluctuations in the strength and volume of process off-gases to the extent that those fluctuations affect the SO_2 content of the tail gas and cannot be avoided by improved scheduling and coordination of process operations. The limitation shall exclude the effect of any increase in emissions caused by process or control equipment malfunction. The limitation shall take into account unavoidable catalyst deterioration in sulfuric acid plants, but may prescribe the frequency of catalyst screening or replacement. The NSO shall also prohibit the smelter owner from using dilution air to meet the limitation.

(c) *Averaging period.* (1) The averaging period shall be derived in combination with the concentration limitation and shall take into account the same factors described in paragraph (b) of this section. The averaging periods established under this paragraph should generally not exceed the following:

(i) For sulfuric acid plants on copper smelters, 12 hour running average;

(ii) For sulfuric acid plants on lead smelters, 6 hour running average;

(iii) For sulfuric acid plants on zinc smelters, 2 hour running average;

(iv) For dimethylaniline (DMA) scrubbing units on copper smelters, 2 hour running average.

(2) A different averaging period may be established if the applicant demonstrates that such a period is necessary in order to account for the factors described in paragraph (b) of this section: Provided, that the period is enforceable and satisfies the criteria of paragraph (a) of this section.

(d) *Improved performance.* (1) The performance level representing maximum feasible efficiency for any existing control system (e.g., a sulfuric acid plant or a DMA scrubber) shall require the correction of the effects of any serious deficiencies in the system. For the purpose of this paragraph, at least the following problems shall constitute serious deficiencies in acid plants:

(i) Heat exchangers and associated equipment inadequate to sustain efficient, autothermal operation at the average gas strengths and volumes received by the acid plant during routine process equipment operation;

(ii) Failure to completely fill all available catalyst bed stages with sufficient catalyst;

(iii) Inability to the gas pre-treatment system to prevent unduly frequent plugging or fouling (deterioration) of catalyst or other components of the acid plant; or

(iv) Blower capacity inadequate to permit the treatment of the full volume of gas which the plant could otherwise accommodate, or in leakage of air into the flues leading to the plant, to the extent that this inadequacy results in bypassing of gas around the plant.

(2) Notwithstanding any contrary provisions of § 57.304(c) (malfunction demonstration), no excess emissions (as

defined in § 57.304(a)) shall be considered to have resulted from a malfunction in the constant control system if the smelter owner has not upgraded serious deficiencies in the constant control system in compliance with the requirements of § 57.302(d)(1), unless the smelter owner demonstrates under § 57.304(c) that compliance with those requirements would not have affected the magnitude of the emission.

(e) *Multiple control devices.* (1) At any smelter where off-gas streams are treated by various existing control systems (e.g., multiple acid plants or a DMA scrubber and an acid plant), the NSO shall require the use of those systems in the combination that will result in the maximum feasible net SO_2 removal.

(2) To the extent that compliance with this requirement is demonstrated by the smelter operator to result in excess emissions during unavoidable startup and shutdown of the control systems, those excess emissions shall not constitute violations of the NSO.

§ 57.303 Total plantwide emission limitation.

(a) *Calculation of the emission limitation.* Each NSO shall contain a requirement limiting the total allowable emissions from the smelter to the level which would have been associated with production at the smelter's maximum production capacity (as defined in § 57.103(r)) as of August 7, 1977. This limitation shall be expressed in units of mass per time and shall be calculated as the sum of uncontrolled process and fugitive emissions, and emissions from any control systems (operating at the efficiency prescribed under § 57.302). These emission rates may be derived from either direct measurements or appropriately documented mass balance calculations.

(b) *Compliance with the emission limitation.* Each NSO shall require the use of specific, enforceable testing methods and measurement periods for determining compliance with the limitation established under paragraph (a) of this section.

§ 57.304 Bypass, excess emissions and malfunctions.

(a) *Definition of excess emissions.* For the purpose of this subpart, any emissions greater than those permitted by the NSO provisions established under § 57.302 (performance level of interim constant controls) or § 57.303 (plantwide emission limitation) of this subpart shall constitute excess emissions. Emission of any gas stream identified under § 57.301(a), (b), (c), or (d) of this subpart that is not treated by a sulfur dioxide constant control system shall also constitute an excess emission under this subpart.

(b) *The excess emission report.* Each NSO shall require the smelter to report all excess emissions to the issuing agency, as provided in § 57.305(b). The report shall include the following:

(1) Identity of the stack or other emission points where the excess emissions occurred;

(2) Magnitude of the excess emissions expressed in the units of each applicable emission limitation, as well as the operating data, documents, and calculations used in determining the magnitude of the excess emissions;

(3) Time and duration of the excess emissions;

(4) Identify of the equipment causing the excess emissions;

(5) Nature and cause of such excess emissions;

(6) Steps taken to limit the excess emissions, and when those steps were commenced;

(7) If the excess emissions were the result of a malfunction, the steps taken to remedy the malfunction and to prevent the recurrence of such malfunction; and

(8) At the smelter owner's election, the demonstration specified in paragraph (c) of this section.

(c) *Malfunction demonstration.* Except as provided in § 57.302(e)(2) or in paragraph (d) or (e) of this section, any excess emission shall be a violation of the NSO unless the owner demonstrates in the excess emissions report required under paragraph (b) of this section that the excess emission resulted from a malfunction (or an unavoidable startup and shutdown resulting from a malfunction) and that:

(1) The air pollution control systems, process equipment, or processes were at all times maintained and operated, to the maximum extent practicable, in a manner consistent with good practice for minimizing emissions;

(2) Repairs were made as expeditiously as practicable, including the use of off-shift labor and overtime;

(3) The amount and duration of the excess emissions were minimized to the maximum extent practicable during periods of such emissions; and

(4) The excess emissions were not part of a recurring pattern indicative of serious deficiencies in, or inadequate operation, design, or maintenance of, the process or control equipment.

(d) *Scheduled maintenance exception.* Excess emissions occurring during scheduled maintenance shall not constitute violations of the NSO to the extent that:

(1) The expected additional annual sulfur dioxide removal by any control system (including associated process changes) for which construction had not commenced (as defined in 40 CFR 60.2 (g) and (i)) as of August 7, 1977 and which the smelter owner agrees to install and operate under Subpart F, would have offset such excess emissions if the system had been in operation throughout the year in which the maintenance was performed.

(2) The system is installed and operated as provided in the NSO provisions established under Subpart F; and

(3) The system performs at substantially the expected efficiency and reliability subsequent to its initial break-in period.

(e) An NSO may provide that excess emissions which occur during acid plant start-up as the result of the cooling of acid plant catalyst due to the unavailability of process gas to an acid plant during a prolonged SO_2 curtailment or scheduled maintenance are not excess emissions. If the NSO does so provide, it shall also require the use of techniques or practices designed to minimize these excess emissions, such as the sealing of the acid plant during prolonged curtailments, the use of auxiliary heat or SO_2 injected during the curtailment, or the preheating of the acid plant before start-up of the process equipment it serves.

§ 57.305 Compliance monitoring and reporting.

(a) *Monitoring.* (1) Each NSO shall require compliance with the control system performance requirements established pursuant to this subpart to be determined through the use of continuous monitors for measuring SO_2 concentration.

(i) Such monitors must be installed, operated and maintained in accordance with the performance specifications and other requirements contained in Appendix D to 40 CFR Part 52 or Part 60. The monitors must take and record at least one measurement of SO_2 concentration from the effluent of each control system in each 15 minute period. Failure of the monitors to record at least 95% of the 15-minute periods in any 30-day period shall constitute a violation of the NSO.

(ii) The sampling point shall be located at least 8 stack diameters (diameter measured at sampling point) downstream and 2 diameters upstream from any flow disturbance such as a bend, expansion, constriction, or flame, unless another location is approved by the Administrator.

(iii) The sampling point for monitoring emissions shall be in the duct at the centroid of the cross section if the cross sectional area is less than 4.645m² (50 ft²) or at a point no closer to the wall than 0.914m (3 ft) if the cross sectional area is 4.645m² (50 ft²) or more. The monitor sample point shall be in an area of small spatial concentration gradient and shall be representative of the concentration in the duct.

(iv) The measurement system(s) installed and used pursuant to this paragraph shall be subject to the manufacturer's recommended zero adjustment and calibration procedures at least once per 24-hour operating period unless the manufacturer specifies or recommends calibration at shorter intervals, in which case such specifications or recommendations shall be followed. Records of these procedures shall be made which clearly show instrument readings before and after zero adjustment and calibration.

(2) Each NSO shall require the monitoring of any ducts or flues used to bypass gases, required under this subpart to be treated by constant controls, around the smelter's sulfur dioxide constant control system(s) for ultimate discharge to the atmosphere. Such monitoring shall be adequate to disclose the time of the bypass, its duration, and the approximate volume and SO_2 concentration of gas bypassed.

(b) *Reporting.* (1) Each NSO shall require that the smelter maintain a record of all measurements required under paragraph (a) of this section. Results shall be summarized monthly and shall be submitted to the issuing agency within 15 days after the end of each month. The smelter owner shall retain a record of such measurements for one year after the NSO period terminates.

(2) Each NSO shall require that the smelter maintain a record of all measurements and calculations required under § 57.303(b). Results shall be summarized on a monthly basis and shall be submitted to the issuing agency at 6-month intervals. The smelter owner shall retain a record of such measurements and calculations for at least one year after the NSO terminates.

(3) The report required under § 57.304(b) shall accompany the report required under paragraph (b)(1) of this section.

(c) Quality assurance and continuous data—(1) *Quality assurance.* Each NSO shall require that the smelter submit a plan for quality assurance to the issuing agency for approval and that all monitoring performed by continuous monitors shall be verified for quality assurance by the smelter. Such plans must follow current EPA guidelines for quality assurance, in order to be approvable.

(2) *Continuous data.* Manual source testing methods equivalent to 40 CFR Part 60, Appendix A shall be used to determine compliance if the continuous monitoring system malfunctions.

Supbart D—Supplementary Control System Requirements

§ 57.401 General requirement.

Except as provided in Subpart E, each NSO shall require the smelter owner to prevent all violations to the NAAQS in the smelter's designated liability area (DLA) through the operation of an approved supplementary control system (SCS).

§ 57.402 Elements of the supplementary control system.

Each supplementary control system shall contain the following elements:

(a) *Air quality monitoring network.* An approvable SCS shall include the use of appropriate ambient air quality monitors to continuously measure the concentration of sulfur dioxide in the air in the smelter's DLA.

(1) The monitors shall be located at all points of expected SO_2 concentrations necessary to anticipate and prevent possible violations of NAAQS anywhere in the smelter's DLA. The determination of the locations where such concentrations may occur shall take into account all recorded or probable meteorological and operating conditions (including bypassing of control equipment), as well as the presence of other sources of SO_2 significantly affecting SO_2 concentrations in the DLA.

(2) The number and location of sites shall be based on dispersion modeling, measured ambient air quality data, meteorological information, and the results of the continuing review required by paragraph (f) of this section. The system shall include the use of at least 7 fixed monitors unless the issuing agency determines, on the basis of a demonstration by the smelter owner, that the use of fewer monitors would not limit coverage of points of high SO_2 concentration or otherwise reduce the capability of the smelter owner to prevent any violations of the NAAQS in the smelter's DLA.

(3) All monitors shall be continuously operated and maintained and shall meet the performance specifications contained in 40 CFR Part 53. The monitors shall be capable of routine real time measurement of maximum expected SO_2 concentrations for the averaging times of SO_2 NAAQS.

(b) *Meteorological network.* The SCS must have a meteorological assessment capability adequate to predict and identify local conditions requiring emission curtailment to prevent possible violations of the NAAQS. The meteorological assessment capability shall provide all forecast and current information necessary for successful use of the SCS operational manual required by paragraph (e) of this section.

(c) *Designated liability area.* The system shall be required to prevent all violations of the NAAQS within the smelter's DLA. The DLA of any smelter is the area within which the smelter's emissions may cause or significantly contribute to violations of the NAAQS for SO_2 when the smelter is operating at its maximum production capacity under any recorded or probable meteorological conditions. The boundaries of that area shall be specified in the NSO.

(1) Unless an acceptable demonstration is made under paragraph (c)(2) of this section, the DLA shall be a circle with a center point at the smelter's tallest stack and a minimum radius as given in the following table:

RADIUS FOR SO_2 EMISSIONS AT MAXIMUM PRODUCTION CAPACITY *

Emissions rate in tons per hour	Emission rate in grains per sec.	Radius in kilometers
16 or less	4,000 or less	11
24	6,000	16
32	8,000	24
40	10,000	32
48 or more	12,000 or more	40

* Maximum emission rates for periods not to exceed 24 hours. Minimum radii may be determined from the table by linear interpolation.

(2) The NSO may provide for a DLA with different boundaries if the smelter owner can demonstrate through the use of appropriate dispersion modeling and ambient air quality monitoring data that the smelter's controlled emissions could not cause or significantly contribute to a violation of the NAAQS beyond the boundaries of such a different area under any recorded or probable meteorological conditions.

(3) A violation of the NAAQS in the DLA of any smelter shall constitute a violation of that smelter's NSO, unless the issuing agency determines on the basis of a showing by the smelter owner that the smelter owner had taken all emission curtailment action indicated by the SCS operational manual and that the violation was caused in significant part by:

(i) Emissions of another source(s) which were in excess of the maximum permissible emissions applicable to such source(s),

(ii) Fugitive emissions of another source(s), or

(iii) Except as provided by § 57.703(a), the smelter's own fugitive emissions: Provided, that the smelter is in compliance with all requirements of or under subpart E of this Part.

(4) For the purposes of this section, maximum permissible emissions for other sources are the highest of:

(i) SIP emission limitation;

(ii) Orders in effect under section 113(d) of the Clean Air Act; or

(d) *Overlapping designated liability areas.* Notwithstanding any other provisions of this subpart, the following requirements shall apply whenever the designated liability areas of 2 or more smelters do, or may, overlap:

(1) In the case of any NSO applicant that would have a DLA which would overlap with the DLA of any other smelter that has applied for an NSO or has an NSO in effect, the NSO applicant shall include in its application an enforceable joint plan, agreed to by such other smelter(s). In determining whether a joint plan is required, the NSO applicant shall calculate its DLA according to the table in paragraph (c)(1) of this section. The DLA of the other smelter shall be calculated according to the table in paragraph (c)(1) of this section unless the other smelter has an NSO in effect, in which case the boundaries in that NSO shall be used. The enforceable joint plan shall provide for:

(i) Emission curtailment adequate to ensure that the NAAQS will not be violated in any areas of overlapping DLAs; and

(ii) Conclusive prospective allocation of legal liability in the event that the NAAQS are violated in the area of overlapping DLAs.

Such plans may, but need not, include the operation of a joint SCS system. Each NSO shall require adherence by the NSO applicant owner to the joint plan for emission curtailment and allocation of liability, unless the issuing agency determines, pursuant to the provisions of paragraph (c)(2) of this section, that the NSO applicant's DLA does not overlap with that of any other smelter.

(2) In the case of any NSO applicant that would have a DLA which would overlap with the DLA of any other smelter whose owner has not applied for an NSO (and does not have an NSO in effect), the NSO applicant's submittal shall contain a written consent, signed by a corporate official empowered to do so. The consent shall state that if, at any time thereafter, the owner of the other smelter applies for an NSO, and the other smelter's DLA would overlap with the NSO applicant's DLA, the NSO applicant will negotiate and submit an enforceable joint plan for emission curtailment and allocation of liability (as described in paragraph (d)(1) of this section). In determining whether it is necessary to submit such a consent, each smelter's DLA shall be calculated according to the table set forth in paragraph (c)(1) of this section. The consent shall state that a joint plan shall be submitted within 90 days of the issuing agency's notification to the NSO applicant of receipt of the other smelter's letter of intent, unless the issuing agency determines that the DLAs do not overlap. Failure of the NSO applicant to submit such a plan shall constitute grounds for denial of its NSO application or a violation of an effective NSO, as applicable.

(e) *The SCS operational manual.* Each NSO shall require the smelter to be operated in accordance with the provisions of an SCS operational manual approved by the issuing agency. The SCS operational manual shall describe the circumstances under which, the extent to which, and the procedures through which emissions shall be curtailed to prevent violations of the NAAQS in the smelter's DLA. Failure to curtail emissions when and as much as indicated by the manual or to follow the provisions of the manual implementing the requirements of paragraph (e)(3) of this section shall constitute a violation of the NSO.

(1) The operational manual shall prescribe emission curtailment decisions based on the use of real time information from the air quality monitoring network dispersion model estimates of the effect of emissions on air quality, and meteorological observations and predictions.

(2) The operational manual shall also provide for emission curtailment to prevent violation of the NAAQS within the smelter's DLA which may be caused in part by stack emissions, and to the extent practicable fugitive emissions, from any other source (unless that other source is a smelter subject to an NSO).

(3) The SCS operational manual shall include (but not be limited to):

(i) A clear delineation of the authority of the SCS operator to require all other smelter personnel to implement the operator's curtailment decisions;

(ii) The maintenance and calibration procedures and schedules for all SCS equipment;

(iii) A description of the procedures to be followed for the regular acquisition of all meteorological information necessary to operate the system;

(iv) The ambient concentrations and meteorological conditions that will be used as criteria for determining the need for various degrees of emission curtailment;

(v) The meteorological variables as to which judgments may be made in applying the criteria stated pursuant to subparagraph (e)(3)(iv) of this section;

(vi) The procedures through which and the maximum time period within which a curtailment decision will be made and implemented by the SCS operator;

(vii) The method for immediately evaluating the adequacy of a particular curtailment decision, including the factors to be considered in that evaluation;

(viii) The procedures through which and the time within which additional necessary curtailment will immediately be effected; and

(ix) The procedures to be followed to protect the NAAQS in the event of a mechnical failure in any element of the SCS.

(f) *Continuing review and improvement of the SCS.* Each NSO shall require the smelter owner to conduct an active program to continuously review the design and operation of the SCS to determine what measures may be available for improving the performance of the system. Among the elements of this program shall be measures to locate and examine possible places both inside and outside the DLA where unmonitored NAAQS violations may be occurring. Such measures shall include the use of modelling as appropriate and mobile ambient air quality monitors, following up on information and complaints from members of the public, and other appropriate activities. The NSO shall also require the submission of a semi-annual report to the issuing agency detailing the results of this review and specifying measures implemented to prevent the recurrence of any violations of NAAQS.

§ 57.403 Written consent.

(a) *The consent.* The NSO shall include a written consent, signed by a corporate official empowered to do so, in the following form:

> "As a condition of receiving a Primary Nonferrous Smelter Order (NSO) under section 119 of the Clean Air Act for the smelter operated by (name of company) at (location), the undersigned official, being empowered to do so, consents for the company as follows:
> (1) In any judicial or administrative proceeding to enforce the NSO, the company will not contest:
> (a) Liability for any violation of the National Ambient Air Quality Standards for sulfur dioxide in the smelter's

designated liability area (DLA), except on the ground that a determination under 40 CFR 57.402(c)(3) was clearly wrong; or
(b) The conclusive allocation of liability under NSO provisions satisfying 40 CFR 57.402(d)(1) between the company's smelter and any other smelter(s) for any violation of the National Ambient Air Quality Standards for sulfur dioxide in an area of overlapping DLAs.
(2) The issuing agency (as defined in 40 CFR 57.103) will be allowed unrestricted access at reasonable times to inspect, verify calibration of, and obtain data from ambient air quality monitors operated by the company under the requirements of the NSO."

(b) *Rights not waived by the consent.* This consent shall not be deemed to waive:

(1) Any right(s) to judicial review of any provisions of an NSO that are otherwise available to the smelter owner or operator under section 307(b) of the Clean Air Act; or

(2) The right to contest, in any forum, that any violation of an NSO was committed "knowingly" within the meaning of section 113(c) of the Clean Air Act.

§ 57.404 Measurements, records, and reports.

(a) *Measurements.* Each NSO shall require the smelter owner to install, operate, and maintain a measurement system(s) for continuously monitoring sulfur dioxide emissions and stack gas volumetric flow rates in each stack (except a stack used exclusively for bypassing control equipment) which could emit 5 percent or more of the smelter's total potential (uncontrolled) hourly sulfur dioxide emissions.

(1) Such monitors shall be installed, operated, and maintained in accordance with the performance specifications and other requirements contained in Appendices D and E to 40 CFR Part 52. The monitors must take and record at least one measurement of sulfur dioxide concentration and stack gas flow rate from the effluent of each affected stack in each fifteen-minute period. (The NSO shall require the smelter operator to devise and implement any procedures necessary for compliance with these performance specifications.)

(2) The sampling point shall be located at least eight stack diameters (diameter measured at sampling point) downstream and two diameters upstream from any flow disturbance such as a bend, expansion, constriction, or flame, unless another location is approved by the Administrator.

(3) The sampling point for monitoring emissions shall be in the duct at the centroid of the cross section if the cross sectional area is less than 4.645 m^2 (50 ft^2) or at a point no closer to the wall than 0.914m (3 ft) if the cross sectional area is 4.645m^2 (50 ft^2) or more. The monitor sample point shall be in an area of small spatial concentration gradient and shall provide a sample which is representative of the concentration in the duct.

(4) The measurement system(s) installed and used pursuant to this paragraph shall be subject to the manufacturer's recommended zero adjustment and calibration procedures at least once per 24-hour operating period unless the manufacturer specifies or recommends calibration at shorter intervals, in which case such specifications or recommendations shall be followed. Records of these procedures shall be made which clearly show instrument readings before and after zero adjustment and calibration.

(5) The results of such monitoring, calibration, and maintenance shall be submitted in the form and with the frequency specified in the NSO.

(b) *Records.* Each NSO shall require the smelter owner to maintain records of the air quality measurements made, meteorological information acquired, emission curtailment ordered (including the identity of the persons making such decisions), and calibration and maintenance performed on SCS monitors during the operation of the SCS. These records shall be maintained for the duration of the NSO.

(c) *Reports.* Each NSO shall require the smelter owner to:

(1) Submit a monthly summary indicating all places and times at which the NAAQS for SO_2 were violated in the smelter's DLA, and stating the SO_2 concentrations at such times;

(2) Immediately notify EPA and the state agency any time concentrations of SO_2 in the ambient air in the smelter's DLA reaches 0.3 part per million (800 micrograms/cubic meter), 24-hour average, or exceed the warning stage in any more stringent emergency plan in the applicable state implementation plan; and

(3) Make such other reports as may be specified in the NSO.

§ 57.405 Formulation, approval, and implementation of requirements.

(a) *SCS content of the application.* The requirements of §57.203(d) shall be satisfied with respect to this subpart as follows:

(1) Each NSO application shall include a complete description of any supplementary control system in operation at the smelter at the time of application and a copy of any SCS operational manual in use with that system.

(2) Each NSO application shall contain proposed NSO provisions for compliance with the requirements of § 57.401, § 57.402 (c), (d), and (f), § 57.403, § 57.404, and § 57.405(b)(2).

(3) Each NSO application shall include a specific plan for the development of a system fulfilling the requirements of § 57.402 (a), (b) and (e) (covering air quality monitoring network, meteorological network, and the SCS operational manual).

(b) *SCS content of the order.* (1) Each NSO shall include an approved version of the plan described in paragraph (a)(3) of this section and shall provide increments of progress towards its completion.

(2) Each NSO shall require the submission of a final report, within 6 months, evaluating the performance and adequacy of the SCS developed pursuant to the approved plan. The report shall include:

(i) A detailed description of how the criteria that form the basis for particular curtailment decisions were derived;

(ii) A complete description of each SCS element listed in § 57.402 (a) through (b) (covering monitoring, meteorology, and the DLA), and an explanation of why the elements fulfill the requirements of those sections;

(iii) A reliability study demonstrating that the SCS will prevent violations of the NAAQS in the smelter's DLA at all times. The reliability study shall include a comprehensive analysis of the system's operation during one or more three-month seasonal periods when meteorological conditions creating the most serious risk of NAAQS violations are likely to occur; and

(iv) A copy of the current SCS operational manual.

(c) *Amendment of the NSO.* Each NSO shall be amended, if necessary, within 3 months of submission of the final report required under paragraph (b)(2) of this section, to reflect the most current approved elements of the SCS and to fulfill all other requirements of this subpart. Each NSO shall also be subsequently amended (as provided in § 57.104) whenever necessary as a result of the program required by § 57.402(f) or to reflect improved SCS operating procedures or other system requirements.

Subpart E—Fugitive Emission Evaluation and Control

§ 57.501 General requirement.

(a) Each NSO shall require the smelter owner to use such control measures as may be necessary to ensure that the smelter's fugitive emissions do not result

in violations of the NAAQS for SO_2 in the smelter's DLA.

(b) A smelter which is operating under an NSO containing SIP compliance schedule established in accordance with § 57.705 is required to be making progress toward compliance with any fugitive control requirements contained in its respective SIP and need not meet the other requirements contained in this subpart.

(c) A smelter which is subject to an NSO which does not contain a SIP compliance schedule must meet the provisions of §§ 57.502 and 57.503.

§ 57.502 Evaluation.

(a) *Evaluation at the time of application.* Any smelter owner may demonstrate at the time of application for an NSO that the smelter's SO_2 fugitive emissions will not cause or significantly contribute to violations of the NAAQS in the smelter's DLA. If such demonstration is not made, the smelter owner shall submit the design and workplan for a study adequate to assess the sources of significant fugitive emissions from the smelter and their effects upon ambient air quality.

(b) *Evaluation during the first 6 months of the NSO.* The design and workplan of the study shall be approved, if adequate, by the issuing agency and included in the NSO. The study shall commence no later than the date when the NSO becomes effective and an analysis of its results shall be submitted to the issuing agency within 6 months of the effective date of the NSO. The study shall include an appropriate period during which the ambient air shall be monitored to determine the impact of fugitive emissions of sulfur dioxide, arsenic (at copper smelters only), lead (at lead and zinc smelters only), and total suspended particulates on the ambient air quality in the smelter's DLA.

§ 57.503 Control measures.

The NSO of any smelter subject to the requirements of § 57.502(b) shall be amended, if necessary, within 6 months of EPA's receipt of the analysis specified in § 57.502(b), as provided in § 57.704(c) to implement the requirement of § 57.501. Measures required to be implemented may include:

(a) *Additional supplementary control.* The use of the supplementary control system, if the additional use of the system does not interfere with the smelter owner's ability to meet the requirements of Subpart D; and

(b) *Engineering and maintenance techniques.* The use of engineering and maintenance techniques to detect and prevent leaks and capture and vent fugitive emissions through appropriate stacks. These techniques include but are not limited to:

(1) For reactors, installation and proper operation of primary hoods;

(2) For roasters, installation and proper operation of primary hoods on all hot calcine transfer points;

(3) For furnaces, installation and proper operation of primary hoods on all active matte tap holes, matte launders, slag skim bays, and transfer points;

(4) For converters, installation and proper operation of primary hoods for blowing operations, and where appropriate, secondary hoods for charging and pouring operations;

(5) For sintering machines, installation and proper operation of primary hoods on the sinter bed, all hot sinter ignition points, all concentrate laydown points, and all hot sinter transfer points;

(6) For blast furnaces, installation and proper operation of primary hoods on all active slag and lead bullion furnace tap holes and transfer points;

(7) For dross reverberatory furnaces, installation and proper operation of primary hoods on all active charging and discharging points;

(8) Maintenance of all ducts, flues and stacks in a leak-free condition to the maximum extent possible;

(9) Maintenance of all process equipment under normal operating conditions in such a fashion that out-leakage of fugitive gases will be prevented to the maximum extent possible;

(10) Secondary or tertiary hooding on process equipment where necessary; and

(11) Partial or complete building evacuation as appropriate.

Subpart F—Research and Development Requirements

§ 57.601 General requirements.

(a) This subpart is not applicable to NSOs which contain a SIP compliance schedule in accordance with § 57.705.

(b) Except as provided in paragraph (a), each NSO shall require the smelter to conduct or participate in a specific research and development program designed to develop more effective means of compliance with the sulfur dioxide control requirements of the applicable state implementation plan than presently exist.

§ 57.602 Approval of proposal.

(a) *The smelter owner's proposal.* The smelter owner's NSO application shall include a proposed NSO provision for implementing the requirement of § 57.601, a fully documented supporting analysis of the proposed program, and an evaluation of the consistency of the proposed program with the criteria listed in § 57.603. The application shall also specify:

(1) The design and substantive elements of the research and development program, including the expected amount of time required for their implementation;

(2) The annual expected capital, operating, and other costs of each element in the program;

(3) The smelter's current production processes, pollution control equipment, and emissions which are likely to be affected by the program;

(4) Potential or expected benefits of the program;

(5) The basis upon which the results of the program will be evaluated; and

(6) The names, positions, and qualifications of the individuals responsible for conducting and supervising the project.

(b) *EPA approval.* (1) If the issuing agency will not be EPA, the smelter owner or the issuing agency may also submit to EPA the information specified in paragraph (a) of this section at the same time the information is submitted to the issuing agency. As soon as possible after the receipt of the information described in paragraph (a) of this section, EPA shall certify to the issuing agency and to the applicant whether or not in the judgment of the Administrator the smelter owner's final proposals are approvable. If EPA does not receive an advance copy of the proposal, the ultimate approval will occur when the NSO is approved rather than in advance of receipt of the NSO.

(2) A prerequisite for approval of an R&D proposal by EPA and any issuing agency is that the planned work must yield the most cost effective technology possible.

(c) *Optional preproposal.* The smelter owner may, at its option, submit to EPA for its approval and comment a preproposal generally describing the project the owner intends to propose under paragraph (a) of this section. A preproposal may be submitted to EPA any time prior to the submission of a proposal under paragraph (a) of this section. As soon as possible after the receipt of a preproposal, EPA shall certify to the applicant (and to any other issuing agency, as applicable) whether or not the project would be approvable. This certification may include comments indicating necessary modifications which would make the project approvable.

§ 57.603 Criteria for approval.

The approvability of any proposed research and development program shall be judged primarily according to the following criteria:

(a) The likelihood that the project will result in the use of more effective means of emission limitation by the smelter within a reasonable period of time and that the technology can be implemented at the smelter in question, should the smelter be placed on a SIP compliance schedule at some future date when adequately demonstrated technology is reasonably available;

(b) Whether the proposed funding and staffing of the project appear adequate for its successful completion;

(c) Whether the proposed level of funding for the project is consistent with the research and development expenditure levels for pollution control found in other industries;

(d) The potential that the project may yield industrywide pollution control benefits;

(e) Whether the project may also improve control of other pollutants of both occupational and environmental significance;

(f) The potential effects of the project on energy conservation; and

(g) Other non-air quality health and environmental considerations.

§ 57.604 Evaluation of projects.

The research and development proposal shall include a provision for the employment of a qualified independent engineering firm to prepare written reports at least annually which evaluate each completed significant stage of the research and development program, including all relevant information and data generated by the program. All reports required by this paragraph shall be submitted to EPA and also to the issuing agency if it is not EPA.

57.605 Consent.

Each NSO shall incorporate by reference a binding written consent, signed by a corporate official empowered to do so, requiring the smelter owner to:

(a) Carry out the approved research and development program;

(b) Grant each issuing agency and EPA and their contractors access to any information or data employed or generated in the research and development program, including any process, emissions, or financial records which such agency determines are needed to evaluate the technical or economic merits ot the program;

(c) Grant physical access to representatives and contractors of each issuing agency to each facility at which such research is conducted;

(d) Grant the representatives and contractors of EPA and the issuing agency reasonable access to the persons conducting the program on behalf of the smelter owner for discussions of progress, interpretation of data and results, and any other similar purposes as deemed necessary by EPA or any issuing agency.

§ 57.606 Confidentiality.

The provisions of section 114 of the Act and 40 CGR Part 2 shall govern the confidentiality of any data or information provided to EPA under this subpart.

Subpart G—Compliance Schedule Requirements

§ 57.701 General requirements.

This section applies to all smelters applying for an NSO. Each NSO shall require the smelter owner to meet all of the requirements within the NSO as expeditiously as practicable. All NSO requirements shall be effective as specified. For requirements not immediately effective, the NSO shall provide increments of progress and a schedule for compliance. The schedules set forth in this subpart represent the most expeditious compliance practicable only for those smelters which do not currently have the equipment or systems required by this part. Requirements for smelters to submit compliance schedules and the processes which they must follow are outlined below.

§ 57.702 Compliance with constant control emission limitation.

This section applies to all smelters which receive an NSO, but only to the extent this section is compatible with any SIP compliance schedule required by § 57.201(d) (2) and §57.705. An NSO issued to a smelter which was previously issued a first period NSO shall require compliance with all interim constant control requirements under Subpart C immediately after issuance of the second NSO, unless the smelter received a waiver under the first NSO. Any NSO issued to a smelter not required to immediately comply with the requirement of Subpart C shall contain a schedule for compliance with those requirements [except where] a waiver is requested in accordance with Subpart H, in which case an NSO may be issued without such a schedule for compliance pending a final decision on the request under Subpart H. No final compliance date shall extend beyond 6 months of the effective date of the NSO or, if a waiver is requested in accordance with Subpart H, beyond 6 months of a final decision to deny a waiver under Subpart H, [unless] a smelter operator demonstrates that special circumstances warrant more time, in which case the schedule shall require compliance as expeditiously as practible but the 6 month limit shall not apply. An NSO which does not contain a schedule for compliance with the requirements of Subpart C because a waiver has been requested in accordance with Subpart H shall require submission of such a schedule within 30 days of a final denial of a waiver under Subpart H. Such an NSO shall be amended to include a schedule for compliance with the requirements of Subpart C within a reasonable time thereafter.

(a) Description of the overall design of the SO_2 control system(s) to be installed.

(b) Descriptions of specific process hardware to be used in achieving compliance with interim SO_2 constant controls including gas capacity values.

(c) The date by which contracts will be let or purchase orders issued to accomplish any necessary performance improvements;

(d) The date for initiating on-site construction or installation of necessary equipment;

(e) The date by which on-site construction or installation of equipment is to be completed; and

(f) The date for achievement of final compliance with interim emission limitations.

§ 57.703 Compliance with the supplementary control system requirements.

This section applies to all nonferrous smelters applying for an NSO.

(a) *Operations of existing SCS.* Each NSO shall require the immediate operation of any existing supplementary control system or one which is under a schedule developed under an NSO issued during the first NSO period, and shall require the immediate assumption of liability for violations of the NAAQS at existing monitor sites provided the SCS system meets Subpart D requirements. Each NSO shall require that all the requirements of Subpart D be satisfied within 6 months of the effective date of the NSO where an existing SCS does not fully satisfy these requirements.

(b) *Compliance schedule where no SCS exists.* Where necessary, the NSO shall also require compliance with the requirements of Subpart D to be achieved according to the following schedule:

(1) Within 6 months after issuance of the NSO the smelter shall install all

operating elements of the system, begin operating the system, complete all other measures specified in its approved SCS development plan, and begin compliance with the requirements of § 57.404.

(2) Within 9 months thereafter the smelter shall submit the SCS Report, assume liability for all violations of the NAAQS within its designated liability area, and comply with all other requirements of Subpart D.

§ 57.704 Compliance with fugitive emission evaluation and control requirements.

This section applies only to smelters not required to submit SIP Compliance Schedules under § 57.705. Each NSO shall require that smelters which were issued NSOs during the first NSO period be in compliance with all fugitive emission control requirements under Subpart E immediately after issuance of the second period NSO.

(a) *Plan for fugitive emission control.* The NSO shall provide that within a 6 month period after the submission of the report on the fugitive emission control study required by § 57.502, the smelter owner shall submit to the issuing agency for its approval a proposed fugitive emission control plan, including increments of progress, for compliance with the requirements of §§ 57.501 and 57.503.

(b) *SCS Report.* If the fugitive emission control plan submitted under paragraph (a) of this section proposes to meet the requirements of §§ 57.501 and 57.503 through the additional use of a supplementary control system, the plan shall demonstrate that the use of supplementary controls at that smelter to prevent violations of the NAAQS resulting from fugitive emissions is practicable, adequate, reliable, and enforceable. The plan shall contain increments of progress providing for completion of the implementation of each additional measure, and for corresponding compliance with the requirements of paragraphs (b) and (c) of § 57.404, within four months of appproval of the plan by the issuing agency. The plan shall also provide that within three months after completion of implementation of those additional measures, the smelter shall fully comply with the requirements of §§ 57.401 and 57.501 (including the assumption of liability for violations of NAAQS within its designated liability area), and shall submit an additional SCS report for the approval of the issuing agency. This additional final report shall correspond to that submitted under § 57.405(b)(2), except that it need not contain the 3 month study described in § 57.405(b)(2)(iii).

(c) *NSO amendment.* The amendments of the NSO required under § 57.503 shall be effected by the issuing agency as follows:

(1) With respect to the additional use of SCS, upon approval or promulgation of the plan submitted under paragraph (a) of this section and upon approval or promulgation of the requirements for the system described in the additional SCS Report under paragraph (b) of this section;

(2) With respect to the additional use of engineering techniques, upon approval or promulgation of the compliance schedule required by paragraph (a) of this section.

§ 57.705 Contents of SIP compliance schedule required by § 57.201(d) (2) and (3).

This section applies to smelters which are required to submit a SIP Compliance Schedule as discussed below.

(a) Each SIP Compliance Schedule required by § 57.201(d) (2) and (3) must contain the following elements:

(1) Description of the overall design of the SO_2 control system(s) to be installed;

(2) Descriptions of specific process hardware to be used in achieving compliance with the SIP emission limitation including gas capacity values;

(3) The date by which contracts will be let or purchase orders issued to accomplish any necessary performance improvements;

(4) The date for initiating on-site construction or installation of necessary equipment;

(5) The date by which on-site construction or installation of equipment is to be completed;

(6) The date for achievement of final compliance with SIP emission limitations; and

(7) Any other measures necessary to assure compliance with all SIP rquirements as expeditiously as practicable.

(b) Operations of SCS. Smelters to which § 57.705 is applicable must comply with all elements of § 57.703.

Subpart H—Waiver of Interim Requirement for Use of Continuous Emission Reduction Technology

§ 57.801 Purpose and Scope.

(a) This subpart shall govern all proceedings for the waiver of the interim requirement that each NSO provide for the use of constant controls.

(b) In the absence of specific provisions in this subpart, and where appropriate, questions arising at any stage of the proceeding shall be resolved at the discretion of the Presiding Officer or the Administrator, as appropriate.

§ 57.802 Request for waiver.

(a) *General.* (1) Each smelter owner requesting a waiver shall complete, sign, and submit Appendix A (Test for Eligibility for Interim Waiver). Copies of Appendix A may be obtained from any EPA Regional Administrator, or from the Director, Stationary Source Compliance Division (EN–341), United States Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Claims of confidentiality shall be made as provided in § 57.203.

(2) The smelter owner shall append to the completed and signed Appendix A full copies of all documents, test results, studies, reports, scientific literature and assessments required by Appendix A. To the extent that the material consists of generally available published material, the smelter owner may cite to the material in lieu of appending it to Appendix A. The smelter owner shall specificially designate those portions of any documents relied upon and the facts or conclusions in Appendix A to which they relate.

(b) *Effect of submitting incomplete application.* (1) The Administrator, or a person designated by him to review applications for waivers, may advise the smelter owner in writing whenever he determines that additional information is needed in order to make the waiver eligibility determinations required by Section 119(d)(2) of the Act. The smelter owner shall promptly supply such information. All additional information requested under this paragraph and filed in the manner required by paragraph (d) shall be deemed part of Appendix A.

(2) Failure to comply with the requirements of paragraphs (a) and (b)(1) of this section shall be grounds for denial of the requested waiver.

(c) *Time for requesting waivers.* Any request for a waiver must be submitted to the Administrator by the smelter owner at the time of the initial application for an NSO from the State or the Administrator, as the case may be.

(d) *Submission of request.* A copy of Appendix A (plus attachments) which has been completed for the purpose of requesting a waiver of constant control requirements shall be filed with the Administrator, addressed as follows: Director, Stationary Source Compliance Division (EN–341), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Attn: Confidential Information Unit.

(e) *Eligibility.* No smelter shall be eligible for consideration under this subpart unless no constant controls

were installed at that smelter as of August 7, 1977.

(f) *Criteria for Decision.* The Administrator shall grant or approve a waiver, whichever is appropriate, for any eligible smelter as to which he finds, in accordance with the methods and procedures specified in Appendix A, that:

(1) The sum of the present value of the smelter's future net cash flow (after installation of interim constant control equipment) plus its terminal value would be less than the smelter's liquidation (salvage) value; or

(2) The smelter's average variable costs at all relevant levels of production (after installation of interim constant control equipment) would exceed the weighted average price of smelter output for one year or more.

§ 57.803 Issuance of tentative determination; notice.

(a) *Tentative determination.* (1) The EPA staff shall formulate and prepare:

(i) A "Staff Computational Analysis," using the financial information submitted by the smelter owner under § 57.802 to evaluate the economic circumstances of the smelter for which the waiver is sought;

(ii) A tentative determination as to whether an interim requirement for the use of constant controls would be so costly as to necessitate permanent or prolonged temporary cessation of operations at the smelter for which the waiver is requested. The tentative determination shall contain a "Proposed Report and Findings" summarizing the conclusions reached in the Staff Computational Analysis, discussing the estimated cost of interim controls, and assessing the effect upon the smelter of requiring those controls. The tentative determination shall also contain a proposed recommendation that the waiver be granted or denied, based upon the Proposed Report and Findings, and stating any additional considerations supporting the proposed recommendation. This tentative determination shall be a public document.

(2) In preparing the Proposed Report and Findings, the EPA staff shall attempt to the maximum extent feasible to avoid revealing confidential information which, if revealed, might damage the legitimate business interests of the applicant. The preceding sentence notwithstanding, the tentative determination shall be accompanied by a listing of all materials considered by EPA staff in developing the tentative determination. Subject to the provisions of § 57.814(a), full copies of all such materials shall be included in the administrative record under § 57.814, except that, to the extent the material consists of published material which is generally available, full citations to that material may be given instead.

(b) *Public notice.* Public notice of EPA's tentative determination to grant or deny an application for a waiver shall be given by:

(1) Publication at least once in a daily newspaper of general circulation in the area in which the smelter is located; and

(2) Posting in the principal office of the municipality in which the smelter is located.

(c) *Individual notice.* Individual notice of EPA's tentative determination to grant or deny an application for a waiver shall be mailed to the smelter owner by certified mail, return receipt requested, and to the air pollution control agency for the State in which the smelter is located.

(d) *Request for individual notice.* EPA shall mail notice of its tentative determination to grant or deny an application for waiver to any person upon request. Each such request shall be submitted to the Administrator in writing, shall state that the request is for individual notice of tentative determination to grant or deny any application for a waiver under section 119(d) of the Clean Air Act, and shall describe the notice or types of notices desired (e.g., all notices, notices for a particular Region, notices for a particular State, notice for a particular city).

(e) *Form of notice.* The notice of tentative determination required to be distributed under paragraphs (b), (c), and (d) of this section shall include, in addition to any other materials, the following:

(1) A summary of the information contained in Appendix A;

(2) The tentative determination prepared under paragraph (a) of this section: Provided, that except in the case of the smelter owner, a summary of the basis for the grant or denial of the waiver may be provided in lieu of the formal determinations required by paragraph (a)(1) of this section;

(3) A brief description of the procedures set forth in § 57.804 for requesting a public hearing on the waiver request, including a statement that such request must be filed within 30 days of the date of the notice;

(4) A statement that written comments on the tentative determination submitted to EPA within 60 days of the date of the notice will be considered by EPA in making a final decision on the application; and

(5) The location of the administrative record and the location at which interested persons may obtain further information on the tentative determination, including a copy of the index to the record, the tentative determination prepared under paragraph (a) of this section, and any other nonconfidential record materials.

§ 57.804 Request for hearing; request to participate in hearing.

(a) *Request for hearing.* Within 30 days of the date of publication or receipt of the notice required by § 57.803, any person may request the Administrator to hold a hearing on the tentative determination by submitting a written request containing the following:

(1) Identification of the person requesting the hearing and his interest in the proceeding;

(2) A statement of any objections to the tentative determination; and

(3) A statement of the issues which such person proposes to raise for consideration at such hearing.

(b) *Grant or denial of hearing; notification.* Whenever (1) the Administrator has received a written request satisfying the requirements of paragraph (a) of this section which presents genuine issues as to the effect on the smelter of the requirement for use of constant controls, or (2) the Administrator determines in his discretion that a hearing is necessary or appropriate, the Administrator shall give written notice of his determination to each person requesting such hearing and the smelter owner, and shall provide public notice of his determination in accordance with § 57.803(b). If the Administrator determines that a request filed under paragraph (a) of this section does not comply with the requirements of paragraph (a) or does not present genuine issues, he shall given written notice of his decision to deny a hearing to the person requesting the hearing.

(c) *Form of notice of hearing.* Each notice of hearing disseminated under paragraph (b) of this section shall contain:

(1) A statement of the time and place of the hearing;

(2) A statement identifying the place at which the official record on the application for waiver is located, the hours during which it will be open for public inspection, and the documents contained in the record as of the date of the notice of hearing;

(3) The due date for filing a written request to participate in the hearing under paragraph (d) of this section;

(4) The due date for making written submissions under 57.805; and

(5) The name, address, and office telephone number of the Hearing Clerk for the hearing.

(d) *Request to participate in hearing.* Each person desiring to participate in any hearing granted under this section, including any person requesting such a hearing, shall file a written request to participate with the Hearing Clerk by the deadline set forth in the notice of hearing. The request shall include:

(1) A brief statement of the interest of the person in the proceeding;

(2) A brief outline of the points to be addressed;

(3) An estimate of the time required; and

(4) If the request is submitted by an organization, a nonbinding list of the persons to take part in the presentation. As soon as practicable, but in no event later than two weeks before the scheduled date of the hearing, the Hearing Clerk shall make available to the public and shall mail to each person who asked to participate in the hearing a hearing schedule.

(e) *Effect of denial of or absence of request for hearing.* If no request for a hearing is made under this section, or if all such requests are denied under paragraph (b) of this section, the tentative determination issued under § 57.803 shall be treated procedurally as if it were a recommended decision issued under § 57.811(b)(2), except that for purposes of §§ 57.812 and 57.813 the term "hearing participant" shall be construed to mean the smelter owner and any person who submitted comments under § 57.803(e)(4).

§ 57.805 Submission of written comments on tentative determination.

(2) *Main comments.* Each person who has filed a request to participate in the hearing shall file with the Hearing Clerk no later than 30 days before the scheduled start of the hearing (or such other date as may be set forth in the notice of hearing) any comments which he has on the request for waiver and EPA's tentative determination, based on information which is or reasonably could have been available to that person at the time.

(b) *Reply comments.* Not later than two weeks after a full transcript of the hearing becomes available (or such other date as may be set forth in the notice of hearing), each person who has filed a request to participate in the hearing shall file with the Hearing Clerk any comments he may have on:

(1) Written comments submitted by other participants pursuant to paragraph (a) of this section;

(2) Written comments submitted in response to the notice of hearing;

(3) Material in the hearing record; and

(4) Material which was not and could not reasonably have been available prior to the deadline for submission of main comments under paragraph (a) of this section.

(c) *Form of comments.* All comments should be submitted in quadruplicate and shall include any affidavits, studies, tests or other materials relied upon for making any factual statements in the comments.

(d) *Use of comments.* (1) Written comments filed under this section shall constitute the bulk of the evidence submitted at the hearing. Oral statements at the hearing should be brief, and restricted either to points that could not have been made in written comments, or to emphasizing points which are made in the comments, but which the participant believes can be more forcefully urged in the hearing context.

(2) Notwithstanding the foregoing, within two weeks prior to either deadline specified by paragraph (a) of this section for the filing of main comments, any person who has filed a request to participate in the hearing may file a request with the Presiding Officer to submit all or part of his main comments orally at the hearing in lieu of submitting written comments. The Presiding Officer shall, within one week, grant such request if he finds that such person will be prejudiced if he is required to submit such comments in written form.

§ 57.806 Presiding Officer.

(a) *Assignment of Presiding Officer.* (1) The Administrator shall, as soon as practicable after the granting of a request for hearing under § 57.803:

(i) Appoint a Presiding Officer to chair the hearing panel, who shall be either the Assistant Administrator for Air, Noise and Radiation or the Associate Administrator for Enforcement and General Counsel; or

(ii) Request that the Chief Administrative Law Judge assign an Administrative Law Judge as Presiding Officer. The Chief Administrative Law Judge shall thereupon make the assignment.

(2) If all parties to the hearing waive their right to have the Agency or an Administrative Law Judge preside at the hearing, the Administrator shall appoint an EPA employee having the qualifications of a Judicial Officer as defined in § 57.103 to serve as Presiding Officer.

(b) *Powers and duties of Presiding Officer.* It shall be the duty of the Presiding Officer to conduct a fair and impartial hearing, assure that the facts are fully elicited, and avoid delay. The Presiding Officer shall have authority to:

(1) Chair and conduct administrative hearings held under this subpart;

(2) Administer oaths and affirmations;

(3) Receive relevant evidence: Provided, that the administrative record, as defined in § 57.814, shall be received in evidence;

(4) Consider and rule upon motions, dispose of procedural requests, and issue all necessary orders;

(5) Hold conferences for the settlement or simplification of the issues or the expediting of the proceedings; and

(6) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial conduct of proceedings under this subpart.

§ 57.807 Hearing.

(a) *Composition of hearing panel.* The Presiding Officer shall preside at the hearing held under this subpart. An EPA panel shall also take part in the hearing. In general, the membership of the panel shall consist of EPA employees having special expertise in areas related to the issues to be addressed at the hearing, including economists and engineers. For this reason, the membership of the panel may change as different issues are presented for discussion.

(b) *Additional hearing participants.* Either before or during the hearing, the Presiding Officer, after consultation with the panel, may request that a person not then scheduled to participate in the hearing (including an EPA employee or a person identified by any scheduled hearing participant as having knowledge concerning the issues raised for discussion at the hearing) make a presentation or make himself available for cross-examination at the hearing.

(c) *Questioning of hearing participants.* The panel members may question any person participating in the hearing. Cross-examination by persons other then panel members shall not be permitted at this stage of the proceeding except where the Presiding Officer determines, after consultation with the panel, that circumstances compel such cross-examination. However, persons in the hearing audience, including other hearing participants, may submit written questions to the Presiding Officer for the Presiding Officer to ask the participants, and the Presiding Officer may, after consultation with the panel, and in his sole discretion, ask these questions.

(d) *Submission of additional material.* Participants in the hearing shall submit for the hearing record such additional material as the hearing panel may request within 10 days following the

close of the hearing, or such other period of time as is ordered by the Presiding Officer. Participants may also submit additional information for the hearing record on their own accord within 10 days after the close of the hearing.

(e) *Transcript.* A verbatim transcript shall be made of the hearing.

§ 57.808 Opportunity for cross-examination.

(a) *Request for cross-examination.* After the close of the panel hearing conducted under this part, any participant in that hearing may submit a written request for cross-examination. The request shall be received by EPA within one week after a full transcript of the hearing becomes available and shall specify:

(1) The disputed issue(s) of material fact as to which cross-examination is requested. This shall include an explanation of why the questions at issue are factual, rather than of an analytical or policy nature; the extent to which they are in dispute in the light of the record made thus far, and the extent to which and why they can reasonably be considered material to the decision on the application for a waiver; and

(2) The person(s) the participant desires to cross-examine, and an estimate of the time necessary. This shall include a statement as to why the cross-examination requested can be expected to result in full and true disclosure resolving the issue of material fact involved.

(b) *Order granting or denying request for cross-examination.* As expeditiously as practicable after receipt of all requests for cross-examination under paragraph (a) of this section, the Presiding Officer, after consultation with the hearing panel, shall issue an order either granting or denying each such request, which shall be disseminated to all persons requesting cross-examination and all persons to be cross-examined. If any request for cross-examination is granted, the order shall specify:

(1) The issues as to which cross-examination is granted;

(2) The persons to be cross-examined on each issue;

(3) The persons allowed to conduct cross-examination;

(4) Time limits for the examination of witnesses; and

(5) The date, time and place of the supplementary hearing at which cross-examination shall take place. In issuing this ruling, the Presiding Officer may determine that one or more participants have the same or similar interests and that to prevent unduly repetitious cross-examination, they should be required to choose a single representative for purposes of cross-examination. In such a case, the order shall simply assign time for cross-examination by that single representative without identifying the representative further.

(c) *Supplementary hearing.* The Presiding Officer and at least one member of the original hearing panel shall preside at the supplementary hearing. During the course of the hearing, the Presiding Officer shall have authority to modify handy order issued under paragraph (b) of this section. A verbatim transcript shall be made of this hearing.

(d) *Alternatives to cross-examination.* (1) No later than the time set for requesting cross-examination, a hearing participant may request that alternative methods of clarifying the recorded (such as the submittal of additional written information) be used in lieu of or in addition to cross-examination. The Presiding Officer shall issue an order granting or denying such request at the time he issues (or would have issued) an order under paragraph (b) of this section. If the request is granted, the order shall specify the alternative provided and any other relevant information (e.g., the due date for submitting written information).

(2) In passing on any request for cross-examination submitted under paragraph (a) of this section, the Presiding Officer may, as a precondition to ruling on the merits of such request, require that alternative means of clarifying the record be used whether or not a request to do so has been made under the preceding paragraph. The person requesting cross-examination shall have one week to comment on the results of utilizing such alternative means, following which the Presiding Officer, as soon as practicable, shall issue an order granting or denying such person's request for cross-examination.

§ 57.809 Ex parte communications.

(a) *General.* (1) No interested person outside the Agency or member of the Agency trial staff shall make or knowingly cause to be made to any member of the decisional body an ex parte communication relevant to the merits of the proceedings. (2) No member of the decisional body shall make or knowingly cause to be made to any interested person outside the Agency or member of the Agency trial staff an ex parte communication relevant to the merits of the proceedings.

(b) *Effect of receipt of ex parte communication.* (1) A member of the decisional body who receives or who makes or knowingly causes to be made a communication prohibited by this subsection shall place in the record all written communications or memoranda stating the substance of all oral communications together with all written responses and memoranda stating the substance of all responses.

(2) Upon receipt by any member of the decisionmaking body of an ex parte communication knowingly made or knowingly caused to be made by a party or representative of a party in violation of this section, the person presiding at the stage of the hearing then in progress may, to the extent consistent with justice and the policy of the Clean Air Act, require the party to show cause why its claim or interest in the proceedings should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(c) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *Agency trial staff* means those Agency employees, whether temporary or permanent, who have been designated by the Agency as available to investigate, litigate, and present the evidence arguments and position ofthe Agency in the evidentiary hearing or non-adversary panel hearing. Appearance as a witness does not necessarily require a person to be designated as a member of the Agency trial staff;

(2) *Decisional body* means any Agency employee who is or may reasonably be expected to be involved in the decisional process of the proceeding including the Administrator, Judicial Officer, Presiding Officer, the Regional Administrator (if he does not designate himself as a member of the Agency trial staff), and any of their staff participating in the decisional process. In the case of a non-adversary panel hearing, the decisional body shall also include the panel members whether or not permanently employed by the Agency;

(3) *Ex parte communication* means any communication, written or oral, relating to the merits of the proceeding between the decisional body and an interested person outside the Agency or the Agency trial staff which was not originally filed or stated in the administrative record or in the hearing. Ex parte communications do not include:

(i) Communications between Agency employees other than between the Agency trial staff and the member of the decisional body;

(ii) Discussions between the decisional body and either:

(A) Interested persons outside the Agency, or;

(B) The Agency trial staff if all parties have received prior written notice of such proposed communications and have been given the opportunity to be present and participate therein.

(4) "Interested person outside the Agency" includes the smelter owner, any person who filed written comments in the proceeding, any person who requested the hearing, any person who requested to participate or intervene in the hearing, any participant or party in the hearing and any other interested person not employed by the Agency at the time of the communications, and the attorney of record for such persons.

§ 57.810 Filing of briefs, proposed findings, and proposed recommendations.

Unless otherwise ordered by the Presiding Officer, each hearing participant may, within 20 days after reply comments are submitted under § 57.805(b), or if a supplementary hearing for the purpose of cross-examination has been held under § 57.808(c), within 20 days after the transcript of such supplemental hearing becomes available or if alternative methods of clarifying the record have been used under § 57.808(d), within 20 days after the alternative methods have been employed, file with the Hearing Clerk and serve upon all other hearing participants proposed findings and proposed recommendations to replace in whole or in part the findings and recommendations contained in the tentative determination. Any such person may also file, at the same time, a brief in support of his proposals, together with references to relevant pages of transcript and to relevant exhibits. Within 10 days thereafter each participant may file a reply brief concerning alternative proposals. Oral argument may be held at the discretion of the Presiding Officer on motion of any hearing participant or sua sponte.

§ 57.811 Recommended decision.

As soon as practicable after the conclusion of the hearing, one or more responsible employees of the Agency shall evaluate the record for preparation of a recommended decision and shall prepare and file a recommended decision with the Hearing Clerk. The employee(s) preparing the decision will generally be members of the hearing panel and may include the Presiding Officer. Such employee(s) may consult with and receive assistance from any member of the hearing panel in drafting a recommended decision and may also delegate the preparation of the recommended decision to the panel or to any member or members of it. This decision shall contain the same elements as the tentative determination. After the recommended decision has been filed, the Hearing Clerk shall serve a copy of such decision on each hearing participant and upon the Administrator.

§ 57.812 Appeal from or review of recommended decision.

(a) *Exceptions.* (1) Within 20 days after service of the recommended decision, any hearing participant may take exception to any matter set forth in such decision or to any adverse order or ruling of the Presiding Officer prior to or during the hearing to which such participant objected, and may appeal such exceptions to the Administrator by filing them in writing with the Hearing Clerk. Such exceptions shall contain alternative findings and recommendations, together with references to the relevant pages of the record and recommended decision. A copy of each document taking exception to the recommended decision shall be served upon every other hearing participant. Within the same period of time each party filing exceptions shall file with the Administrator and shall serve upon all hearing participants a brief concerning each of the exceptions being appealed. Each brief shall include page references to the relevant portions of the record and to the recommended decision.

(2) Within 10 days of the service of exceptions and briefs under paragraph (a) (1) of this section, any hearing participant may file and serve a reply brief responding to exceptions or arguments raised by any other hearing participant together with references to the relevant portions of the record, recommended decision, or opposing brief. Reply briefs shall not, however, raise additional exceptions.

(b) *Sua sponte review by the Administrator.* Whenever the Administrator determines sua sponte to review a recommended decision, notice of such intention shall be served upon the parties by the Hearing Clerk within 30 days after the date of service of the recommended decision. Such notice shall include a statement of issues to be briefed by the hearing participants and a time schedule for the service and filing of briefs.

(c) *Scope of appeal or review.* The appeal of the recommended decision shall be limited to the issues raised by the appellant, except when the Administrator determines that additional issues should be briefed or argued. If the Administrator determines that briefing or argument of additional issues is warranted, all hearing participants shall be given reasonable written notice of such determination to permit preparation of adequate argument.

(d) *Argument before the Administrator.* The Administrator may, upon request by a party or sua sponte, set a matter for oral argument. The time and place for such oral argument shall be assigned after giving consideration to the convenience of the parties.

§ 57.813 Final decision.

(a) *After review.* As soon as practicable after all appeal or other review proceedings have been completed, the Administrator shall issue his final decision. Such a final decision shall include the same elements as the recommended decision, as well as any additional reasons supporting his decisions on exceptions filed by hearing participants. The final decision may accept or reject all or part of the recommended decision. The Administrator may consult with the Presiding Officer, members of the hearing panel or any other EPA employee in preparing his final decision. The Hearing Clerk shall file a copy of the decision on all hearing participants.

(b) *In the absence of review.* If no party appeals a recommended decision to the Administrator and if the Administrator does not review it sua sponte, he shall be deemed to have adopted the recommended decision as the final decision of the Agency upon the expiration of the time for filing any exceptions under § 57.812(a).

(c) *Timing of judicial review.* For purposes of judicial review, final Agency action on a request for a waiver of the interim requirement that each NSO provide for the use of constant controls shall not occur until EPA approves or disapproves the issuance of an NSO to the source requesting such a waiver.

§ 57.814 Administrative Record.

(a) *Establishment of record.* (1) Upon receipt of request for a waiver, an administrative record for that request shall be established, and a Record and Hearing Clerk appointed to supervise the filing of documents in the record and to carry out all other duties assigned to him under this subpart.

(2) All material required to be included in the record shall be added to the record as soon as feasible after its receipt by EPA. All material in the record shall be appropriately indexed. The Hearing Clerk shall make appropriate arrangements to allow members of the public to copy all

nonconfidential record materials during normal EPA business hours.

(3) Confidential record material shall be indexed under (a)(2) of this section. Confidential record material shall, however, be physically maintained in a separate location from public record material.

(4) Confidential record material shall consist of the following:

(i) Any material submitted pursuant to § 57.802 for which a proper claim of confidentiality has been made under section 114(c) of the Act and 40 CFR Part 2; and

(ii) The Staff Computational Analysis prepared under § 57.803.

(b) *Record for issuing tentative determination.* The administrative record for issuing the tentative determination required by § 57.803 shall consist of the material submitted under § 57.802 and any additional materials supporting the tentative determination.

(c) *Record for acting on requests for cross-examination.* The administrative record for acting on requests for cross-examination under § 57.808 shall consist of the record for issuing the tentative determination, all comments timely submitted under §§ 57.803 (e)(4) and 57.805, the transcript of the hearing, and any additional material timely submitted under § 57.807(d).

(d) *Record for preparation of recommended decision.* The administrative record for preparation of the recommended decision required by § 57.811 shall consist of the record for acting on requests for cross-examination, the transcript of any supplementary hearing held under § 57.808(c), any materials timely submitted in lieu of or in addition to cross-examination under § 57.808(d), and all briefs, proposed findings of fact and proposed recommendations timely submitted under § 57.810.

(e) *Record for issuance of final decision.* (1) Where no hearing has been held, the administrative record for issuance of the Administrator's final decision shall consist of the record for issuing the tentative determination, any comments timely submitted under § 57.803(e)(4), any briefs or reply briefs timely submitted under § 57.812 (a) through (c), and the transcript of any oral argument granted under § 57.812(d).

(2) Where a hearing has been held, the administrative record for issuance of the Administrator's final decision shall consist of the record of preparation of the recommended decision, any briefs or reply briefs submitted under § 57.812 (a) through (c), and the transcript of any oral argument granted under § 57.812(d).

§ 57.815 State notification.

The Administrator shall give notice of the final decision in writing to the air pollution control agency of the State in which the smelter is located.

§ 57.816 Effect of negative recommendation.

No waiver of the interim requirement for the use of constant controls shall be granted by the Administrator or a State in the absence of a positive recommendation by the Administrator that such a waiver be granted.

Appendix A—Primary Nonferrous Smelter Order (NSO) Application

Instructions

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1. General Instructions

1.1 *Purpose of the Application*

This application provides financial reporting schedules and the accompanying instructions for EPA's determination of eligibility for a nonferrous smelter order (NSO), and for a waiver of the interim constant controls requirement of an NSO. Although the determination of eligibility for an NSO is prerequisite for the determination of a waiver, Appendix A, as a matter of convenience to applicants, includes both the NSO and waiver tests and reporting schedules.

In order to support an NSO eligibility determination, the applicant must submit operating and financial data as specified by the schedules included in this application. Specific instructions for completing each schedule are provided in subsequent sections of the instructions. In general, applicants must provide:

(a) Annual income statements, balance sheets and supporting data covering the five most recent fiscal years for the smelter for which the NSO is requested.

(b) Forecasts of operating revenues, operating costs, net income from operations and capital investments for the firm's smelter operations subject to this application, on the basis of anticipated smelter operations without sulfur dioxide control facilities installed after 1977.

(c) Forecasts of operating revenues, operating costs, net income from operations and capital investments for the firm's smelter operations subject to this application, on the basis of anticipated smelter operations with expected additional sulfur dioxide control facilities required to comply with the smelter's SIP emission limitation.

(d) For smelters applying for a waiver of interim constant controls, forecasts of operating revenues, operating costs, and capital investment for the firm's smelter operations prepared on the basis of anticipated smelter operations with additional pollution control facilities required to comply with interim constant control requirements.

1.2 NSO Financial Tests

EPA will use separate tests to determine eligibility for an NSO and to evaluate applications for a waiver of the interim constant control requirement. The two tests for NSO eligibility employ a present value approach for determining the reasonable availability of constant control technology that will enable an applicant to achieve full compliance with its SIP sulfur dioxide emission limitation. The tests for the waiver of the interim constant control requirements employ variable costing and discounted cash flow standards for evaluating an applicant's economic

capability to implement those requirements.

1.2.1 *NSO Eligibility Tests.* Each applicant must establish that the system of production and/or constant control technology that will enable the smelter to achieve full compliance with its SIP SO_2 emission limitation standard is not reasonably available. An applicant will determine financial eligibility for an NSO by passing at least one of the following two tests.

(a) *Profit Protection Test.* The smelter will experience a reduction in pre-tax profits of 50 percent or more after undertaking the required installation of constant controls.

(b) *Rate of Return Test.* The smelter will earn a rate of return below the industry average cost of capital after undertaking the required installation of constant controls.

1.2.2 *Temporary Waiver from Interim Controls.* Applicants that do not have an existing constant controls system may apply for a waiver from requirements for the interim controls. Applicants will be eligible for a temporary waiver from the interim constant control requirement if they can establish pursuant to the procedures in this application that the imposition of such control requirements would economically necessitate closure of the smelter facility for a period of one year or longer. The economic justification for a non-permanent closure under this temporary waiver test is defined as a situation in which the smelter's projected operating revenues for one or more years during which the NSO is in effect are inadequate to cover variable operating costs anticipated after installing the required interim control technology. Temporary waivers will be granted for only the period of time over which applicants can establish an inability by the firm to cover its variable operating costs. Interim control waiver requests based on the smelter's projected inability to earn adequate income after installation of interim pollution control equipment will be subject to the permanent waiver test.

1.2.3 *Permanent Waiver from Interim Controls.* Applicants without an existing constant controls system will be eligible for a full waiver from the interim use of such controls if they can establish pursuant to the procedure in this application that an imposition of interim control requirements would necessitate permanent closure of the smelter. Economic justification for a permanent closure is defined as a situation in which the present value of future cash flows anticipated from the smelter after installing the required interim control technology is less than the smelter's current salvage value under an orderly plan of liquidation.

1.2.4 *EPA Contact for NSO Inquiries.* Inquiries concerning this portion of the requirements for NSO application should be addressed to Roy Rathbun, Environmental Protection Agency, EN 341, 401 M Street SW, Washington, D.C. 20460.

1.2.5 *Certification.* The NSO Certification Statement must be signed by an authorized officer of the applicant firm.

1.3 *Confidentiality*

Applicants may request that information contained in this application be treated as confidential. Agency regulations concerning claims of confidentiality of business information are contained in 40 CFR Part 2 Subpart B (41 FR 36902 *et seq.*, September 1, 1976, as amended by 43 FR 39997 *et seq.*, September 8, 1978). The regulations provide that a business may, if it desires, assert a business confidentiality claim covering part or all of the information furnished to EPA. The claim must be made at the same time the applicable information is submitted. The manner of asserting such claims is specified in 40 CFR 2.203(b). Information covered by such a claim will be handled by the Agency in accordance with procedures set forth in the Subpart B regulations. EPA will not disclose information on a business that has made a claim of confidentiality, except to the extent of and in accordance with 40 CFR Part 2, Subpart B. However, if no claim of confidentiality is made when information is furnished to EPA, the information may be made available to the public without notice to the business.

2. NSO Financial Reporting Overview

2.1 *Revenue and Cost Assignment.* The amounts assigned to operations of the smelter subject to this NSO application should include (1) revenues and costs directly attributable to the smelter's operating activities and (2) indirect operating costs shared with other segments of the firm to the extent that a specific causal and beneficial relationship can be identified for the allocation of such costs to the smelter. Do not allocate revenues and costs associated with central administrative activities for which specific causal and beneficial relationships to the activities of the smelter cannot be established. Nonallocable items include, but are not restricted to, amounts such as dividend and interest income on centrally administered protfolio investments, central corporate administrative office expenses and interest on long-term debt financing arrangements. Provide a detailed explanation of amounts classified as nontraceable on a separate schedule and attach as part of Exhibit B.

2.2 *Transfer Prices on Affiliated Party Transactions.* Certain transactions by the smelter subject to an NSO application may reflect sales to or purchases from "affiliated" customers or suppliers with whom the smelter has a common bond of ownership and/or managerial control In preparing this application, affiliated party transactions shall be defined as transactions with any entity that the firm, or its owners, controls directly or indirectly either through an ownership of 10 percent or more of the entity's voting interests or through an exercise of managerial responsibility. Applicants must attach as part of Exhibit B supporting schedules explaining the pricing policies established on affiliated party transactions incorporated in the financial reporting schedules.

Prices on inter-segment material and product transfers within a firm, or on external purchases from and sales to other affiliated suppliers and customers, may differ from the prices on comparable transactions with unaffiliated suppliers and customers. In this event, applicants also must present in the Exhibit B supporting schedules and incorporate in the NSO financial reporting schedules appropriate adjustments for restating affiliated party transactions. Affiliated party transactions must be restated at either (a) equivalent prices on comparable transactions with unaffiliated parties if such price quotations can be obtained or (b) prices that provide the selling entity with a normal profit margin above its cost of sales if a meaningful comparision with unaffiliated transaction prices cannot be established.

A "normal" profit margin is defined as the gross operating profit per dollar of operating revenue that will provide an average after-tax rate of return on permanent capital (total assets less current liabilities). This average rate of return is defined differently for the historical and forecast periods. The applicant must use a rate of return of 10.3 percent for the *historical* period. This figure is based on a historical average earned rate of return for the nonferrous metals industrry.[1] EPA may update this figure periodically. The updates will be available in the rulemaking docket or from the **INFORMATION CONTACT** noted in the **Federal Register**. For the *forecast* period,

[1] The derivation of this figure is explained in a memorandum to EPA in EPA Docket No. A-82-35.

the applicant must use a rate of return equal to the current weighted average cost of capital for the nonferrous metals industry, as computed in Section 2.6.

Forecast smelting charges for integrated smelters can be computed from forecast market smelting charges. Integrated copper smelters must use as the basis of their forecast revenues the forecast copper smelting charges provided by EPA, adjusted as described in Section 2.4.1. An applicant may petition EPA to accept other forecasts, providing the forecast methodology is fully documented as part of Exhibit B.

2.3 *Forecasting Requirements.* NSO applicants must provide the Agency with financial forecasts in Schedules B.1 through B.6 and C.1 through C.2. Applicants requesting either a temporary or permanent waiver from interim constant control requirements also must provide an additional set of financial forecasts in Schedules D.1 through D.4.

2.3.1 *Forecast Period.* The forecast period must include at least two full years following completion and startup of the required pollution control system. The forecast period shall be from 1983 through 1989 for an NSO application filed in 1983. If an application is filed in a later year, the 1983 through 1989 period should be adjusted accordingly. All references in this Appendix to the period 1983 through 1989 should be interpreted accordingly.

2.3.2 *Forecast Adjustments by Control Case.* Some line items that have the same title in several schedules may contain different information because they are based on different assumptions regarding pollution controls. Production interruptions or curtailments due to the installation of pollution control facilities may require adjustment to certain revenue and cost estimates in the respective control cases. For example, production curtailments associated with supplementary control systems may be the basis for the pre-control case, yet are eliminated when constant controls replace supplementary control systems in the constant controls case. The application of pollution control techniques that involve process changes in the smelter's operations (e.g., conversion to flash smelting) also may require specific forecasts by applicants of associated impacts on incremental operating revenues and costs.

2.3.3 *Nominal Dollar Basis.* Applicants must make their financial forecasts in terms of nominal dollars. Forecasts of selected parameters provided by EPA will furnish guidelines to an applicant in preparing the required cost and revenue estimates. In particular, copper smelting charges provided in nominal-dollar terms must be used directly by the applicant as given; i.e., the stipulated charge estimates should not be inflated.

2.3.4 *Tolling Service Equivalent Basis.* Applicants must express all revenue forecasts on a tolling service equivalent basis. Thus, forecast revenues are computed as the product of the forecast quantity of processed concentrate, the forecast average product grade of the concentrate (the percent of metal in the concentrate), and the forecast smelting charge. Smelters that are not tolling smelters and that do not use the copper smelting charges provided by EPA (as explained in Section 2.4.1) can forecast a smelting charge from forecast product grade of the concentrate, percent recovery, and product and concentrate prices. The forecast prices and derivation of the smelting charge must be fully documented in Exhibit B.

2.4 *EPA-Furnished Forecast Data.* In making projections for the period 1983 through 1989, applicants must, except as noted below, use the indices provided by EPA. The table below presents yearly values for each index (expressed as annual percentage rates of change) to be used by smelters applying for an NSO before January 1, 1984. Those applying on or after January 1, 1984, may obtain updates from EPA which are available in the rulemaking docket or from the **INFORMATION CONTACT** noted in the **Federal Register.**

	1983	1984	1985	1986	1987	1988	1989
Copper smelting charge * (cents per pound)	12.0	14.7	15.0	16.6	16.1	16.2	16.4
Annual percentage rates of change:							
Wages	5.9	6.3	6.6	6.9	7.1	7.3	7.4
Energy prices:							
Electricity	7.0	11.0	10.2	7.5	7.8	8.0	7.4
Natural gas	18.0	12.7	14.6	8.7	9.6	10.4	11.0
Coal	5.7	8.6	9.3	9.5	10.8	10.9	11.2
Fuel oil	0.9	5.7	7.7	9.6	9.8	10.4	11.7
GNP price deflator	5.2	5.7	6.2	6.2	6.2	6.3	6.3

* Reference charge for calculating smelter-specific copper smelting charges as described in Section 2.4.1.

2.4.1 *Copper smelting charge.* EPA will supply a forecast of reference copper smelting charges. These charges, which are f.o.b. U.S. mine, are based on an estimate of export smelting charges and on the differential value of copper in the U.S. and the world market. They must be used in forecasting unaffiliated party revenues for the period following the expiration of existing contracts and in forecasting affiliated party revenues for the entire forecast period. The applicant may petition EPA to accept its own smelting charge forecast for the post-contract period, provided that such forecast is fully documented and substantiated as part of Exhibit B.

The EPA forecast export charge represents the world market copper smelting charge with copper valued at the London Metal Exchange (LME) copper price. This charge serves as the reference charge for the applicant copper smelter in calculating its smelting charges. Applicant copper smelters must derive their smelting charges from this world market charge as described in paragraph (a) below.

The applicant may adjust the derived smelter-specific smelting charge to account for other factors, provided the adjustments are fully documented as part of Exhibit B. An example of such a factor is the unit deduction for metallurgical losses in smelting. Adjustment for this factor is discussed in paragraph (b) below.

(a) *The derivation of a smelter-specific smelting charge from the world market charge* is based on assumptions regarding transportation costs and the U.S. producer-world copper price differential. The EPA forecast export charge is the forecast smelting charge available at a Japanese smelter, with copper valued at the London Metal Exchange (LME) copper price. The charge includes no freight costs, which must be paid by the mine. A U.S. smelter determines its smelting charge to a mine by meeting the combined world market smelting charge, adjusted to reflect copper valued at the U.S. producer price, and the transportation charge from the mine to the Japanese smelter. This combined price is the highest that a mine is willing to pay for smelting.

The smelter's net smelting charge is equal to the combined world smelting charge, adjusted to the U.S. producer price for copper (i.e., the export forecast charge plus the U.S. producer price premium), and the transportation cost between the mine and a Far East smelter, minus the cost of transporting the concentrate between the mine and the applicant smelter.

The applicant smelter's net smelting charge for concentrate from an individual mine is computed by first adding the U.S. producer price-LME world price differential to the EPA-supplied forecast. The cost of

transporting copper from the U.S. mine to the Far East is then added to this figure. The net smelting charge is obtained by subtracting from this total the cost of transporting copper from the mine to the applicant smelter.

In making these calculations, an applicant applying during 1983 must use a 3 cent per pound U.S. producer price premium (relative to the LME price). It must use a 11.1 cent per pound (1982 dollars) freight cost between an Arizona mine and the Far East. If used, this freight cost must be converted to nominal dollars of the respective forecast years by applying the EPA-provided GNP price deflator. Updates of the producer price premium and the freight cost will be available in the rulemaking docket or from the **INFORMATION CONTACT** noted in the **Federal Register**. The applicant may substitute its own forecasts of these values if it can substantiate such forecasts. All supporting documentation for such applicant-supplied forecasts must be supplied in Exhibit B. The applicant must also supply (and document in Exhibit B) an estimate of the transportation charge from mine to smelter and, for a non-Arizona mine, an estimate of the freight charges from that mine to the Far East.

The following two representative examples illustrate this methodology for making the transportation and U.S. producer price premium adjustment.

(1) The applicant smelter, located in Arizona, obtains concentrate from an adjacent mine. The freight charge from mine to smelter is zero. The mine is willing to pay the applicant smelter an amount no higher than the sum of the world market smelting charge (adjusted for the copper value differential) and the transportation cost of shipping copper from the mine to the Far East. This combined cost is the net charge received by the applicant smelter. If the export smelting charge is 12 cents per pound, the applicant smelter would calculate a net smelting charge equal to 26.1 cents: 12 cents plus 3 cents (for the U.S. producer price premium) plus 11.1 cents (for the freight cost between the mine and the Far East).

(2) The applicant smelter obtains concentrate from a non-adjacent mine. The mine will pay a charge no higher than the total market smelting charge, valued at the U.S. producer price, and the transportation costs between the mine and a Far East smelter. The applicant's net smelting charge is equal to this combined cost minus the transportation costs for shipping the concentrate between mine and applicant smelter.

Suppose that the mine to Far East freight charge is 13 cents per pound and the mine to applicant smelter freight charge is 4 cents per pound. If the export smelting charge is 12 cents per pound, the net smelting charge is equal to 24 cents per pound: 12 cents plus 3 cents (for the U.S. producer price premium) plus 13 cents (for the freight cost to the Far East) minus 4 cents (for the freight cost to the applicant smelter).

(b) *The EPA forecast charges are based on a one unit deduction for metallurgical losses.* This means that if a concentrate grades 25 percent copper, the mine is only credited with 24 percent for metal return. The one unit deduction on 25 percent concentrate is equivalent to a 96 percent payment for contained copper. Should a smelter recover less than 96 percent, its revenue would be less than the EPA forecast smelting charge. Should a smelter recover more than 96 percent, its revenue would be greater than the EPA forecast smelting charge.

2.4.2 *Indices (Annual Percentage Changes).* These indices, which are expressed as annual percentage rate changes in price, must be used only for estimating the rate of price increases for the forecast period following the expiration of the applicant's current contracts. Where contracts expire during the calendar year, prices should be calculated by rounding to the nearest quarter and interpolating to the next calendar year if necessary. The applicant may petition EPA to accept another projection for the forecast period following the expiration of current contracts, providing the projection is fully documented as part of Exhibit B.

The wage indices are to be applied to wages paid to manufacturing labor. The energy price indices are to be applied to prices of the respective energy products. The GNP price deflators are to be applied to prices for non-metal, non-labor, and non-energy inputs.

2.5 *Applicant-Generated Forecasts.* Within the specified limitations, applicants may petition EPA to accept a method of forecasting smelting charges and by-product, co-product and other prices. The method selected must be explained and unit prices or cost provided where applicable. The forecast elements must be compatible with an applicant's historical cost and revenue elements to permit direct comparisons of historical and forecast data. Applicants must attach as part of Exhibit B appropriate schedules explaining variances between forecast and historical unit costs for the smelter.

To the maximum extent practicable, by-product, co-product and (when applicable) unaffiliated smelting charges must be stated at market prices adjusted to f.o.b. smelter. Adjustments of these pricing bases must be made to reflect differences in grades and types of production. All adjustments must be consistent with expected sales, grades and types of concentrate processed. Applicants must attach as part of Exhibit B schedules describing and explaining the methods used to forecast these revenue items and the adjustments required for these revenue forecasts.

Applicants must explain fully any changes from the historical data that are required to forecast labor productivity, ore-concentrate grade and composition, materials and energy consumption per unit of output, yield rates and other physical input/output relationships.

Existing contractual terms must be used in forecasting those sales or input costs or prices to which the applicant is committed by contracts. The use of contract-dictated prices must be disclosed and supported by attaching as part of Exhibit B the terms and duration of labor and other supplier arrangements.

Cost of compliance estimates need not be to the accuracy of final design/bid estimates; feasibility grade estimates will be acceptable. Updated cost of compliance estimates used in internal five year plans or specially prepared estimates of costs of compliance will generally be satisfactory.

2.6 *Weighted Average Cost of Capital for Nonferrous Metal Producers.* The industry average cost of capital is a weighted average of the rates of return for equity and debt. Its components are the interest rate and the return on equity specific to the nonferrous metals industry.

2.6.1 *Computation.*[2] The applicant must compute the cost of capital according to the following formula:

$$R = (0.65 \times E) + (0.182 \times I)$$

where

R = weighted average cost of capital
E = return on equity
I = interest rate.

The components are calculated as follows:

(a) *Return on equity for the nonferrous metals industry.* The 20 year Treasury bond yield to maturity plus a risk premium of 7.75 percent.

(b) *Interest Rate.* 20 year Treasury bond yield to maturity plus a risk premium of 3.0 percent.

[2] The derivation of the formula and the basis of the parameters are explained in a memorandum to EPA in EPA Docket No. A-82-35.

(c) *Source of the 20 Year Treasury bond yield. Federal Reserve Bulletin,* most recent monthly issue. Use the average yield for the most recent full month.

2.6.2 *Discount Factor.* The discount factor corresponding to the weighted average cost of capital for any forecast year is computed according to the following equation:

$$DF = \frac{1}{(1+R)^N}$$

where
DF = discount factor
R = weighted average cost of capital
N = the number of years in the future (e.g., for the applicant applying in 1983, N = 2 for the forecast year 1984).

The horizon value, which is described in Section 2.7, is computed as of 1989, the end of the detailed forecast period. The discount factor to be applied to the horizon value is the same as for any other 1989 figure. For example, if the application is made in 1983, the value of N is 7.

2.7 *Horizon Value.* The horizon value is the present value of a stream of cash flows or net income for 15 years beyond the last forecast year. Applicants must compute the horizon value by capitalizing the average forecast value of the last two forecast years using the current real weighted cost of capital. The line item instructions for schedules having a horizon value entry will specify the values to be capitalized.

The applicant averages the values of the last two years after expressing both values in terms of the last year's dollars. The two-year average value is then multiplied by 9.6. This is the factor associated with capitalizing a 15 year value stream at the current *real* weighted cost of capital of 6.2 percent.

2.8 Data Entry

2.8.1 *Rounding.* All amounts (including both dollar values and physical units) reported in the schedules and exhibits accompanying this application must be rounded to the nearest thousand and expressed in thousands of dollars or units unless otherwise indicated in the instructions.

2.8.2 *Estimates.* Where an applicant's records cannot produce the specific data required by this application, the use of estimates will be allowed if a meaningful estimate can be made without significant distortion of the reported results. Data estimates must be supported by attaching on a separate sheet of paper as a part of Exhibit B an explanation identifying where such estimates are used and showing explicitly how the estimates were made.

2.8.3 *Missing Data.* Applicants must provide, where applicable, all operating and financial data requested by this application. Only substantially complete applications can be accepted for processing by the Agency. Questions concerning data entries for which information is not provided by or cannot reasonably be estimated from the applicant's existing accounting records should be addressed to the EPA Contact for NSO Inquiries.

2.8.4 *Historical Period.* The annual data requested in the historical schedules, Schedules A.1 through A.4, must be reported for each of the five fiscal years immediately preceding the year in which this application is filed. The historical period shall be from fiscal years 1978 through 1982 for an NSO application filed in 1983. If an application is filed in a later year, the references in this Appendix to the period 1978 through 1082 should be interpreted accordingly.

2.9 Use of Schedules

All applicants must complete Schedules A.1 through A.4, which record historical revenues, cost, and capital investment data. These schedules will be used by EPA to assist in evaluating forecast data. Completion of the remaining schedules depends on the test required of the applicant.

2.9.1 *NSO Eligibility.* An NSO applicant must pass one of the following two tests and complete the corresponding schedules.

(a) *Profit Protection Test.* The applicant must complete Schedules B.1 through B.7 to determine eligibility under the Profit Protection Test. Schedules B.1 and B.2 report the base case (without constant controls) revenue and cost forecast, respectively, and Schedule B.3 summarizes Schedules B.1 and B.2. Base case production forecasts should reflect any production curtailments associated with interim controls currently (preforecast) installed on smelters. Schedules B.4 and B.5 report the revenue and cost forecast, respectively, for the constant controls case, and Schedule B.6 summarizes Schedules B.4 and B.5 for the Profit Protection Test.

Schedule B.7 presents the calculations for the Profit Protection Test. The applicant enters the forecast profits from Schedules B.3 and B.6. The present value of the forecast profits is then computed for each case. If the present value of forecast pre-tax profits with constant controls is less than 50 percent of the present value of forecast pre-tax profits without controls (base case) the smelter passes the test and is eligible for an NSO. The smelter also passes the test if the present value of forecast pre-tax profits without controls (base case) is negative.

(b) *Rate of Return Test.* The applicant must complete Schedules B.4, B.5, and C.1 through C.3 to determine eligibility under the Rate of Return Test. Schedules B.4 and B.5 report the revenue and cost forecast, respectively, for the constant controls case, and Schedule C.1 summarizes Schedules B.4 and B.5 for the Rate of Return Test. Schedule C.2 reports forecast sustaining capital investment for the constant controls case.

Schedule C.3 presents the calculations for the Rate of Return Test. In Schedule C.3, the applicant reports the forecast cash flows from Schedules C.1 and C.2, computes their present value, and subtracts the value of invested capital (taken from Schedule A.4) to yield net present value. If the net present value is less than zero, the smelter passes the test and is eligible to receive an NSO. This result indicates that the smelter is expected to earn a rate of return less than the industry average cost of capital.

2.9.2 *Interim Control Waivers.* An applicant for a waiver from interim controls must complete either a portion or all of Schedules D.1 through D.6, depending on whether the application is for a temporary or permanent waiver.

(a) *Temporary Waiver from Interim Controls Test.* The applicant must complete Schedules D.1 through D.3 to determine eligibility for a temporary waiver from interim controls. Schedules D.1 and D.2 report forecast revenue and cost data for the interim controls case. Schedule D.3 summarizes Schedules D.1 and D.2 and calculates gross operating profit. If gross operating profit is negative for any year during which the NSO is in effect, the applicant is eligible for a temporary waiver.

(b) *Permanent Waiver from Interim Controls Test.* The applicant must complete Schedules D.1 through D.6. Schedules D.1 and D.2 report forecast revenue and cost data for the interim controls case. Schedule D.3 summarizes Schedules D.1 and D.2, and Schedule D.4 reports forecast sustaining capital under the interim controls case. Schedule D.5 reports cash proceeds from liquidation.

Schedule D.6 presents the calculations for the permanent waiver test. In Schedule D.6, the applicant computes net present value by subtracting the current salvage value (taken from Schedule D.5) from the present value of

net cash flow projections (taken from Schedules D.3 and D.4). If this net present value is negative, the applicant is eligible for a permanent waiver.

2.10 Use of Exhibits

In addition to data required by the schedules included in this application, the following information must be attached as exhibits.

2.10.1 *Exhibit A. Background information on the firm's organizational structure and its associated accounting and financial reporting systems for primary nonferrous activities.* This information must include, where applicable, the firm's:

(a) Operating association with and ownership control in consolidated subsidiaries, unconsolidated subsidiaries, joint ventures and other affiliated companies.

(b) Organizational subdivision of its primary nonferrous activities into profit centers, cost centers and/or related financial reporting entities employed to control the operation of its mines, concentrators, smelters, refineries and other associated facilities.

(c) Material and product flows among the smelter subject to this NSO application, other integrated facilities and its affiliated suppliers and/or customers. In the case of integrated facilities, applicants must provide process flow diagrams depicting the operating interrelationships among its mines, concentrators, smelters, refineries and other integrated facilities. For both integrated and nonintegrated facilities, applicants also must describe the proportion contributed to its primary nonferrous activities by material purchases from and product sales to affiliated suppliers.

(d) Annual operating capacity over the five most recent fiscal years for the smelter subject to this application and the firm's other nonferrous facilities. Operating capacity must be defined in terms of the total quantity of throughput that could have been processed with the available facilities after giving appropriate allowance to normal downtime requirements for maintenance and repairs. Operating capacity data also must consider both capacity balancing requirements among processing steps and annual processing yield rates attainable for each facility.

(e) Weighted average analysis of concentrates processed and tonnage produced annually over each of the five most recent fiscal years by the smelter subject to this application. The operators of integrated facilities also must provide annual data over the five-year period on both the sources of and a weighted average analysis of concentrates and ores processed and tonnage produced by individual profit centers.

(f) Accounting system and policies for recording investment expenditures, operating revenues, operating costs and income taxes associated with its primary nonferrous activities. Applicants also must provide a complete description of allocation techniques employed for assigning investments, revenues, costs and taxes to individual profit, cost or departmental centers for which costs are accumulated. Applicants must further indicate the relationship of cost and/or departmental accounting entities to the firm's established profit centers.

(g) Annual and five-year operating and capital expenditure plans (or budgets) by individual nonferrous profit center. These documents must include previous plans prepared for the five preceding fiscal years as well as the current one-year and five-year operating and capital expenditure plans. At least the current one-year and five-year plans must provide a specific breakdown of investment expenditures and operating costs associated with the operation and maintenance of each profit center's existing and proposed pollution control facilities.

2.10.2 *Exhibit B. Supplemental description and explanation of items appearing in the financial reporting schedules.* Other parts of Section 2 and the detailed instructions for the Schedules specify the information required in Exhibit B.

2.10.3 *Exhibit C. Financial data documentation.* Applicants must document annual balance sheet, income statement and supporting data reported for the firm's preceding five fiscal years or for that portion of the past five years during which the firm engaged in smelter operations. This documentation must be provided by attaching to the application:

(a) Sec. 10–K reports filed by the parent corporation and its unconsolidated subsidiaries for each of the proceding five fiscal years.

(b) Certified financial statements prepared (a) on a consolidated basis for the parent corporation and its consolidated subsidiaries and (b) for the firm's unconsolidated subsidiaries and affiliates. This requirement may be omitted for those years in which Sec. 10–K reports have been attached to this Exhibit.

(c) Business Segment Information reports filed with the Securities and Exchange Commission by the firm and its unconsolidated subsidiaries for each of the preceding five years (as available).

Detailed Instructions for Each Schedule

Schedule A.1—Historical Revenue Data

General

Use Schedule A.1 to report annual historical revenue data for fiscal years 1978 through 1982. Revenues include product sales and associated operating revenues, net of returns and allowances, from smelter sales and/or transfers of copper, lead, zinc and molybdenum or other nonferrous metal products and tolling services to both unaffiliated and affiliated customers. The line items in Schedule A.1 are explained in the following instructions.

Lines 01, 14, 27 and 40—Primary Nonferrous product Sales. Report for each year the total quantity of copper, lead, zinc and molybdenum or other nonferrous metal product sales.

Lines 02, 15, 28 and 41—Unaffiliated Customer Sales. Report for each year the respective quantities of copper, lead, zinc and molybdenum or other nonferrous metal product sales to unaffiliated customers.

Lines 03, 16, 29 and 42—Unaffiliated Customer Revenues. Report for each year the total operating revenues derived from smelter sales of copper, lead, zinc and molybdenum or other nonferrous metals to unaffiliated customers.

Lines 04, 17, 30 and 43—Unaffiliated Customer Prices. Report for each year the average unit price received on smelter sales of copper, lead, zinc and molybdenum or other nonferrous metals to unaffiliated customers. The prices are computed as operating revenues reported on Lines 03, 16, 29 and 42 divided by the quantities reported on lines 02 15, 28 and 41, respectively.

Lines 05, 18, 31 and 44—Average Product Quality Grade. Report for each year the average quality rating assigned to copper, lead, zinc and molybdenum or other nonferrous metal products purchased by the smelter's unaffiliated customers.

Lines 06, 19, 32 and 45—Affiliated Customer Sales. Report for each year the respective quantities of copper, lead, zinc and molybdenum or other nonferrous metal product sales to affiliated customers.

Lines 07, 20, 33 and 46—Affiliated Customer Revenues. Report for each year the total operating revenues derived from smelter sales of copper, lead, zinc and molybdenum or other nonferrous metals to affiliated customers. These revenues should be stated at prices equivalent to those received on comparable sales to unaffiliated customers as described in

Section 2.2. Attach as part of Exhibit B an explanation of the methodology used to state affiliated customer revenues.

Lines 08, 21, 34 and 47—Affiliated Customer Prices. Report for each year the average unit price received on smelter sales of copper, lead, zinc and molybdenum or othr nonferrous metals to affiliated customers. The prices are computed as operating revenues reported on Lines 07, 20, 33 and 46 divided by the quantities reported on Lines 06, 19, 32 and 45, respectively.

Lines 09, 22, 35 and 48—Average Product Quality Grade. Report for each year the average quality rating assigned to copper, lead, zinc and molybdenum or other nonferrous metal products purchased by the smelter's affiliated customers.

Lines 10, 23, 36 and 49—Total Primary Product Revenues. Report for each year total operating revenues derived from the smelter's sales to unaffiliated and affiliated customers of copper (Lines 03 + 07), lead (Lines 16 +20), zinc (Lines 29 + 33) and molybdenum or other nonferrous metals (Lines 42 + 46).

Lines 11, 24, 37 and 50—Transfer Price Adjustments. Report for each year operating revenue adjustments required to equate affiliated customer transfer prices with unaffiliated customer market prices on smelter sales of copper, lead, zinc and molybdenum or other nonferrous metals. Attach as part of Exhibit B an explanation of the method used for restating transfer prices where such adjustments are necessary.

Lines 12, 25, 38 and 51—Other Revenue Adjustments. Report for each year sales returns and allowances and other adjustments applicable to the smelter's revenues derived from copper, lead, zinc and molybdenum or other nonferrous metal product sales. Attach as part of Exhibit B a schedule reporting the types and amounts of such adjustments.

Lines 13, 26, 39 and 52—Adjusted Product Revenues. Enter for each year the sums of Lines 10 through 12 for adjusted copper sales (Line 13), Lines 23 through 25 for adjusted lead sales (Line 26), Lines 36 through 38 for adjusted zinc sales (Line 39) and Lines 49 through 51 for adjusted molybdenum or other nonferrous metal sales (Line 52).

Line 53—Primary Metal Revenues. Enter for each year the sum of Lines 13, 26, 39 and 52.

Line 54—Toll Concentrates Processed. Report for each year the total quantity of toll concentrates processed.

Lines 55 to 58—Customer Toll Revenues. Report for each year the quantity of toll concentrates processed for unaffiliated customers (Line 55), total operating revenues derived from this processing (Line 56), average price charged per ton of concentrate processed (Line 57=Line 56/55) and the average quality rating assigned to toll concentrates processed for unaffiliated customers (Line 58).

Lines 59 to 62—Affiliated Customer Toll Revenues. Report for each year the quantity of toll concentrates processed for affiliated customers (Line 59), total operating revenues derived from such processing (Line 60), average price charged per ton of concentrate processed (Line 61=Line 60/59) and the average quality rating (Line 62) assigned to toll concentrates processed for affiliated customers.

Line 63—Tolling Service Revenues. Enter for each year the total of amounts reported on Lines 56 and 60.

Line 64—Transfer Price Adjustments. Report for each year operating revenue adjustments required to equate affiliated customer transfer prices with market prices charged to unaffiliated customers on the smelter's tolling services. Attach as part of Exhibit B an explanation of the method used for restating transfer prices where such adjustments are necessary.

Line 65—Other Revenue Adjustments. Report for each year other adjustments applicable to the smelter's tolling service revenues. Attach as part of Exhibit B a schedule reporting the types and amounts of such adjustments.

Line 66—Adjusted Tolling Service Revenues. Enter for each year the total of Lines 63 through 65.

Line 67—Co-Product Revenues. Report for each year the net revenues from sales of co-products derived from the smelter's operations. Attach as part of Exhibit B a schedule showing by individual type of co-product, the quantity produced and sold, market price per unit of sales and total revenues derived from the co-product sales.

Line 68—Pollution Control By-product Revenues. Report for each year revenues from the sale of by-products derived from operation of the smelter's pollution control facilities. Attach as part of Exhibit B a schedule showing by type of by-product produced, the quantity of output, market price received per unit of output sold and total revenue derived from the by-product sales.

Line 69—Other By-product Revenues. Report for each year revenues from the sales of gold, silver and other by-products derived from the smelter's operations. Attach as part of Exhibit B a schedule providing additional documentation as specified in the instruction for Line 68.

Line 70—Total Co-product and By-product Revenues. Enter for each year the total of Lines 67 through 69.

Schedule A.2—Historical Cost Data

General

Use Schedule A.2 to report annual historical cost and input quantities for smelter operations for fiscal years 1978 through 1982. The line items in Schedule A.2 are explained in the following instructions.

Line 01—Total Quantity Purchased Report for each year the total quantity of concentrates purchased by the smelter. This will be the sum of Lines 02 and 06. Do not include the quantity of toll concentrates.

Line 02—Quantity Purchased. Report for each year the total quantity of concentrates purchased from unaffiliated suppliers by the smelter. Attach as a part of Exhibit B a description of the types and grades of these concentrates. Do not include the quantity of toll concentrates.

Line 03—Concentrate Cost. Report for each year the outlays paid to unaffiliated suppliers for concentrates. Attach as part of Exhibit B an explanation of the method(s) used in determining these outlays and relationship between concentrate prices and the types and grades of concentrates purchased from unaffiliated suppliers.

Line 04—Average Unit Price. Report for each year the average unit price paid for purchases of concentrates from unaffiliated suppliers. Generally, this value will be equivalent to Line 03 divided by Line 02. If this equivalency does not hold, attach as a part of Exhibit B an explanation of the variance.

Line 05—Average Concentrate Grade. Report for each year the average concentrate grade of concentrates purchased from unaffiliated suppliers. Attach as part of Exhibit B an explanation of this average. The average should correspond to the average price reported in Line 04.

Line 06—Quantity Purchased. Report for each year the total quantity of concentrates purchased from affiliated suppliers by the smelter. Attach as part of Exhibit B a description of the types and grades of these concentrates. Do not include the quantity of toll concentrates.

Line 07—Concentrate Cost. Report for each year the actual outlays paid to affiliated suppliers for concentrates. Attach as part of Exhibit B an explanation of the method(s) used in determining these outlays and relationship between concentrate prices and the types and grades of concentrates purchased from affiliated suppliers. Do not reflect any adjustments to market prices here.

Line 08—Average Unit Price. Report for each year the average unit price paid for purchases of concentrates from affiliated suppliers. Generally, this value will be equivalent to Line 07 divided by Line 06. If this equivalency does not hold, attach as part of Exhibit B an explanation of the variance.

Line 09—Average Concentrate Grade. Report for each year the average concentrate grade of concentrates purchased from affiliated suppliers. Attach as part of Exhibit B an explanation of this average. The average should correspond to the average price reported in Line 08.

Line 10—Total Concentrate Cost. Enter for each year the sum of Lines 03 and 07.

Line 11—Transfer Price Adjustments. Enter for each year the amounts required to adjust outlays paid to affiliated suppliers to market value. Refer to Section 2.2 for instructions on the restatement of affiliated party transactions. Attach as part of Exhibit B a description and the computations of any required cost adjustments.

Line 12—Other Cost Adjustments. Enter for each year the amounts of any other cost adjustments required such as freight or allowances. Attach as part of Exhibit B the identification and the derivation of these adjustments.

Line 13—Adjusted Concentrate Cost. Enter for each year the adjusted concentrate cost reflecting the adjustments reported in Lines 11 and 12.

Line 14—Direct Labor Hours. Report for each year the quantity of direct labor hours required to support the processing levels previously reported. Attach as part of Exhibit B an explanation of the labor productivity factors involved.

Line 15—Average Hourly Wage Rate. Report for each year the average wage rate paid per unit of direct labor input. Attach as part of Exhibit B a description of direct labor costs factors under existing labor contracts and an explanation of the method(s) used to determine wage rates.

Line 16—Total Wage Payments. Enter for each year the product of Lines 14 and 15.

Line 17—Supplemental Employee Benefits. Report adjustments required to direct labor costs for other employee compensation under supplemental benefit plans. Attach as part of Exhibit B a description of such plans and their costs and an explanation of the method(s) used to determine such costs.

Line 18—Total Production Labor Cost. Enter for each year the total of Lines 16 and 17.

Lines 19, 22, 25, 28, and 31—Energy Quantities. Report for each year the quantity of energy by type required to support the processing levels reported in the smelter's revenue. Attach as part of Exhibit B, an explanation of energy use factors and qualities considered in determining the smelter's energy requirements.

Lines 20, 23, 26, 29 and 32—Unit Prices. Report for each year a price paid per unit of energy input by type of energy. Attach as part of Exhibit B, a description of the energy price factors under existing energy contracts and an explanation of the method(s) used to determine unit energy prices.

Lines 21, 24, 27, 30 and 33—Total Payments. Enter for each year the products of quantity and prices paid for electricity (Lines 19 x 20), natural gas (Lines 22 x 23), coal (Lines 25 x 26), fuel oil (Lines 28 x 29), and other (Lines 31 x 32).

Line 34—Total Energy Costs. Enter for each year the total of Lines 21, 24, 27, 30 and 33.

Schedule A.3—Historical Profit and Loss Summary

General

Use Schedule A.3 to report annual revenues, costs and income taxes assignable to operation of the smelter subject to this NSO application for fiscal years 1978 through 1982. Assignable revenues and costs should include only the results of transactions either (1) directly associated with smelter operations or (2) for which the applicant can establish a causal and beneficial relationship with smelter operations pursuant to instructions in Section 2.1. The line items in Schedule A.3 are explained in the following instructions.

Line 01—Primary Metal Sales. Enter the totals reported in Schedule A.1, Line 40.

Line 02—Co-Product and By-Product Sales. Report for each year annual revenues, net of returns and allowances, derived from smelter sales and/or transfers of co-products and by-product to both unaffiliated and affiliated customers. Attach as part of Exhibit B a supporting schedule for each major co-product and by-product component of smelter revenues. Segregate the revenues reported by major co-product and by-product components into their unaffiliated customer and affiliated customer elements. Report for each component's unaffiliated and affiliated customer revenue elements the (1) average grade of product sold, (2) actual quantity sold, (3) average price per unit, and (4) total smelter revenues. Also show for each product line any adjustments required to restate transfer prices and explain the basis for such adjustments. Refer to Section 2.2 for instructions on the restatement of affiliated customer revenues.

Line 03—Tolling Service Revenues. Enter the totals reported in Schedule A.1, Line 53.

Line 04—Other Operating Revenues. Report for each year annual revenues directly associated with smelter operations that have not previously been reported on Lines 01 through 03. Attach as part of Exhibit B a schedule showing the types and amounts of sales reported as other operating revenue. The following non-operating revenue and income items should *not* be included as other operating revenue or as a part of revenues reported on Lines 01 through 03.

- Royalties, licensing fees and other income from intangibles.
- Interest and dividend income on portfolio investments.
- Equity in income (loss) of unconsolidated subsidiaries and affiliates.
- Gain (loss) from discountinued operations and disposal of property.
- Minority interest adjustment to consolidated subsidiary income.

Line 05—Total Operating Revenue. Enter for each year the total of Lines 01 through 04.

Line 06—Concentrates Processed. Report the cost of concentrates processed and sold or transferred to unaffiliated and affiliated customers from Schedule A.2, Line 13. Concentrates purchased from unaffiliated suppliers should be valued at the actual prices paid. Concentrates purchased from affiliated suppliers should be valued at or, if necessary, restated to equivalent prices quoted by unaffiliated suppliers. If prices used to report revenues are c.i.f. and concentrate costs are f.o.b. smelter, all transportation charges paid on the smelter's or buyer's account should be excluded from smelter expense. Attach as part of Exhibit B supporting schedules showing the:

- Annual value of concentrate purchases classified according to purchases from unaffiliated and affiliated suppliers.
- Cost of sales adjustments to concentrate purchases for net annual additions to or withdrawals from concentrate inventories, freight-in on concentrate purchases and inventory spoilage.
- Impact on cost of sales for restating, where applicable, the cost of concentrate purchases from affiliated suppliers to the equivalent prices paid to unaffiliated suppliers.
- Volumes, grades and net prices of concentrate purchases from unaffiliated

and affiliated suppliers by type of concentrate purchased.

• Volumes, grades and net prices associated with toll concentrates processed by type of concentrate.

Line 07—Other Materials Costs. Report for each year annual costs incurred for flux, refractories, coke and other materials used by the smelter in its processing of concentrates. Materials purchased from unaffiliated suppliers should be valued at the actual prices paid after adjustment for transportation costs incurred. Materials purchased from affiliated suppliers should be valued at or, if necessary, restated to equivalent prices quited by unaffiliated suppliers. Include in Exhibit B supporting schedules showing the:

• Annual value of material purchases classified according to purchases from unaffiliated and affiliated suppliers.

• Cost of sales adjustments to material purchases for net annual additions to or withdrawls from material inventories, freight costs on material purchases and inventory loss.

• Impact on cost of sales for restating, where applicable, the costs of material purchases from affiliated suppliers to equivalent prices paid to unaffiliated suppliers.

• Classification of other material costs by major cost factors for each cost component that exceeds 20 percent of any line item in the cost of sales schedule.

Line 08—Production Labor Costs. Report for each year total direct labor costs incurred by the smelter for processing purchased and toll concentrates, Schedule A.2, Line 18. Include in Exhibit B supporting schedules showing the:

• Manhours and wage rates for major labor classifications.

• Potential impact on wage rates of provision in the smelter's current labor contracts.

• Explanation of major variances observed in direct labor costs over the five-year period as a result of factors such as strikes or new labor contracts.

Line 09—Energy Costs. Enter the totals reported in Schedule A.2, Line 34.

Line 10—Pollution Control Costs. Report for each year expenses incurred for operating and maintaining pollution control facilities. All by-product credits associated with pollution control facility operations should be eliminated and reported on Line 02. Depreciation and amortization charges against the smelter's pollution control facilities should be reported separately on Line 18. Attach as part of Exhibit B supporting schedules showing the:

• Major pollution control cost elements with their values classified according to direct and indirect cost factors.

• Techniques used to allocate indirect polution control costs to major cost pools.

Line 11—Production Overhead. Report for each year the total costs for indirect labor, indirect materials and other production overhead costs associated with the smelter. Attach as part of Exhibit B a schedule showing annual overhead costs by major cost components associated with the smelter's operations. For each cost component, where appropriate, identify the quantity and unit price element of overhead costs.

Line 12—Other Production Costs. Report for each year annual smelter overhead and other production costs not previously reported on Lines 06 through 11. By-product credits, if any, should be eliminated and reported on Line 02 as operating revenues. Attach as part of Exhibit B supporting schedules showing the:

• Major cost elements classified according to direct and indirect production costs.

• Disaggregation of major overhead cost components into their fixed and variable cost elements.

• Allocation techniques used in assigning indirect overhead costs to the major cost components.

• Elements of overhead costs represented by purchases from affiliated suppliers and adjustments, if any, required to restate these costs on the basis of equivalent prices paid to unaffiliated supplier.

Line 13—Total Cost of Sales. Enter for each year the total of Lines 06 through 12.

Line 14—Gross Operating Profit. Enter for each year the difference between Lines 05 and 13.

Line 15—Selling, General & Administrative (SG&A) Expenses. Report for each year SG&A expenses attributable to the smelter's annual operating activities. Exclude those operating costs to be reported separately on Lines 16 through 21 and those costs for which causal and beneficial relationships to the smelter cannot be established. Attach as part of Exhibit B supporting schedules(1) segregating SG&A expenses by major espense components, (2) classifying the major expense components according to thise costs incurred directly by smelter operations and costs allocated to the smelter from indirect cost pools, and (3) explaining the basis used for indirect cost allocations.

Line 16—Taxes, Other Than Income Tax. Report for each year all taxes (exclusive of Federal, state, local and foreign income taxes) assignable to the smelter's operations. Attach as part of Exhibit B, a schedule that (1) segregates these operating taxes by major component, (2) classifies each component according to direct and indirect cost elements, and (3) explains the basis used for indirect cost allocations.

Line 17—Research Costs. Report for each year research costs (exclusive of capitalized costs reported in Schedule A.4) that are assignable to the smelter's annual operations. Attach as part of Exhibit B a schedule (1) segregating exploration and research costs by major expense components, (2) classifying each expense component according to direct and indirect cost elements, and (3) explaining the basis used for indirect cost allocations.

Line 18—Pollution Control Depreciation and Amortization. Report for each year annual depreciation and amortization charges attributable to the smelter's investment in pollution control factilities and equipment. Reported charges should be computed in accordance with depreciation and amortization methods adopted for tax reporting purposes by the firm. Attach as part of Exhibit B a schedule segregating the smelter's pollution control facility investments into major depreciable asset components. Describe for each asset component the (1) depreciation method adopted for tax reporting purposes, (2) annual depreciation and amortization charges by applicable year, (3) classification of annual charges into direct and indirect cost elements, and (4) basis used for indirect cost allocations.

Line 19—Other Facility Depreciation and Amortization. Report for each year annual depreciation and amortization charges (exclusive of charges reported on Line 18) assignable to the smelter's operations. Refer to Line 18 instructions for additional reporting requirements.

Line 20—Interest on Short-Term Debt. Report for each year interest expense and associated financial charges on current liabilities in accordance with the assignment instructions in Section 2.1. Do not include interest on the portion of long-term debt due within the current year for each reporting period.

Line 21—Miscellaneous Operating Expenses. Report for each year any additional expenses assignable to the smelter's annual operations. Attach as part of Exhibit B a schedule (1) segregating these additional expenses into major expense components, (2) classifying each expense component according to costs incurred directly by the smelter and costs allocated to the

smelter from indirect cost pools, and (3) explaning the basis used for indirect cost allocations.

Line 22—Total Other Operating Expenses. Enter for each year the total of Lines 15 through 21.

Line 23—Income from Operations. Enter for each year the difference between Lines 14 and 22.

Line 24—Gain/(Loss) from Disposition of Property. Report net gains or losses recognized during each year from disposition of property, plant and equipment. Report such gains or losses in accordance with the firm's normal practice for certified financial statement reporting. If such gains or losses are not significant and are classified otherwise, no reclassification need be made. A note to this effect must be included in Exhibit B.

Line 25—Miscellaneous Income and Expenses. Report minority interest in income, foreign currency translation effects, and other non-operating income and expenses directly assignable to the smelter and not recognized elsewhere on this schedule. Report such items in accordance with the accounting methods used for certified financial reporting purposes.

Line 26—Total Other Income and Expenses. Enter for each year the sum of Lines 24 and 25.

Line 27—Net Taxable Income. Enter for each year the difference between Lines 23 and 26.

Schedule A.4—Historical Capital Investment Summary

General

Use Schedule A.4 to report annual end-of-period asset investments and current liabilities for fiscal years 1978 through 1982. These figures must correspond with the revenues and costs associated with operation of the smelter subject to this NSO application as reported in Schedule A.3.

The amounts assigned to the subject smelter should include both (1) investments and liabilities directly identifiable with the smelter's operating activities and (2) asset investments shared with other segments to the extent that a specific causal and beneficial relationship can be established for the intersegment allocation of such investments. Do not allocate to the smelter the costs of assets maintained for general corporate purposes. Provide a detailed explanation of amounts classified as nontraceable on a separate schedule and attach as part of Exhibit B.

Applicants shall also restate trade receivables and payables for transfer price adjustments on the smelter's transactions with affiliated customers. The line items in Schedule A.4 are explained in the following instructions.

Line 01—Cash on Hand and Deposit. Report for each year total cash balances assignable to the smelter's operations at the end of each year on the basis of causal and beneficial relationships with total corporate activities. Attach as part of Exhibit B an explanation of the basis used for allocation.

Line 02—Temporary Cash Investments. Report for each year temporary cash investments in time deposits or other short-term securities. Included only those investments either held by the smelter to meet current-period tax payments or other budgeted expenditures specifically identifiable with the smelter's continued operation. Exclude any temporary cash investments for which no specific future outlay requirement can be identified.

Attach as part of Exhibit B a schedule classifying temporary cash investments according to identifiable budgeted expenditure requirements.

Lines 03 and 04—Net Trade Receivables. Report for each year trade accounts and notes, net of reserves for uncollectible items, assignable to the smelter in relation to its unaffiliated (Line 03) and affiliated (Line 04) customer sales and transfers. Trade receivables reported by the smelter as due from affiliated customers should be stated or, if necessary, restated on credit terms equivalent to those received by unaffiliated customers on a sale of comparable products. Attach as part of Exhibit B a schedule showing adjustments in the smelter's receivables investments required to equate trade credit terms extended to affiliated and unaffiliated customers.

Lines 05 and 06—Inventory Investments. Report for each year respective end-of-period investments in raw material, work-in-process and finished good inventories held to support the smelter's production and sale of products (Line 05) and associated inventories of other materials and supplies (Line 06). Inventory purchases from affiliated suppliers should be stated or, if necessary, restated at market prices prevailing on purchases from unaffiliated suppliers. Attach as part of Exhibit B a schedule (1) describing whether inventories have been valued on a last-in-first-out (LIFO), first-in-first-out (FIFO) or other cost allocation process, (2) describing the smelter's transfer pricing policies on inventory purchases from affiliated suppliers, and (3) presenting adjustments required in reported inventory investments to reflect restatements of transfer prices on purchases from affiliated suppliers.

Line 07—Other Current Assets. Report for each year prepaid expenses, deferred charges, non-trade notes and accounts receivable, and other assets classified as current for certified financial statement reporting purposes that are assignable to the smelter's operations. Attach as part of Exhibit B a schedule classifying these other current assets according to their types and amounts.

Line 08—Total Current Assets. Enter for each year the total of Lines 01 through 07.

Lines 09 to 14—Property, Plant and Equipment. Report for each year by individual line item property, plant and equipment investments assignable to smelter operations. Include in gross facility investments at the end of each period both (1) property, plant and equipment directly associated with the smelter's operations and (2) facilities shared with other operating segments to the extent that a causal and beneficial relationship can be established for the inter-segment allocation of such facility investments.

Attach as part of Exhibit B a schedule reporting by individual line item the annual capital expenditures on additional property, plant and equipment investments in the smelter's operations. Further classify these annual capital expenditures into both (1) investments required to maintain the smelter versus investments in smelter expansion and improvement and (2) direct facility versus joint-use facilty investments. Explain the method used for allocating capital expenditures on joint-use facilities to the smelter's operations. Refer to Line 17 instructions for additional reporting requirements on the smelter's facility investments.

Line 15—Total Smelter Investment. Enter for each year the total of Lines 09 through 14.

Line 16—Accumulated Depreciation and Amortization. Report for each year accumulated depreciation, amortization and other valuation charges recorded for certified financial statement reporting purposes in relation to smelter investment as reported on Line 15. Other valuation charges are defined in Financial Accounting Standards Board (FASB) Statement No. 19 as losses recognized in connection with an impairment in the value of an unimproved property below its acquisition cost. Refer to Line 17 instructions for additional reporting requiirements on smelter facility investments.

Line 17—Net Smelter Investment. Enter for each year the difference between Lines 15 and 16. Attach as part

of Exhibit B a schedule classifying gross facility investments, accumulated depreciation, amortization charges, and net facility investments by major pollution control and non-pollution control components. Identify for each asset component the direct versus joint-use investments assigned to the smelter and explain the basis used to allocate amounts associated with joint-use facilities to the smelter.

Line 18—Other Non-Current Assets. Report for each year other assets assignable to the smelter's operations. Attach as part of Exhibit B a schedule reporting by type and amount the major components of such investments.

Line 19—Total Smelter Capital Investment. Enter for each year the total of Lines 08, 17 and 18.

Line 20 and 21—Trade Accounts and Notes Payable. Report for each year trade accounts and notes due on the smelter's purchases from unaffiliated suppliers (Line 20) and on its intersegment transfers or purchases from affiliated suppliers (Line 21). Trade payables reported by the smelter as due to affiliated suppliers should be stated or, if necessary, restated on terms equivalent to those received from unaffiliated suppliers on a purchase of comparable materials. Attach as part of Exhibit B a schedule showing adjustments required on the smelter's trade payables to equate trade credit terms received from affiliated and unaffiliated suppliers.

Line 22—Other Expense Accruals. Report for each year payments classified as current for salaries and wages, other employee benefits, operating taxes and related operating expenses assignable to the smelter's operations. Attach as part of Exhibit B a schedule classifying by type and amount the major components of such accruals.

Line 23—Current Notes Payable. Report for each year payments due to nontrade creditors on short-term financing arrangements directly associated with the smelter's operations. Exclude current installments due on long-term debt financing arrangements, notes due to offices and directors, intersegment loans or advances and loans or advances from affiliated operating segments.

Line 24—Other Current Liabilities. Report for each year other nontrade payables classified as current obligations assignable to the smelter's operations.

Line 25—Total Current Liabilities. Enter for each year the total of Lines 20 through 24.

Line 26—Net Smelter Capital Investment. Enter for each year the difference between Lines 19 and 25.

Schedule B.1—Pre-Control Revenue Forecast

General

Use Schedule B.1 to report annual forecasts of operating revenues anticipated during the years 1983 through 1989 from operation of the smelter subject to this NSO application. These pre-control revenue projections should be based on revenues and production associated with operating the smelter without any SO_2 controls that may have been installed after 1977. Forecast smelter revenues should be expressed on a tolling service equivalent basis as described in Section 2.3.4.

Copper smelters that will process concentrates containing an average of 1,000 pounds per hour or more of arsenic during the forecast period should assume that they will use best engineering techniques to control fugitive emissions of arsenic. All smelters should assume that they will be required to install whatever technically feasible equipment is necessary to reduce their process and fugitive emissions of lead enough to achieve a concentration of 1.5 micrograms per cubic meter (mg/m^3) on a 90-day average basis in the ambient air by January 1, 1985. All smelters should also assume that they will be required to meet all other regulatory requirements in effect at the time the application is made.

The line items in Schedule B.1 are explained in the following instructions. Attach as part of Exhibit B schedules to (1) explain the methods used to make the required forecasts, (2) explain differences, if any, between historical trends and the forecasts and (3) provide data and information to support the forecasts.

Lines 01 and 05—Concentrates Processed. Report for each year the forecast quantity of concentrates processed for unaffiliated parties (Line 01) and affiliated parties (Line 05).

Lines 02 and 06—Smelting Charge. Report for each year the forecast smelting charge for unaffiliated parties (Line 02) and affiliated parties (Line 06). See Section 2.4 for forecast copper smelting charges furnished by EPA.

Lines 03 and 07—Total Smelter Revenues. Report for each year the forecast total operating revenues derived from processing concentrates. The total for unaffiliated parties (Line 03) is equal to the product of Lines 01, 02, and 04, and for affiliated parties (Line 07), the product of Lines 05, 06, and 08.

Line 04 and 08—Average Product Grade. Report for each year the forecast average quality rating assigned to concentrates processed for unaffiliated parties (Line 04) and affiliated parties (Line 08).

Line 09—Total Co-Product Revenues. Report for each year the forecast net revenues from sales of co-products derived from the smelter's operations. Attach as part of Exhibit B a schedule showing by individual type of co-product, the forecast quantity produced and sold, forecast market price per unit of sales, and forecast total revenues derived from the co-product sales.

Line 10—Total By-product Revenues From Pollution Control Facilities. Report for each year forecast revenues from the sale of by-products derived from operation of the smelter's pollution control facilities, excluding those SO_2 controls installed after 1977. Attach as part of Exhibit B a schedule showing by type of by-product produced (e.g., sulfuric acid) the forecast quantity of output, forecast market price per unit of output sold, and forecast total revenue derived from the by-product sales.

Line 11—Total By-product Revenues From Other Smelter Processing. Report forecast revenues from the sales of gold, silver, and other by-products derived from the smelter's operations. Attach as part of Exhibit B a schedule providing additional documentation as specified in the instructions for Line 10.

Line 12—Total Co-product and By-product Revenues. Enter for each year the total of Lines 09 through 11.

Schedule B.2—Pre-Control Cost Forecast

General

Use Schedule B.2 to report annual forecasts of operating costs anticipated during the years 1983 through 1989 from operation of the smelter subject to this NSO application. These pre-control cost projections should be based on costs and production associated with operating the smelter without any SO_2 controls that may have been installed after 1977.

Copper smelters that will process concentrates containing an average of 1,000 pounds per hour or more of arsenic during the forecast period should assume that they will use best engineering techniques to control fugitive emissions of arsenic. All smelters should assume that they will be required to install whatever technically feasible equipment is necessary to reduce their process and fugitive emissions of arsenic to achieve a concentration of 1.5 micrograms per cubic meter (mg/m^3) on a 90-day average basis in the ambient air by January 1, 1985. All smelters should also

assume that they will be required to meet all other regulatory requirements in effect at the time the application is made.

The line items in Schedule B.2 are explained in the following instructions. Attach as part of Exhibit B schedules to (1) explain the methods used to make the required forecasts, (2) explain differences, if any, between historical trends and the forecasts, and (3) provide data and information to support the forecasts.

Line 01—Direct Labor Hours. Report for each year the quantity of direct labor hours required to support the processing levels previously reported. Attach as part of Exhibit B an explanation of the labor productivity factors involved.

Line 02—Average Hourly Wage Rate. Report for each year the forecast average wage rate per unit of direct labor input. Attach as part of Exhibit B a description of direct labor cost factors under any existing labor contracts that extend to the forecast period and an explanation of the methodology used to forecast wage rates. EPA-provided forecast wage indices are reported in Section 2.4.

Line 03—Total Wage Payments. Enter for each year the product of Lines 01 and 02.

Line 04—Supplemental Employee Benefits. Report for each year adjustments required to direct labor costs for other employee compensation under supplemental benefit plans. Attach as part of Exhibit B a description of such plans and their costs and an explanation of the methodology used to forecast such costs. EPA-provided forecast wage indices are reported in Section 2.4.

Line 05—Total Production Labor Cost. Enter for each year the total of Lines 03 and 04.

Lines 06, 09, 12, 15 and 18—Energy Qunatities. Report for each year the quantity of energy by type required to support the processing levels reported in the smelter's revenue. Attach as part of Exhibit B an explanation of energy characteristics and use factors considered in forecasting the smelter's future energy requirements.

Lines 07, 10, 13, 16, and 19—Unit Prices. Report for each year the forecast price per unit of energy input by type of energy. Attach as part of Exhibit B a description of the energy price factors under any existing energy contracts that extend to the forecast period and an explanation of the methodology used to forecast unit energy prices. EPA-provided forecast energy indices are reported in Section 2.4.

Lines 08, 11, 14, 17, and 20—Total Payments Enter for each year the products of quantity and prices paid for electricity (Lines 06 × 07), natural gas (Lines 09 x 10), coal (Lines 12 × 13), fuel oil (Lines 15 × 16), and other (Lines 18 × 19).

Line 21—Total Energy Costs. Enter for each year the total of Lines 08, 11, 14, 17, and 20.

Schedule B.3—Pre-Control Forecast Profit and Loss Summary

General

Use Schedule B.3 to report annual forecasts of operating revenues and operating costs derived in Schedules B.1 and B.2 for the years 1983 through 1989. The transfer of line items from Schedules B.1 and B.2 to this Schedule is explained in the following instructions.

Line 01—Smelter Revenues-Unaffiliated Parties. Enter the totals reported in Schedule B.1, Line 03.

Line 02—Smelter Revuenes-Affiliated Parties. Enter the totals reported in Schedule B.1, Line 07.

Line 03—Co-product and By-product Sales Revenues. Enter the totals reported in Schedule B.1, Line 12.

Line 04—Other Operating Revenues. Report operating revenues anticipated from sources not accounted for under Lines 01 through 03. Refer to instructions for Line 04 of Schedule A.3 for items that should not be included in "Other Revenues." Attach as part of Exhibit B a schedule showing annual amounts forecast by individual revenue component for "other" operating revenues associated with the smelter's forecast pre-control operations. Identify in the supporting schedule any differences in the "other" revenue components reported in this Schedule and Schedule A.3 and explain the reasons for such differences.

Line 05—Total Operating Revenues. Enter for each year the total of Lines 01 through 04.

Line 06—Material Costs. Report total costs forecast for flux, refractories, coke and other materials directly associated with the smelter's processing of concentrates. Attach as part of Exhibit B a schedule showing the annual amounts forecast by major material cost components. For each cost component, identify the forecast quantity and unit price elements of material cost and explain the basis for forecasting these quantity and price elements. Identify in the supporting schedule any differences in the "other" material cost components shown in this Schedule and Schedule A.3 and explain the reasons for such differences.

Line 07—Production Labor Costs. Enter the totals reported in Schedule B.2, Line 05.

Line 08—Energy Costs. Enter the total reported in Schedule B.2, Line 21.

Line 09—Pollution Control Costs. Report the total costs forecast for expenses identifiable with operation and maintenace of all pollution control equipment and facilities except SO_2 controls installed after 1977. By-product credits associated with operation of the pollution control facilities should be eliminated from the cost accounts, reclassified to Schedule B.1, Line 10 and included in Line 03 of this Schedule. Attach a schedule as part of Exhibit B classifying pollution control costs by major cost components. Explain the basis used for estimating each of the cost components.

Line 10—Production Overhead Costs. Report the total costs forecast for indirect labor, indirect materials and other production overhead costs associated with the smelter's constant controls forecasts. Attach as part of Exhibit B a schedule showing annual overhead costs projected by major cost components associated with the smelter's operations. For each cost component, where appropriate, identify the forecast quantity and unit price elements of overhead costs and explain the basis for estimating these quantity and price elements. Also identify in the supporting schedule any differences in production overhead cost classifications used in this Schedule and Schedule A.3 and explain the reasons for such differences.

Line 11—Other Production Costs. Report other forecast production costs not previously reported on Lines 06 through 10. Attach as part of Exhibit B supporting schedules showing the basis of the forecasts.

Line 12—Total Cost of Sales. Enter for each year the sum of operating costs reported on Lines 06 through 11.

Line 13—Gross Operating Profit. Enter for each year the difference between Lines 05 and 12.

Line 14—Selling, General and Administrative Expenses. Report the total costs forecast for administrative, marketing and general corporate overhead functions that directly or indirectly support the smelter's operations. Refer to the NOS Financial Reporting Overview for a general discussion of indirect cost allocations from overhead cost pools. Attach as part of Exhibit B a schedule classifying selling, general and administrative expenses into major cost components. Indicate whether each component represents costs directly assignable to the smelter or indirect costs allocated from other business segments to the smelter. Explain the basis used for

estimating the amount of expected costs included in each component and the basis used for allocating indirect cost elements to the smelter. Identify and explain any differences between the selling, general and administrative cost classification used in this Schedule and that used in Line 15 of Schedule A.3.

Line 15—Taxes Other than Income Taxes. Report the total costs forecast for property taxes and associated levies paid to governmental units by or for the benefit of the smelter operation. Attach as part of Exhibit B a schedule classifying operating taxes by major component. Indicate whether each component represents taxes directly assignable to the smelter or taxes that have been allocated among more than one facility. Explain the basis used for estimating taxes and the basis for any allocation of taxes to the smelter. Identify and explain any differences between the component classifications used in this Schedule and those used in Line 16 of Schedule A.3.

Line 16—Research Costs. Report the estimates of research costs incurred directly by or for the benefit of the smelter operations. Attach as part of Exhibit B a schedule classifying the costs by major direct and indirect cost components. Explain the basis for estimating the costs assigned to each component. Identify and explain any differences between classifications used in this Schedule and those used in Line 17 of Schedule A.3.

Line 17—Pollution Control Facility Depreciation and Amortization. Report the estimates of depreciation and amortization charges associated with the smelter's actual and forecast investment in all pollution control equipment and facilities, except SO_2 controls installed after 1977. Attach as part of Exhibit B supporting schedules classifying pollution control facilities by major assets or asset groups. For each facility component, indicate the depreciation or amortization method that would be reported for certified financial statement reporting purposes. Based on that method, report the original cost of the component assets, undepreciated balance of the component assets, the remaining depreciable life and the annual depreciation or amortization charge. Indicate for each asset component whether the depreciation and amortization charges represent direct cost assignments or indirect cost allocations to the smelter.

Line 18—Other Smelter Facility Depreciation and Amortization. Report the pro forma estimates of depreciation and amortization charges associated with the smelter's investment in equipment and facilities other than those classified as pollution control facilities. Attach as part of Exhibit B supporting schedules prepared according to the instructions for Line 18 above.

Line 19—Interest on Short-Term Debt. Report the estimates of interest and other financing charges on forecast short-term obligations as classified in the smelter's current liabilities on Schedule A.4. Interest and associated financing charges on long-term debt should not be included as an expense identifiable with the smelter's operations. Attach as part of Exhibit B a schedule showing the interest-bearing, short-term debt contracts identifiable with the smelter's operations, the interest rate projected for these contracts, and the estimated annual interest charges. Identify and explain any differences between the classifications used in this Schedule and those used in Line 20 of Schedule A.3.

Line 20—Miscellaneous Operating Expenses. Report only the total operating expenses associated with or allocated to the smelter that cannot be appropriately classified in one of the preceding line items. Attach as part of Exhibit a schedule showing the classification of these residual operating expenses into major cost components. Explain the basis used for forecasting the cost under each component. Identify each cost component in terms of direct or indirect cost and explain the basis used for allocating the indirect costs to smelter operations. Identify and explain any differences between cost classifications included in this Schedule and those used in Line 21 of Schedule A.3.

Line 21—Total Other Operating Expenses. Enter for each year the sum of operating costs reported on Lines 14 through 20.

Line 22—Income From Operations. Enter for each year the difference between Lines 21 and 13.

Schedule B.4—Constant Controls Revenue Forecast

General

Use Schedule B.4 to report annual forecasts of operating revenues anticipated during the years 1983 through 1989 from operation of the smelter subject to this NSO application. These constant controls revenue forecasts should be based on an assumption that the applicant immediately implements a program of additional pollution control facility investments sufficient to achieve full compliance with the smelter's SIP stack emission limitations for sulfur dioxide. Forecast smelter revenues should be expressed on a tolling service equivalent basis as described in Section 2.3.4.

The assumed investment program should be based on whichever adequately demonstrated system, applicable to the smelter, that would be most economically beneficial subsequent to installation of the system. For this purpose, adequately demonstrated systems include those specified in Section 57.102(b)(1).

Copper smelters that will process concentrates containing an average of 1,000 pounds per hour or more of arsenic during the forecast period should assume that they will use best engineering techniques to control fugitive emissions of arsenic. All smelters should assume that they will be required to install whatever technically feasible equipment is necessary to reduce their process and fugitive emissions of lead enough to achieve a concentration of 1.5 micrograms per cubic meter (mg/m3) on a 90-day average basis in the ambient air by January 1, 1985. All smelters should also assume that they will be required to meet all other regulatory requirements in effect at the time the application is made.

The line items in Schedule B.4 are explained in the following instructions. Attach as part of Exhibit B schedules to (1) explain the methods used to make the required forecasts, (2) explain differences, if any, between historical trends and the forecasts, and (3) provide data and information to support the forecasts.

Lines 01 and 05—Concentrates Processed. Report for each year the forecast quantity of concentrates processed for unaffiliated parties (Line 01) and affiliated parties (Line 05).

Lines 02 and 06—Smelting Charge. Report for each year the forecast smelting charge for unaffiliated parties (Line 02) and affiliated parties (Line 06). See Section 2.4 for forecast copper smelting charges furnished by EPA.

Lines 03 and 07—Total Smelter Revenues. Report for each year the forecast total operating revenues derived from processing concentrates. The total for unaffiliated parties (Line 03) is equal to the product of Lines 01, 02, and 04, and for affiliated parties (Line 07), the product of Lines 05, 06, and 08.

Lines 04 and 08—Average Product Grade. Report for each year the forecast average quality rating assigned to concentrates processed for unaffiliated parties (Line 04) and affiliated parties (Line 08).

Line 09—Total Co-Product Revenues. Report for each year the forecast net

revenues from sales of co-products derived from the smelter's operations. Attach as part of Exhibit B a schedule showing by individual type of co-product, the forecast quantity produced and sold, forecast market price per unit of sales, and forecast total revenues derived from the co-product sales.

Line 10—Total By-product Revenues From Pollution Control Facilities. Report for each year forecast revenues from the sale of by-products derived from operation of the smelter's pollution control facilities. Attach as part of Exhibit B a schedule showing by type of by-product produced (e.g., sulfuric acid) the forecast quantity of output, forecast market price per unit of output sold, and forecast total revenue derived from the by-product sales.

Line 11—Total By-product Revenues From Other Smelter Processing. Report forecast revenues from the sales of gold, silver, and other by-products derived from the smelter's operations. Attach as part of Exhibit B a schedule providing additional documentation as specified in the instructions for Line 10.

Line 12—Total Co-product and By-product Revenues. Enter for each year the total of Lines 09 through 11.

Schedule B.5—Constant Controls Cost Forecast

General

Use Schedule B.5 to report annual forecasts of operating costs anticipated during the years 1983 through 1989 from operation of the smelter subject to this NSO application. These constant controls cost forecasts should be based on an assumption that the applicant immediately implements a program of additional pollution control facility investments sufficient to achieve full compliance with the smelter's SIP stack emission limitations for sulfur dioxide.

The assumed investment program should be based on whichever adequately demonstrated system, applicable to the smelter, would be most economically beneficial subsequent to installation of the system. For this purpose, adequately demonstrated systems include those specified in Section 57.102 (b)(1).

Copper smelters that will process concentrates containing an average of 1,000 pounds per hour or more of arsenic during the forecast period should assume that they will use best engineering techniques to control fugitive emissions of arsenic. All smelters should assume that they will be required to install whatever technically feasible equipment is necessary to reduce their process and fugitive emissions of lead enough to achieve a concentration of 1.5 micrograms per cubic meter (mg/m^3) on a 90-day average basis in the ambient air by January 1, 1985. All smelters should also assume that they will be required to meet all other regulatory requirements in effect at the time the application is made.

The line items in Schedule B.5 are explained in the following instructions. Attach as part of Exhibit B schedules to (1) explain the methods used to make the required forecasts, (2) explain differences, if any, between historical trends and the forecasts, and (3) provide data and information to support the forecasts.

Line 01—Direct Labor Hours. Report for each year the quantity of direct labor hours required to support the processing levels previously reported. Attach as part of Exhibit B an explanation of the labor productivity factors involved.

Line 02—Average Hourly Wage Rate. Report for each year the forecast average wage rate per unit of direct labor input. Attach as part of Exhibit B a description of direct labor cost factors under any existing labor contracts that extend to the forecast period and an explanation of the methodology used to forecast wage rates. EPA-provided forecast wage indices are reported in Section 2.4.

Line 03—Total Wage Payments. Enter for each year the product of Lines 01 and 02.

Line 04—Supplemental Employee Benefits. Report for each year adjustments required to direct labor costs for other employee compensation under supplemental benefit plans. Attach as part of Exhibit B a description of such plans and their costs and an explanation of the methodology used to forecast such costs. EPA-provided forecast wage indices are reported in Section 2.4.

Line 05—Total Production Labor Cost. Enter for each year the total of Lines 03 and 04.

Lines 06, 09, 12, 15, and 18—Energy Quantities. Report for each year the quantity of energy by type required to support the processing levels reported in the smelter's revenue. Attach as part of Exhibit B an explanation of energy characteristics and use factors considered in forecasting the smelter's future energy requirements.

Lines 07, 10, 13, 16, and 19—Unit Prices. Report for each year the forecast price per unit of energy input by type of energy. Attach as part of Exhibit B a description of the energy price factors under any existing energy contracts that extend to the forecast period and an explanation of the methodology used to forecast unit energy prices. EPA-provided forecast energy indices are reported in Section 2.4.

Lines 08, 11, 14, 17, and 20—Total Payments. Enter for each year the products of quantity and prices paid for electricity (Lines 06 x 07), natural gas (Lines 09 x 10), coal (Lines 12 x 13), fuel oil (Lines 15 x 16), and other (Lines 18 x 19).

Line 21—Total Energy Costs. Enter for each year the total of Lines 08, 11, 14, 17, and 20.

Schedule B.6—Constant Controls Forecast Profit and Loss Summary for the Profit Protection Test

General

Use Schedule B.6 to report annual forecasts of operating revenues and operating costs derived in Schedules B.4 and B.5 for the years 1983 through 1989. These constant controls forecasts should be based on an assumption that the applicant immediately implements a program of additional pollution control facility investments sufficient to achieve full compliance with the smelter's SIP stack emission limitations for sulfur dioxide. The transfer of line items from Schedules B.4 and B.5 to this Schedule is explained in the following instructions.

Line 01—Smelter Revenues—Unaffiliated Parties. Enter the totals reported in Schedule B.4, Line 03.

Line 02—Smelter Revenues-Affiliated Parties. Enter the totals reported in Schedule B.4, Line 07

Line 03—Co-product and By-product Sales Revenues. Enter the totals reported in Schedule B.4, Line 12.

Line 04—Other Operating Revenues. Report operating revenues anticipated from sources not accounted for under Lines 01 through 03. Refer to instructions for Line 04 of Schedule A.3 for items that should not be included in "Other Operating Revenues." Attach as part of Exhibit B a schedule showing annual amounts forecast by individual revenue component for "other" operating revenues associated with the smelter's forecast constant controls operations. Identify in the supporting schedule any differences in the "other" revenue components reported in this Schedule and Schedule A.3 and explain the reasons for such differences.

Line 05—Total Operating Revenues. Enter for each year the total of lines 01 through 04.

Line 06—Material Costs. Report total costs forecast for flux, refractories, coke and other materials directly associated with the smelter's processing of concentrates. Attach as part of Exhibit B a schedule showing the annual amounts forecast by major material cost

components. For each cost component, identify the forecast quantity and unit price elements of material cost and explain the basis for forecasting these quantity and price elements. Identify in the supporting schedule any differences in the "other" material cost components shown in this Schedule and Schedule A.3 and explain the reasons for such differences.

Line 07—Production Labor Costs. Enter the totals reported in Schedule B.5, Line 05.

Line 08—Energy Costs. Enter the totals reported in Schedule B.5, Line 21.

Line 09—Pollution Control Costs. Report the total costs forecast for expenses identifiable with operation and maintenance of all pollution control equipment and facilities. By-product credits associated with operation of the pollution control facilities should be eliminated from the cost accounts, reclassified to Schedule B.4 Line 10 and included in Line 03 of this Schedule. Attach a schedule as part of Exhibit B classifying pollution control costs by major cost components. Explain the basis used for estimating each of the cost components.

Line 10—Production Overhead Costs. Report the total costs forecast for indirect labor, indirect materials and other production overhead costs associated with the smelter's constant controls forecasts. Attach as part of Exhibit B a schedule showing annual overhead costs projected by major cost components associated with the smelter's operations. For each cost component, where appropriate, identify the forecast quantity and unit price elements of overhead costs and explain the basis for estimating these quantity and price elements. Also identify in the supporting schedule any differences in production overhead cost classifications used in this Schedule and Schedule A.3 and explain the reasons for such differences.

Line 11—Other Production Costs. Report other forecast production costs not previously reported on Lines 06 through 10. Attach as part of Exhibit B supporting schedules showing the basis of the forecasts.

Line 12—Total Cost of Sales. Enter for each year the sum of operating costs reported on Lines 06 through 11.

Line 13—Gross Operating Profit. Enter for each year the difference between Lines 05 and 12.

Line 14—Selling, General and Administrative Expenses. Report the total costs forecast for administrative, marketing and general corporate overhead functions that directly or indirectly support the smelter's operations. Refer to the NSO Financial Reporting Overview for a general discussion of indirect cost allocations from overhead cost pools. Attach as part of Exhibit B a schedule classifying selling, general and administrative expenses into major cost components. Indicate whether each component represents costs directly assignable to the smelter or indirect costs allocated from other business segments to the smelter. Explain the basis used for estimating the amount of expected costs included in each component and the basis used for allocating indirect cost elements to the smelter. Identify and explain any differences between the selling, general and administrative cost classification used in this Schedule and that used in Line 15 of Schedule A.3.

Line 15—Taxes, Other than Income Taxes. Report the total costs forecast for property taxes and associated levies paid to governmental units by or for the benefit of the smelter operation. Attach as part of Exhibit B a schedule classifying operating taxes by major component. Indicate whether each component represents taxes directly assignable to the smelter or taxes that have been allocated among more than one facility. Explain the basis used for estimating taxes and the basis for any allocation of taxes to the smelter. Identify and explain any differences between the component classifications used in this Schedule and those used in Line 16 of Schedule A.3.

Line 16—Research Costs. Report the estimate of research costs incurred directly by or for the benefit of the smelter operations. Attach as part of Exhibit B a schedule classifying the costs by major direct and indirect cost components. Explain the basis for estimating the costs assigned to each component. Identify and explain any differences between classifications used in this Schedule and those used in Line 17 of Schedule A.3.

Line 17—Pollution Control Facility Depreciation and Amortization. Report the estimates of depreciation and amortization charges associated with the smelter's actual and forecast investment in all pollution control equipment and facilities. Attach as part of Exhibit B supporting schedules classifying pollution control facilities by major assets or asset groups. For each facility component, indicate the depreciation or amortization method that would be reported for certified financial statement reporting purposes. Based on that method, report the original cost of the component assets, undepreciated balance of the component assets, the remaining depreciable life and the annual depreciation or amortization charge. Indicate for each asset component whether the depreciation and amortization charges represent direct cost assignments or indirect cost allocations to the smelter.

Line 18—Other Smelter Facility Depreciation and Amortization. Report the pro forma estimates of depreciation and amortization charges associated with the smelter's investment in equipment and facilities other than those classified as pollution control facilities. Attach as part of Exhibit B supporting schedules prepared according to the instructions for Line 18 above.

Line 19—Interest on Short-Term Debt. Report the estimates of interest and other financing charges on forecast short-term obligations as classified in the smelter's current liabilities on Schedule A.4. Interest and associated financing charges on long-term debt should not be included as an expense identifiable with the smelter's operations. Attach as part of Exhibit B a schedule showing the interest-bearing, short-term debt contracts identifiable with the smelter's operations, the interest rate projected for these contracts, and the estimated annual interest charges. Identify and explain any differences between the classifications used in this Schedule and those used in Line 20 of Schedule A.3.

Line 20—Miscellaneous Operating Expenses. Report only the total operating expenses associated with or allocated to the smelter that cannot be appropriately classified in one of the preceding line items. Attach as part of Exhibit B a schedule showing the classification of these residual operating expenses into major cost components. Explain the basis used for forecasting the cost under each component. Identify each cost component in terms of direct or indirect cost and explain the basis used for allocating the indirect costs to smelter operations. Identify and explain any differences between cost classifications included in this Schedule and those used in Line 21 of Schedule A.3.

Line 21—Total Other Operating Expenses. Enter for each year the sum of operating costs reported on Lines 14 through 20.

Line 22—Income From Operations. Enter for each year the difference between Lines 21 and 13.

Schedule B.7—Profit Protection Test

General

Applicants must complete this Schedule and/or Schedule C.3 and the accompanying schedules if they seek eligibility for an NSO. The line items in

Schedule B.7 are explained in the following instructions.

Line 01—Net Income from Operations. Enter for each year the amounts reported in Schedule B.3, Line 22.

Line 02—Discount Factors. Enter the discount factor for each year, computed as described in the instructions under Section 2.6.

Line 03—Present Value of Future Net Income. Enter for each year the product of Lines 01 and 02.

Line 04—Horizon Value. Enter under the Total column, the estimated horizon value of the smelter. This shall be computed by capitalizing the forecast net income from operations in Line 01 as described in the instructions under Section 2.7.

Line 05—Discount Factor. Enter under the Total column the appropriate discount factor corresponding to the weighted cost of capital, computed as described in the instructions under Section 2.6.

Line 06—Present Value of Horizon Value. Enter under the Total column the product of Lines 04 and 05.

Line 07—Present Value of Future Net Income. Enter under the Total column the sum of amounts previously reported on Line 03 for 1983 through 1989.

Line 08—Total Present Value. Enter for each year the sum of Lines 06 and 07.

Line 09—Net Income from Operations. Enter for each year the amount reported in Schedule B.6, Line 22.

Line 10—Discount Factors. Follow the instructions for Line 02.

Line 11—Present Value of Future Net Income. Enter for each year the product of Lines 09 and 10.

Line 12—Horizon Value. Enter under the Total column, the estimated horizon value of the smelter. This shall be computed by capitalizing the forecast net income from operations in Line 09 as described in the instructions under Section 2.7.

Line 13—Discount Factor. Follow the instructions for Line 05.

Line 14—Present Value of Horizon Value. Enter under the Total column the product of Lines 12 and 13.

Line 15—Present Value of Future Net Income. Enter under the Total column the sum of amounts previously reported on Line 11 for 1983 through 1989.

Line 16—Total Present Value. Enter the sum of Lines 14 and 15.

Line 17—Ratio for Total Present Value of Constant Controls Case to Total Present Value of Pre-Control Case. Enter the ratio of Lines 16 to 08. If this ratio is less than .50, the smelter passes the Profit Protection Test. An applicant also passes the Profit Protection Test if the reported total present value of pre-tax profits for the pre-control case on Line 08 is a negative value.

Schedule C.1—Constant Controls Forecast Profit and Loss Summary for the Rate of Return Test

General

Use Schedule C.1 to report forecast revenue and cost information derived in Schedules B.4 and B.5 for the years 1983 through 1989. These constant controls forecast should be based on an assumption that the applicant immediately implements a program of additional pollution control facility investments sufficient to achieve full compliance with the smelter's SIP stack emission limitations for sulfur dioxide. The transfer of line items from Schedules B.4 and B.5 to this Schedule is explained in the following instructions.

Line 01—Smelter Revenues-Unaffiliated Parties. Enter the totals reported in Schedule B.4, Line 03.

Line 02—Smelter Revenues-Affiliated Parties. Enter the totals reported in Schedule B.4, Line 07.

Line 03—Co-product and By-product Sales Revenues. Enter the totals reported in Schedule B.4, Line 12.

Line 04—Other Operating Revenues. Report operating revenues anticipated from sources not accounted for under Lines 01 through 03. Refer to instructions for Line 04 of Schedule A.3 for items that should not be included in "Other Operating Revenues." Attach as part of Exhibit B a schedule showing annual amounts forecast by individual revenue component for "other" operating revenues associated with the smelter's forecast constant controls operations. Identify in the supporting schedule any differences in the "other" revenue components reported in this Schedule and Schedule A.3 and explain the reasons for such differences.

Line 05—Total Operating Revenues. Enter for each year the total of Lines 01 through 04.

Line 06—Material Costs. Report total costs forecast for flux, refractories, coke and other materials directly associated with the smelter's processing of concentrates. Attach as part of Exhibit B a schedule showing the annual amounts forecast by major material cost components. For each cost component, identify the forecast quantity and unit price elements of material cost and explain the basis for forecasting these quantity and price elements. Identify in the supporting schedule any differences in the "other" material cost compoments shown in this Schedule and Schedule A.3 and explain the reasons for such differences.

Line 07—Production Labor Costs. Enter the totals reported in Schedule B.5, Line 05.

Line 08—Energy Costs. Enter the totals reported in Schedule B.5, Line 21.

Line 09—Pollution Control Costs. Report the total costs forecast for expenses identifiable with operation and maintenance of all pollution control equipment and facilities. By-product credits associated with operation of the pollution control facilities should be eliminated from the cost accounts, reclassified to Schedule B.4, Line 10 and included in Line 03 of this Schedule. Attach a schedule as part of Exhibit B classifying pollution control costs by major cost components. Explain the basis used for estimating each of the cost components.

Line 10—Production Overhead Costs. Report the total costs forecast for indirect labor, indirect labor, indirect materials and other production overhead costs associated with the smelter's constant controls forecasts. Attach as part of Exhibit B a schedule showing annual overhead costs projected by major cost components associated with the smelter's operations. For each cost component, where appropriate, identify the forecast quantity and unit price elements of overhead costs and explain the basis for estimating these these quantity and price elements. Also identify in the supporting schedule any differences in production overhead cost classifications used in this Schedule and Schedule A.3 and explain the reasons for such differences.

Line 11—Other Production Costs. Report other forecast production costs not previously reported on Lines 06 through 10. Attach as part of Exhibit B supporting schedules showing the basis of the forecasts.

Line 12—Total Cost of Sales. Enter for each year the sum of operating costs reported on Lines 06 through 10.

Line 13—Gross Operating Profit. Enter for each year the difference between Lines 05 and 12.

Line 14—Selling, General and Administrative Expenses. Report the total costs forecast for administrative, marketing and general corporate overhead functions that directly or indirectly support the smelter's operations. Refer to the NSO Financial Reporting Overview for a general discussion of indirect cost allocations from overhead cost pools. Attach as part of Exhibit B a schedule classifying selling, general and administrative expenses into major cost components. Indicate whether each component represents costs directly assignable to

the smelter or indirect costs allocated from other business segments to the smelter. Explain the basis used for estimating the amount of expected costs included in each component and the basis used for allocating indirect cost elements to the smelter. Identify and explain any differences between the selling, general and administrative cost classification used in this Schedule and that used in Line 15 of Schedule A.3.

Line 15—Taxes, Other than Income Taxes. Report the Total costs forecast for property taxes and associated levies paid to governmental units by or for the benefit of the smelter operation. Attach as part of Exhibit B a schedule classifying operating taxes by major component. Indicate whether each component represents taxes directly assignable to the smelter or taxes that have been allocated among more than one facility. Explain the basis used for estimating taxes and the basis for any allocation of taxes to the smelter. Identify and explain any differences between the component classifications used in this Schedule and those used in Line 16 of Schedule A.3.

Line 16—Research Costs. Report the estimates of research costs incurred directly by or for the benefit of the smelter operations. Attach as part of Exhibit B a schedule classifying the costs by major direct and indirect cost components. Explain the basis for estimating the costs assigned to each component. Identify and explain any differences between classifications used in this Schedule and those used in Line 17 of Schedule A.3.

Line 17—Pollution Control Facility Depreciation and Amortization. Report the estimates of depreciation and amortization charges associated with the smelter's actual and forecast investment in all pollution control equipment and facilities. Attach as part of Exhibit B supporting schedules classifying pollution control facilities by major assets or asset groups. For each facility component, indicate the depreciation or amortization method that would be reported for tax purposes. Based on that method, report the original cost of the component assets, undepreciated balance of the component assets, the remaining depreciable life and the annual depreciation or amortization charge. Indicate for each asset component whether the depreciation and amortization charges represent direct cost assignments or indirect cost allocations to the smelter.

Line 18—Other Smelter Facility Depreciation and Amortization. Report the pro forma estimates of depreciation and amortization charges associated with the smelter's investment in equipment and facilities other than those classified as pollution control facilities. Attach as part of Exhibit B supporting schedules prepared according to the instructions for Line 18 above.

Line 19—Interest on Short-/term Debt. Report the estimates of interest and other financing charges on forecast short-term obligations as classified in the smelter's current liabilities on Schedule A.4. Interest and associated financing charges on longterm debt should not be included as an expense identifiable with the smelter's operations. Attach as part of Exhibit B a schedule showing the interest-bearing, short-term debt contracts identifiable with the smelter's operations, the interest rate projected for these contracts, and the estimated annual interest charges. Identify and explain any differences between the classifications used in this Schedule and those used in Line 20 of Schedule A.3.

Line 20—Miscellaneous Operating Expenses. Report only the total operating expenses associated with or allocated to the smelter that cannot be appropriately classified in one of the preceding line items. Attach as part of Exhibit B a schedule showing the classification of these residual operating expenses into major cost components. Explain the basis used for forecasting the cost under each component. Identify each cost component in terms of direct or indirect cost and explain the basis used for allocating the indirect costs to smelter operations. Identify and explain any differences between cost classifications included in this Schedule and those used in Line 21 of Schedule A.3.

Line 21—Total Other Operating Expenses. Enter for each year the sum of operating costs reported on Lines 14 through 20.

Line 22—Income From Operations. Enter for each year the difference between Lines 21 and 13.

Line 23—Income Taxes. Enter the product of income from operations (Line 22) and the sum of the Federal, state and local marginal tax rates. Attach as part of Exhibit B a schedule detailing the estimated Marginal tax rate by taxing entity.

Line 24—Net Income from Operations. Enter for each year the difference between Line 23 and 22.

Schedule C.2—Constant Controls Sustaining Capital Investment Forecast

General

The applicant should estimate and report, in Schedule C.2., yearly sustaining capital outlays for maintenance of the smelter's existing productive capability. These estimates should be forecast under the assumption that full compliance with SIP emission limitations for SO_2 will be achieved. Major elements of these outlays should be disclosed, as well as the total of such outlays. Estimates shall be restricted to those items that will be capitalized for tax purposes. These outlays shall primarily be for plant replacement, although outlays for improvements and expansion may be included to the extent that improvements and/or expansion, exclusive of required pollution control outlays, can be justified as economically feasible. Estimates of sustaining capital shall exclude any incremental investment for constant control requirements. Sustaining capital investments in facilities shared with other operating segments shall be allocated in accordance with the instructions given below.

Estimates of sustaining capital shall be compatible with productive capacity and pollution control requirements underlying the operating revenue and cost forecasts incorporated in Schedule C.1.

Lines 01 to 06—Sustaining Capital. Report for each year by individual line item property, plant and equipment sustaining capital investments assignable to smelter operations. Include both (1) property, plant and equipment directly associated with the smelter's operations and (2) facilities shared with other operating segments to the extent that a causal and beneficial relationship can be established for the intersegment allocations of such facility investments.

Attach as part of Exhibit B a schedule disclosing by individual line item the major elements of annual capital expenditures for sustaining capital. Further classify these annual capital expenditures into both (1) investments required to maintain the smelter versus investments in smelter expansion and improvements and (2) direct facility versus joint-use facility investments. Explain the method used for allocating capital expenditures on joint-use facilities to the smelter's operations.

Lines 07—Total Smelter Sustaining Capital. Enter for each year the total of Lines 01 through 06. Transfer the reported total for each year to Schedule C.3, Line 06.

Schedule C.3—Rate of Return Test

General

Applicants must complete this Schedule and/or Schedule B.7 and the accompanying schedules if they seek

eligibility for an NSO. The line items in Schedule C.3 are explained in the following instructions.

Line 01—Net Income from Operations. Enter for each year the amounts reported in Schedule C.1, Line 24.

Lines 02 and 03—Depreciation and Amortization. Enter for each year the amounts reported in Schedule C.1, Lines 17 and 18, respectively.

Line 04—Operating Cash Flow. Enter for each year the total of amounts reported on Lines 01 through 03.

Line 05—Constant Controls Capital Investment. Enter the estimated capital outlays for constant controls for the years during which outlays would be made. These values shall correspond to the investment estimates shown in the supporting schedules for Line 17 of Schedule C.1. Changes on working capital investment due to investment in constant controls facilities may be added to the capital investment estimates shown in the supporting schedules for Schedule C.1.

Line 06—Sustaining Capital. Enter for each year the amounts reported in Schedule C.2, Line 07.

Line 07—Total. Enter for each year the sum of lines 05 and 06.

Line 08—Net Cash Flow Projections. Enter for each year the difference between Lines 04 and 07.

Line 09—Discount Factors. Enter the discount factor for each year, computed as described in the instructions under Section 2.6.

Line 10—Present Value of Future Cash Flows. Enter for each year the product of Lines 08 and 09.

Line 11—Horizon Value. Enter under the Total column the estimated horizon value of the smelter. This shall be computed by capitalizing net cash flow projections in Line 08 as described in the instructions under Section 2.7.

Line 12—Discount Factor. Enter under the Total column the appropriate discount factor, computed as described in the instructions under Section 2.6.

Line 13—Present Value of Horizon Value. Enter under the Total column the product of Lines 11 and 12.

Line 14—Present Value of Future Cash Flows. Enter under the Total column the sum of amounts previously reported on Line 10 for 1983 through 1989.

Line 15—Total Present Value. Enter the sum of Lines 13 and 14.

Line 16—Net Smelter Capital Investment. Enter under the Total column the amount reported in Schedule A.4, Line 26 for 1982 if the value is greater than zero. If the value is zero or less, enter zero.

Line 17—Post-1977 Pollution Control Depreciation. Enter under the Total column the accumulated depreciation for sulfur dioxide control investments made after 1977 as reported in the supporting schedules to Schedule A.4, Line 17.

Line 18—Total. Enter the sum of Lines 16 and 17.

Line 19—Net Present Value. Enter the difference between Lines 15 and 18. Applicants reporting a negative net present value will pass the rate of return test.

Schedule D.1—Interim Controls Revenue Forecast

General

Use Schedule D.1 to report annual forecasts of operating revenues anticipated during the years 1983 through 1989 from operation of the smelter applying for an interim controls waiver. These interim controls revenue and production projections should be based on immediately implementing a program of interim controls. The assumed investment progrm should be based on the installation and operation of a well-designed sulfuric acid plant to treat all strong gas streams.

Forecast smelter revenues should be expressed on a tolling service equivalent basis as described in Section 2.3.4. The line items in Schedule D.1 are explained in the following instructions. Attach as part of Exhibit B schedules to (1) explain the methods used to make the required forecasts, (2) explain differences, if any, between historical trends and the forecasts, and (3) provide data and information to support the forecasts.

Lines 01 and 05—Concentrates Processed. Report for each year the forecast quantity of concentrates processed for unaffiliated parties (Line 01) and affiliated parties (Line 05).

Lines 02 and 06—Smelting Charge. Report for each year the forecast smelting charge for unaffiliated parties (Line 02) and affiliated parties (Line 06). See Section 2.4 for forecast copper smelting charges furnished by EPA.

Line 03 and 07—Total Smelter Revenues. Report for each year the forecast total operating revenues derived from processing concentrates. The total for unaffiliated parties (Line 03) is equal to the product of Lines 01, 02, and 04, and for affiliated parties (Line 07), the product of Lines 05, 06, and 08.

Lines 04 and 08—Average Product Grade. Report for each year the forecast average quality rating assigned to concentrates processed for unaffiliated parties (Line 04) and affiliated parties (Line 08).

Line 09—Total Co-Product Revenues. Report for each year the forecast net revenues from sales of co-products derived from the smelter's operations. Attach as part of Exhibit B a schedule showing by individual type of co-product the forecast quantity produced and sold, forecast market price per unit of sales, and forecast total revenues derived from the co-product sales.

Line 10—Total By-Product Revenues From Pollution Control Facilities. Report for each year forecast revenues from the sale of by-products derived from operation of the smelter's pollution control facilities. Attach as part of Exhibit B a schedule showing by type of by-product produced (e.g., sulfuric acid) the forecast quantity of output, forecast market price per unit of output sold, and forecast total revenue derived from the by-product sales.

Line 11—Total By-product Revenues From Other Smelter Processing. Report forecast revenues from the sales of gold, silver, and other by-products derived from the smelter's operations. Attach as part of Exhibit B a schedule providing additional documentation as specified in the instructions for Line 10.

Line 12—Total Co-product and By-product Revenues. Enter for each year the total of Lines 09 through 11.

Schedule D.2—Interim Controls Cost Forecast

General

Use Schedule D.2 to report annual forecasts of operating costs anticipated during the years 1981 through 1989 from operation of the smelter applying for an interim controls waiver. These interim controls cost and production projections should be based on immediately implementing a program of interim controls. The assumed investment program should be based on the installation and operation of a well-designed sulfuric acid plant to treat all strong gas streams.

The line items in Schedule D.2 are explained in the following instructions. Attach as part of Exhibit B schedules to (1) explain the methods used to make the required forecasts, (2) explain differences, if any, between historical trends and the forecasts, and (3) provide data and information to support the forecasts.

Line 01—Direct Labor Hours. Report for each year the quantity of direct labor hours required to support the processing levels previously reported. Attach as part of Exhibit B an explanation of the labor productivity factors involved.

Line 02—Average Hourly Wage Rate. Reports for each year the forecast average wage rate per unit of direct labor input. Attach as part of Exhibit B a

description of direct labor cost factors under any existing labor contracts that extend to the forecast period and an explanation of the methodology used to forecast wage rates. EPA-provided forecast wage indices are reported in Section 2.4.

Line 03—Total Wage Payments. Enter for each year the product of Lines 01 and 02.

Line 04—Supplemental Employee Benefits. Report for each year adjustments required to direct labor costs for other employee compensation under supplemental benefit plans. Attach as part of Exhibit B a description of such plans and their costs and an explanation of the methodology used to forecast such costs. EPA-provided forecast wage indices are reported in Section 2.4.

Line 05—Total Production Labor Cost. Enter for each year the total of Lines 03 and 04.

Lines 06, 09, 12, 15, and 18—Energy Quantities. Report for each year the quantity of energy by type required to support the processing levels reported in the smelter's revenue. Attach as part of Exhibit B an explanation of energy characteristics and use factors considered in forecasting the smelter's future energy requirements.

Lines 07, 10, 13, 16, and 19—Unit Prices. Report for each year the forecast price per unit of energy input by type of energy. Attach as part of Exhibit B a description of the energy price factors under any existing energy contracts that extend to the forecast period and an explanation of the methodology used to forecast unit energy prices. EPA-provided forecast energy indices are reported in Section 2.4.

Lines 08, 11, 14, 17, and 20—Total Payments. Enter for each year the products of quantity and prices paid for electricity (Lines 06×07), natural gas (Lines 09×10), coal (Lines 12×13), fuel oil (Lines 15×16), and other (Lines 18×19).

Line 21—Total Energy Costs. Enter for each year the total of Lines 08, 11, 14, 17, and 20.

Schedule D.3—Interim Controls Forecast Profit and Loss Summary

General

Use Schedule D.3 to report forecast revenue and cost information summed in Schedules D.1 and D.2 for the years 1983 through 1989. The transfer of line items from Schedules D.1 and D.2 to this Schedule is explained in the following instructions.

Line 01—Smelter Revenues—Unaffiliated Parties. Enter the totals reported in Schedule D.1, Line 03.

Line 02—Other Smelter Revenues—Affiliated Parties. Enter the totals reported in Schedule D.1, Line 07.

Line 03—Co-product and By-product Sales Revenues. Enter the totals reported in Schedule D.1, Line 12.

Line 04—Other Operating Revenues. Report operating revenues anticipated from sources not accounted for under Lines 01 through 03. Refer to instructions for Line 04 of Schedule A.3 for items that should not be included in "Other Operating Revenues." Attach as part of Exhibit B a schedule showing annual amounts forecast by individual revenue component for "other" operating revenues associated with the smelter's forecast interim controls operations. Identify in the supporting schedule any differences in the "other" revenue components reported in this Schedule and Schedule A.3 and explain the reasons for such differences.

Line 05—Total Operating Revenues. Enter for each year the total of Lines 01 through 04.

Line 06—Material Costs. Report total costs forecast for flux, refractories, coke and other materials directly associated with the smelter's processing of concentrates. Attach as part of Exhibit B a schedule showing the annual amounts forecast by major material cost components. For each cost component, identify the forecast quantity and unit price elements of material cost and explain the basis for forecasting these quantity and price elements. Identify in the supporting schedule any differences in the "other" material cost components shown in this Schedule and Schedule A.3 and explain the reasons for such differences.

Line 07—Production Labor Costs. Enter the totals reported in Schedule D.2, Line 05.

Line 08—Energy Costs. Enter the totals reported in Schedule D.2, Line 21.

Line 09—Pollution Control Costs. Report the total costs forecast for expenses identifiable with operation and maintenance of all pollution control equipment and facilities. By-product credits associated with operation of the pollution control facilities should be eliminated from the cost accounts, reclassified to Schedule D.1, Line 10 and included in Line 03 of this Schedule. Attach a schedule as part of Exhibit B classifying pollution control costs by major cost components. Explain the basis used for estimating each of the cost components.

Line 10—Production Overhead Costs. Report the total costs forecast for indirect labor, indirect materials and other production overhead costs associated with the smelter's constant controls forecasts. Attach as part of Exhibit B a schedule showing annual overhead costs projected by major cost components associated with the smelter's operations. For each cost component, where appropriate, identify the forecast quantity and unit price elements of overhead costs and explain the basis for estimating these quantity and price elements. Also identify in the supporting schedule any differences in production overhead costs classifications used in this Schedule and Schedule A.3 and explain the reasons for such differences.

Line 11—Other Production Costs. Report other forecast production costs not previously reported on Lines 06 through 10. Attach as part of Exhibit B supporting schedules showing the basis of the forecasts.

Line 12—Total Cost of Sales. Enter for each year the sum of operating costs reported on Lines 06 through 11.

Line 13—Gross Operating Profit. Enter for each year the difference between Lines 05 and 12.

Line 14—Selling, General and Administrative Expenses. Report the total costs forecast for administrative, marketing and general corporate overhead functions that directly or indirectly support the smelter's operations. Refer to the NSO Financial Reporting Overview for a general discussion of indirect cost allocations from overhead cost pools. Attach as part of Exhibit B a schedule classifying selling, general and administrative expenses into major cost components. Indicate whether each component represents costs directly assignable to the smelter or indirect costs allocated from other business segments to the smelter. Explain the basis used for estimating the amount of expected costs included in each component and the basis used for allocating indirect cost elements to the smelter. Identify and explain any differences between the selling, general and administrative cost classification used in this Schedule and that used in Line 15 of Schedule A.3.

Line 15—Taxes, Other than Income Taxes. Report the total costs forecast for property taxes and associated levies paid to governmental units by or for the benefit of the smelter operation. Attach as part of Exhibit B a schedule classifying operating taxes by major component. Indicate whether each component represents taxes directly assignable to the smelter or taxes that have been allocated among more than one facility. Explain the basis used for estimating taxes and the basis for any allocation of taxes to the smelter. Identify and explain any differences between the component classifications

used in this Schedule and those used in Line 16 of Schedule A.3.

Line 16—Research Costs. Report the estimates of research costs incurred directly by or for the benefit of the smelter operations. Attach as part of Exhibit B a schedule classifying the costs by major direct and indirect cost components. Explain the basis for estimating the costs assigned to each component. Identify and explain any differences between classifications used in this Schedule and those used in Line 17 of Schedule A.3.

Line 17—Pollution Control Facility Depreciation and Amortization. Report the estimates of depreciation and amortization charges associated with the smelter's actual and forecast investment in all pollution control equipment and facilities. Attach as part of Exhibit B supporting schedules classifying pollution control facilities by major assets or asset groups. For each facility component, indicate the depreciation or amortization method that would be reported for tax purposes. Based on that method, report the original cost of the component assets, undepreciated balance of the component assets, the remaining depreciable life and the annual depreciation or amortization charge. Indicate for each asset component whether the depreciation and amortization charges represent direct cost assignments or indirect cost allocations to the smelter.

Line 18—Other Smelter Facility Depreciation and Amortization. Report the pro forma estimates of depreciation and amortization charges associated with the smelter's investment in equipment and facilities other than those classified as pollution control facilities. Attach as part of Exhibit B supporting schedules prepared according to the instructions for Line 18 above.

Line 19—Interest on Short-Term Debt. Report the estimates of interest and other financing charges on forecast short-term obligations as classified in the smelter's current liabilities on Schedule A.4. Interest and associated financing charges on long-term debt should not be included as an expense identifiable with the smelter's operations. Attach as part of Exhibit B as schedule showing the interest-bearing, short-term debt contracts identifiable with the smelter's operations, the interest rate projected for these contracts, and the estimated annual interest charges. Identify and explain any differences between the classifications used in this Schedule and those used in Line 20 of Schedule A.3.

Line 20—Miscellaneous Operating Expenses. Report only the total operating expenses associated with or allocated to the smelter that cannot be appropriately classified in one of the preceding line items. Attach as part of Exhibit B a schedule showing the classification of these residual operating expenses into major cost components. Explain the basis used for forecasting the cost under each component. Identify each cost component in terms of direct or indirect cost and explain the basis used for allocating the indirect costs to smelter operations. Identify and explain any differences between cost classifications included in this Schedule and those used in Line 21 of Schedule A.3.

Line 21—Total Other Operating Expenses. Enter for each year the sum of operating costs reported on Lines 14 through 20.

Line 22—Income From Operations. Enter for each year the difference between Lines 21 and 13.

Line 23—Income Taxes. Enter the product of income from operations (Line 22) and the sum of the Federal, state and local marginal tax rates. Attach as part of Exhibit B a schedule detailing the estimated marginal tax rate by taxing entity.

Line 24—Net Income from Operations. Enter for each year the difference between Lines 23 and 22.

The temporary waiver from interim controls test is on Line 13. Applicants will be eligible for a temporary waiver from the interim developoment of constant control technology for sulfur dioxide emissions if the reported gross operating profit on Line 14 is a negative value for one or more years during which the NSO is in effect.

Schedule D.4—Interim Controls Sustaining Capital Investment Forecast

General

The applicant should estimate and report in Schedule D.4 yearly sustaining capital outlays for maintenance of the smelter's existing productive capability. These estimates should be forecast under the assumption that the smelter is operated after implementing a program of interim controls. Major elements of these outlays should be disclosed, as well as the total of such outlays. Estimates shall be restricted to those items that will be capitalized for tax purposes. These outlays shall primarily be for plant replacement, although outlays for improvements and expansion may be included to the extent that improvements and/or expansion, exclusive of required pollution control outlays, can be justified as economically feasible. Estimates of sustaining capital shall exclude any incremental investment for constant control requirements. Sustaining capital investments in facilities shared with other operating segments shall be allocated in accordance with the instructions given below.

Estimates of sustaining capital shal be compatible with productive capacity and pollution control requirements underlying the operating revenue and cost forecasts incorporated in Schedule D.3.

Lines 01 to 06—Sustaining Capital. Report for each year by individual line item property, plant and equipment sustaining capital investments assignable to smelter operations. Include both (1) property, plant and equipment directly associated with the smelter's operations and (2) facilities shared with other operating segments to the extent that a causal and beneficial relationship can be established for the intersegment allocations of such facility investments.

Attach as part of Exhibit B a schedule disclosing by individual line item the major elements of annual capital expenditures for sustaining capital. Further classify these annual capital expenditures into both (1) investments required to maintain the smelter versus investments in smelter expansion and improvements and (2) direct facility versus joint-use facility investments. Explain the method used for allocating capital expenditures on joint-use facilities to the smelter's operations.

Line 07—Total Smelter Sustaining Capital. Enter for each year the total of Lines 01 through 06. Transfer the reported total for each year to Schedule D.6, Line 06.

Schedule D.5—Cash Proceeds From Liquidation

General

Use Schedule D.5 to calculate cash proceeds from liquidation. Applicants should determine the current salvage value of their existing investment in the smelter as the net proceeds that could be derived through an orderly liquidation of the smelter's assets. The net cash proceeds should be reported after an appropriate allowance for disposal costs, contractual claims against the smelter (e.g., labor termination penalties), and income tax effects on the corporation of such liquidation costs.

The applicant must stipulate the most advantageous alternative market (use) for the smelter's facilities. Generally, this market will be:

- Secondary market for used plant and equipment.

• Sale for scrap.

• Abandonment where the disposal cost exceeds scrap value.

The current net salvage value should be disaggregated into the same property, plant and equipment asset groups reported under the historical capital investment summary, Schedule A.4. The line items in Schedule D.5 are explained in the following instructions.

Line 01—Current Assets. Enter in Columns 1 and 2, the value of total current assets shown in Line 08 of Schedule A.4 (Historical Capital Investment Summary) for 1982. No gain or loss should be reported in Columns 3 through 5 for the liquidation of current asset investments.

Lines 02–07—Property Plant and Equipment. Enter in Column 1 the appraised liquidation value (in terms of pretax cash proceeds) of the smelter by asset group. This estimate should be certified by a qualified third party professional appraiser and shall represent the best use and highest alternative value of these assets. The liquidation value of any assets which are jointly used by the smelter and other operating segments shall be excluded if, upon closure of the smelter, such assets would continue in service for the non-smelter activity.

In Column 2, report the net book value of these assets for which liquidation values have been reported in Column 1. The reported values should correspond with amounts reported for 1982 in lines 09 through 15 in Schedule A.4 as adjusted for appropriate eliminations of joint-use facilities and reconciliation to a net book value as reported for income taxes. Attach as part of Exhibit B supporting schedules showing all adjustments and conversion of net book value as reported on the financial statements, to net book value that would be used for income tax purposes.

Compute Column 3 as Column 1 less Column 2. The gain (or loss) shown in column 3 shall be segregated into ordinary income and capital gains components subject to taxation pursuant to applicable income tax rules. Enter ordinary income in Column 4 and capital gains in Column 5.

Line 08—Total Smelter Investment. Enter the sum of Lines 02 through 07 for each of the columns.

Line 09—Other Non-current Assets. In Column 1, report the appraised value of other non-current assets in accordance with the instructions for Line 18, Schedule A.4, except that any joint asset(s) that would continue in the event of smelter liquidation shall be excluded. This estimate shall be certified by a qualified third-party professional appraiser.

In Column 2, report the net book value of the non-current assets directly corresponding to those assets included in the liquidation value estimated under Column 1.

The remaining columns shall be completed in accordance with the instructions given above for Lines 02 to 06.

Lines 10—Total Smelter Value. Enter the sum of Lines 01, 08 and 09.

Line 11—Total Current Liabilities. Report in both Columns 1 and 2, the value of total current liabilities shown in Line 25 of Schedule A.4 for 1982.

Line 12—Gross Liquidation Value. Enter the difference between Lines 10 and 11.

Line 13—Liquidation Costs. In Columns 1, 3 and 4, report the value of any liquidation costs such as labor contract termination penalties, severance pay and related costs, associated with closure of the smelter.

Line 14—Taxable Gain (or Loss). Enter in Columns 4 and 5, the differences between Lines 12 and 13.

Line 15—Income Tax Rate. Enter the sum of the Federal, State and local marginal tax rates of the firm for ordinary income and capital gains in Columns 4 and 5, respectively. Attach as part of Exhibit B a schedule detailing the estimated marginal tax rate by taxing entity.

Line 16—Income Tax on Gain (or Loss). In columns 4 and 5, enter the product of Line 14 and the marginal income tax rates reported in Line 15. In Column 1, enter the sum of Columns 4 and 5.

Line 17—After-Tax Cash Proceeds. Enter in Column 1 the difference between Line 12 and the sum of Lines 13 and 16.

Schedule D.6—Permanent Waiver from Interim Controls Test

General

Applicants must complete this Schedule and its supporting schedules if they seek a permanent waiver from interim control requirements. The line items in Schedule D.6 are explained in the following instructions.

Line 01—Net Income from Operations. Enter for each year the amounts reported in Schedule D.3, Line 24.

Lines 02 and 03—Depreciation and Amortization. Enter for each year the amounts reported in Schedule D.3, Line 17 and 18, respectively.

Line 04—Operating Cash Flow. Enter for each year the total of amounts reported on Lines 01 through 03.

Line 05—Interim Controls Capital Investment. Enter the estimated capital outlays for interim controls for the years during which outlays would be made. These values shall correspond to the investment estimates shown in the supporting schedules for Line 17 of Schedule D.3. Changes in working capital investment due to investment in interim controls facilities may be added to the capital investment estimates shown in the supporting schedules for Schedule D.3.

Line 06—Sustaining Captial. Enter for each year the amounts reported in Schedule D.4, Line 07.

Line 07—Total. Enter for each year the sum of Lines 05 and 06.

Line 08—Net Cash Flow Projections. Enter for each year the difference between Lines 04 and 07.

Line 09—Discount Factors. Enter the discount factor for each year, computed as described in the instructions under Section 2.6.

Line 10—Present Value of Future Cash Flows. Enter for each year the product of Lines 08 and 09.

Line 11—Horizon Value. Enter under the Total column the estimated horizon value of the smelter. This shall be computed by capitalizing net cash flow projections in Line 08 as described in the instructions under Section 2.7.

Line 12—Discount Factor. Enter under the Total column the appropriate discount factor, computed as described in the instructions under Section 2.6.

Line 13—Present Value of Horizon Value. Enter under the Total column the product of Lines 11 and 12.

Line 14—Present Value of Future Cash Flows. Enter under the Total column the sum of amounts previously reported on Line 10 for 1983 through 1989.

Line 15–Total Present Value. Enter the sum of Lines 13 and 14.

Line 16–Current Salvage Value. Enter the amount reported in Schedule D.5, Line 17, if the value is greater than zero. If the value is zero or less, enter zero.

Line 17—Net Present Value. Enter the difference between Lines 15 and 16. Applicants reporting a negative net present value will be eligible for a permanent waiver from interim use of a constant control system for sulfur dioxide emissions.

SCHEDULE A.1—HISTORICAL REVENUE DATA

[Smelter identification]

	Line	1978	1979	1980	1981	1982
A. Copper product sales:						
1. Total quanity sold	01					
2. Unaffiliated customer sales:						
a. Quantity sold	02					
b. Operating revenue	03					
c. Average unit price	04					
d. Average product grade	05					
3. Affiliated customer sales:						
a. Quantity sold	06					
b. Operating revenue	07					
c. Average unit price	08					
d. Average product grade	09					
4. Adjusted copper revenues:						
a. Total copper revenues	10					
b. Transfer price adjustment	11					
c. Other revenue adjustments	12					
d. Adjusted copper revenues	13					
B. Lead product sales:						
1. Total quantity sold	14					
2. Unaffiliated customer sales:						
a. Quantity sold	15					
b. Operating revenue	16					
c. Average unit price	17					
d. Average product grade	18					
3. Affiliated customer sales:						
a. Quantity sold	19					
d. Operating revenue	20					
c. Average unit price	21					
d. Average product grade	22					
4. Adjusted lead revenues:						
a. Total lead revenues	23					
b. Transfer price adjustment	24					
c. Other revenue adjustments	25					
d. Adjusted lead revenues	26					
C. Zinc product sales:						
1. Total quantity sold	27					
2. Unaffiliated customer sales:						
a. Quantity sold	28					
b. Operating revenue	29					
c. Average unit price	30					
d. Average product grade	31					
3. Affiliated customer sales:						
a. Quantity sold	32					
b. Operating revenue	33					
c. Average unit price	34					
d. Average product grade	35					
4. Adjusted zinc revenues:						
a. Total zinc revenues	36					
b. Transfer price adjustment	37					
c. Other revenue adjustments	38					
d. Adjusted zinc revenues	39					
D. Molybdenum or other nonferrous metal sales:						
1. Total quantity sold	40					
2. Unaffiliated customer sales:						
a. Quantity sold	41					
b. Operating revenue	42					
c. Average unit price	43					
d. Average product grade	44					
3. Affiliated customer sales:						
a. Quantity sold	45					
b. Operating revenue	46					
c. Average unit price	47					
d. Average product grade	48					
4. Adjusted molybdenum or other nonferrous metal revenues:						
a. Total molybdenum or other nonferrous metal revenues	49					
b. Transfer price adjustment	50					
c. Other revenue adjustments	51					
d. Adjusted molybdenum or other nonferrous metal revenues	52					
E. Primary metal revenues	53					
F. Tolling service revenues:						
1. Total toll concentrates processed	54					
2. Unaffiliated customer revenues:						
a. Concentrates processed	55					
b. Operating revenue	56					
c. Average unit price	57					
d. Average product grade	58					
3. Affiliated customer revenues:						
a. Concentrates processed	59					
b. Operating revenue	60					
c. Average unit price	61					
d. Average product grade	62					
4. Adjusted tolling service revenues:						
a. Total tolling service revenue	63					
b. Transfer price adjustment	64					
c. Other revenue adjustments	65					
d. Adjusted tolling service revenues	66					
G. Coproduct and by product sales:						
1. Total coproduct revenues	67					
2. Total byproduct revenues:						
a. Pollution control facilities	68					

SCHEDULE A.1—HISTORICAL REVENUE DATA—Continued

[Smelter identification]

	Line	1978	1979	1980	1981	1982
b. Other smelter processing	69					
3. Total coproduct and byproduct revenues	70					

SCHEDULE A.2—HISTORICAL COST DATA

[Smelter identification]

	Line	1978	1979	1980	1981	1982
A. Concentrate costs:						
1. Total quantity purchased	01					
2. Unaffiliated purchases:						
a. Quantity purchased	02					
b. Concentrate cost	03					
c. Average unit price	04					
d. Average concentrate grade	05					
3. Affiliated purchases:						
a. Quantity purchased	06					
b. Concentrate cost	07					
c. Average unit price	08					
d. Average concentrate grade	09					
4. Adjusted concentrate costs:						
a. Total concentrate costs	10					
b. Transfer price adjustment	11					
c. Other cost adjustments	12					
d. Adjusted concentrate cost	13					
B. Production labor cost:						
1. Direct labor hours	14					
2. Average hourly wage rate	15					
3. Total wage payments	16					
4. Supplemental employee benefits	17					
5. Total production labor cost	18					
C. Energy costs:						
1. Electricity:						
a. Quantity in kilowatt hours	19					
b. Price per kwh	20					
c. Total electricity payments	21					
2. Natural gas:						
a. Quantity in mcf	22					
b. Price per mcf	23					
c. Total natural gas payments	24					
c. Coal:						
a. Quantity in tons	25					
b. Price per ton	26					
c. Total coal payments	27					
4. Fuel oil:						
a. Quantity in gallons	28					
b. Price per gallon	29					
c. Total fuel oil payments	30					
5. Other (specify):						
a. Quantity (specific units)	31					
b. Price per unit	32					
c. Total payments	33					
6. Total energy costs	34					

SCHEDULE A.3—HISTORICAL PROFIT AND LOSS SUMMARY

[Smelter identification]

	Line	1978	1979	1980	1981	1982
A. Operating revenues:						
1. Primary metal sales	01					
2. Coproduct and byproduct sales	02					
3. Tolling service revenues	03					
4. Other operating revenues	04					
5. Total operating revenues	05					
B. Cost of sales:						
1. Concentrates processed	06					
2. Other materials	07					
3. Production labor	08					
4. Energy costs	09					
5. Pollution control cost	10					
6. Production overhead	11					
7. Other production costs	12					
8. Total cost of sales	13					
C. Gross operating profit	14					
D. Other operating expenses:						
1. Selling, general and administrative	15					
2. Taxes, other than income tax	16					
3. Research costs	17					
4. Depreciation and amortization:						
a. Pollution control facilities	18					
b. Other smelter facilities	19					

SCHEDULE A.3—HISTORICAL PROFIT AND LOSS SUMMARY—Continued

[Smelter identification]

	Line	1978	1979	1980	1981	1982
5. Interest on short term debt	20					
6. Miscellaneous operating expenses	21					
7. Total other operating expenses	22					
E. Income from operations	23					
F. Other income and (expense):						
1. Gain/(loss) on disposition of property	24					
2. Miscellaneous other income and (expense)	25					
3. Total other income and (expense)	26					
G. Net taxable income	27					

SCHEDULE A.4—HISTORICAL CAPITAL INVESTMENT SUMMARY

[Smelter identification]

	Line	1978	1979	1980	1981	1982
A. Current assets:						
1. Cash on hand and deposit	01					
2. Temporary cash investments	02					
3. Trade receivables, net:						
a. Unaffiliated customers	03					
b. Affiliated customers	04					
4. Inventories:						
a. Raw materials and products	05					
b. Other materials and supplies	06					
5. Other current assets	07					
6. Total current assets	08					
B. Property, plant and equipment:						
1. Land	09					
2. Buildings and improvements	10					
3. Machinery and equipment	11					
4. Transportation equipment	12					
5. Pollution control facilities	13					
6. Other fixed assets	14					
7. Total smelter investment	15					
8. Less: Accumulated depreciation and amortization	16					
9. Net smelter investment	17					
C. Other noncurrent assets	18					
D. Total smelter capital investment	19					
E. Current liabilities:						
1. Trade accounts and notes payable:						
a. Unaffiliated suppliers	20					
b. Affiliated suppliers	21					
2. Other expense accruals	22					
3. Notes payable, current	23					
4. Other current liabilities	24					
5. Total current liabilities	25					
F. Net smelter capital investment	26					

SCHEDULE B.1—PRE-CONTROL REVENUE FORECAST

[Smelter identification]

	Line	1983	1984	1985	1986	1987	1988	1989
A. Forecast smelter revenues—unaffiliated parties:								
1. Concentrates processed	01							
2. Smelting charge	02							
3. Total smelter revenues	03							
4. Average product grade	04							
B. Forecast smelter revenues—affiliated parties:								
1. Concentrates processed	05							
2. Smelting charge	06							
3. Total smelter revenues	07							
4. Average product grade	08							
C. Forecast co-product and by-product sales:								
1. Total co-product revenues	09							
2. Total by-product revenues from:								
a. Pollution control facilities	10							
b. Other smelter processing	11							
3. Total co-product and by-product revenues	12							

SCHEDULE B.2—PRE-CONTROL COST FORECAST

[Smelter identification]

	Line	1983	1984	1985	1986	1987	1988	1989
A. Forecast production labor cost:								
1. Direct labor hours	01							
2. Average hourly wage rate	02							
3. Total wage payments	03							
4. Supplemental employee benefits	04							
5. Total production labor cost	05							
B. Forecast energy costs:								
1. Electricity:								
a. Quantity in kilowatt hours	06							
b. Price per kwh	07							
c. Total electricity payments	08							
2. Natural gas:								
a. Quantity in mcf	09							
b. Price per mcf	10							
c. Total natural gas payments	11							
3. Coal:								
a. Quantity in tons	12							
b. Price per ton	13							
c. Total coal payments	14							
4. Fuel oil:								
a. Quantity in gallons	15							
b. Price per gallon	16							
c. Total fuel oil payments	17							
5. Other (specify):								
a. Quantity (specific units)	18							
b. Price per unit	19							
c. Total payments	20							
6. Total energy costs	21							

SCHEDULE B. 3—PRE-CONTROL FORECAST PROFIT AND LOSS SUMMARY

[Smelter idnetification]

	Line	1983	1984	1985	1986	1987	1988	1989
A. Forecast operating revenues:								
1. Smelter revenues—unaffiliated parties	01							
2. Smelter revenues—affiliated parties	02							
3. Co-product and by-product sales	03							
4. Other operating revenues	04							
5. Total operating revenues	05							
B. Forecast cost of sales:								
1. Material costs	06							
2. Production labor costs	07							
3. Energy costs	08							
4. Pollution control costs	09							
5. Production overhead	10							
6. Other production costs	11							
7. Total costs of sales	12							
C. Forecast gross operating profit	13							
D. Forecast other operating expenses:								
1. Selling, general and administrative expenses	14							
2. Taxes, other than income tax	15							
3. Research costs	16							
4. Depreciation and amortization								
a. Pollution control facilities	17							
b. Other smelter facilities	18							
5. Interest on short-term debt	19							
6. Miscellaneous operating expenses	20							
7. Total other operating expenses	21							
E. Forecast income from operations	22							

SCHEDULE B.4—CONSTANT CONTROLS REVENUE FORECAST

[Smelter identification]

	Line	1983	1984	1985	1986	1987	1988	1989
A. Forecast smelter revenues—unaffiliated parties:								
1. Concentrates processed	01							
2. Smelting charge	02							
3. Total smelter revenues	03							
4. Average product grade	04							
B. Forecast smelter revenues—affiliated parties:								
1. Concentrates processed	05							
2. Smelting charge	06							
3. Total smelter revenues	07							
4. Average product grade	08							

SCHEDULE B.4—CONSTANT CONTROLS REVENUE FORECAST—Continued

[Smelter identification]

	Line	1983	1984	1985	1986	1987	1988	1989
C. Forecast co-product and by-product sales:								
1. Total co-product revenues	09							
2. Total by-product revenues from:								
a. Pollution control facilities	10							
b. Other smelter processing	11							
3. Total co-product and by-product revenues	12							

SCHEDULE B.5—CONSTANT CONTROLS COST FORECAST

[Smelter identification]

	Line	1983	1984	1985	1986	1987	1988	1989
A. Forecast production labor cost:								
1. Direct labor hours	01							
2. Average hourly wage rate	02							
3. Total wage payments	03							
4. Supplemental employee benefits	04							
5. Total production labor cost	05							
B. Forecast energy costs:								
1. Electricity:								
a. Quantity in kilowatt hours	06							
b. Price per kwh	07							
c. Total electricity payments	08							
2. Natural gas:								
a. Quantity in mcf	09							
b. Price per mcf	10							
c. Total natural gas payments	11							
3. Coal:								
a. Quantity in tons	12							
b. Price per ton	13							
c. Total coal payments	14							
4. Fuel oil:								
a. Quantity in gallons	15							
b. Price per gallon	16							
c. Total fuel oil payments	17							
5. Other (specify):								
a. Quantity (specific units)	18							
b. Price per unit	19							
c. Total payments	20							
6. Total energy costs	21							

SCHEDULE B.6—CONSTANT CONTROLS PROFIT AND LOSS SUMMARY FOR THE PROFIT PROTECTION TEST

[Smelter identification]

	Line	1983	1984	1985	1986	1987	1988	1989
A. Forecast operating revenues:								
1. Smelter revenues—unaffiliated parties	01							
2. Smelter revenues—affiliated parties	02							
3. Co-product and by-product sales	03							
4. Other operating revenues	04							
5. Total operating revenues	05							
B. Forecast cost of sales:								
1. Material costs	06							
2. Production labor costs	07							
3. Energy costs	08							
4. Pollution control costs	09							
5. Production overhead	10							
6. Other production costs	11							
7. Total cost of sales	12							
C. Forecast gross operating profit	13							
D. Forecast other operating expenses:								
1. Selling, general and administrative expenses	14							
2. Taxes, other than income tax	15							
3. Research costs	16							
4. Depreciation and amortization								
a. Pollution control facilities	17							
b. Other smelter facilities	18							
5. Interest on short-term debt	19							
6. Miscellaneous operating expenses	20							
7. Total other operating expenses	21							
E. Forecast income from operations	22							

SCHEDULE B.7—PROFIT PROTECTION TEST

[Smelter identification]

	Line	1983	1984	1985	1986	1987	1988	1989	Total
A. Pre-Control Case:									
1. Net income from operations	01								XXXX
2. Discount factors	02								XXXX
3. Present value of future net income	03								XXXX
4. Horizon value	04	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
5. Discount factor	05	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
6. Present value of horizon value	06	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
7. Present value of future net income	07	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
8. Total present value	08	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
B. Constant controls case:									
1. Net income from operations	09								XXXX
2. Discount factors	10								XXXX
3. Present value of future net income	11								XXXX
4. Horizon value	12	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
5. Discount factor	13	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
6. Present value of horizon value	14	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
7. Present value of future net income	15	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
8. Total present value	16	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
C. Ratio of total present value of constant controls case to total present value of base case	17	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	

SCHEDULE C.1—CONSTANT CONTROLS PROFIT AND LOSS SUMMARY FOR THE RATE OF RETURN TEST

[Smelter identification]

	Line	1983	1984	1985	1986	1987	1988	1989
A. Forecast operating revenues:								
1. Smelter revenues—unaffiliated parties	01							
2. Smelter revenues—affiliated parties	02							
3. Co-product and by-product sales	03							
4. Other operating revenues	04							
5. Total operating revenues	05							
B. Forecast cost of sales:								
1. Material costs	06							
2. Production labor costs	07							
3. Energy costs	08							
4. Pollution control costs	09							
5. Production overhead	10							
6. Other production costs	11							
7. Total cost of sales	12							
C. Forecast gross operating profit	13							
D. Forecast other operating expenses:								
1. Selling, general and administrative expenses	14							
2. Taxes, other than income tax	15							
3. Research costs	16							
4. Depreciation and amortization:								
a. Pollution control facilities	17							
b. Other smelter facilities	18							
5. Interest on short-term debt	19							
6. Miscellaneous operating expenses	20							
7. Total other operating expenses	21							
E. Forecast income from operations	22							
F. Forecast income taxes	23							
G. Forecast net income from operations	24							

SCHEDULE C.2—CONSTANT CONTROLS SUSTAINING CAPITAL INVESTMENT FORECAST

[Smelter identification]

Sustaining capital	Line	1983	1984	1985	1986	1987	1988	1989
1. Land	01							2
2. Buildings and improvements	02							2
3. Machinery and equipment	03							2
4. Transportation equipment	04							2
5. Pollution control facilities	05							2
6. Other fixed assets	06							2
7. Total smelter sustaining capital	07							2

SCHEDULE C.3—RATE OF RETURN TEST

[Smelter identification]

	Line	1983	1984	1985	1986	1987	1988	1989	Total
A. Operating cash flow projection:									
1. Net income from operations	01								XXXX
2. Depreciation and amortization:									
a. Pollution control facilities	02								XXXX
b. Other smelter facilities	03								XXXX

SCHEDULE C.3—RATE OF RETURN TEST—Continued

[Smelter identification]

	Line	1983	1984	1985	1986	1987	1988	1989	Total
3. Operating cash flow	04								XXXX
4. Capital expenditure projections:									
a. Constant controls	05								XXXX
b. Sustaining capital	06								XXXX
Total	07								XXXX
5. Net cash flow projections	08								XXXX
6. Discount factors	09								XXXX
7. Present value of future cash flows	10								XXXX
B. Net present value:									
1. Horizon value	11	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
2. Discount factor	12	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
3. Present value of horizon value	13	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
4. Present value of future cash flows	14	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
5. Total present value	15	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
6. Invested capital:									
a. Net smelter capital investment	16	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
b. Post-1977 pollution control depreciation	17	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
c. Total	18	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
7. Net present value	19	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	

SCHEDULE D.1—INTERIM CONTROLS REVENUE FORECAST

[Smelter identification]

	Line	1983	1984	1985	1986	1987	1988	1989
A. Forecast smelter revenues—unaffiliated parties:								
1. Concentrates processed	01							
2. Smelting charge	02							
3. Total smelter revenues	03							
4. Average product grade	04							
B. Forecast smelter revenues—affiliated parties:								
1. Concentrates processed	05							
2. Smelting Charge	06							
3. Total smelter revenues	07							
4. Average product grade	08							
C. Forecast co-product and by-product sales:								
1. Total co-product revenues	09							
2.! Total by-product revenues from:								
a. Pollution control facilities	10							
b. Other smelter processing	11							
3. Total co-product and by-product revenues	12							

SCHEDULE D.2—INTERIM CONTROL REVENUE FORECAST

[Smelter identification]

	Line	1983	1984	1985	1986	1987	1988	1989
A. Forecast production labor cost:								
1. Direct labor hours	01							
2. Average hourly wage rate	02							
3. Total wage payments	03							
4. Supplemental employee benefits	04							
5. Total production labor cost	05							
B. Forecast energy costs:								
1. Electricity:								
a. Quantity in kilowatt hours	06							
b. Price per kwh	07							
c. Total electricity payments	08							
2. Natural gas:								
a. Quantity in mcf	09							
b. Price per mcf	10							
c. Total natural gas payments	11							
3. Coal:								
a. Quantity in tons	12							
b. Price per ton	13							
c. Total coal payments	14							
4. Fuel oil:								
a. Quality in gallons	15							
b. Price per gallon	16							
c. Total fuel oil payments	17							
5. Other (specify):								
a. Quantity (specific units)	18							
b. Price per unit	19							
c. Total payments	20							

SCHEDULE D.2—INTERIM CONTROL REVENUE FORECAST—Continued

[Smelter identification]

	Line	1983	1984	1985	1986	1987	1988	1989
6. Total energy costs	21							

SCHEDULE D.3—INTERIM CONTROLS FORECAST PROFIT AND LOSS SUMMARY

[Smelter identification]

	Line	1983	1984	1985	1986	1987	1988	1989
A. Forecast operating revenues:								
1. Smelter revenues—unaffiliated parties	01							
2. Smelter revenues—affiliated parties	02							
3. Co-product and by-product sales	03							
4. Other operating revenues	04							
5. Total operating revenues	05							
B. Forecast cost of sales:								
1. Material costs	06							
2. Production labor costs	07							
3. Energy costs	08							
4. Pollution control costs	09							
5. Production overhead	10							
6. Other production costs	11							
7. Total cost of sales	12							
C. Forecast gross operating profit	13							
D. Forecast other operating expenses:								
1. Selling, general and administrative expenses	14							
2. Taxes, other than income tax	15							
3. Research costs	16							
4. Depreciation and amortization								
a. Pollution control facilities	17							
b. Other smelter facilities	18							
5. Interest on short-term debt	19							
6. Miscellaneous operating expenses	20							
7. Total other operating expenses	21							
E. Forecast income from operations	22							
F. Forecast income taxes	23							
G. Forecast net income from operations	24							

SCHEDULE D.4—INTERIM CONTROL SUSTAINING CAPITAL INVESTMENT FORECAST

[Smelter identification]

Sustaining capital	Line	1983	1984	1985	1986	1987	1988	1989
1. Land	01							
2. Buildings and improvements	02							
3. Machinery and equipment	03							
4. Transportation equipment	04							
5. Pollution control facilities	05							
6. Other fixed assets	06							
7. Total smelter sustaining capital	07							

SCHEDULE D.5—CASH PROCEEDS FROM LIQUIDATION

[Smelter identification]

	Line	(1) Estimated liquidation value	(2) Reported net book value	(3) Total gain (loss)	Gain (loss) subject to taxation as—	
					(4) Ordinary income	(5) Capital gain
A. Total current assets	01			XXXXX	XXXXX	XXXXX
B. Property, plant and equipment:						
1. Land	02					
2. Buildings and improvements	03					
3. Machinery and equipment	04					
4. Transportation equipment	05					
5. Pollution control facilities	06					
6. Other fixed assets	07					
7. Total	08					
C. Other Noncurrent assets	09					
D. Total smelter value	10					
E. Total current liabilities	11			XXXXX	XXXXX	XXXXX
F. Gross liquidation value	12					
G. Liquidation costs	13		XXXXX			XXXXX
H. Net Taxable Gain (or loss)	14	XXXXX	XXXXX	XXXXX		
I. Income tax rate	15	XXXXX	XXXXX	XXXXX		
J. Income tax on gain (loss)	16		XXXXX	XXXXX		
K. After tax cash proceeds from liquidation	17		XXXXX	XXXXX	XXXXX	XXXXX

SCHEDULE D.6—PERMANENT WAIVER FROM INTERIM CONTROL TEST

[Smelter identification]

	Line	1983	1984	1985	1986	1987	1988	1989	Total
A. Operating cash flow projection:									
1. Net income from operations	01								XXXX
2. Depreciation and amortization:									
a. Pollution control facilities	02								XXXX
b. Other smelter facilities	03								XXXX
3. Operating cash flow	04								XXXX
4. Capital expenditure projections:									
a. Interim controls	05								XXXX
b. Sustaining capital	06								XXXX
c. Total	07								XXXX
5. Net cash flow projections	08								XXXX
6. Discount factors	09								XXXX
7. Present value of future cash flows	10								XXXX
B. Net present value:									
1. Horizon value	11	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
2. Discount factor	12	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
3. Present value of horizon value	13	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
4. Present value of future cash flows	14	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
5. Total present value	15	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
6. Current salvage value	16	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	
7. Net present value	17	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	

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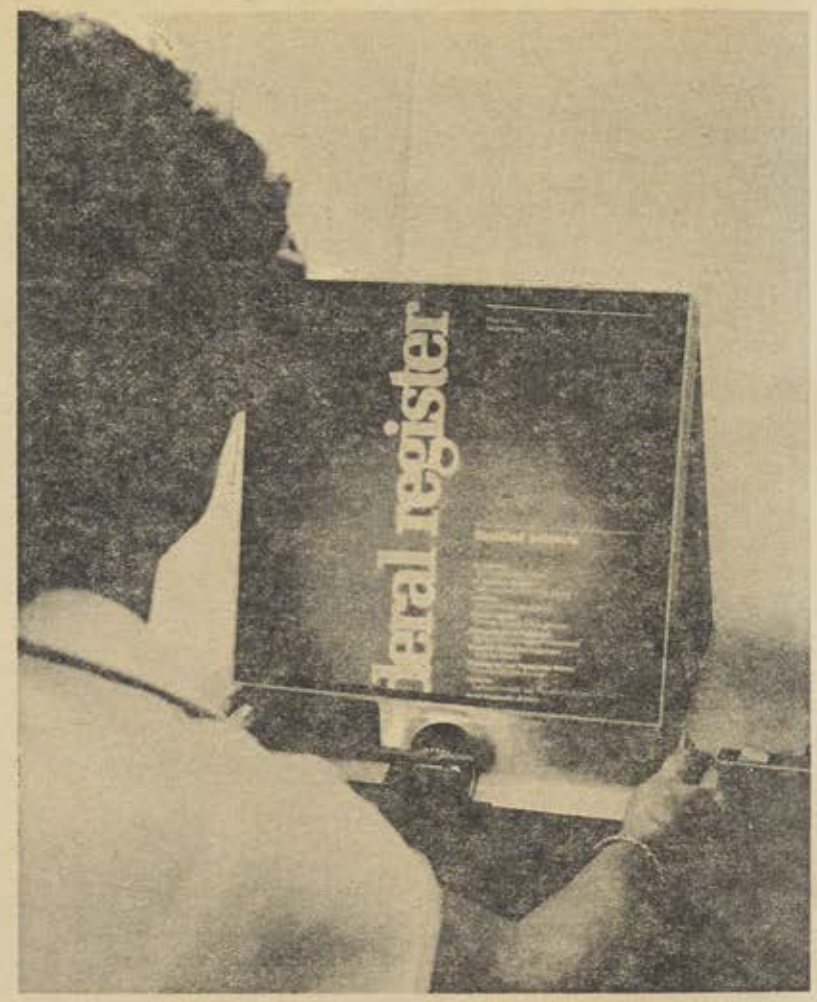

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Monday, September 19, 1983

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

Federal Acquisition Regulation; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 1

Establishing the Federal Acquisition Regulation

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Federal Acquisition Regulation (FAR) establishes (a) a single regulation for use by all Executive agencies in their acquisition of supplies and services with appropriated funds, and (b) the Federal Acquisition Regulations System consisting of the FAR and agency acquisition regulations that implement or supplement the FAR. The FAR is prepared, issued, and maintained, and the Federal Acquisition Regulations System is prescribed, jointly by the Secretary of Defense, the Administrator of General Services, and the Administrator, National Aeronautics and Space Administration, under their several statutory authorities. The FAR, together with agency supplemental regulations, replaces the current Federal Procurement Regulations System, the Defense Acquisition Regulation, and the NASA Procurement Regulation. Regulations in Titles 32 and 41 of the Code of Federal Regulations will continue to apply to existing contracts. The major intended effects of the FAR are to (a) produce a clear, understandable document that maximizes feasible uniformity in the acquisition process, (b) reduce the proliferation of agency acquisition regulations, (c) implement recommendations made by the Commission on Government Procurement, the Federal Paperwork Commission, various Congressional groups, and others, and (d) facilitate agency, industry, and public participation in the development and maintenance of the FAR and agency acquisition regulations.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT:
Mr. James T. Brannan, Director, Defense Acquisition Regulatory Council, for DOD, (202) 697-9125;
Mr. William B. Ferguson, Chairman, Civilian Agency Acquisition Council, for Civilian agencies other than NASA, (202) 566-1043;
Mr. Hugh H. Wilson, Director, Procurement Policy Division, for NASA, (202) 755-8530.

SUPPLEMENTARY INFORMATION:

Note.—Copies of the FAR in the **Federal Register**, loose-leaf, and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Copies of the FAR in loose-leaf form will be available before January 1, 1984.

List of Subjects in 48 CFR Chapter 1

Government procurement.

For the reasons set out in the preamble, there is established in the Code of Federal Regulations Title 48—Federal Acquisition Regulations System, Chapter 1—Federal Acquisition Regulation, consisting of Parts 1 through 69 to read as set forth below.

1984 EDITION

Foreword

The Federal Acquisition Regulation (FAR) is the primary regulation for use by all Federal Executive agencies in their acquisition of supplies and services with appropriated funds. The FAR System has been developed in accordance with the requirements of the Office of Federal Procurement Policy Act of 1974, as amended by Pub. L. 96-83. The FAR is issued within applicable laws under the joint authorities of the Administrator of General Services, the Secretary of Defense, and the Administrator for the National Aeronautics and Space Administration, under the broad policy guidelines of the Administrator for Federal Procurement Policy.

The FAR, together with agency supplemental regulations, replaces the current Federal Procurement Regulations System, the Defense Acquisition Regulation, and the NASA Procurement Regulation. It precludes agency acquisition regulations that unnecessarily repeat, paraphrase, or otherwise restate the FAR and it limits agency acquisition regulations to those necessary to implement FAR policies and procedures within an agency. The FAR provides for coordination, simplicity, and uniformity in the Federal acquisition process. The FAR includes changes recommended by the Commission on Government Procurement, the Federal Paperwork Commission, various congressional groups, and others. It also provides for agency and public participation in developing the FAR and agency acquisition regulations.

This edition is the initial publication of the FAR. It is effective on April 1, 1984, in accordance with procedures to be established by the undersigned.

Caspar W. Weinberger,
Secretary of Defense.

Gerald P. Carmen,
Administrator of General Services.

James M. Beggs,
Administrator, National Aeronautics and Space Administration.

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TITLE 48—Federal Acquisition Regulations System

CHAPTER 1

FEDERAL ACQUISITION REGULATION

GENERAL STRUCTURE

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FEDERAL ACQUISITION REGULATION

SUBCHAPTER A—General

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

1.000 Scope of part.

This part sets forth basic policies and general information about the Federal Acquisition Regulations System including purpose, authority, applicability, issuance, arrangement, numbering, dissemination, implementation, supplementation, maintenance, administration, and deviation. Subparts 1.2, 1.3, and 1.4 prescribe administrative procedures for maintaining the FAR System.

SUBPART 1.1—PURPOSE, AUTHORITY, ISSUANCE

1.101 Purpose.

The Federal Acquisition Regulations System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR includes guidelines and procedures for administering and maintaining the FAR System.

1.102 Authority.

(a) The development of the FAR System is in accordance with the requirements of the Office of Federal Procurement Policy Act of 1974 (Pub. L. 93-400), as amended by Pub. L. 96-83.

(b) The FAR is prepared, issued, and maintained, and the FAR System is prescribed, jointly by the Secretary of

Defense, the Administrator of General Services, and the Administrator, National Aeronautics and Space Administration, under their several statutory authorities.

1.103 Applicability.

The FAR applies to all acquisitions as defined in Part 2 of the FAR, except where expressly excluded.

1.104 Issuance.

1.104-1 Publication and code arrangement.

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

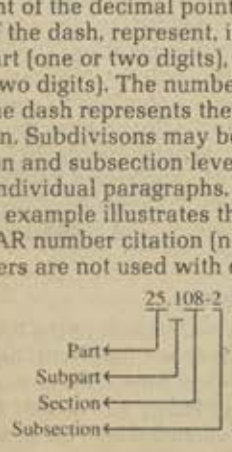
(b) The FAR is issued as Chapter 1 of Title 48, CFR. Subsequent chapters are reserved for agency acquisition regulations that implement or supplement the FAR (see Subpart 1.3). The CFR Staff will assign chapter numbers to requesting agencies.

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

1.104-2 Arrangement of regulations.

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

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



(2) Subdivisions below the section or subsection level shall consist of parenthetical alphanumerics reading from highest to lowest indenture as follows: lower case alphabet, Arabic numbers, lower case Roman numerals, and upper case alphabet. The following example is illustrative:

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

Subdivisions, below the 4th level shall repeat the sequence.

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

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

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

(i) Part would be "FAR Part 9" outside the FAR and "Part 9" within the FAR.

(ii) Subpart would be "FAR Subpart 9.1" outside the FAR and "Subpart 9.1" within the FAR.

(iii) Section would be "FAR 9.106" outside the FAR and "9.106" within the FAR.

(iv) Subsection would be "FAR 9.106-4" outside the FAR and "9.106-4" within the FAR.

(v) Paragraph would be "FAR 9.106-4(d)" outside the FAR and "9.106-4(d)" within the FAR.

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

1.104-3 Copies.

Copies of the FAR in Federal Register, loose-leaf, and CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

SUBPART 1.2—ADMINISTRATION

1.201 Maintenance of the FAR.

1.201-1 The two councils.

(a) Subject to the authorities discussed in 1.102, revisions to the FAR will be prepared and issued through the coordinated action of two councils, the Defense Acquisition Regulatory Council (DAR Council) and the Civilian Agency Acquisition Council (CAA Council). Members of these councils shall—

(1) Represent their agencies on a full-time basis;

(2) Be selected for their superior qualifications in terms of acquisition experience and demonstrated professional expertise; and

(3) Be funded by their respective agencies.

(b) The chairperson of the CAA Council shall be the representative of the Administrator of General Services. The other members of this council shall be one each representative from the (1) Departments of Agriculture, Commerce, Energy, Health and Human Services, Housing and Urban Development, Interior, Labor, and Transportation, and (2) Environmental Protection Agency, Small Business Administration, and Veterans Administration.

(c) The Director of the DAR Council shall be the representative of the Secretary of Defense. The operation of the DAR Council will be as prescribed by the Secretary of Defense. Membership shall include representatives of the military Departments, the Defense Logistics Agency, and the National Aeronautics and Space Administration.

(d) Responsibility for processing revisions to the FAR is apportioned by the two councils so that each council has cognizance over specified parts or subparts.

(e) Each council shall be responsible for—

(1) Agreeing on all revisions with the other council;

(2) Submitting to the FAR Secretariat (see 1.201-2) the information required under paragraphs 1.501(c) and (e) for publication in the Federal Register of a notice soliciting comments on a proposed revision to the FAR;

(3) Considering all comments received in response to notice of proposed revisions;

(4) Arranging for public meetings;

(5) Preparing any final revision in the appropriate FAR format and language; and

(6) Submitting any final revision to the FAR Secretariat for publication in the Federal Register and printing for distribution.

1.201-2 FAR Secretariat.

(a) The General Services Administration is reponsible for establishing and operating the FAR Secretariat to print, publish, and distribute the FAR through the Code of Federal Regulations system (including a loose-leaf edition with periodic updates).

(b) Additionally, the FAR Secretariat shall provide the two councils with centralized services for—

(1) Keeping a synopsis of current FAR cases and their status;

(2) Assigning FAR case numbers;

(3) Maintaining official files;

(4) Assisting parties interested in reviewing the files on completed cases; and

(5) Performing miscellaneous administrative tasks pertaining to the maintenance of the FAR.

1.202 Agency compliance with the FAR.

Agency compliance with the FAR (see 1.304) is the responsibility of the Secretary of Defense (for the military departments and defense agencies), the Administrator of General Services (for civilian agencies other than NASA), and the Administrator of NASA (for NASA activities).

SUBPART 1.3—AGENCY ACQUISITION REGULATIONS

1.301 Policy.

(a) Subject to the authorities in (c) below and other statutory authority and, except as stated in 1.301(b) below, an agency head may issue or authorize the issuance of agency acquisition regulations that (1) implement or supplement the FAR and (2) incorporate, together with the FAR, agency-wide policies, procedures, contract clauses, and solicitation provisions that govern the contracting process or otherwise control the relationship between the agency, including any of its suborganizations, and contractors or prospective contractors. Agency-wide acquisition regulations shall be published in the Federal Register as required by law.

(b) Subject to the authorities in (c) below and other statutory authority, an agency head may issue or authorize the issuance of internal agency guidance at any o ganizational level (e.g., designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements). Such agency internal guidance need not be published in the Federal Register.

(c) Agency acquisition regulations implementing or supplementing the FAR are, for—

(1) The military departments and defense agencies, issued subject to the authority of the Secretary of Defense;

(2) NASA activities, issued subject to the authorities of the Administrator of NASA; and

(3) The civilian agencies other than NASA, issued by the heads of those agencies subject to the overall authority of the Administrator of General Services or independent authority the agency may have.

1.302 Limitations.

Agency acquisition regulations shall be limited to—

(a) Those necessary to implement FAR policies and procedures within the agency; and

(b) Additional policies, procedures, solicitation provisions, or contract clauses that supplement the FAR to satisfy the specific needs of the agency.

1.303 Codification and public participation.

(a) Agency acquisition regulations that are published in the Federal Register shall be codified under an assigned chapter in Title 48, Code of Federal Regulations, and shall parallel the FAR in format, arrangement, and numbering system (but see 1.104-1(c)). Coverage in an agency acquisition regulation that implements a specific part, subpart, section, or subsection of the FAR shall be numbered and titled to correspond to the appropriate FAR number and title. Supplementary material for which there is no counterpart in the FAR shall be codified using chapter, part, subpart, section, or subsection numbers of 70 and up (e.g., for the Department of Interior, whose assigned chapter number in Title 48 is 14, Part 1470, Subpart 1401.70, section 1401.370, or subsection 1401.301-70.)

(b) Agency heads shall establish procedures to assure public participation when appropriate in the promulgation of agency acquisition regulations that must be published in the Federal Register (see 1.301(a)). The coverage on public participation in Subpart 1.5 shall be the principal guideline for establishing these procedures.

1.304 Agency control and compliance procedures.

(a) Under the authorities of 1.301(c), agencies shall control and limit issuance of agency acquisition regulations and shall establish formal procedures for the review of these regulations to assure compliance with this Part 1.

(b) Agency acquisition regulations shall not—

(1) Unnecessarily repeat, paraphrase, or otherwise restate material contained in the FAR or higher-level agency acquisition regulations; or

(2) Except as required by law or as provided in Subpart 1.4, conflict or be inconsistent with FAR content.

(c) Agencies shall evaluate all regulatory coverage in agency acquisition regulations to determine if it could apply to other agencies. Coverage that is not peculiar to one agency shall be recommended for inclusion in the FAR.

SUBPART 1.4—DEVIATIONS FROM THE FAR

1.400 Scope of subpart.

This subpart prescribes the policies and procedures for authorizing deviations from the FAR. Exceptions pertaining to the use of forms prescribed by the FAR are covered in Part 53 rather than in this subpart.

1.401 Definition.

"Deviation" means any one or combination of the following:

(a) The issuance or use of a policy, procedure, solicitation provision (see definition in 52.101(a)), contract clause (see definition in 52.101(a)), method, or practice of conducting acquisition actions of any kind at any stage of the acquisition process that is inconsistent with the FAR.

(b) The omission of any solicitation provision or contract clause when its prescription requires its use.

(c) The use of any solicitation provision or contract clause with modified or alternate language that is not authorized by the FAR (see definitions of "modification" and "alternate" in 52.101(a)).

(d) The use of a solicitation provision or contract clause prescribed by the FAR on a "substantially as follows" or "substantially the same as" basis (see definitions in 52.101(a)), if such use is inconsistent with the intent, principle, or substance of the prescription or related coverage on the subject matter in the FAR.

(e) The authorization of lesser or greater limitations on the use of any solicitation provision, contract clause, policy, or procedure prescribed by the FAR.

(f) The issuance of policies or procedures that govern the contracting process or otherwise control contracting relationships that are not incorporated into agency acquisition regulations in accordance with 1.301(a).

1.402 Policy.

Unless precluded by law, executive order, or regulation, deviations from the FAR may be granted as specified in this subpart when necessary to meet the specific needs and requirements of each agency. The development and testing of new techniques and methods of acquistion should not be stifled simply because such action would require a FAR deviation. The fact that deviation authority is required should not, of itself, deter agencies in their development and testing of new techniques and acquisition methods. Refer to 31.101 for instructions concerning deviations pertaining to the subject matter of Part 31, Contract Cost Principles and Procedures.

1.403 Individual deviations.

Individual deviations affect only one contracting action, and, unless 1.405(e) is applicable, may be authorized by agency heads or their designees. The justification and agency approval shall be documented in the contract file and a copy of the approved deviation shall be furnished to the FAR Secretariat through a central agency control point.

1.404 Class deviations.

Class deviations affect more than one contracting action. When it is known that a class deviation will be required on a permanent basis, an agency should propose an appropriate FAR revision to cover the matter. A copy of each approved class deviation shall be furnished to the FAR Secretariat.

(a) For civilian agencies except NASA, class deviations may be authorized by agency heads or their designees, unless 1.405(e) is applicable. Delegation of this authority shall not be made below the head of a contracting activity. Authorization of class deviations by agency officials is subject to the following limitations:

(1) An agency official who may authorize a class deviation, before doing so, shall consult with the chairperson of the Civilian Agency Acquisition Council (CAA Council), unless that agency official determines that urgency precludes such consultation.

(2) Recommended revisions to the FAR shall be transmitted to the FAR Secretariat by agency heads or their designees for authorizing class deviations.

(b) For DOD, class deviations shall be controlled and approved by the Deputy Under Secretary of Defense Research and Engineering (Acquisition Management) and shall be processed in accordance with agency regulations.

(c) For NASA, class deviations shall be controlled and approved by the Assistant Administrator for Procurement after consultation with the Deputy Under Secretary of Defense Research and Engineering (Acquisition Management). Deviations shall be processed in accordance with agency regulations.

1.405 Deviations pertaining to treaties and executive agreements.

(a) "Executive agreements," as used in this section, means Government-to-Government agreements, including agreements with international organizations, to which the United States is a party.

(b) Any deviation from the FAR required to comply with a treaty to which the United States is a party is authorized, unless the deviation would be inconsistent with FAR coverage based on a law enacted after the execution of the treaty.

(c) Any deviation from the FAR required to comply with an executive agreement is authorized unless the deviation would be inconsistent with FAR coverage based on law.

(d) A copy of the text of any deviation authorized under paragraphs (b) or (c) of this section shall be transmitted to the FAR Secretariat through a central agency control point.

(e) If a deviation required to comply with a treaty or an executive agreement is not authorized by paragraphs (b) or (c) of this section, then the request for deviation shall be processed through the FAR Secretariat to the appropriate council.

SUBPART 1.5—AGENCY AND PUBLIC PARTICIPATION

1.501 Solicitation of agency and public views.

(a) "Significant revisions of the FAR," as used in this section, means revisions that alter the substantive meaning of any coverage in the FAR having a substantial impact on the public. This expression, for example, does not include editorial, stylistic, or other revisions that have no impact on the basic meaning of the coverage being revised.

(b) Views of agencies and nongovernmental parties or organizations will be considered in formulating acquisition policies and regulations under the FAR.

(c) The opportunity to submit written comments on proposed significant revisions of the FAR will be provided by a notice in the Federal Register. Each of these notices shall state that—

(1) The text and an explanation of a proposed revision to a specified FAR segment is available for examination; and

(2) Comments on the proposed revision, addressed to the FAR Secretariat, are solicited for consideration in the formulation of the final revision that will be published in the Federal Register.

(d) Normally, at least 60 days will be given for the receipt of comments.

(e) Councils need not solicit comments if the (1) proposed coverage does not constitute a significant revision of the FAR, or (2) solicitation is impractical, such as when a new statute must be implemented in a relatively short period of time.

(f) Consideration shall also be given to unsolicited recommendations for revisions of the FAR that have been submitted in writing with sufficient data and rationale to permit their evaulation.

1.502 Public meetings.

Public meetings may be appropriate when a decision to adopt, amend, or delete FAR coverage is likely to benefit from significant additional views and discussion.

SUBPART 1.6—CONTRACTING AUTHORITY AND RESPONSIBILITIES

1.601 General.

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

1.602 Contracting officers.

1.602-1 Authority.

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

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

1.602-2 Responsibilities.

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

(a) Ensure that the requirements of 1.602-1(b) have been met, and that sufficient funds are available for obligation;

(b) Ensure that contractors receive impartial, fair, and equitable treatment; and

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

1.603 Selection, appointment, and termination of appointment.

1.603-1 General.

Consistent with 1.301(c), the agency shall establish a system for the selection, appointment, and termination of appointment of contracting officers. Agency heads or their designees may select and appoint contracting officers and terminate their appointments.

1.603-2 Selection.

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

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

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

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

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

(e) Satisfactory completion of acquisition training courses.

1.603-3 Appointment.

Contracting officers shall be appointed in writing on a "Certificate of Appointment," SF 1402, which shall state any limitation on the scope of authority to be exercised, other than limitations contained in applicable laws or regulations. Appointing officials shall maintain files containing copies of all Certificates of Appointment that have not been terminated.

1.603-4 Termination.

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

PART 2—DEFINITIONS OF WORDS AND TERMS

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

2.000 Scope of part.

This part defines words and terms commonly used in this regulation. Other terms are defined in the part or subpart with which they are particularly associated (see the Index for locations).

SUBPART 2.1—DEFINITIONS

As used throughout this regulation, the following words and terms are used as defined in this subpart unless (a) the context in which they are used clearly requires a different meaning or (b) a different definition is prescribed for a particular part or portion of a part.

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

"Affiliates" means associated business concerns or individuals if, directly or indirectly, (a) either one controls or can control the other or (b) a third party controls or can control both.

"Agency head" (see "head of the agency").

"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 41 U.S.C. 501, et seq. For discussion of various types of contracts, see Part 16.

"Contract administration office" means an office that performs (a) assigned postaward functions related to the administration of contracts and (b) assigned preaward functions.

"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.

"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 to administrative contracting officer or termination contracting officer does not (a) require that a duty be performed at a particular office or activity or (b) restrict in any way a contracting officer in the performance of any duty properly assigned.

"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. 846.

"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).

"Head of the agency" (also called "agency head") means the Secretary, Attorney General, Administrator, Governor, Chairperson, or other chief official of an executive agency, unless otherwise indicated, including any deputy or assistant chief official of an executive agency and, for the Department of Defense, the Under Secretary and any Assistant Secretary of the Departments of the Army, Navy, and Air Force and the Director and Deputy Director of Defense agencies; and the term "authorized representative" means any person, persons, or board (other than the contracting officer) authorized to act for the head of the agency or Secretary.

"Head of the contracting activity" includes the official who has overall responsibility for managing the contracting activity.

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

"National defense" means any activity related to programs for military or atomic energy production or construction, military assistance to any foreign nation, stockpiling, or space.

"Offer" means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (formal advertising) are offers called "bids;" responses to requests for proposals (negotiation) are offers called "proposals;" responses to requests for quotations (negotiation) are *not* offers and are called "quotes." For unsolicited proposals, see Subpart 15.5.

"Possessions" includes the Virgin Islands, Johnston Island, American Samoa, Guam, Wake Island, Midway Island, and the guano islands, but does not include Puerto Rico, leased bases, or trust territories.

"Shall" denotes the imperative.

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

"United States," when used in a geographic sense, means the 50 States and the District of Columbia.

SUBPART 2.2—DEFINITIONS CLAUSE

The contracting officer shall insert the clause at 52.202-1, Definitions, in solicitations and contracts except when (a) a fixed-price research and development contract that is expected to be $2,500 or less is contemplated or (b) a purchase order is contemplated. If the contract is for personal services; construction; architect-engineer services; or dismantling, demolition, or removal of improvements, the contracting officer shall use the clause with its Alternate I. Additional definitions may be included; *provided*, they are consistent with this clause and the Federal Acquisition Regulation.

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

3.000 Scope of part.

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

SUBPART 3.1—SAFEGUARDS

3.101 Standards of conduct.

3.101-1 General.

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

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

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

official duties. Certain limited exceptions are authorized in agency regulations.

3.101-3 Agency regulations.

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

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

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

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

3.102 Officials not to benefit.

3.102-1 General.

41 U.S.C. 22 requires that most Government contracts explicitly state that no member of Congress shall be admitted to any share or part of the contract or any benefit arising from it. If a contract is made between the U.S. Government and any member of or delegate to Congress, or resident commissioner, it may constitute a violation of 18 U.S.C. 431 and 432, resulting in—

(a) Both the officer or employee of the Government who awarded the contract and the member, delegate, or resident commissioner being subject to criminal penalties;

(b) The contract being void; and

(c) The contractor having to return any consideration paid by the Government under the contract.

3.102-2 Contract clause.

The contracting officer shall insert the clause at 52.203-1, Officials Not to Benefit, in solicitations and contracts, except those related to agriculture that are exempted by 41 U.S.C. 22.

3.103 Independent pricing.

3.103-1 Solicitation provision.

The contracting officer shall insert the provision at 52.203-2, Certificate of Independent Price Determination, in solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(a) The acquisition is to be made under the small purchase procedures in Part 13;

(b) The work is to be performed by foreign suppliers outside the United States, its possessions, and Puerto Rico;

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

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

3.103-2 Evaluating the certification.

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

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

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

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

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

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

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

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

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

(2) If the offeror deleted or modified subparagraph (a)(2) of the certificate, the offeror must have furnished with its offer a signed statement of the circumstances of the disclosure of prices contained in the bid or proposal. The chief of the contracting office shall review the altered certificate and the statement and shall determine, in writing, whether the disclosure was made for the purpose or had the effect of restricting competition. If the determination is positive, the bid or proposal shall be rejected; if it is negative, the bid or proposal shall be considered for award.

(3) Whenever an offer is rejected under subparagraph (1) or (2) above, or the certificate is suspected of being false, the contracting officer shall report the situation to the Attorney General in accordance with 3.303.

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

3.103-3 The need for further certifications.

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

SUBPART 3.2—CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL

3.201 Applicability.

This subpart applies to all executive agencies, except that coverage concerning exemplary damages applies only to the Department of Defense (10 U.S.C. 2207).

3.202 Contract clause.

The contracting officer shall insert the clause at 52.203-3, Gratuities, in solicitations and contracts, except those for personal services and those between military departments or defense agencies and foreign governments that do not obligate any funds appropriated to the Department of Defense.

3.203 Reporting suspected violations of the Gratuities clause.

Agency personnel shall report suspected violations of the Gratuities clause to the contracting officer or other designated official in accordance with agency procedures. The agency reporting procedures shall be published as an implementation of this section 3.203 and shall clearly specify—

(a) What to report and how to report it; and

(b) The channels through which reports must pass, including the function and authority of each official designated to review them.

3.204 Treatment of violations.

(a) Before taking any action against a contractor, the agency head or a designee shall determine, after notice and hearing under agency procedures, whether the contractor, its agent, or another representative, under a contract containing the Gratuities clause—

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended by the gratuity to obtain a contract or favorable treatment under a contract (intent generally must be inferred).

(b) Agency procedures shall afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents. The procedures should be as informal as practicable, consistent with principles of fundamental fairness.

(c) When the agency head or designee determines that a violation has occurred, the Government may—

(1) Terminate the contractor's right to proceed;

(2) Initiate debarment or suspension measures as set forth in Subpart 9.4; and

(3) Assess exemplary damages, if the contract uses money appropriated to the Department of Defense.

SUBPART 3.3—REPORTS OF IDENTICAL BIDS AND SUSPECTED ANTITRUST VIOLATIONS

3.301 General.

(a) Practices that eliminate competition or restrain trade usually lead to excessive prices and may warrant criminal, civil, or administrative action against the participants. Examples of anticompetitive practices are collusive bidding, follow-the-leader pricing, rotated low bids, collusive price estimating systems, and sharing of the business.

(b) Contracting personnel are an important potential source of investigative leads for antitrust enforcement and should therefore be sensitive to indications of unlawful behavior by offerors and contractors. Agency personnel shall report instances of identical bids in advertised acquisitions, in accordance with agency regulations, for referral to the Attorney General under 3.302. Agency personnel shall also report, in accordance with agency regulations, evidence of suspected antitrust violations in either advertised or competitively negotiated acquisitions for possible referral to (1) the Attorney General under 3.303 and (2) the agency office responsible for contractor debarment and suspension under Subpart 9.4.

3.302 Reporting identical bids.

3.302-1 Definitions.

"Identical bids" means bids for the same line item that are determined to be identical as to unit price or total line item amount, with or without the application of evaluation factors (e.g., discount or transportation cost).

"Line item" means an item of supply or service, specified in an invitation for bids, for which the bidder must bid a separate price.

3.302-2 Reporting requirements.

(a) Executive Order 10936 of April 24, 1961, requires submission of a report to the Attorney General when identical bids are received in connection with a formally advertised acquisition exceeding $10,000. In implementing this order, the Attorney General requires submission of a report concerning such an acquisition whenever the response to a solicitation under formal advertising procedures, including small business and labor surplus area restricted advertising, results in—

(1) The total bid value of all line items exceeding $10,000 (based on the apparent low bid for each line item); and

(2) The receipt of identical bids on at least one line item for which the apparent low bid exceeds $2,500.

(b) In the case of indefinite delivery contracts, the Government's estimated line item quantities shall be used in computing the bid value of line items for the purposes of identifying identical bids and meeting the reporting thresholds.

(c) Reports are required regardless of the—

(1) Disposition of the solicitation (e.g., award or cancellation);

(2) Fact that the identical bids were not the low bids; or

(3) Fact that the bids contain qualifying or restrictive limitations (e.g., all-or-none bids, or award on one item being conditioned on award of other items).

(d) A report filed with respect to an acquisition shall list each identically bid item except those for which—

(1) The apparent low bid is $2,500 or less; or

(2) Bids are received only from foreign sources with delivery and performance outside the United States, its possessions, and Puerto Rico.

(e) Agencies shall submit reports to the Attorney General on U.S. Department of Justice Form DJ 1500, Identical Bid Report for Procurement (see 53.303-DJ-1500). Preparation and distribution instructions are printed on the cover of each pad of forms. Reports shall be submitted within 20 days after the disposition of all bids.

(f) If identical bids are involved and a bidder fails to provide the information required by the solicitation provision at 52.214-8, Parent Company and Identifying Data, the contracting officer shall make one inquiry to obtain the information. If the bidder still does not provide it, the contracting officer shall indicate this in a note on the identical bid report.

3.303 Reporting suspected antitrust violations.

(a) Agencies are required by 41 U.S.C. 252(d) and 10 U.S.C. 2305(d) to report to the Attorney General bids received after formal advertising that evidence a violation of the antitrust laws. Agencies should also report offers received in competitively negotiated acquisitions if they evidence a violation of the antitrust laws. These reports are in addition to those required by 3.302 and Subpart 9.4.

(b) The antitrust laws are intended to ensure that markets operate competitively. Any agreement or mutual understanding among competing firms that restrains the natural operation of market forces is suspect. Paragraph (c) below identifies behavior patterns that are often associated with antitrust violations. Activities meeting the descriptions in paragraph (c) are not necessarily improper, but they are sufficiently questionable to warrant notifying the appropriate authorities, in accordance with agency procedures.

(c) Practices or events that may evidence violations of the antitrust laws include—

(1) The existence of an "industry price list" or "price agreement" to which contractors refer in formulating their offers;

(2) A sudden change from competitive bidding to identical bidding;

(3) Simultaneous price increases or follow-the-leader pricing;

(4) Rotation of bids or proposals, so that each competitor takes a turn in sequence as low bidder, or so that certain competitors bid low only on some sizes of contracts and high on other sizes;

(5) Division of the market, so that certain competitors bid low only for contracts let by certain agencies, or for contracts in certain geographical areas, or on certain products, and bid high on all other jobs;

(6) Establishment by competitors of a collusive price estimating system;

(7) The filing of a joint bid by two or more competitors when at least one of the competitors has sufficient technical capability and productive capacity for contract performance;

(8) Any incidents suggesting direct collusion among competitors, such as the appearance of identical calculation or spelling errors in two or more competitive offers or the submission by one firm of offers for other firms; and

(9) Assertions by the employees, former employees, or competitors of

offerors, that an agreement to restrain trade exists.

(d) In addition to being reported under 3.302, identical bids shall be reported under this section if the agency has some reason to believe that the bids resulted from collusion.

(e) Agency reports shall be addressed to the Attorney General, U.S. Department of Justice, Washington, DC 20530, Attention: Assistant Attorney General, Antitrust Division, and shall include—

(1) A brief statement describing the suspected practice and the reason for the suspicion; and

(2) The name, address, and telephone number of an individual in the agency who can be contacted for further information.

(f) Questions concerning this reporting requirement may be communicated by telephone directly to the Office of the Assistant Attorney General, Antitrust Division.

SUBPART 3.4—CONTINGENT FEES

3.400 Scope of subpart.

This subpart prescribes policies and procedures that restrict contingent fee arrangements for soliciting or obtaining Government contracts to those permitted by 10 U.S.C. 2306(b) and 41 U.S.C. 254(a).

3.401 Definitions.

"Bona fide agency," as used in this subpart, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this subpart, means a person employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this subpart, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this subpart, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

3.402 Statutory requirements.

Contractors' arrangements to pay contingent fees for soliciting or obtaining Government contracts have long been considered contrary to public policy because such arrangements may lead to attempted or actual exercise of improper influence. In 10 U.S.C. 2306(b) and 41 U.S.C. 254(a), Congress affirmed this public policy but permitted certain exceptions. These statutes—

(a) Require in every negotiated contract a warranty by the contractor against contingent fees;

(b) Permit, as an exception to the warranty, contingent fee arrangements between contractors and bona fide employees or bona fide agencies; and

(c) Provide that, for breach or violation of the warranty by the contractor, the Government may annul the contract without liability or deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

3.403 Applicability.

This subpart applies to all contracts. Statutory requirements for negotiated contracts are, as a matter of policy, extended to formally advertised contracts.

3.404 Solicitation provision and contract clause.

(a) Prospective contractors are generally required to disclose contingent fee arrangements, other than those with full-time bona fide employees working solely for the prospective contractor, in order to permit the Government to evaluate the arrangements before award.

(b) The contracting officer shall insert the provision at 52.203-4, Contingent Fee Representation and Agreement, in solicitations, except when—

(1) Contracting by formal advertising, and the contract amount is expected to be $25,000 or less;

(2) The contract amount is not expected to exceed the appropriate small purchase limitation in Part 13;

(3) The solicitation is for perishable subsistence supplies, and the contract amount is expected to be $25,000 or less;

(4) The solicitation is for personal services to be paid for on a time basis;

(5) The solicitation is for utility services, at rates regulated by Federal, State, or other regulatory bodies, from a public utility company that is the sole source;

(6) The award under the solicitation is to be made in a foreign country; or

(7) Any other Department of Defense contracts, individually or by class, have been designated by the Secretary for exception. Reports of such exceptions shall be filed promptly with the Administrator of General Services Administration.

(c) The contracting officer shall insert the clause at 52.203-5, Covenant Against Contingent Fees, in all solicitations and contracts.

3.405 Review of Contingent Fee Representation and Agreement.

(a) Prospective contractors may not use any claimed professional or special relationship (other than that of a full-time bona fide employee working solely for the prospective contractor) as a basis for nondisclosure of contingent fee arrangements. The fact that a fee is for information does not exclude it from the definition of contingent fee.

(b) Contracting officers shall review each prospective contractor's offer or quotation and take the following actions:

(1) Ensure that the prospective contractor has completed both subparagraph (a)(1) and (a)(2) of the solicitation provision at 52.203-4, Contingent Fee Representation and Agreement.

(2) Consider failure to complete the representation a minor informality and afford the prospective contractor another opportunity to comply.

(3) If the prospective contractor still does not furnish the representation, reject the offer or quotation.

(4) If the prospective contractor answered subparagraphs (a)(1) and (a)(2) of the representation negatively, accept the representation, unless there is a reason to question its accuracy, and proceed with the contractual action.

(5) If the prospective contractor has answered subparagraph (a)(1) or (a)(2) affirmatively, secure a completed Standard Form 119, Statement of Contingent or Other Fees (see 53.301-119), or the statement authorized by the representation and agreement.

3.406 Award before receipt of the SF 119.

Contracting officers may award formally advertised contracts before receipt of the SF 119 or the statement. Negotiated contracts may not be awarded before receipt and evaluation of the SF 119 or statement, unless specifically approved by the chief of the contracting office.

3.407 Failure or refusal to furnish the SF 119.

If the prospective contractor fails or refuses to furnish the SF 119 or the statement in response to the contracting

officer's request, the chief of the contracting office shall determine whether to make further efforts to secure the SF 119 or statement or to initiate appropriate actions under 3.409.

3.408 Evaluation of the SF 119.

3.408-1 Responsibilities.

(a) The contracting officer shall evaluate the SF 119 and all related information to determine—

(1) Whether a contingent fee arrangement exists between the prospective contractor and a person or company other than a full-time bona fide employee working solely for the prospective contractor; and

(2) When such a contingent fee arrangement does exist, whether it meets the statutory exception permitting contingent fee arrangements with bona fide employees or agencies.

(b) The contracting officer's documentation of the evaluation, conclusion, and any proposed actions shall be reviewed at a level above the contracting officer in accordance with agency procedures.

3.408-2 Evaluation criteria.

(a) *Improper influence.* By definition (see 3.401), a bona fide employee or bona fide agency neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts. If the contracting officer decides that there is a reasonable basis to conclude that improper influence has been or will be exerted or proposed, or that the employee or agency has held out as being able to obtain any Government contract or contracts through improper influence, the employee or agency shall not be considered bona fide.

(b) *Bona fide employee.* An employee may be bona fide but not work on a full-time basis solely for the contractor (e.g., small business concerns may need to employ persons who also represent other concerns). Prospective contractors must disclose such arrangements in the representation and agreement and submit the SF 119 or the statement. However, contingent compensation arrangements with bona fide employees, customary in the trade, are within the statutory exception and are not prohibited. In determining whether an employee is bona fide, the contracting officer shall—

(1) Compare the employment arrangement to the definition of bona fide employee in 3.401;

(2) Consider the criteria in subparagraphs (c)(1), (2), and (5) below, as appropriate; and

(3) Consider the continuity of employment. The employment must contemplate some continuity and not be solely for obtaining one or more specific Government contracts.

(c) *Bona fide agency.* The following guidelines are intended to help contracting officers determine whether an agency is a "bona fide agency," as defined in 3.401. They describe circumstances ordinarily existing in acceptable arrangements in which the agency is bona fide. However, the guidelines are not individually or collectively inviolable rules. The contracting officer must evaluate each arrangement in its totality, including attendant facts and circumstances.

(1) The fee should not be inequitable or exorbitant when compared to the services performed or to customary fees for similar services related to commercial business.

(2) The agency should have adequate knowledge of the contractor's products and business, as well as other qualifications necessary to sell the products or services on their merits.

(3) The contractor and the agency should have a continuing relationship or, in newly established relationships, should contemplate future continuity.

(4) The agency should be an established concern that has existed for a considerable period, or be a newly established going concern likely to continue in the future. The business of the agency should be conducted in the agency name and characterized by the customary indicia of the conduct of regular business.

(5) While an agency that confines its selling activities to Government contracts is not disqualified, the fact that an agency represents the contractor in Government and commercial sales should receive favorable consideration.

3.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Government personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant Against Contingent Fees shall report the matter promptly to the contracting officer or appropriate higher authority in accordance with agency procedures.

(b) When there is specific evidence or other reasonable basis to suspect one or more of the violations in paragraph (a) above, the chief of the contracting office shall review the facts and, if appropriate, take or direct one or more of the following, or other, actions:

(1) If before award, reject the bid or proposal.

(2) If after award, enforce the Government's right to annul the contract or to recover the fee.

(3) Initiate suspension or debarment action under Subpart 9.4.

(4) Refer suspected fraudulent or criminal matters to the Department of Justice, as prescribed in agency regulations.

3.410 Records.

For enforcement purposes, agencies shall preserve any representation and the original SF 119 or statement, together with all other pertinent data, including a record of actions taken. Contracting offices shall not retire or destroy these records until it is certain that they are no longer needed for enforcement purposes. If the original record is maintained in a central file, a copy must be retained in the contract file.

SUBPART 3.5—OTHER IMPROPER BUSINESS PRACTICES

3.501 Buying-in.

3.501-1 Definition.

"Buying-in" means submitting an offer below anticipated costs, expecting to—

(a) Increase the contract amount after award (e.g., through unnecessary or excessively priced change orders); or

(b) Receive follow-on contracts at artificially high prices to recover losses incurred on the buy-in contract.

3.501-2 General.

(a) Buying-in may decrease competition or result in poor contract performance. The contracting officer must take appropriate action to ensure buying-in losses are not recovered by the contractor through the pricing of (1) change orders or (2) follow-on contracts subject to cost analysis.

(b) The Government should minimize the opportunity for buying-in by seeking a price commitment covering as much of the entire program concerned as is practical by using—

(1) Multiyear contracting, with a requirement in the solicitation that a price be submitted only for the total multiyear quantity; or

(2) Priced options for additional quantities that, together with the firm contract quantity, equal the program requirements (see Subpart 17.2).

(c) Other safeguards are available to the contracting officer to preclude recovery of buying-in losses (e.g., amortization of nonrecurring costs (see 15.804-6(f)) and treatment of unreasonable price quotations (see 15.803(d)).

3.502 Subcontractor kickbacks.

(a) The Anti-Kickback Act (41 U.S.C. 51-54) was passed to deter subcontractors from making payments to influence the award of subcontracts. The Act—

(1) Prohibits payments, by or on behalf of a subcontractor in any tier under any Government negotiated contract, as an inducement to or acknowledgment of the award of a subcontract or order (a payment includes a fee, commission, compensation, gift, or gratuity to the prime contractor or any higher tier subcontractor or to any officer, partner, employee, or agent of the prime contractor or any higher tier subcontractor);

(2) Prohibits the subcontractor from charging these payments to the prime contractor or higher tier subcontractor;

(3) Creates a conclusive presumption that the payments have been included in the price of the subcontract or order and borne by the Government;

(4) Provides for the Government to recover these payments from the subcontractor or recipient by court action or by setoff of moneys otherwise due the subcontractor (this may be accomplished either by the Government directly or by the prime contractor); and

(5) Imposes criminal penalties on any person who knowingly makes or receives these payments.

(b) Agencies shall report suspected violations of the Act in accordance with agency procedures.

SUBPART 3.6—CONTRACTS WITH GOVERNMENT EMPLOYEES OR ORGANIZATIONS OWNED OR CONTROLLED BY THEM

3.601 Policy.

Except as specified in 3.602, a contracting officer shall not knowingly award a contract to a Government employee or to a business concern or other organization owned or substantially owned or controlled by one or more Government employees. This policy is intended to avoid any conflict of interest that might arise between the employees' interests and their Government duties, and to avoid the appearance of favoritism or preferential treatment by the Government toward its employees.

3.602 Exceptions.

The agency head, or a designee not below the level of the head of the contracting activity, may authorize an exception to the policy in 3.601 only if there is a most compelling reason to do so, such as when the Government's needs cannot reasonably be otherwise met.

3.603 Responsibilities of the contracting officer.

(a) Before awarding a contract, the contracting officer shall obtain an authorization under 3.602 if—

(1) The contracting officer knows, or has reason to believe, that a prospective contractor is one to which award is otherwise prohibited under 3.601; and

(2) There is a most compelling reason to make an award to that prospective contractor.

(b) The contracting officer shall comply with the requirements and guidance in Subpart 9.5 before awarding a contract to an organization owned or substantially owned or controlled by Government employees.

PART 4—ADMINISTRATIVE MATTERS

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

4.000 Scope of part.

This part prescribes policies and procedures relating to the administrative aspects of contract execution, distribution, reporting, retention, and files.

SUBPART 4.1—CONTRACT EXECUTION

4.101 Contracting officer's signature.

(a) Only contracting officers shall sign contracts on behalf of the United States. The contracting officer's name and official title shall be typed, stamped, or printed on the contract. The contracting officer normally signs the contract after it has been signed by the contractor. The contracting officer shall ensure that the signer(s) have authority to bind the contractor (see specific requirements in 4.102 below).

(b) Each signed or reproduced copy of the signed contract or modification that is intended to have the same force and effect as the signed original shall be marked "DUPLICATE ORIGINAL".

4.102 Contractor's signature.

(a) *Individuals.* A contract with an individual shall be signed by that individual. A contract with an individual doing business as a firm shall be signed by that individual, and the signature shall be followed by the individual's typed, stamped, or printed name and the words ", an individual doing business as ....." [*insert name of firm*].

(b) *Partnerships.* A contract with a partnership shall be signed in the partnership name. Before signing for the Government, the contracting officer shall obtain a list of all partners and ensure that the individual(s) signing for the partnership have authority to bind the partnership.

(c) *Corporations.* A contract with a corporation shall be signed in the corporate name, followed by the word "by" and the signature and title of the person authorized to sign. The contracting officer shall ensure that the person signing for the corporation has authority to bind the corporation.

(d) *Joint venturers.* A contract with joint venturers may involve any combination of individuals, partnerships, or corporations. The contract shall be signed by each participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. When a corporation is participating, the contracting officer shall obtain from the corporation secretary a certificate stating that the corporation is authorized to participate in the joint venture.

(e) *Agents.* When an agent is to sign the contract, other than as stated in paragraphs (a) through (d) above, the agent's authorization to bind the principal must be established by evidence satisfactory to the contracting officer.

4.103 Contract clause.

The contracting officer shall insert the clause at 52.204-1, Approval of Contract, in solicitations and contracts when agency procedures require written approval of the contract at a level above that of the contracting officer.

SUBPART 4.2—CONTRACT DISTRIBUTION

4.201 Procedures.

Contracting officers shall distribute copies of contracts or modifications within 10 working days after execution by all parties. As a minimum, the contracting officer shall—

(a) Distribute simultaneously one signed copy or reproduction of the signed contract (see 4.101(b)), to the contractor and the paying office;

(b) When a contract is assigned to another office for contract administration (see Subpart 42.2), provide to that office—

(1) One copy or reproduction of the signed contract and of each modification (stamped "DUPLICATE ORIGINAL"; see 4.101(b)); and

(2) A copy of the contract distribution list, showing those offices that should receive copies of modifications, and any changes to the list as they occur;

(c) Distribute one copy to each accounting and finance office (funding office) whose funds are cited in the contract;

(d) When the contract is not assigned for administration but contains a Cost Accounting Standards clause, provide one copy of the contract to the cognizant administrative contracting officer and mark the copy "FOR COST ACCOUNTING STANDARDS ADMINISTRATION ONLY" (see 30.401(b));

(e) Provide one copy of each contract or modification that requires audit service to the appropriate field audit office listed in the "Directory of Federal Contract Audit Offices" (copies of this directory can be ordered from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402, referencing stock numbers 008-007-03189-9 and 008-007-03190-2 for Volumes I and II, respectively); and

(f) Provide copies of contracts and modifications to those organizations required to perform contract administration support functions (e.g., when manufacturing is performed at multiple sites, the contract administration office cognizant of each location).

4.202 Agency distribution requirements.

Agencies shall limit additional distribution requirements to the minimum necessary for proper performance of essential functions. When contracts are assigned for administration to a contract administration office located in an agency different from that of the contracting office (see Part 42), the two agencies shall agree on any necessary distribution in addition to that prescribed in 4.201 above.

SUBPART 4.3—[RESERVED]

SUBPART 4.4—SAFEGUARDING CLASSIFIED INFORMATION WITHIN INDUSTRY

4.401 Definitions.

"Classified acquisition" means an acquisition that consists of one or more contracts in which offerors would be required to have access to classified information (Confidential, Secret, or Top Secret) to properly submit an offer or quotation, to understand the performance requirements of a classified contract under the acquisition, or to perform the contract.

"Classified contract" means any contract that requires, or will require, access to classified information (Confidential, Secret, or Top Secret) by the contractor or its employees in the performance of the contract. A contract may be a classified contract even though the contract document is not classified.

"Classified information" means any information or material that is owned by, produced by or for, or under the control of the United States Government, and determined pursuant to Executive Order 12065, June 28, 1978 (43 FR 28949, July 3, 1978) or prior orders to require protection against unauthorized disclosure, and is so designated.

4.402 General.

(a) Executive Order 10865, February 20, 1960 (25 FR 1583, February 25, 1960), entitled "Safeguarding Classified Information Within Industry," as amended by Executive Order 10909, January 17, 1961 (26 FR 508, January 20, 1961), forms the basis for agency regulations concerning safeguarding the release of classified information to U.S. industry.

(b) The Department of Defense (DOD) has incorporated the requirements of these Executive Orders into the Defense Industrial Security Program (DISP), administered by the Defense Investigative Service, 1900 Half Street, SW, Washington, DC 20324, (Director for Industrial Security). The following DOD publications implement the program:

(1) *Industrial Security Regulation* (ISR) (DOD 5220.22-R).

(2) *Industrial Security Manual for Safeguarding Classified Information* (ISM) (DOD 5220.22-M).

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

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

4.403 Responsibilities of contracting officers.

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

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

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

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

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

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

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

(2) Include (i) an appropriate Security Requirements clause in the solicitation (see 4.404), and (ii) as appropriate, in solicitations and contracts when the contract may require access to classified information, a requirement for security safeguards in addition to those provided in the clause (52.204-2, Security Requirements).

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

(1) Agencies covered by the DISP shall use the Contract Security Classification Specification, DD Form 254. The contracting officer, or authorized representative, is the approving official for the form and shall ensure that it is prepared and distributed in accordance with Section VII of the ISR.

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

4.404 Contract clause.

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

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

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

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

SUBPART 4.5—[RESERVED]

SUBPART 4.6—CONTRACT REPORTING

4.600 Scope of subpart.

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

4.601 Federal Procurement Data System.

(a) The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data to the Federal Procurement Data Center (FPDC), which collects, processes, and disseminates official statistical data on Federal contracting. The data provide (1) a basis for recurring and special reports to the President, the Congress, the General Accounting Office, Federal executive agencies, and the general public; (2) a means of measuring and assessing the impact of Federal contracting on the Nation's economy and the extent to which small business concerns and small disadvantaged business concerns are sharing in Federal contracts; and (3) data for other policy and management control purposes.

(b) The *FPDS Reporting Manual* provides a complete list of reporting and nonreporting agencies and organizations. This manual (available at no charge from the Federal Procurement Data Center, General Services Administration, Suite 900, 4040 N. Fairfax Drive, Arlington, VA 22203, telephone (703) 235-2141) provides the necessary instruction to the data collection point in each agency as to what data are required and how often to provide the data.

(c) Data collection points in each agency report data on SF 279, Individual Contract Action Report (over $10,000), and SF 281, Summary of Contract Actions of $10,000 or less, or computer-generated equivalent.

SUBPART 4.7—CONTRACTOR RECORDS RETENTION

4.700 Scope of subpart.

This subpart provides policies and procedures for retention of records by contractors to meet the records review requirements of the Government. In this subpart, the terms "contracts" and "contractors" include "subcontracts" and "subcontractors."

4.701 Purpose.

The purpose of this subpart is to generally describe records retention requirements and to allow reductions in the retention period for specific classes of records under prescribed circumstances.

4.702 Applicability.

(a) This subpart applies to records generated under contracts that contain one of the following clauses:

(1) Examination of Records by Comptroller General (52.215-1).

(2) Audit—Formal Advertising (52.214-26).

(3) Audit—Negotiation (52.215-2).

(b) This subpart is not mandatory on Department of Energy contracts for which the Comptroller General allows alternative records retention periods. Apart from this exception, this subpart applies to record retention periods under contracts that are subject to Chapter 137, Title 10, U.S.C., and the Federal Property and Admininstrative Services Act of 1949, as amended, 40 U.S.C. 471 et seq.

4.703 Policy.

(a) Except as stated in 4.703(b), contractors shall make available books, records, documents, and other supporting evidence to satisfy contract negotiation, administration, and audit requirements of the contracting agencies and the Comptroller General for (1) 3 years after final payment or, for certain records, (2) the period specified in 4.705 and 4.704, whichever of these periods expires first.

(b) Contractors shall make available the foregoing documents and supporting evidence for a longer period of time than is required in 4.703(a) if—

(1) A retention period longer than that cited in 4.702(a) is specified in any contract clause; or

(2) The contractor, for its own purposes, retains the foregoing documents and supporting evidence for a longer period. Under this circumstance, the retention period shall be the period of the contractor's retention or 3 years after final payment, whichever period expires first.

(c) Contractors need not retain duplicate copies of records or supporting documents unless they contain significant information not shown on the record copy.

(d) Contractors need not retain intermediate data records consisting of punched cards, electronic tape, or comparable media if printouts or listings are prepared and maintained. The printouts or listings must show the details of the transactions charged or allocated to individual Government contracts and must identify the supporting source documents.

4.704 Calculation of retention periods.

(a) The retention periods in 4.705 are calculated from the end of the contractor's fiscal year in which an entry is made charging or allocating a cost to a Government contract or subcontract. If a specific record contains a series of entries, the retention period is calculated from the end of the contractor's fiscal year in which the

final entry is made. The contractor should cut off the records in annual blocks and retain them for block disposal under the prescribed retention periods.

(b) When records generated during a prior contract are relied upon by a contractor for cost or pricing data in negotiating a succeeding contract, the prescribed periods shall run from the date of the succeeding contract.

(c) If two or more of the record categories described in 4.705 are interfiled and screening for disposal is not practical, the contractor shall retain the entire record series for the longest period prescribed for any category of records.

4.705 Specific retention periods.

The contractor shall retain the records identified in 4.705-1 through 4.705-3 for the periods designated, provided retention is required under 4.702. Records are identified in this subpart in terms of their purpose or use and not by specific name or form number. Although the descriptive identifications may not conform to normal contractor usage or filing practices, these identifications apply to all contractor records that come within the description.

4.705-1 Financial and cost accounting records.

(a) Accounts receivable invoices, adjustments to the accounts, invoice registers, carrier freight bills, shipping orders, and other documents which detail the material or services billed on the related invoices: Retain 4 years.

(b) Material, work order, or service order files, consisting of purchase requisitions or purchase orders for material or services, or orders for transfer of material or supplies: Retain 4 years.

(c) Cash advance recapitulations, prepared as posting entries to accounts receivable ledgers for amounts of expense vouchers prepared for employees' travel and related expenses: Retain 4 years.

(d) Paid, canceled, and voided checks, other than those issued for the payment of salary and wages: Retain 4 years.

(e) Accounts payable records to support disbursements of funds for materials, equipment, supplies, and services, containing originals or copies of the following and related documents: remittance advices and statements, vendors' invoices, invoice audits and distribution slips, receiving and inspection reports or comparable certifications of receipt and inspection of material or services, and debit and credit memoranda: Retain 4 years.

(f) Labor cost distribution cards or equivalent documents: Retain 2 years.

(g) Petty cash records showing description of expenditures, to whom paid, name of person authorizing payment, and date, including copies of vouchers and other supporting documents: Retain 2 years.

4.705-2 Pay administration records.

(a) Payroll sheets, registers, or their equivalent, of salaries and wages paid to individual employees for each payroll period; change slips; and tax withholding statements: Retain 4 years.

(b) Clock cards or other time and attendance cards: Retain 2 years.

(c) Paid checks, receipts for wages paid in cash, or other evidence of payments for services rendered by employees: Retain 2 years.

4.705-3 Acquisition and supply records.

(a) Store requisitions for materials, supplies, equipment, and services: Retain 2 years.

(b) Work orders for maintenance and other services: Retain 4 years.

(c) Equipment records, consisting of equipment usage and status reports and equipment repair orders: Retain 4 years.

(d) Expendable property records, reflecting accountability for the receipt and use of material in the performance of a contract: Retain 4 years.

(e) Receiving and inspection report records, consisting of reports reflecting receipt and inspection of supplies, equipment, and materials: Retain 4 years.

(f) Purchase order files for supplies, equipment, material, or services used in the performance of a contract; supporting documentation and backup files including, but not limited to, invoices, and memoranda; e.g., memoranda of negotiations showing the principal elements of subcontract price negotiations (see 52.244-1 and 52.244-2): Retain 4 years.

(g) Production records of quality control, reliability, and inspection: Retain 4 years.

4.706 Microfilming records.

4.706-1 General.

(a) Contractors may use microfilm (e.g., film chips, jackets, aperture cards, microprints, roll film, and microfiche) for recordkeeping, subject to the limitations in this subpart.

(b) In the process of microfilming documents, the contractor shall also microfilm all relevant notes, worksheets, and other papers necessary for reconstructing or understanding the records.

(c) The contractor shall review all microfilm before destroying the hard-copy documents to ensure legibility and reproducibility of the microfilm.

(d) Unless earlier retirement of records is permitted by 4.705, or the administrative contracting officer agrees to a lesser retention period when the contractor has established adequate internal controls including continuing surveillance over the microfilm system, the contractor shall not destroy original records that have been microfilmed, until—

(1) All claims under the contract are settled;

(2) Eighteen months have passed since final payment; or

(3) The time original records are required to be kept by other laws or regulations has elapsed.

4.706-2 Filing and retrieval.

The contractor shall—

(a) Maintain an effective indexing system to permit timely and convenient access to the microfilmed records by the Government;

(b) Provide strict security measures to prevent the loss of microfilm and to safeguard classified information;

(c) Store microfilm in a fireproof cabinet in an environment ensuring the safety of these records for the specified retention periods; and

(d) Have adequate viewing equipment and provide printouts the approximate size of the original material.

4.706-3 Quality control.

(a) Microfilm, when displayed on a microfilm reader (viewer) or reproduced on paper, must exhibit a high degree of legibility and readability.

(b) The quality of the contractor's record microfilming process is subject to periodic review by the administrative contracting officer.

SUBPART 4.8—CONTRACT FILES

4.800 Scope of subpart.

This subpart prescribes requirements for establishing, maintaining, and disposing of contract files for all contractual actions. The application of this subpart to small purchases and other simplified procedures covered by Part 13 is optional. See also documentation requirements in 13.106(c).

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, which shall document 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, which shall document actions reflecting the basis for and the performance of contract administration responsibilities; and

(3) The paying office contract file, which shall document 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 shall be maintained at organizational levels that shall 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 shall be assigned. A central control and, if needed, a locator system should be established to ensure the ability to locate promptly any contract files.

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) Request for authority to negotiate, and associated determination and findings.

(3) Evidence of availability of funds.

(4) Synopsis of proposed acquisition as published in the Commerce Business Daily or reference thereto.

(5) The list of sources solicited, approval of and justification for limiting the number of sources, 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.

(7) Government estimate of contract price.

(8) A copy of the solicitation.

(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.

(11) Contractor's contingent fee representation and other certifications and representations.

(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) Cost or pricing data and Certificates of Current Cost or Pricing Data or a required justification for waiver.

(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. These proposals may be filed separately for early disposal (see 4.805(h)).

(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.

(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) Cost and pricing data, Certificates of Current 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) below, time standards for closing out contract files are as follows:
(1) Small purchase files should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulation.
(2) Files for all firm-fixed-price contracts other than small purchases should be closed within 6 months of the month in 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.
(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) Small purchase files 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) below, 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) Facilities contracts and 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 Detailed procedures for closing out contract files.

(a) The office administering the contract is responsible for initiating (automated or manual) administrative closeout procedures to 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) Deobligation of excess funds is recommended.
(b) When the actions in paragraph (a) above have been verified, the contracting officer administering the contract shall 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 shall 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 Disposal of contract files.

Agencies shall prescribe procedures for the handling, storing, and disposing of contract files. However, such procedures shall include provisions that the documents specified below shall not be destroyed before the times indicated:

Document	Retention Period
(a) Records pertaining to exceptions or protests, claims for or against the United States, investigations, cases pending or in litigation, or similar matters.	Until final clearance or settlement, or until the retention period otherwise specified for the document in paragraphs (b) through (n) below is completed, whichever is later.
(b) Signed originals of (1) contracts and (2) modifications thereto.	6 years and 3 months after final payment.
(c) Data pertaining to each contract negotiation under 15.201, and 15.207 through 15.215.	6 years and 3 months after final payment.
(d) Signed originals of determinations and findings authorizing contracting by negotiation, and copies of documents supporting the determinations and findings.	6 years and 3 months after final payment.
(e) Signed originals of small purchases and modifications thereto and construction contracts under $2,000.	3 years after final payment.
(f) All unsuccessful offers or quotations that pertain to contracts below the appropriate small purchase limitation in Part 13.	Retain 1 year after date of award or until final payment, whichever is later; but if the contracting officer determines that the files have future value to the Government, retain as long as advisable.
(g) Contract status (progressing), expediting, and production surveillance records.	6 months after final payment.
(h) Rejected engineering change proposals.	6 months after final payment.
(i) Labor compliance records, including equal employment opportunity records.	3 years after final payment.
(j) Documents pertaining generally to the contractor as described at 4.801(c)(3).	Until superseded or obsolete.
(k) Records or documents other than those in paragraphs 4.805(a)-(j) above pertaining to contracts below the appropriate small purchase limitation in Part 13.	1 year after final payment.
(l) Records or documents other than those in paragraphs 4.805(a)-(k) above pertaining to contracts above the appropriate small purchase limitation in Part 13.	6 years and 3 months after final payment.
(m) Files for cancelled solicitations (see 4.801(c)(1)).	5 years after cancellation.
(n) Solicited and unsolicited unsuccessful bids and proposals above the appropriate small purchase limitation in Part 13.	
(1) When filed separately from contract case files.	Until contract completion date.
(2) When filed with contract case files.	6 years and 3 months after final payment.

PART 5—PUBLICIZING CONTRACT ACTIONS

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

5.000 Scope of part.

This part prescribes policies and procedures for publicizing contract opportunities and award information.

5.001 Policy.

Contracting officers shall publicize contract actions offering competitive opportunities for contractors and subcontractors, in order to—

(a) Increase competition;

(b) Broaden industry participation in meeting Government requirements; and

(c) Assist small business concerns, small disadvantaged business concerns, and labor surplus area concerns in obtaining contracts and subcontracts.

SUBPART 5.1—DISSEMINATION OF INFORMATION

5.101 Methods of disseminating information.

(a) Except as provided in 5.202, contracting officers shall disseminate information on proposed contracts in amounts over $5,000 for civilian agencies and $10,000 for defense agencies by—

(1) Synopsizing in the Commerce Business Daily (CBD) (see Subpart 5.2); and

(2) Displaying a copy of each solicitation that provides at least 10 calendar days for submitting offers for an unclassified contractual action on bulletin boards in the contracting office and/or at additional public places from the date of issuance until 7 calendar days after the offers have been opened; however, should posting of the solicitation be impractical, the bulletin board notices shall describe the solicitation and give the location where a copy of the solicitation may be examined.

(b) In addition, one or more of the following methods may be used:

(1) Preparing periodic handouts listing proposed contracts, and displaying them as in 5.101(a)(2).

(2) Assisting local trade associations in disseminating information to their members.

(3) Making brief announcements of proposed contracts to newspapers, trade journals, magazines, or other mass communication media for publication without cost to the Government.

(4) Placing paid advertisements in newspapers or other communications media, subject to the following limitations:

(i) Contracting officers shall place paid advertisements of proposed contracts only when it is anticipated that effective competition cannot be obtained otherwise (see 5.205(d)).

(ii) Contracting officers shall not place advertisements of proposed contracts in a newspaper published and printed in the District of Columbia unless the supplies or services will be furnished, or the labor performed, in the District of Columbia or adjoining counties in Maryland or Virginia (44 U.S.C. 3701).

(iii) Advertisements published in newspapers must be under proper written authority in accordance with 44 U.S.C. 3702 (see 5.502(a)).

5.102 Availability of solicitations.

(a) The contracting officer shall—

(1) Maintain a reasonable number of copies of solicitations publicized in the CBD, including specifications and other pertinent information (upon request, potential sources not initially solicited shall be mailed or provided copies of solicitations, if available);

(2) Provide copies of a limited solicitation to firms requesting copies that were not initially solicited, but only after advising the requester of the determination to limit the solicitation to a specified firm or firms possessing the

capability to meet the requirements for award;

(3) Provide copies on a "first-come-first-served" basis, for pickup at the contracting office, to publishers, trade associations, information services, and other members of the public having a legitimate interest (for construction, see 36.211); and

(4) In addition to the methods of disseminating proposed contract information in 5.101(a) and (b), provide upon request to small business concerns, as required by 15 U.S.C. 637(b)—

(i) A copy of the solicitation and specifications;

(ii) The name and telephone number of an employee of the agency to answer questions on the solicitation; and

(iii) Adequate citations to each applicable major Federal law or agency rule with which small business concerns must comply in performing the contract.

(b) This section 5.102 applies to classified contracts to the extent consistent with agency security requirements (see 5.202(a)).

SUBPART 5.2—SYNOPSES OF PROPOSED CONTRACTS

5.201 General.

(a) Under the Small Business Act (see 15 U.S.C. 637(e)), the Secretary of Commerce is empowered to—

(1) Obtain notices (synopses) of proposed defense agency (i.e., agencies subject to the provisions of 10 U.S.C. 137) contracts of $10,000 and above, and proposed civil agency contracts of $5,000 and above (but see 5.205(c) for contracts for architect-engineer services), from any agency engaged in contracting for supplies and services in the United States, its possessions, and Puerto Rico; and

(2) Publicize a synopsis in the Commerce Business Daily (CBD) immediately after the necessity for each contract is established.

(b) Other than for the exceptions in 5.202, and special situations in 5.205, the contracting officer shall transmit a synopsis to the CBD (see 5.207) for each proposed—

(1) Contract meeting the applicable threshold in 5.201(a)(1);

(2) Effort to locate private commercial sources for cost comparison purposes under OMB Circular A-76 (see 5.205(d));

(3) Modification to an existing contract that obligates new funds for additional supplies and services (but see 5.202(i)), including definitization of letter contracts that have not been previously synopsized, that meet the applicable threshold in 5.201(a)(1); and

(4) Contract or order in any amount when advantageous to industry or the Government.

(c) The primary purpose of the CBD is to identify contracting and subcontracting opportunities.

(d) Subscriptions to the CBD can be entered at any Department of Commerce office. Complimentary subscriptions are available to Government offices on a limited basis.

5.202 Exceptions.

Synopsizing is not required when any of the following are involved:

(a) Classified matters, when the synopsis cannot be worded to preclude the disclosure of classified information, or when disclosure of the Government's interest in the proposed contract would violate security requirements. Other classified contracts require publication in the CBD, even though access to classified matter might be necessary to submit a proposal or perform the contract.

(b) Perishable subsistence.

(c) Utility services (except telecommunications services).

(d) Unusual or compelling emergencies in which the Government would be seriously injured if offers were permitted to be made more than 15 calendar days after issuing the solicitation, or the date of transmitting the synopsis, whichever is earlier. The circumstances involved shall be documented in the contract file by the contracting officer.

(e) Orders placed under existing contracts. This exception does not apply to orders placed under basic ordering agreements (BOA's) unless the agreements themselves were previously synopsized.

(f) Contracts from or through another Government agency, including contracts with the Small Business Administration (SBA) under section 8(a) of the Small Business Act.

(g) Acquisitions from a mandatory source of supply.

(h) Solicitation of offers from foreign sources only.

(i) Modifications to existing contracts that were previously synopsized, or for which new funds are not obligated for additional supplies and services (see 5.201(b)(3)).

5.203 Time of synopsizing.

To allow concerns not on current solicitation mailing lists time to prepare offers or quotations, contracting officers shall—

(a) Transmit synopses of proposed contracts to the CBD for publication no less than 10 calendar days before issuing solicitations, or before placing orders against BOA's if the agreements were not previously synopsized;

(b) Transmit synopses to the CBD for publication of proposed contracts involving architect-engineer services and research and development, allowing no less than 14 calendar days before issuing solicitations for the proposed contracts;

(c) Use a date on or about the intended date if a definite date for issuing the solicitation is not established; however, if this is not feasible, forward the synopsis to the CBD to arrive not later than the date of issuance of solicitations; and

(d) Properly document any reasons that prevent the synopsis from being forwarded to the CBD at the required time.

5.204 Presolicitation notices.

Contracting officers shall synopsize presolicitation notices. Synopsizing a second time is not required when the solicitation is issued. However, if the presolicitation notice contains a set-aside provision that is later canceled, the contracting officer shall synopsize the proposed contract a second time when the solicitation is issued.

5.205 Special situations.

(a) *Research and development (R&D) advance notices.* Contracting officers shall publish in the CBD advance notices of their interest in R&D fields. Each notice shall be titled "Research and Development Sources Sought," cite the appropriate Numbered Note, and include the name and telephone number of the contracting officer or other contracting activity official from whom technical details of the project can be obtained. This will enable sources to submit information for evaluation of their R&D capabilities. Contracting officers shall synopsize all subsequent solicitations for R&D contracts, including those resulting from a previously synopsized advance notice, unless one of the exceptions in 5.202 applies.

(b) *Personal and professional services.* Except when exempted by 5.202, contracting officers shall synopsize in the CBD solicitations for personal and professional services (see Subparts 37.1 and 37.2) when it is feasible and practicable to do so and in the Government's interest.

(c) *Architect-engineer services.* Except when exempted by 5.202, contracting officers shall publicize solicitations for architect-engineer services as follows:

(1) Synopsize in the CBD each contract to be made in the United

States, its possessions, and Puerto Rico for which the total fee (including phases and options) is expected to exceed $10,000.

(2) When the total fee is not expected to exceed $10,000, or when the contract is to be made outside the United States, its possessions, and Puerto Rico, the contracting officer may display a notice of the proposed contract at the contracting office and use other optional publicizing methods authorized by 5.101(b).

(d) *Cost comparison under OMB Circular A-76.* When making cost comparisons between contractor and Government performance under the procedures prescribed in Subpart 7.3 and OMB Circular A-76, the contracting officer shall not arrive at a conclusion that there are no commercial sources capable of providing the required supplies or services until publicizing the requirement in the CBD at least three times in a 90 calendar-day period, with a minimum of 30 calendar days between each. When necessary to meet an urgent requirement, this may be limited to a total of two publications in the CBD in a 30 calendar-day period, with a minimum of 15 calendar days between each.

5.206 Synopses of subcontract opportunities.

(a) Contracting officers shall, if in the Government's interest and significant subcontracting opportunities exist, publish in the CBD the names and addresses of prospective offerors in accordance with subparagraphs (1) and (2) below. The synopsis shall include Numbered Note 27, which reads as follows: "It is suggested that small business firms or others interested in subcontracting opportunities in connection with the described acquisition, make direct contact with firm(s) listed."

(1) In negotiated acquisitions over $500,000, the contracting officer shall indicate in the synopsis the firms to whom solicitations will be issued (if no more than 5 firms will be solicited), to enable small business concerns and others interested in subcontracting to contact prospective prime contractors early in the acquisition.

(2) In two-step formally advertised acquisitions, the contracting officer shall indicate in the synopsis those firms that have submitted acceptable technical proposals in the first step of two-step formal advertising and will be issued solicitations in the second step.

(b) Contracting officers shall encourage prime contractors and subcontractors to use the CBD to publicize subcontracting opportunities stemming from their Government business. Subcontract information should be mailed directly to the CBD under the heading "Subcontracting Assistance Wanted," using the format in 5.207.

5.207 Preparation and transmittal of synopses.

(a) *Transmittal.* Contracting officers shall transmit synopses of proposed contracts--

(1) By the most effective transmission means or devices available, or if no other, daily via first class mail; and

(2) Addressed to the following:
U.S. Department of Commerce
Commerce Business Daily
P.O. Box 5999
Chicago, IL 60680.

(b) *Format.* Contracting officers shall prepare synopses in the following format:

(1) *General.* Use conventional typing with upper and lower case letters, standard punctuation, and commonly used abbreviations. Write text in such detail that it will be understood by interested parties.

(2) *Spacing.* Begin lines in the text, except paragraph beginnings, flush with the left margin. Use double-spaced lines. Put each separate proposed contract in a separate paragraph.

(3) *Contracting office and address.* Begin the name and address of the contracting office on the first line of the text. Do not abbreviate except for the names of States. The address shall include an attention phrase identifying the person to contact for further information, including title, code, and telephone number.

(4) *Description of the supply/service.* Begin five spaces from the left margin, several lines under the name and address of the contracting office. Type the following elements, to the extent applicable, horizontally in the following sequence, with each element separated by two hyphens:

(i) Supply/service classification code (see 5.207(f)) (if more than one classification is involved, enter the code for the one with the largest dollar volume).

(ii) Name of supply/service.

(iii) National stock number (NSN), if assigned.

(iv) Specification, including notation "QPL" if the specification requires a qualified product.

(v) Manufacturer, including part number, drawing number, etc.

(vi) Size or dimensions.

(vii) Basic material from which fabricated.

(viii) Quantity, including options for additional quantities.

(ix) Unit of issue.

(x) Destination information.

(xi) Delivery schedule.

(xii) Solicitation number.

(xiii) Solicitation opening and closing dates.

(xiv) Duration of the contract period.

(xv) For architect-engineer projects, and other projects for which the codes are insufficient, brief details of the location, scope of services required, cost range and limitations, type of contract, estimated starting and completion dates, and significant evaluation factors by which selection will be made.

(xvi) Numbered Notes (see 5.207(d)), including instructions for set-asides for small businesses and labor surplus area concerns.

(5) *Supplies subject to the Trade Agreements Act of 1979.* See Part 25.

(c) *Set-asides.* (1) When the proposed acquisition provides for a total small business or labor surplus area (LSA) set-aside, state: "The proposed contract listed here is a 100-percent small business (or labor surplus area) set-aside."

(2) When there is a proposed partial small business or LSA set-aside, state: "An additional quantity of ..... is being reserved for ..... [*insert 'small business' or 'labor surplus area' as appropriate*] concerns under a partial determination."

(d) *Numbered Notes.*

(1) The first issue of the CBD each week lists all current "Numbered Notes." The Notes describe how to respond to the synopsis of a proposed contract; the qualifications a prospective contractor must have to be considered for an award; and the availability of plans, specifications, or other information. When one or more of the Notes applies to a synopsis, contracting officers should incorporate the content of the Note(s) by reference at the end of the synopsis; e.g., "See Note(s) ....." New Notes may be added to the list only when they apply to more than one agency. Contracting officers shall also include the substance of Numbered Notes whenever a proposed contract is publicized by other means than the CBD (see 5.101).

(2) If the acquisition is subject to the requirements of the Trade Agreements Act of 1979 (see 5.207(b)(5)), Numbered Note 12 shall be referenced in the synopsis.

(e) *Information not covered by Numbered Notes.* To alert prospective contractors to information not covered by Numbered Notes, contracting officers should identify the following unusual circumstances in the synopsis:

(1) "*Availability of specifications, plans, or drawings.* It is impracticable to

distribute the applicable ..... [*insert 'specifications,' 'plans,' 'drawings,' or other appropriate words*] with the solicitation. These contract documents may be examined or obtained at....."

(2) "*Availability of background research report.* This contract for basic research is a continuation of an effort conducted for the past ..... [*insert period*]. A research report containing findings to date is not available to the Government."

(3) "*Production requirements.* The production of the supplies listed requires a substantial initial investment or an extended period of preparation for manufacture."

(4) "*Standardization requirements.* This contract is for technical equipment. A determination was made under section 15.213 of the Federal Acquisition Regulation that standardization and interchangeability of parts are necessary in the public interest. To achieve standardization, solicitations will be issued only to the following firms: .....[*insert names and addresses of these firms*]."

(f) (1) The contracting officer shall use the following classification codes to describe services:

Code	Description
A	Experimental, developmental, test, and basic and applied research work.
H	Expert and consultant services.
J	Maintenance and repair of equipment.
K	Modification, alteration, and rebuilding of equipment.
L	Technical representative services (e.g., services of technical specialists required to assist with the installation, checking, operation, and maintenance of complex equipment).
M	Operation and maintenance of Government-owned facility.
N	Installation of equipment (use code K if the contract also involves modification, alteration, or rebuilding of the equipment).
O	Funeral and Chaplain services.
P	Salvage services (services required to salvage property of any kind).
Q	Medical services.
R	Architect-engineer services.
S	Housekeeping services; e.g.—
	Utilities (gas, electric, telephone, etc.);
	Laundry and dry cleaning;
	Custodial-janitorial;
	Insect and rodent control;
	Packing and crating;
	Storage;
	Garbage and trash collection;
	Food;
	Fueling;
	Fire protection;
	Building and grounds maintenance;
	Care of remains-funerals; and
	Guards.
T	Photographic, mapping, printing, and publication services; e.g.—
	Film processing;
	Cataloging;
	Charting;
	Reproduction;
	Technical writing;
	Art; and
	Printing.
U	Training.
V	Transportation services; e.g.—
	Passenger and cargo transportation;
	Vessel charter;
	Vessel operation;
	Tug service;
	Stevedoring;
	Vehicle hire; and
	Railway equipment charter.
W	Lease or rental, except transportation equipment; e.g.—
	Lease of ADP or EAM equipment; and
	Lease of earth-moving equipment.
X	Miscellaneous (includes all services not covered by any other code).
Y	Construction; i.e., new construction and major additions to existing buildings or facilities.
Z	Maintenance, repair, and alteration of real property; i.e., painting, building maintenance, alteration and repair, grounds maintenance and repair, roads maintenance and repair.

(2) The contracting officer shall use the following classification codes to describe supplies:

Code	Description
10	Weapons.
11	Nuclear ordnance.
12	Fire control equipment.
13	Ammunition and explosives.
14	Guided missiles.
15	Aircraft and airframe structural components.
16	Aircraft components and accessories.
17	Aircraft launching, landing, and ground handling equipment.
18	Space vehicles.
19	Ships, small craft, pontoons, and floating docks.
20	Ship and marine equipment.
22	Railway equipment.
23	Motor vehicles, trailers, and cycles.
24	Tractors.
25	Vehicular equipment components.
26	Tires and tubes.
28	Engines, turbines, and components.
29	Engine accessories.
30	Mechanical power transmission equipment.
31	Bearings.
32	Woodworking machinery and equipment.
34	Metalworking machinery.
35	Service and trade equipment.
36	Special industry machinery.
37	Agricultural machinery and equipment.
38	Construction, mining, excavating, and highway maintenance equipment.
39	Materials handling equipment.
40	Rope, cable, chain, and fittings.
41	Refrigeration and air-conditioning equipment.
42	Fire fighting, rescue, and safety equipment.
43	Pumps and compressors.
44	Furnace, steam plant, and drying equipment and nuclear reactors.
45	Plumbing, heating, and sanitation equipment.
46	Water purification and sewage treatment equipment.
47	Pipe, tubing, hose, and fittings.
48	Valves.
49	Maintenance and repair shop equipment.
51	Hand tools.
52	Measuring tools.
53	Hardware and abrasives.
54	Prefabricated structures and scaffolding.
55	Lumber, millwork, plywood, and veneer.
56	Construction and building materials.
58	Communication equipment.
59	Electrical and electronic equipment components.
61	Electric wire, and power and distribution equipment.
62	Lighting fixtures and lamps.
63	Alarm and signal systems.
65	Medical, dental, and veterinary equipment and supplies.
66	Instruments and laboratory equipment.
67	Photographic equipment.
68	Chemicals and chemical products.
69	Training aids and devices.
70	General-purpose ADP equipment, software, supplies, and support equipment.
71	Furniture.
72	Household and commercial furnishings and appliances.
73	Food preparation and serving equipment.
74	Office machines.
75	Office supplies and devices.
76	Books, maps, and other publications.
77	Musical instruments, phonographs, and home-type radios.
78	Recreational and athletic equipment.
79	Cleaning equipment and supplies.
80	Brushes, paints, sealers, and adhesives.
81	Containers, packaging, and packing supplies.
83	Textiles, leather, furs, apparel and shoe findings, tents, and flags.
84	Clothing, individual equipment, and insignia.
85	Toiletries.
87	Agricultural supplies.
88	Live animals.
89	Subsistence.
91	Fuels, lubricants, oils, and waxes.
93	Nonmetallic fabricated materials.
94	Nonmetallic crude materials.
95	Metal bars, sheets, and shapes.
96	Ores, minerals, and their primary products.
99	Miscellaneous.

SUBPART 5.3—SYNOPSES OF CONTRACT AWARDS

5.301 General.

(a) Contracting officers shall synopsize in the Commerce Business Daily (CBD) awards of contracts exceeding $100,000 that are to be performed in whole or in part within the United States; however, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.

(b) Exceptions to this policy include awards—

(1) To the SBA under section 8(a) of the Small Business Act;

(2) For perishable subsistance items;

(3) For brand-name items for commissary resale; and

(4) Classified contracts that are not synopsized in accordance with 5.202(a).

5.302 Preparation and transmittal of synopses of awards.

Contracting officers shall—

(a) Transmit synopses of contract awards in the same manner as prescribed in 5.207; and

(b) In addition to the applicable elements in 5.207(b)(4), include the following in the synopsis of award:

(1) Contract number and date and, in parentheses, the solicitation number.

(2) Name and address of the contractor.

(3) Dollar amount of the award.

(4) The following details of f.o.b. destination contracts, when total shipments from origin to destination will exceed 200,000 pounds, and destinations are firm:

(i) Origin point of shipment when different from the address of the contractor.

(ii) Continental United States destination of shipment.

(iii) Scheduled delivery period (beginning and ending dates).

(5) A statement of the industries, crafts, processes, or component items for which subcontractors are desired in a geographic area indicated by the contractor. This information shall be included when requested by the prime contractor.

5.303 Announcement of contract awards.

(a) *Public Announcement.* Contracting officers shall make information available on awards over $3 million in sufficient time for the agency concerned to announce it by 4:00 p.m. Washington, DC time on the day of award. Contracts excluded from this reporting requirement include those placed with (1) the Small Business Administration under Section 8(a) of the Small Business Act, and (2) with foreign firms when the place of delivery or performance is outside the United States or its possessions. Agencies shall not release information on awards before the public release time of 4:00 p.m. Washington, DC time.

(b) *Local Announcement.* Agencies may also release information on contract awards to the local press or other media. When local announcements are made for contract awards of $10,000 or more, they shall include—

(1) For awards after formal advertising, a statement that the contract was awarded after competition by formal advertising, the number of offers solicited and received, and the basis for selection (e.g., the lowest responsible bidder); or

(2) For awards after negotiation, the information prescribed by 15.1001(c), and after competitive negotiation (either price or design competition), a statement to this effect, and in general terms the basis for selection.

SUBPART 5.4—RELEASE OF INFORMATION

5.401 General.

(a) A high level of business security must be maintained in order to preserve the integrity of the acquisition process. When it is necessary to obtain information from potential contractors and others outside the Government for use in preparing Government estimates, contracting officers shall ensure that the information is not publicized or discussed with potential contractors.

(b) Contracting officers may make available maximum information to the public, except information—

(1) On plans that would provide undue or discriminatory advantage to private or personal interests;

(2) Received in confidence from an offeror;

(3) Otherwise requiring protection under Freedom of Information Act (see Subpart 24.2) or Privacy Act (see Subpart 24.1); or

(4) Pertaining to internal agency communications (e.g., technical reviews, contracting authority or other reasons, or recommendations referring thereto).

(c) This policy applies to all Government personnel who participate directly or indirectly in any stage of the acquisition cycle.

5.402 General public.

Contracting officers shall process requests for specific information from the general public, including suppliers, in accordance with Subpart 24.1 or 24.2, as appropriate.

5.403 Requests from Members of Congress.

(a) *Individual requests.* Contracting officers shall give Members of Congress, upon their request, detailed information regarding any particular contract. When responsiveness would result in disclosure of classified matter, business confidential information, or information prejudicial to competitive acquisition, the contracting officer shall refer the proposed reply, with full documentation, to the agency head and inform the legislative liaison office of the action.

(b) *Inclusion on solicitations mailing lists.* Upon request of a Congressional Committee or Subcommittee Chairperson, contracting officers shall place any member of a Committee or Subcommittee on the applicable solicitation mailing lists to receive automatic distribution of solicitations in the specific area of interest.

5.404 Release of long-range acquisition estimates.

To assist industry planning and to locate additional sources of supply, it may be desirable to publicize estimates of unclassified long-range acquisition requirements. Estimates may be publicized as far in advance as possible.

5.404-1 Release procedures.

(a) *Application.* The agency head, or a designee, may release long-range acquisition estimates if the information will—

(1) Assist industry in its planning and facilitate meeting the acquisition requirements;

(2) Not encourage undesirable practices (e.g., attempts to corner the market or hoard industrial materials); and

(3) Not indicate the existing or potential mobilization of the industry as a whole.

(b) *Conditions.* The agency head shall ensure that—

(1) Classified information is released through existing security channels in accordance with agency security regulations;

(2) The information is publicized as widely as practicable to all parties simultaneously by any of the means described in this part;

(3) Each release states that (i) the estimate is based on the best information available, (ii) the information is subject to modification and is in no way binding on the Government, and (iii) more specific information relating to any individual item or class of items will not be furnished until the proposed acquisition is synopsized in the CBD, or the solicitation is issued;

(4) Each release contains the name and address of the contracting officer that will process the acquisition;

(5) Modifications to the original release are publicized as soon as possible, in the same manner as the original; and

(6) Each release—

(i) Is coordinated in advance with small business, public information, and public relations personnel, as appropriate;

(ii) Contains, if applicable, a statement that small business or LSA set-asides may be involved, but that a determination can be made only when acquisition action is initiated; and

(iii) Contains the name or description of the item, and the estimated quantity to be acquired by calendar quarter, fiscal year, or other period. It may also contain such additional information as the number of units last acquired, the unit price, and the name of the last supplier.

5.404-2 Announcements of long-range acquisition estimates.

Further publication, consistent with the needs of the individual case, may be accomplished by announcing in the CBD that long-range acquisition estimates have been published and are obtainable, upon request, from the contracting officer.

5.405 Exchange of acquisition information.

(a) When the same item or class of items is being acquired by more than one agency, or by more than one contracting activity within an agency, the exchange and coordination of pertinent information, particularly cost and pricing data, between these agencies or contracting activities is necessary to promote uniformity of

treatment of major issues and the resolution of particularly difficult or controversial issues. The exchange and coordination of information is particularly beneficial during the period of acquisition planning, presolicitation, evaluation, and pre-award survey.

(b) When substantial acquisitions of major items are involved or when the contracting activity deems it desirable, the contracting activity shall request appropriate information (on both the end item and on major subcontracted components) from other agencies or contracting activities responsible for acquiring similar items. Each agency or contracting activity receiving such a request shall furnish the information requested. The contracting officer, early in a negotiation of a contract, or in connection with the review of a subcontract, shall request the contractor to furnish information as to the contractor's or subcontractor's previous Government contracts and subcontracts for the same or similar end items and major subcontractor components.

SUBPART 5.5—PAID ADVERTISEMENTS

5.501 Definitions.

"Advertisement," as used in this subpart, means any single message prepared for placement in communication media, regardless of the number of placements.

"Publication," as used in this subpart, means (a) the placement of an advertisement in a newspaper, magazine, trade or professional journal, or any other printed medium, or (b) the broadcasting of an advertisement over radio or television.

5.502 Authority.

(a) *Newspapers.* Authority to approve the publication of paid advertisements in newspapers is vested in the head of each agency (44 U.S.C. 3702). This approval authority may be delegated (5 U.S.C. 302 (b)). Contracting officers shall obtain written authorization in accordance with agency procedures before advertising in newspapers.

(b) *Other media.* Unless the agency head determines otherwise, advance written authorization is not required to place advertisements in media other than newspapers.

5.503 Procedures.

(a) *General.* Orders for paid advertisements may be placed directly with the media or through an advertising agency. Contracting officers shall give small and disadvantaged business concerns maximum opportunity to participate in these acquisitions.

(b) *Rates.* Advertisements may be paid for at rates not over the commercial rates charged private individuals, with the usual discounts (44 U.S.C. 3703).

(c) *Forms.* (1) When contracting directly with the media for advertising, contrating officers shall—

(i) Use Standard Form 26, Award/Contract, when the dollar amount of the acquisition exceeds the small purchase dollar limitations (see 13.000); or

(ii) Use Optional Form 347, Order for Supplies or Services, or an approved agency form, when the dollar amount of the acquisition does not exceed the small purchase dollar limitations (see 13.000).

(2) When issuing a delivery order under a basic ordering agreement with an advertising agency for advertising, contracting officers should use Optional Form 347, or an approved agency form.

(d) *Proof of advertising.* Every invoice for advertising shall be accompanied by a copy of the advertisement or an affidavit of publication furnished by the publisher, radio or television station, or advertising agency concerned (44 U.S.C. 3703). Paying offices shall retain the proof of advertising until the General Accounting Office settles the paying office's account.

(e) *Payment.* Upon receipt of an invoice supported by proof of advertising, the contracting officer shall attach a copy of the written authority (see 5.502(a)) and submit the invoice for payment under agency procedures.

5.504 Use of advertising agencies.

(a) *General.* Basic ordering agreements may be placed with advertising agencies for assistance in producing and placing advertisements when a significant number will be placed in several publications and in national media. Services of advertising agencies include, but are not limited to, counseling as to selection of the media for placement of the advertisement, contacting the media in the interest of the Government, placing orders, selecting and ordering typography, copywriting, and preparing rough layouts.

(b) *Use of commission-paying media.* The services of advertising agencies in placing advertising with media often can be obtained at no cost to the Government, over and above the space cost, as many media give advertising agencies a commission or discount on the space cost that is not given to the Government.

(c) *Use of noncommission-paying media.* Some media do not grant advertising agencies a commission or discount, meaning the Government can obtain the same rate as the advertising agency. If the advertising agency agrees to place advertisements in noncommission-paying media as a no-cost service, the basic ordering agreement shall so provide. If the advertising agency will not agree to place advertisements at no cost, the agreement shall (1) provide that the Government may place orders directly with the media, or (2) specify an amount that the Government will pay if the agency places the orders.

(d) *Art work, supplies, and incidentals.* The basic ordering agreement also may provide for the furnishing by the advertising agency of art work, supplies, and incidentals, including brochures and pamphlets, but not their printing. "Incidentals" may include telephone calls, telegrams, and postage incurred by the advertising agency on behalf of the Government.

PART 6—[RESERVED]

SUBCHAPTER B—Acquisition Planning

PART 7—ACQUISITION PLANNING

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

7.000 Scope of part.

This part prescribes policies and procedures for—

(a) Developing acquisition plans;

(b) Determining whether to use commercial or Government resources

for acquisition of supplies or services; and

(c) Deciding whether it is more economical to lease equipment rather than purchase it.

SUBPART 7.1—ACQUISITION PLANS

7.101 Definitions.

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

"Design-to-cost" is 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.

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

"Planner," as used in this subpart, means the designated person or office responsible for developing and maintaining a written plan, or for the planning function in those acquisitions not requiring a written plan.

7.102 Policy.

For acquisitions other than small, repetitive buys, agencies shall perform coordinated planning, integrating the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner. Agencies that have a detailed acquisition planning system in place that generally meets the criteria of this subpart need not revise their system to specifically meet the criteria.

7.103 Agency-head responsibilities.

The agency head or a designee shall prescribe procedures for—

(a) Establishing criteria and thresholds at which increasingly greater detail and formality in the planning process is required as the acquisition becomes more complex and costly, specifying those cases in which a written plan shall be prepared;

(b) Writing plans either on a system basis or on an individual contract basis, depending upon the acquisition;

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

(d) Designating planners for acquisitions;

(e) Reviewing and approving acquisition plans and revisions to these plans;

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

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

(h) Waiving requirements of detail and formality, as necessary, in planning for acquisitions having compressed delivery or performance schedules because of the urgency of the need.

7.104 General procedures.

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

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

(c) An acquisition plan may be used to support a determination and findings (D&F) (see Subpart 15.3).

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 subparagraph (b)(19) below). The plan shall 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 shall follow the applicable instructions in paragraphs (a) and (b) below, together with the agency's implementing procedures.

(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 and any related in-house effort.

(2) *Applicable conditions.* State all significant conditions affecting the acquisition, such as (i) requirements for compatibility with existing or future systems or programs and (ii) any known cost, schedule, and capability or performance constraints.

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

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

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

(iii) *Application of should-cost.* Describe the application of should-cost analysis to the acquisition (see 15.810).

(4) *Capability or performance.* Specify the required capabilities or performance characteristics of the supplies or 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 12.1). Explain and provide reasons for any urgency if it results in concurrency of development and production or constitutes justification for noncompetitive contracting.

(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.

(b) *Plan of action.* (1) *Sources.* Indicate the prospective sources of supplies and/or services that will meet the need. Consider required sources of supplies and services (see Part 8). Include consideration of small business, small disadvantaged business, and labor surplus area concerns (see Parts 19 and 20). If the acquisition or a part of it is for commercial or commercial-type products (see Part 11), address the results of market research and analysis and indicate their impact on the various elements of the plan.

(2) *Competition.* Describe how competition will be sought, promoted, and sustained throughout the course of the acquisition. Discuss component breakout for competition, if applicable. If noncompetitive contracting is being recommended, identify the source and discuss why competition cannot be used. Justification for a noncompetitive acquisition may be referenced and attached to the plan.

(3) *Source-selection procedures.* Discuss the source-selection procedures for the acquisition, including the timing for submission and evaluation of proposals, and the relationship of evaluation factors to the attainment of the acquisition objectives (see Subpart 15.6).

(4) *Contracting considerations.* For each contract contemplated, discuss contract type selection (see Part 16); use of multiyear contracting, options, or other special contracting methods (see Part 17); any special clauses, special solicitation provisions, or FAR deviations required (see Subpart 1.4); whether formal advertising 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.

(5) *Authority for contracting by negotiation.* If contracting by negotiation is contemplated, cite the authority (see Subpart 15.2) for using negotiation and discuss the basis for selecting that particular authority. If a D&F to justify negotiation will be required (see Subpart 15.3) and the acquisition plan will be used to support that D&F, provide the information needed.

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

(7) *Product descriptions.* In accordance with Part 10, explain the choice of product description types 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 12.3).

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

(10) *Management information requirements.* Discuss, as appropriate, what management system will be used by the Government to monitor the contractor's effort.

(11) *Make or buy.* Discuss any consideration given to make-or-buy programs (see Subpart 15.7).

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

(13) *Logistics considerations.* Describe—

(i) The assumptions determining contractor or agency support, both initially and over the life of the acquisition, including consideration of contractor or agency maintenance and servicing (see Subpart 7.3) and distribution of commercial products (see Part 11);

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

(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).

(14) *Government-furnished property.* Indicate any property to be furnished to contractors, including material and facilities, and discuss any associated considerations, such as its availability or the schedule for its acquisition (see Part 45).

(15) *Government-furnished information.* Discuss any Government information, such as manuals, drawings, and test data, to be provided to prospective offerors and contractors.

(16) *Environmental considerations.* Discuss environmental issues associated with the acquisition, the applicability of an environmental assessment or environmental impact statement (see 40 CFR 1502), the proposed resolution of environmental issues, and any environment-related requirements to be included in solicitations and contracts.

(17) *Security considerations.* For acquisitions dealing with classified matters, discuss how adequate security will be established, maintained, and monitored (see Subpart 4.4).

(18) *Other considerations.* Discuss, as applicable, energy conservation measures, standardization concepts, the industrial readiness program, the Defense Production Act, the Occupational Safety and Health Act, foreign sales implications, and any other matters germane to the plan not covered elsewhere.

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

Acquisition plan approval.

D&F approval.

Completion of acquisition-package preparation.

Statement of work.

Specifications.

Data requirements.

Purchase request.

Issuance of solicitation.

Evaluation of proposals, audits, and field reports.

Beginning and completion of negotiations.

Contract preparation, review, and clearance.

Contract award.

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

SUBPART 7.2—[RESERVED]

SUBPART 7.3—CONTRACTOR VERSUS GOVERNMENT PERFORMANCE

7.300 Scope of subpart.

This subpart prescribes policies and procedures for use in acquisitions of commercial or industrial products and services subject to (a) OMB Circular No. A-76 (the Circular), Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government, and (b) the Cost Comparison Handbook (the Handbook), Supplement No. 1 to OMB Circular No. A-76.

7.301 Policy.

The Circular provides that it is the policy of the Government to (a) rely generally on private commercial sources for supplies and services, if certain criteria are met, while recognizing that some functions are inherently Governmental and must be performed by Government personnel, and (b) give appropriate consideration to relative cost in deciding between Government performance and performance under contract. In comparing the costs of

Government and contractor performance, the Circular provides that agencies shall base the contractor's cost of performance on firm offers.

7.302 General.

The Circular and the Handbook—

(a) Prescribe the overall policies and detailed procedures required of all agencies in making cost comparisons between contractor and Government performance. In making cost comparisons, agencies shall—

(1) Prepare an estimate of the cost of Government performance based on the same work statement and level of performance as apply to offerors; and

(2) Compare the total cost of Government performance to the total cost of contracting with the potentially successful offeror.

(b) Provide that solicitations and synopses of the solicitations issued to obtain offers for comparison purposes shall state that they will not result in a contract if Government performance is determined to be more advantageous (see the solicitation provisions at 52.207-1 and 52.207-2);

(c) Provide that each cost comparison shall be reviewed by an activity independent of the activity which prepared the cost analysis to ensure conformance with the instructions in the Handbook; and

(d) Provide that, ordinarily, agencies should not incur the delay and expense of conducting cost comparison studies to justify a Government commercial or industrial activity whose annual operating costs are estimated to be less than $100,000. Activities below this threshold should be performed by contract unless in-house performance is justified. However, if there is reason to believe that inadequate competition or other factors are causing commercial prices to be unreasonable, a cost comparison study may be conducted.

7.303 Determining availability of private commercial sources.

(a) During acquisition planning reviews, contracting officers shall assist in identifying private commercial sources.

(b) In making all reasonable efforts to identify such sources, the contracting officer shall assist in—

(i) Synopsizing the requirement in the Commerce Business Daily at least three times in a 90-day period with a minimum of 30 days between notices (but, when necessary to meet an urgent requirement, this notification may be limited to a total of two notices in a 30-day period with a minimum of 15 days between them); and

(ii) Requesting assistance from the Small Business Administration, the Department of Commerce, and the General Services Administration.

7.304 Procedures.

(a) *Work statement.* When private commercial sources are available and a cost comparison is required, the Government's functional managers responsible for the comparison or another group shall prepare a comprehensive, performance-oriented work statement. The work statement must—

(1) Accurately reflect the actual Government requirement, stating adequately *what* is to be done without prescribing *how* it is to be done;

(2) Include performance standards that can be used to ensure a comparable level of performance for both Government and contractor and a common basis for evaluation; and

(3) Be reviewed by the contracting officer to ensure that it is adequate and appropriate to serve as a basis for solicitation and award.

(b) *Cost estimate.* The agency personnel who develop the cost estimate for Government performance—

(1) Enter on a cost-comparison form (see Cost Comparison Handbook, Exhibit 1) the cost estimate and the other elements required to accomplish a cost comparison;

(2) Review the estimate for completeness and accuracy and have the estimate audited; and

(3) Submit to the contracting officer the completed form and all necessary detailed supporting data in a sealed, dated envelope not later than the time established for receipt of initial proposals or bid opening. If more time is needed to develop the Government's cost estimate, the contracting officer shall amend the opening date of the solicitation.

(c) *Solicitation.* (1) The contracting officer shall issue a solicitation based on the work statement prepared in accordance with paragraph (a) above. Prepriced option prices in existing contracts will not be used instead of issuing a new solicitation when conducting a cost comparison under a new start.

(2) Firm offers shall be required for the period covered by the cost comparison, by using (i) a base contract period and any applicable priced options to total the amount of time represented by the cost estimate for Government performance (see Subpart 17.2), or (ii) a multiyear contract when appropriate (see Subpart 17.1).

(3) Solicitations shall not, unless a proper determination to the contrary is made, limit award to U.S. offerors.

(d) *Integrity of cost comparison.* (1) The confidentiality of (i) the cost estimate for Government performance and (ii) the bids in formally advertised cost comparisons shall be maintained until the time of bid opening, to ensure that they are completely independent.

(2) For cost comparisons conducted using the results of negotiation procedures, confidentiality and independence shall be maintained until after negotiations are completed and the most advantageous offer has been selected.

(3) Personnel who have knowledge of the cost figures in the cost estimate for Government performance shall not participate in the offer-evaluation process unless the contract file is adequately documented to show that no other qualified personnel were available.

7.305 Solicitation provisions and contract clause.

(a) The contracting officer shall, when contracting by formal advertising, insert in solicitations issued for the purpose of comparing the costs of contractor and Government performance the provision at 52.207-1, Notice of Cost Comparison (Advertised).

(b) The contracting officer shall, when contracting by negotiation, insert in requests for proposals issued for the purpose of comparing the costs of contractor and Government performance the provision at 52.207-2, Notice of Cost Comparison (Negotiated).

(c) The contracting officer shall insert the clause at 52.207-3, Right of First Refusal of Employment, in solicitations issued for the purpose of making a cost comparison covering work currently being performed by the Government and in contracts that result from the solicitations.

7.306 Evaluation.

The evaluation procedure to be followed after the contracting officer receives the cost estimate for Government performance [see 7.304(b)] and the responses to the solicitation differs from conventional contracting procedures as follows:

(a) *Formal advertising.* (1) At the public bid opening, after recording of bids, the contracting officer shall—

(i) Open the sealed envelope containing the cost-comparison form on which the cost estimate for Government performance has been entered;

(ii) Enter on the cost-comparison form the price of the apparent low bidder;

(iii) Announce the result, based on the initial cost-comparison form, stating that this result is subject to required agency processing, including evaluation for responsiveness and responsibility, completion and audit of the cost-comparison form (see Cost Comparison Handbook, Exhibit 1), and resolution of any requests for review under the appeals procedure (see 7.307);

(iv) State that no final determination for performance by the Government or under contract will be made during the public review period specified in the solicitation (at least 5 working days, up to a maximum of 15 working days if the contracting officer considers the action to be complex; the public review period begins when the documents identified in (v) below are available to interested parties), plus any additional time required for the appeals procedure; and

(v) Make available for this public review by interested parties the abstract of bids, completed cost-comparison form, and detailed data supporting the cost estimate for Government performance.

(2) After evaluation of bids (see Subpart 14.4) and determinations of responsibility, the contracting officer shall provide the price of the low responsive, responsible bidder to the preparer of the cost estimate for Government performance, for (i) final Government review of the cost-comparison form and (ii) origination of a decision summary form (see Cost Comparison Handbook, Exhibit 2).

(3) Upon completion of the review process, including resolution of any request under 7.307, the responsible agency official shall make the final determination for performance by the Government or under contract and furnish the approved decision summary form to the contracting officer, who shall either award a contract or cancel the solicitation as required.

(4) The contracting officer shall make the completed and approved cost-comparison analysis available to interested parties upon request.

(b) *Negotiation.* The contracting officer shall receive proposals, evaluate them (see Subpart 15.6), conduct negotiations, and select the most advantageous proposal in accordance with normal contracting procedures (see Part 15). The contracting officer shall, before public announcement, open the sealed estimate in the presence of the preparer, enter the amount of the most advantageous responsible proposal on the cost-comparison form, and return the form to the preparer of the cost estimate for Government performance for completion. The preparer shall give due consideration to all types of costs which could add or subtract from the cost of either mode of performance.

(1) If the result of the cost comparison favors performance under contract and the responsible agency official approves the result, the contracting officer shall award a contract in accordance with agency procedures. Concurrently with the award, the contracting officer shall publicly—

(i) Notify interested parties of the result of the cost comparison;

(ii) Inform interested parties that the completed cost-comparison form and detailed supporting data are available for review;

(iii) Announce the contractor's name; and

(iv) Advise interested parties that contractor preparations for performance are conditioned upon completion of the public review period specified in the solicitation plus any additional period required by the appeals procedure.

(2) If the result of the cost comparison favors Government performance, the contracting officer shall—

(i) Notify interested parties of the result of the cost comparison;

(ii) Inform interested parties that the completed cost-comparison form and detailed supporting data relative to the Government cost estimate are available for public review (see subparagraph (3) below); and

(iii) Announce the price of the offer most advantageous to the Government.

(3) The public review period shall begin with the contracting officer's announcement of the cost-comparison result and availability of the cost comparison forms and detailed supporting data to interested parties. The review period shall last for the period specified in the solicitation (at least 5 working days, up to a maximum of 15 working days if the contracting officer considers the action to be complex). Upon completion of the public review period and resolution of any questions raised under 7.307 below, a decision summary form shall be completed by the preparer of the cost estimate for Government performance and approved under agency procedures. The contracting officer shall then, in the case of subparagraph (1) above, give the contractor notice to commence or cancel the contract as appropriate or, in the case of subparagraph (2) above, cancel the solicitation or award the contract, as appropriate.

7.307 Appeals.

(a) The Circular provides that each agency shall establish an appeals procedure for informal administrative review of the initial cost-comparison result. The appeals procedure shall provide for an independent, objective review of the initial result by an official at the same level as, or at a higher level than, the official who approved that result. This review must be completed within 30 days after the contracting officer receives a request under paragraph (b) below. The purpose is to protect the rights of affected parties and to ensure that final agency determinations are fair, equitable, and in accordance with established policy.

(b) The Circular provides that the appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and shall not apply to questions concerning selection of one contractor in preference to another, which shall be treated as prescribed in 14.407-8, Protests against award. Directly affected parties may request review of any discrepancy in the cost comparison. Any such requests shall be made in writing to the contracting officer, who shall forward them in accordance with agency procedures. Such requests shall be considered only if based on specific objections and received within the public review period stated in the solicitation.

SUBPART 7.4—EQUIPMENT LEASE OR PURCHASE

7.400 Scope of subpart.

This subpart provides guidance pertaining to the decision to acquire equipment by lease or purchase. It applies to both the initial acquisition of equipment and the renewal or extension of existing equipment leases.

7.401 Acquisition considerations.

(a) Agencies should consider whether to lease or purchase equipment based on a case-by-case evaluation of comparative costs and other factors. The following factors are the minimum that should be considered:

(1) Estimated length of the period the equipment is to be used and the extent of use within that period.

(2) Financial and operating advantages of alternative types and makes of equipment.

(3) Cumulative rental payments for the estimated period of use.

(4) Net purchase price.

(5) Transportation and installation costs.

(6) Maintenance and other service costs.

(7) Potential obsolescence of the equipment because of imminent technological improvements.

(b) The following additional factors should be considered, as appropriate,

depending on the type, cost, complexity, and estimated period of use of the equipment:

(1) Availability of purchase options.

(2) Potential for use of the equipment by other agencies after its use by the acquiring agency is ended.

(3) Trade-in or salvage value.

(4) Imputed interest.

(5) Availability of a servicing capability, especially for highly complex equipment; e.g., can the equipment be serviced by the Government or other sources if it is purchased?

7.402 Acquisition methods.

(a) *Purchase method.* (1) Generally, the purchase method is appropriate if the equipment will be used beyond the point in time when cumulative leasing costs exceed the purchase costs.

(2) Agencies should not rule out the purchase method of equipment acquisition in favor of leasing merely because of the possibility that future technological advances might make the selected equipment less desirable.

(b) *Lease method.* (1) The lease method is appropriate if it is to the Government's advantage under the circumstances. The lease method may also serve as an interim measure when the circumstances—

(i) Require immediate use of equipment to meet program or system goals; but

(ii) Do not currently support acquisition by purchase.

(2) If a lease is justified, a lease with option to purchase is preferable.

(3) Generally, a long term lease should be avoided, but may be appropriate if an option to purchase or other favorable terms are included.

7.403 General Services Administration assistance.

(a) When requested by an agency, the General Services Administration (GSA) will assist in lease or purchase decisions by providing information such as—

(1) Pending price adjustments to Federal Supply Schedule contracts;

(2) Recent or imminent technological developments;

(3) New techniques; and

(4) Industry or market treads.

(b) Agencies may request information from the following GSA offices:

(1) Office of Information Resources Management Policy (KMA), Washington, DC 20405, for information on automatic data processing and telecommunications equipment acquisitions.

(2) Office of Procurement (FC), Washington, DC 20406, for information on other types of equipment.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

8.000 Scope of part.

This part deals with the acquisition of supplies and services from or through Government supply sources.

8.001 Priorities for use of Government supply sources.

(a) Except as required by 8.002, or as otherwise provided by law, agencies shall satisfy requirements for supplies and services from or through the sources and publications listed below in descending order of priority as prescribed in 41 CFR 101-26.107:

(1) *Supplies.*

(i) Agency inventories;

(ii) Excess from other agencies (see Subpart 8.1);

(iii) Federal Prison Industries, Inc. (see Subpart 8.6);

(iv) Procurement lists of products available from the Committee for Purchase from the Blind and Other Severely Handicapped (see Subpart 8.7);

(v) Wholesale supply sources, such as stock programs of the General Services Administration (GSA) (see 41 CFR 101-26.3), the Defense Logistics Agency (see 41 CFR 101-26.6), the Veterans Administration (see 41 CFR 101-26.704), and military inventory control points;

(vi) Mandatory Federal Supply Schedules (see Subpart 8.4);

(vii) Optional use Federal Supply Schedules (see Subpart 8.4); and

(viii) Commercial sources (including educational and nonprofit institutions).

(2) *Services.*

(i) Procurement lists of services available from the Committee for Purchase from the Blind and Other Severely Handicapped (see Subpart 8.7);

(ii) Mandatory Federal Supply Schedules (see Subpart 8.4) and mandatory GSA term contracts for personal property rehabilitation (see 41 CFR 101-42.1);

(iii) Optional use Federal Supply Schedules (see Subpart 8.4) and optional use GSA term contracts for personal property rehabilitation (see 41 CFR 101-42.1); and

(iv) Federal Prison Industries, Inc. (see Subpart 8.6), or other commercial sources (including educational and nonprofit institutions).

(b) Sources other than those listed in paragraph (a) may be used as prescribed in 41 CFR 101-26.301 and in a public exigency as prescribed in 15.202 and in 41 CFR 101-25.101-5.

8.002 Use of other Government supply sources.

Agencies shall satisfy requirements for the following supplies or services from or through specified sources, as applicable:

(a) Jewel bearings and related items (see Subpart 8.2);

(b) Public utility services (see Subpart 8.3);

(c) Printing and related supplies (see Subpart 8.8);

(d) Automatic data processing and telecommunications acquisitions (see Part 39);

(e) Leased motor vehicles (see Subpart 8.11);

(f) Strategic and critical materials from excess GSA inventories (See 41 CFR 101-14.2); and

(g) Helium (see 30 CFR Parts 601 and 602).

SUBPART 8.1—EXCESS PERSONAL PROPERTY

8.101 Definition.

"Excess personal property" means any personal property (see 45.601) under the control of a Federal agency that the agency head or a designee determines is not required for its needs and for the discharge of its responsibilities.

8.102 Policy.

When it is practicable to do so, agencies shall use excess personal property as the first source of supply in fulfilling their requirements and those of their cost-reimbursement contractors. Accordingly, agencies shall ensure that all personnel make positive efforts to satisfy agency requirements by obtaining and using excess personal property (including that suitable for adaptation or substitution) before initiating contracting action.

8.103 Information on available excess personal property.

Information regarding the availability of excess personal property can be obtained through—

(a) Review of excess personal property catalogs and bulletins issued by the General Services Administration (GSA);

(b) Personal contact with GSA or the activity holding the property;

(c) Submission of supply requirements to the regional offices of GSA (GSA Form 1539, Request for Excess Personal Property, is available for this purpose); and

(d) Examination and inspection of reports and samples of excess personal property in GSA regional offices.

8.104 Obtaining nonreportable property.

GSA will assist agencies in meeting their requirements for supplies of the types excepted from reporting as excess by the Federal Property Management Regulations (41 CFR 101-43.312). Federal agencies requiring such supplies should contact the appropriate GSA regional office.

SUBPART 8.2—JEWEL BEARINGS AND RELATED ITEMS

8.201 Definitions.

"Jewel bearing" means a piece of synthetic corundum (sapphire or ruby) of any shape, except a phonograph needle, that has one or more polished surfaces to provide supporting surfaces or low-friction contact areas for revolving, oscillating, or sliding parts in an instrument, mechanism, subassembly, or part. A jewel bearing may be unmounted or may be mounted into a ring or bushing. Examples are watch holes—olive, watch holes—straight, pallet stones, roller jewels (jewel pins), endstones (caps), vee (cone) jewels, instrument rings, cups, and double cups.

"Plant," as used in this subpart, means the Government-owned, contractor-operated William Langer Plant, Rolla, North Dakota.

"Related item," as used in this subpart, means a piece of synthetic corundum (sapphire or ruby), other than a jewel bearing, that (a) is made from material produced by the Verneuil flame fusion process, (b) has a geometric shape up to a maximum of 1 inch in any dimension, (c) requires extremely close tolerances and highly polished surfaces identical to those involved in manufacturing jewel bearings, and (d) is either mounted in a retaining or supporting structure or unmounted. Examples are window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, and notched plate.

8.202 Policy.

Except as otherwise provided in this subpart, (a) jewel bearings shall be acquired from the Plant and (b) related items shall be acquired either from domestic manufacturers or from the Plant.

8.203 Procedures.

8.203-1 Contract clause and solicitation provision.

(a) The contracting officer shall insert the clause at 52.208-1, Required Sources for Jewel Bearings and Related Items, in solicitations and contracts that may involve items (or any subassembly, component, or part of such items) in the Federal supply classes and groups listed in paragraph (b) below, except for—

(1) Small purchases under Part 13;

(2) Items purchased and used outside the United States, its possessions, and Puerto Rico; or

(3) Items that the contracting officer knows do not contain jewel bearings or related items (the contractor's certification required by 8.203-2 does not in itself satisfy this requirement).

(b) Federal supply classes and groups:

(1)	Federal Supply Classes
6605	Navigational Instruments
6610	Flight Instruments
6615	Autopilot Mechanisms and Airborne Gyro Components
6620	Engine Instruments

(1)	Federal Supply Classes
6625	Electrical- and Electronic-Properties Measuring and Testing Instruments
6630	Chemical-Analysis Instruments
6635	Physical-Properties Testing Equipment
6636	Environmental Chambers and Related Equipment
6640	Laboratory Equipment and Supplies
6645	Time-Measuring Instruments
6650	Optical Instruments
6655	Geophysical and Astronomical Instruments
6660	Meteorological Instruments and Apparatus
6665	Hazard-Detecting Instruments and Apparatus
6670	Scales and Balances
6675	Drafting, Surveying, and Mapping Instruments
6680	Liquid- and Gas-Flow, Liquid-Level, and Mechanical-Motion Measuring Instruments
6685	Pressure-, Temperature-, and Humidity-Measuring and Controlling Instruments
6695	Combination and Miscellaneous Instruments

(2)	Federal Supply Groups
12	Fire-Control Equipment
14	Guided Missiles
15	Aircraft, Airframe Structural Components
16	Aircraft Components and Accessories
18	Space Vehicles
23	Motor Vehicles and Motorcycles
25	Vehicular Equipment Components
42	Firefighting, Rescue, and Safety Equipment
52	Measuring Tools
58	Communications Equipment
59	Electrical and Electronic Equipment Components
63	Alarm and Signal Systems
65	Medical, Dental, and Veterinary Equipment and Supplies
67	Photographic Equipment
69	Training Aids and Devices

(c) The contracting officer shall insert the solicitation provision at 52.208-2, Jewel Bearings and Related Items Certificate (see 8.203-2 following), in solicitations that contain the clause at 52.208-1, Required Sources for Jewel Bearings and Related Items, except those for research and development.

8.203-2 Offeror's certification.

(a) The provision at 52.208-2 requires the offeror to (1) certify as to whether or not jewel bearings and/or related items will be incorporated into contract end items, (2) accept certain purchase requirements, and (3) attach an estimate of the jewel bearings and related items required. While failure to submit the certificate set forth in the provision with the offer does not make the offer nonresponsive, the contracting officer must obtain the certificate before award.

(b) The contracting officer shall annotate any affirmative certificate from a successful offeror with (1) the number of the contract awarded that offeror, (2) identification of the contract administration office cognizant of that contract, and (3) the date of award. The contracting officer shall forward one copy of the certificate and the attachment it calls for to the Plant and one copy of the certificate and attachment to the cognizant contract administration office. The Plant will compare the attachment with actual orders and notify the contract administration office of any serious discrepancies.

(c) The contract administration office shall review contractor records and require corrective action, if necessary, if (1) the Plant informs it of serious discrepancies between certifications and orders or (2) the contract administration office believes that there is noncompliance with the clause at 52.208-1, Required Sources for Jewel Bearings and Related Items.

8.203-3 Declination or rejection of orders.

(a) The Plant may initially decline to accept a contractor's or subcontractor's order because of the customer's current excessive and overdue indebtedness to the Plant. The Plant's declination under these circumstances is not in itself justification for (1) a waiver of the requirement to purchase from the Plant and (2) adjustment in the contract price. If the contractor or subcontractor disagrees with the Plant as to this indebtedness, the contracting officer may require the Plant to accept the order and to make shipment on a cash-on-delivery (c.o.d.) basis.

(b) Rejection of orders by the Plant—or by any other domestic manufacturer—for reasons other than those in paragraph (a) above shall not provide relief from the requirement to purchase from the Plant or other domestic manufacturer, unless the contracting officer determines that such relief is in the Government's best interest. The contracting officer shall evaluate the impact of the rejection and make an equitable adjustment in the contract price, in the delivery schedule, or in both, if one is warranted.

SUBPART 8.3—ACQUISITION OF UTILITY SERVICES

8.300 Scope of subpart.

This subpart prescribes policies and procedures for the acquisition of utility services. Agency policies and procedures predating the effective date of the Federal Acquisition Regulation (FAR) may continue to be used for 2 years after that date. However, any new or changed policies or procedures, or any policies or procedures to be used following the 2-year period, must be approved in advance by the appropriate FAR council.

8.301 Definitions.

"Areawide contract," as used in this subpart, means a master contract entered into between the General Services Administration (GSA) and a utility service supplier to cover the utility service acquisitions of all Federal agencies from the particular utility service supplier for a period not to exceed 10 years. Federal agencies, including the Department of Defense (DOD), are covered when an authorization attached to the areawide contract is completed and accepted by the utility service supplier and executed by the agency and the utility service supplier.

"Authorization," as used in this subpart, means the ordering document under an areawide contract.

"Connection charge," as used in this subpart, means a payment by an agency for special or local facilities on either one or both sides of the delivery point that are required to make connections with the nearest point of supply and are usually installed, owned, and operated by a utility service supplier.

"Separate contract," as used in this subpart, means a utility services contract executed for a period not to exceed 10 years, to cover the utility services to a specific facility.

"Termination liability," as used in this subpart, means a contingent obligation to pay the unamortized portion of special or local connecting facilities, usually installed, owned, and operated by the utility service supplier, if an agency terminates the utility service contract before expiration of its term specified in the contract or tariff of the utility service supplier.

"Utility service," as used in this subpart, means a service such as the furnishing of electricity, gas, water, steam and sewerage that is available to the general public and performed by governmental entities or private companies. Utility services are ordinarily subject to governmental regulation. The term also includes services such as snow removal and removal or disposal of garbage, rubbish, and trash that are performed on a contractual basis, which may or may not be subject to government or public regulation. This term does not include telecommunications services (see Part 39).

8.302 Applicability.

(a) Except as provided in paragraph (b) below, this subpart applies to the acquisition of utility services or connection charges costing $10,000 or more, by agencies in the United States, its possessions, and the Commonwealth of Puerto Rico.

(b) This subpart does not apply to—

(1) Utility services produced, distributed, or sold by a Federal agency (other than consolidated purchase, joint use, or cross service); or

(2) Utility services (other than those required for administrative purposes) obtained by purchase, exchange, or otherwise by a Federal power or water marketing agency incident to that agency's marketing or distribution program.

(c) The Statement of Areas of Understanding between Department of Defense and General Services Administration (15 F.R. 8227, as amended at 22 F.R. 871) governs the acquisition of utility services by DOD. Therefore, DOD shall not be subject to this subpart as specifically indicated within this subpart.

8.303 General.

(a) Except as otherwise specified, agencies shall submit all information required by GSA under this subpart to General Services Administration, Public Buildings Service, Office of Public Utilities (PU), Washington, DC 20405.

(b) Agencies requiring technical or consulting assistance in the acquisition of utility services, including assistance in negotiating with a potential supplier (see 8.304-3), may contact GSA at the address given in paragraph (a) above.

(c) GSA will, upon request, furnish the services provided for in this subpart to any Federal agency, mixed ownership Government corporation, the District of Columbia, the Senate, the House of Representatives, or the Architect of the Capitol and any activity under its direction.

8.304 Acquiring utility services.

8.304-1 GSA long-term contracts.

(a) GSA has statutory authority to enter into long-term contracts for utility services for periods not to exceed a term of 10 years (40 U.S.C. 481). These contracts may be in the form of an areawide contract or a separate contract. GSA may delegate this authority to other agencies that have qualified staffs.

(b) A long-term contract may be justified and is usually required by any of the following circumstances:

(1) The Government will obtain lower rates, larger discounts, or more favorable conditions of service.

(2) A proposed connection charge, termination liability, or any other facilities charge to be paid by the Government will be reduced or eliminated.

(3) The utility service supplier refuses to render the desired service except under a long-term contract.

(c) Other conditions for acquisitions under long-term contracts shall be determined by the specific delegation of authority to the agency from GSA.

8.304-2 GSA areawide contracts.

(a) GSA enters into areawide contracts with suppliers for the furnishing of utility services to Federal agencies located within the service areas of those suppliers.

(b) An areawide contract requires the utility service supplier to furnish the needed services—

(1) Upon bilateral execution of the authorization under the contract;

(2) Without further negotiation;

(3) At the published or unpublished current rate schedules and tariffs applicable to the classes and characteristics of the services;

(4) Subject to all terms of the areawide contract; and

(5) To all Government-owned or Government-leased facilities as long as the agency pays the bills directly to the utility service supplier and not the leasor as part of its lease agreement.

(c) An agency in an area covered by an areawide contract shall acquire utility services under that contract unless the agency determines that (1) more advantageous competing services are available from another supplier without an effective areawide contract, or (2) it is in the Government's interest to negotiate special rates or special services under a separate contract which departs from the published or unpublished current rate schedules of the utility service supplier.

(d) Upon request, GSA will furnish agencies a list of the current areawide contracts showing the kinds of utility services, the suppliers, and the areas served. GSA will also provide a copy of any areawide contract upon request. Each contract includes an authorization form for requesting service, service connection, disconnection, or change.

(e) When utility services are acquired under an areawide contract, the agency shall use the authorization attached to the appropriate GSA areawide contract. The form prescribed for ordering may be modified to satisfy the fiscal and administrative requirements of the agency and to contain any necessary additional contract terms. The authorization shall not be modified, however, to be used as a public voucher in lieu of Standard Form 1034, Public Voucher for Purchases and Services Other than Personal.

(f) All agencies acquiring utility services under an areawide contract shall furnish to GSA an executed copy of the authorization requesting service, service connection, disconnection, or change within 30 days after execution by the agency.

(g) When, pursuant to paragraph (c) above, an agency determines it appropriate to acquire utility services under a separate contract, 8.304-3 shall apply to the acquisition, except that DOD may acquire the services under its own regulations implementing the Statement of Areas of Understanding (see 8.302(c)).

8.304-3 Separate contracts.

(a) When GSA initiates or is requested to negotiate a separate contract, the acquiring agency shall furnish the following information to GSA:

(1) The technical and acquisition data required in 8.307-1(a) and 8.307-4; and

(2) Such other technical data as GSA may request to complete the contract.

(b) Other conditions for acquisition of utility services under separate contracts shall be determined by the specific delegation of authority to the agency from GSA in accordance with 8.307-3.

(c) In determining whether to negotiate special rates or special services in an area not covered by an areawide contract, consideration should be given to the following:

(1) The public utility supplier's tariff and rate schedules in light of the magnitude of the services required.

(2) Any unusual characteristics of services required which are not provided for under the supplier's tariffs and current rate schedules.

(3) Any special equipment or facility requirements which are not provided for under the supplier's tariffs and current rate schedules.

(4) Any special technical contract terms required by the agency which are not provided for under the supplier's tariff and current rate schedule.

8.304-4 Consolidated purchase, joint use, or cross-service.

(a) Agencies shall use consolidated purchase, joint use, or cross-service to acquire utility services or facilities when advantageous to the Government and in accordance with the policies and procedures at Subpart 17.5, Interagency Acquistions under the Economy Act. This requirement is not applicable if utility services are furnished without charge by another Government agency as part of space acquisition.

(b) The agencies involved under paragraph (a) above shall use a memorandum of understanding or other appropriate document to specify the services or facilities to be supplied, the estimated costs, and other conditions under which they will be acquired.

(c) These memorandums shall be subject to on-site post reviews or periodic reporting as may be required by GSA. (see 8.306). This paragraph (c) does not apply to DOD.

8.304-5 Agency acquisition.

(a) This subsection 8.304-5 does not apply to DOD.

(b) In the absence of areawide contracts for a particular location, GSA separate contracts, consolidated purchases, joint use, or cross-service arrangements, or as otherwise authorized in this section 8.304, agencies may acquire utility services and facilities and pay related connection charges within the scope of their authority, subject to the policy and procedures of this subpart.

(c) The contracting officer shall determine the appropriate contracting method in accordance with the instructions of Parts 13 through 15 of this regulation. If formal advertising is not feasible, negotiation may be used under 15.210. Except as authorized by 8.304-5(h), agencies shall use a utility service contract instead of standard utility services supplier application forms or similar documents (also see 8.304-5(g)).

(d) The contracting officer shall determine if more than one supplier can furnish the needed utility services. Although unusual, when such competition exists, the contracting officer shall solicit competitive bids or proposals for the services.

(e) The contracting officer shall acquire utility services by bilateral written contract, whether or not rates or conditions of service are fixed or adjusted by a Federal, State, or other public regulatory body, if—

(1) The supplier requires the execution of a contract;

(2) The utility service is available from more than one source (see paragraph (d) above);

(3) The annual cost of the service at the time of initiation or annual review is estimated to exceed the appropriate small purchase limitation in Part 13;

(4) A proposed connection charge, termination liability, purchase cost, cumulative leasing cost, or any other facilities charge (whether or not refundable) to be paid by the agency is estimated to exceed the appropriate small purchase limitation in Part 13; or

(5) The contracting officer determines that a bilateral written contract would be in the Government's interest.

(f) The contracting officer may acquire utility services by purchase order except when a bilateral written contract is required under paragraph (e) above.

(g) If a utility service supplier refuses to execute a contract, the agency shall notify GSA of the supplier's refusal to execute a contract, and forward full documentation including a copy of the record of negotiations. The agency may then acquire services by use of a Government purchase order or other written request for service, after a written definite and final refusal is received from a corporate officer of the supplier.

(h) When the utility supplier refuses to execute a contract (see 8.304-5(g)), the contracting officer may use the commercial forms and clauses of the utility companies in acquiring utility services by bilateral contract (except see paragraph (c) above). The contracting officer must take precautions to delete from such forms any language that may be contrary to Federal law and regulations. The contracting officer shall also comply with the requirements of 8.309 concerning the insertion of mandatory clauses in the contract.

(i) Each agency shall provide GSA (upon GSA's request) with duplicate copies of the agency's utility bills.

8.305 Rate increases.

(a) This section 8.305 does not apply to DOD.

(b) When a supplier proposes increases in rates by filing for approval with the regulatory body controlling the supplier's rates, the agency should forward the matter, including percentage of increase and amount of increase, to GSA for appropriate action.

(c) When the regulatory body approves the utility supplier's rate increase, further modification of any utility contract is not necessary, since copies of the utility supplier's new rate schedules as approved by the regulatory body will serve as the authority to pay the increased or decreased rates.

8.306 Post contract review or periodic reporting.

All acquisition documents and supporting records retained in accordance with 4.805 shall be subject to any on-site postreview or periodic reporting that may be required by GSA. See 8.307 concerning prior review of certain acquisitions. This section 8.306 does not apply to DOD.

8.307 Precontract acquisition reviews.

This section 8.307 does not apply to DOD.

8.307-1 General.

(a) Either GSA or the acquiring agency, if authorized under this section 8.307, shall review certain proposed utility services acquisitions before the contracting officer executes a binding contract. The review shall apply to—

(1) Proposed authorizations under GSA areawide contracts;

(2) Proposed memorandums of understanding or interagency agreements for consolidated purchase, joint use, or cross-service by one agency for another; and

(3) Proposed separate utility service contracts.

(b) The review is required when—

(1) The annual cost of the service to be acquired is estimated by the using agency, at the time of initiation of the service or annual review, to exceed $150,000 for separate contracts or $250,000 for authorizations under effective areawide contracts; or

(2) A proposed connection charge, termination liability, or other facilities charge to be paid by the agency (whether or not refundable) is estimated to exceed $75,000 for separate contracts or $125,000 for authorizations under effective areawide contracts.

(c) Approval of a proposed acquisition after review shall be based on written determinations and findings from the acquiring agency that all of the following criteria, as a minimum, are met:

(1) The proposed supplier is either the sole source of the required service or has been selected after consideration of more than one source of supply.

(2) The service to be provided is adequate in terms of quantity, quality, and delivery schedule to meet the acquiring agency's needs.

(3) The selected rate schedule is the most advantageous of the rate schedules available to the agency in terms of economy, efficiency, or service and is based upon the class, conditions, and characteristics of services being rendered to the agency.

(4) The proposed facilities charge, if any, is (i) necessary to secure the required service, (ii) based on current cost or pricing data, and (iii) reasonable in total amount, and may be certified for payment by the agency.

(5) The proposed acquisition meets the requirements of this subpart.

8.307-2 Precontract review by GSA.

(a) Each agency shall refer applicable proposed acquisitions of utility services to GSA for review unless an agency has its own program of prior review under 8.307-3.

(b) GSA shall acknowledge the date of receipt of the referral from the agency.

(c) If GSA does not provide comments to the referring agency within 20 workdays after a proposed utility services acquisition is received for review (or within a lesser period if agreed upon), the referring agency may complete negotiations and execute the contract.

(d) Proposed acquisitions forwarded for GSA prior review shall contain the

technical and acquisition data required by 8.307-1(c) and 8.307-4.

8.307-3 Precontract review by acquiring agency.

(a) Agencies having authorization from GSA by direct delegation of authority may conduct their own programs of utility acquisition reviews in accordance with this subpart.

(b) Agencies that do not have the authorization indicated in paragraph (a) above, but that have the qualified technical personnel to conduct an agency review program, may seek a direct delegation of authority to conduct such a program from the Office of Public Utilities, at the address stated in 8.303(a).

(c) Agency authority to conduct prior reviews shall not preclude the referral of any specific case to GSA for assistance, if desired by the agency.

(d) Any agency having responsibility for review shall provide by agency procedure for uniform application of the guidelines in 8.307-4.

8.307-4 Guidelines and data for precontract review.

(a) The office proposing to acquire utility services shall assemble and furnish complete information relating to each proposed acquisition sufficiently in advance to permit a complete review by either GSA or the acquiring agency.

(b) The information furnished for review shall include—

(1) A technical description or specifications of the type, quantity, and quality of service required; and

(2) A copy of any service proposal or proposed contract.

(c) If not included in the foregoing, a copy of the following additional documents and data shall be furnished, if applicable:

(1) A complete copy or copies of the published or unpublished current rate schedules and tariffs of the utility supplier.

(2) The following data concerning quantity, quality, and delivery schedule of required services when new or initial services are to commence:

(i) The date initial service is required.

(ii) Data, for the first calendar year of full service, on estimated maximum demand, monthly consumption, and estimated annual cost of the service and connection charges to be paid by the agency.

(iii) Known or estimated time schedule for growth to ultimate requirements.

(iv) Estimated ultimate maximum demand and ultimate monthly consumption.

(v) A simple schematic diagram or line drawing showing the meter locations and the location of the new utility facilities to be constructed by the Government and the new connecting facilities to be constructed by the utility supplier to provide the new services.

(vi) Accounting and appropriation data to cover the required utility services and any connection charges required to be paid by the agency to receive such utility services.

(3) Identification of all available sources or methods of supply, the cost effectiveness of each, and a statement of the ability of each source to provide the required services, including the location and a description of each available supplier's facilities at the nearest point of service.

(4) Identification of any unusual factors affecting the acquisition.

(5) The following data concerning proposed facilities and related charges or costs:

(i) Proposed refundable or nonrefundable connection charge, termination liability, or other facilities charge to be paid by the Government, together with a description of the supplier's proposed facilities and estimated construction costs entering into the determination of the proposed connection charge, termination liability, or facilities charge.

(ii) The basis for the connection charge including the tariff provisions or written policy of the utility supplier.

(iii) A statement by the supplier that any proposed facilities charge is not in excess of the charge that other customers would be required to pay for like facilities under similar class and condition of service.

(iv) A copy of the acquiring agency's estimate to make its own connection to the supplier's facilities, in lieu of paying the connection charge proposed by the utility supplier. In the case of proposed water and sewage contracts, the acquiring agency shall provide its estimates to construct and operate its own utility facilities in lieu of participating in a cost-sharing construction program with the proposed utility supplier.

(d) For existing utility services, the agency shall furnish the data required above under 8.307-4(a), (b), (c)(1) and the following additional information:

(1) A copy of the monthly bills covering the most recent 12 months.

(2) A tabulation, by months, for the most recent 12 months, showing the utility demands, consumption and charges, fuel adjustment charges and the average monthly cost per unit of consumption.

(3) A tabulation by months, for the next 12 months showing the same data as requested in (2) above.

(4) Accounting and appropriation data to cover the costs for the continuation of utility services.

(5) A simple schematic diagram or line drawing suitable to be included in the utility services contract showing the meter locations.

(6) For electric service contracts, state if the transformer at the point of delivery is owned by the Government or the utility supplier and if the metering is made on the primary or secondary side of such transformer.

8.308 Capital credits.

Capital credits are a form of cash reimbursement or offset of billings by Reconstruction Electrification Administration-financed Cooperatives to their customers. See 41 CFR 101-33.3 for procedures on processing these capital credits.

8.309 Contract Clauses.

(a) The contracting officer shall insert the clause at 52.208-3, Conflicts, in solicitations and contracts for utility services.

(b) The contracting officer shall also insert in solicitations and contracts for utility services the provisions and clauses prescribed elsewhere in the FAR, as appropriate for each acquisition, depending on the conditions that are applicable.

SUBPART 8.4—ORDERING FROM FEDERAL SUPPLY SCHEDULES

8.401 General.

(a) The Federal Supply Schedule program, directed and managed by the General Services Administration (GSA), provides Federal agencies with a simplified process for obtaining commonly used supplies and services at prices associated with volume buying. Indefinite delivery contracts (primarily requirements contracts) are established with commercial firms to provide supplies and services at stated prices for given periods of time. The schedule contracting office issues publications, titled Federal Supply Schedules, containing the information necessary for placing delivery orders with the contractors. Ordering offices issue delivery orders directly to the schedule contractors for the required supplies or services. Similar systems of schedule-type contracting are used for automatic data processing equipment and services, for telecommunications equipment and services and for military items managed by the Department of Defense. These systems are not included in the Federal

Supply Schedule program covered by this subpart.

(b) Ordering offices may request copies of schedules by completing GSA Form 457, FSS Publications Mailing List Application, and mailing it to the GSA Centralized Mailing Lists Services, Building 41, Denver Federal Center, Denver, Colorado 80225. Copies of GSA Form 457 and the GSA publication titled "Federal Supply Schedule Program Guide" (which includes a listing of schedules and information on the use of schedules) may also be obtained from the above address.

8.402 Applicability.

(a) This subpart applies to—

(1) Federal agencies ordering supplies or services from Federal Supply Schedules on either a mandatory or optional (nonmandatory) basis (see 8.404);

(2) Civilian and military commissaries and nonappropriated fund activities authorized by a Federal agency to use Federal Supply Schedules for their own use, not for resale; and

(3) Contractors authorized under Part 51 to order from schedules.

(b) This subpart does not apply to agencies placing orders for automatic data processing and telecommunications items or services from schedules. See Part 39 for policies and procedures for placing orders for those items or services.

8.403 Types of Federal Supply Schedules.

8.403-1 Single-award schedules.

Single-award schedules cover contracts made with one supplier at a stated price for delivery to a geographic area as defined in the schedule. Most schedules contain all information necessary for placing orders. Some schedules specify that contractor catalogs must be used for additional ordering information to aid in the selection of fabrics, colors, and similar variables.

8.403-2 Multiple-award schedules.

Multiple-award schedules cover contracts made with more than one supplier for comparable supplies and services. Contracts are awarded to suppliers of the same generic types of items at varying prices for delivery within the same geographic area. Contractor catalogs and pricelists must be used with the schedules to prepare delivery orders. The catalogs and pricelists contain information such as item descriptions, prices and discounts, order limitations, and delivery.

8.403-3 New Item Introductory Schedule.

The New Item Introductory Schedule (NIIS) provides the means to introduce new or improved products into the Federal Supply System. The schedule lists brand names of products available from various suppliers. With the exception of GSA, the only mandatory user of this schedule, Federal agencies and agencies authorized by law or agreement may use the NIIS on an optional basis. Ordering offices must use contractor catalogs and pricelists with the schedule to prepare delivery orders.

8.404 Using schedules.

(a) Before soliciting commercial sources, executive agencies shall determine if the required supplies or services, or similar supplies or services fulfilling the same purpose, are available from schedules (see FPMR 101-26.4). If so, the ordering office shall proceed in accordance with the procedure of 8.404-1 or 8.404-2, as appropriate.

(b) In the case of mandatory schedules, ordering offices shall not (1) solicit bids, proposals, quotations, or otherwise test the market solely for the purpose of seeking alternative sources to Federal Supply Schedules; or (2) request formal or informal quotations from Federal Supply Schedule contractors for the purpose of price comparisons.

8.404-1 Mandatory use.

Schedules identify executive agencies required to use them as mandatory sources of supply. The single-award schedule shall be used as a primary source and the multiple-award schedule as a secondary source. The following are exceptions to the mandatory-use requirement:

(a) *Urgent requirements.* When an ordering office requires supplies or services with a shorter delivery time than specified in the schedules, and time permits, the ordering office shall request the contractor by letter, telegram, mailgram, or telephone conversation (confirmed in writing) to state the best delivery time that can be met under the circumstances and subject to all other terms and conditions of the schedule contract. The contractor shall be instructed to reply to the inquiry within not more than 3 workdays after receipt, by the same or a faster communications medium than the one by which the inquiry was received. If the contractor offers accelerated delivery acceptable to the ordering office, orders shall obligate the contractor to make the shorter delivery under all other terms and conditions of the contract. When the contractor fails to reply, or the best delivery time does not meet the ordering office's requirements, use of the schedule is not mandatory.

(b) *Small requirements.* Dollar or quantity minimums are established for most schedules, below which ordering offices are not obligated to order and contractors are not obligated to accept orders. Ordering offices may submit orders below established minimums, subject to the contractor's acceptance. Once an order is accepted, the contractor is obligated to perform according to all the terms and conditions of the contract. Some schedules require the contractor to accept orders below the dollar or quantity minimum, but authorize the contractor to include a service charge up to a certain dollar amount. In these cases, the schedule will contain specific obligations and entitlements.

(c) *Maximum order limitation.* (1) Most schedules stipulate a dollar amount or unit quantity above which agencies shall not submit orders and contractors shall not accept orders. There may be a maximum order limitation (MOL) for each item as well as for the total order. Ordering offices should not reduce or split their requirements simply to avoid an MOL. Rather, ordering offices should consolidate their requirements whenever possible to take advantage of lower prices normally obtainable through definite quantity contracts for quantities exceeding the MOL.

(2) Ordering offices shall submit requirements exceeding the MOL in FEDSTRIP/MILSTRIP format, as applicable, to the GSA support region in accordance with FPMR 101-26.401-4(c), unless specified otherwise in the schedule. Optional schedule users may use this procedure.

(d) *Geographic coverage.* Each schedule defines geographic areas of coverage on a national, zonal, regional, or other basis. Ordering offices shall place orders with contractors serving the geographic areas in which consignees are located. When a consignee is located outside the geographic area of coverage, mandatory use is not applicable.

(e) *Lower prices for identical items.* (1) When an ordering office finds that an identical product (make and model) included on a multiple-award schedule is available from another source at a price lower than the schedule price, the office may purchase the item subject to the requirements to obtain competition.

(2) All cost and related considerations for lower priced products shall be evaluated, including but not limited to comparisons of warranties,

transportation costs (origin and destinations), and delivery terms.

(3) When products are purchased from commercial sources on the open market (i.e., not under an existing government contract) at delivered prices that are lower than the prices provided by multiple-award schedule contracts, copies of the purchase orders shall be sent to the General Services Administration (FCC), Washington, DC 20406, at the time the orders are issued.

(f) *Absence of follow-on award.* Ordering offices, after any consultation required by the schedule, are not required to forego or postpone their legitimate needs pending the award or renewal of any schedule contract.

8.404-2 Optional use.

(a) The following optional users may order from schedules and contractors may accept their orders:

(1) All executive agencies not specified in the schedules as mandatory users.

(2) All other agencies and activities of the Government, including legislative and judicial agencies as provided by law or agreement, nonappropriated fund activities as prescribed in 41 CFR 101-26.000, and the Government of the District of Columbia.

(3) Government contractors authorized to order under Part 51.

(4) Mixed-ownership Government corporations as defined in the Government Corporation Control Act (31 U.S.C. 856).

(b) If a contractor accepts an order from an optional user under a schedule contract, all terms of the schedule contract apply to that order. Acceptance may be by written notice, delivery or performance, or failure to return the order within the time specified in the contract (usually 7 workdays).

8.404-3 Requests for waivers.

(a) When an ordering office that is a mandatory user under a schedule determines that items available from the schedule will not meet its specific needs, but similar items from another source will, it shall submit a request for waiver to the Assistant Administrator, Office of Federal Supply and Services (F), GSA, Washington, DC 20406, except as provided in (b) below. Requests shall contain the following information:

(1) A complete description of the required items, whenever possible; e.g., descriptive literature such as cuts, illustrations, drawings, and brochures that explain the characteristics and/or construction.

(2) A comparison of prices and the technical differences between the requested item and the schedule item, identifying as a minimum the—

(i) Inadequacies of the schedule item to perform required functions; and

(ii) Technical, economic, or other advantages of the item requested.

(3) Quantity required.

(4) Estimated annual usage or a statement that the requirement is nonrecurrent or unpredictable.

(b) Ordering offices shall not initiate action to acquire similar items from nonschedule sources until a request for waiver is approved, except as otherwise provided in interagency agreements.

8.405 Ordering office responsibilities.

Ordering offices shall place orders directly with contractors and shall perform contract administration on individual orders. Ordering offices should deal directly with contractors concerning contract performance (see 41 CFR 101-26.403-1).

8.405-1 Ordering from multiple-award schedules.

(a) Orders should be placed with the schedule contractor offering the lowest delivered price available. However, the ordering office shall fully justify in their contract file, any orders over $500 per line item placed at other than the lowest price. Justification for ordering a higher priced item may be based on such considerations as—

(1) Delivery time in terms of actual need that cannot be met by a contractor offering a lower price;

(2) Specific or unusual requirements such as differences in performance characteristics;

(3) Compatibility with existing equipment or systems;

(4) Trade-in considerations that favor a higher priced item and produce the lowest net cost; and

(5) Special features of one item not provided by comparable items that are required in effective program performance.

(b) When two or more items at the same delivered price will meet an ordering office's needs, the ordering office shall give preference to the items of small business and/or labor surplus area concerns by following the order of priority in 14.407-6 for equal low bids.

(c) When a schedule lists both foreign and domestic items that will meet the ordering office's needs, the ordering office shall apply the procedures of Part 25, Foreign Acquisition.

(d) If an item available from a multiple-award schedule is ordered from the schedule contractor at a price lower than the schedule price, the ordering office shall notify the schedule contracting office within 10 days.

8.405-2 Order placement.

Ordering offices may use Optional Form 347, or an agency-prescribed form, to order items from schedules and shall place orders directly with the contractor within the limitations specified in each schedule. Orders shall include, at a minimum, the following information in addition to any information required by the schedule:

(a) Complete shipping and billing addresses.

(b) Contract number and date.

(c) Agency order number.

(d) F.o.b. delivery point; i.e., origin or destination.

(e) Discount terms.

(f) Delivery time.

(g) Special item number or national stock number.

(h) Brief, complete description of each item (when ordering by model number, features and options such as color, finish, and electrical characteristics, if available, must be specified).

(i) Quantity and any variation in quantity.

(j) Number of units.

(k) Unit price.

(l) Total price of order.

(m) Points of inspection and acceptance.

(n) Other pertinent data; e.g., delivery instructions or receiving hours and size-of-truck limitation.

(o) Marking requirements.

(p) Level of preservation, packaging, and packing.

8.405-3 Inspection and acceptance.

(a) Consignees shall inspect supplies at destination except when—

(1) The schedule provides for the schedule contracting agency to perform source inspection (in this case, the schedule will indicate that mandatory source inspection is required); or

(2) A schedule item is covered by a product description, and the ordering office determines that the schedule contracting agency's inspection assistance is needed (inspection assistance may be based on the ordering volume, the complexity of items, or the past performance of the supplier).

(b) When the schedule contracting agency performs the inspection, as specified in the schedule, the ordering office will provide two copies of the order specifying source inspection to the schedule contracting agency. The schedule contracting agency will notify the ordering office of acceptance or rejection of the supplies.

(c) Material inspected at source by the schedule contracting agency, and determined to conform with the product description of the schedule, shall not be

reinspected for the same purpose. The consignee shall limit inspection to quantity and condition on receipt.

(d) Unless otherwise provided in the schedule, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

8.405-4 Delinquent performance.

When the contractor fails to perform on the order, the ordering office may terminate the order for default or give the contractor further opportunity to perform by modifying the order to establish a new delivery date (obtaining consideration as necessary).

8.405-5 Termination for default.

(a) (1) An ordering office may terminate any one or more orders for default in accordance with Part 49, Termination of Contracts. The schedule contracting office shall be notified of all cases where an ordering office has declared a Federal Supply Schedule contractor in default or fraud is suspected.

(2) Should the contractor claim that the failure was excusable, the ordering office shall promptly refer the matter to the schedule contracting office. In the absence of a decision by the schedule contracting office (or by the head of the schedule contracting agency, on appeal) excusing the failure, the ordering office may charge the contractor with excess costs resulting from repurchase.

(3) Any repurchase shall be made at as reasonable a price as possible considering the quality required by the Government, delivery requirement, and administrative expenses. Copies of all repurchase orders, except the copy furnished to the contractor or any other commercial concern, shall include the notation "Repurchase against the account of ..... under Delivery Order ..... under Contract ....."

(4) When excess costs are anticipated, the ordering office may withhold funds due the contractor as offset security. Ordering offices shall minimize excess costs to be charged against the contractor and collect or setoff any excess costs owed.

(5) If an ordering office is unable to collect excess costs, it shall take the following actions:

(i) Notify the schedule contracting office within 60 days after final payment to the replacement contractor. The notice shall include the following information about the defaulted order:

(A) Name and address of the contractor.

(B) Schedule, contract, and order number.

(C) National stock or special item number(s), and a brief description of the item(s).

(D) Cost of schedule items involved.

(E) Excess costs to be collected.

(F) Other pertinent data.

(ii) In addition to the above, the notice shall include the following information about the replacement contract:

(A) Name and address of the contractor.

(B) Item repurchase cost.

(C) Repurchase order number and date of payment.

(D) Contract number, if any.

(E) Other pertinent data.

(b) Only the schedule contracting officer may terminate for default any or all items covered by the schedule contract. When notified of default action by the schedule contracting officer with respect to defaulted items, ordering offices shall—

(1) Refuse to accept further performance by the contractor;

(2) Not place further orders with the contractor;

(3) Repurchase against the contractor in default from sources designated by the schedule contracting officer; or

(4) Proceed as otherwise directed by the schedule contracting officer.

(c) All actions taken regarding terminations for default shall comply with the applicable requirements in Part 49.

8.405-6 Termination for convenience.

(a) Ordering offices may terminate individual orders for the convenience of the Government. Only the schedule contracting officer may terminate any or all items covered by the schedule contract for the convenience of the Government.

(b) Before terminating orders for convenience, the ordering office shall endeavor to enter into a "no cost" cancellation agreement with the contractor.

(c) All actions taken regarding terminations for convenience shall comply with the applicable requirements in Part 49.

8.405-7 Disputes.

The ordering office shall refer all unresolved disputes under orders to the schedule contracting office for action under the Disputes clause of the contract.

8.406 Blanket purchase agreements.

Ordering offices should consider using a Blanket Purchase Agreement (BPA) with schedule contractors to reduce the number of orders and billing and payment documents required for repetitive orders. When the schedule provides for quantity discounts, considerable savings may be effected by establishing a BPA for items for which there is a foreseeable demand. Ordering offices shall comply with Subpart 13.2 and the schedule when establishing a BPA.

8.407 Delivery.

(a) *Destination delivery.* Destination delivery (store-door) in a schedule means delivery to the door (unloading dock) of the location specified by the ordering office. This delivery is not subject to additional charges except when there is a specified charge for store-door delivery in the tariff of the delivering carrier. When destination delivery is subject to a charge, the contractor or carrier shall be instructed to annotate bills of lading or freight bills "Delivery service requested," and to show a separate item on the invoice for the charge. The ordering office may request delivery to a railroad siding at no additional cost. When destination delivery cannot be accomplished, delivery will be made to the freight station nearest the consignee at no additional cost.

(b) *Delivery within consignee's premises.* Delivery within consignee's premises is sometimes available at an additional cost. This service may be requested on an optional basis by ordering offices but contractors may refuse to provide it. Some schedules provide instructions for requesting the service, provide a means for determining the cost, and establish a time limit for the contractor to refuse. Under other schedules, when contractors refuse to deliver within the consignees' premises, ordering offices must make their own arrangements.

(c) *Shipping point/origin delivery.* Shipping point/origin delivery requires ordering offices to pay transportation costs unless delivery is requested within the commercial zone of the shipping point, as prescribed by the Interstate Commerce Commission in 49 CFR 1048. When the carrier accepts supplies from the contractor, title for the supplies passes to the ordering office. Payment should be made upon the contractor's submission of invoices and proof of shipment.

(d) *Special transportation.* Ordering offices may request premium methods of transportation on items delivered f.o.b. destination. When this is done, ordering offices must pay the difference between "freight" and the requested mode. Transportation details such as these are subject to agreement between ordering offices and the schedule contractors.

8.408 Deficiencies or discrepancies in shipments.

Ordering offices shall process deficiencies or discrepancies in shipments as follows:

(a) The ordering office and contractor shall resolve complaints concerning the quality of material inspected at destination. However, the ordering office should report significant instances of poor quality to the schedule contracting officer.

(b) When it is established that the contractor is at fault for nonconforming supplies or services, the following options are available to the ordering office:

(1) Require the nonconforming supplies or services to be corrected in place or removed for correction, by and at the expense of the contractor.

(2) Accept the supplies or services with an agreed reduction in price.

(3) Terminate the order for default.

(c) When items are covered by warranty, quality deficiencies shall be handled as provided in Subpart 46.6.

(d) Discrepancies concerning other than the quality of the material; e.g., overages, shortages, or damages, shall be—

(1) Processed as provided in 41 CFR 101-40.7 or as directed by the schedule contracting agency, when there are discrepancies in quantity or condition of material received from that shown on the covering bill of lading (transportation-type discrepancy); or

(2) Resolved between the ordering office and the contractor when there exists any discrepancy in quantity or condition of material received from that shown on the covering invoices or shipment packing list.

SUBPART 8.5—[RESERVED]

SUBPART 8.6—ACQUISITION FROM FEDERAL PRISON INDUSTRIES, INC.

8.601 General.

(a) Federal Prison Industries, Inc. (FPI), also referred to as UNICOR, is a self-supporting, wholly owned Government corporation of the District of Columbia.

(b) FPI provides training and employment for prisoners confined in Federal penal and correctional institutions through the sale of its products and services to Government agencies (18 U.S.C. 4121-4128).

(c) FPI diversifies its products and services to prevent private industry from experiencing unfair competition from prison workshops or activities.

8.602 Policy.

(a) Agencies shall purchase required supplies of the classes listed in the Schedule of Products made in Federal Penal and Correctional Institutions (referred to in this subpart as "the Schedule") at prices not to exceed current market prices, using the procedures in this subpart.

(b) Agencies are encouraged to use the facilities of FPI to the maximum extent practicable in purchasing (1) supplies that are not listed in the Schedule, but that are of a type manufactured in Federal penal and correctional institutions, and (2) services that are listed in the Schedule.

(c) Agencies should ask FPI whether unlisted products of the type normally produced by FPI can be added to the Schedule.

8.603 Purchase priorities.

(a) FPI and the Workshops for the Blind and Other Severely Handicapped may produce identical supplies or services. When this occurs, ordering offices shall purchase supplies and services in the following priorities:

(1) Supplies:

(i) Federal Prison Industries, Inc. (41 U.S.C. 48).

(ii) Workshops.

(iii) Commercial sources.

(2) Services:

(i) Workshops.

(ii) Federal Prison Industries, Inc.

(iii) Commercial sources.

(b) Supplies and services manufactured or performed by FPI are in strict conformity with Federal Specifications. These supplies and services are listed in the Schedule. Copies of the Schedule are available from Federal Prison Industries, Inc., Department of Justice, Washington, DC 20534.

8.604 Ordering procedures.

(a) Contracting officers shall order (1) less-than-carload lots of common-use items (Schedule A of the Schedule) from the regional warehouses of GSA, unless it is more practical and economical to purchase directly from FPI, and (2) carload lots of common-use items, and other items listed in the Schedule, from FPI.

(b) Contracting officers shall prepare orders to FPI using the procedures in the Schedule.

(c) When the contracting officer believes that the FPI price exceeds the market price, the matter may be referred to the cognizant product division identified in the Schedule or to the FPI Washington office for resolution.

8.605 Clearances.

(a) Clearance is required from FPI before products on the Schedule are acquired from other sources, except when the conditions in 8.606 apply. FPI clearances ordinarily are of the following types:

(1) General or blanket clearances issued when classes of articles or services are not available from FPI.

(2) Formal clearances issued in response to requests from offices desiring to acquire, from other sources, supplies listed in the Schedule and not covered by a general clearance. Requests should be addressed to Federal Prison Industries, Inc., Department of Justice, Washington, DC 20534.

(b) Purchases from other sources because of a lower price are not normally authorized, and clearances will not be issued on this basis except as a result of action taken to resolve questions of price under 8.604(c).

(c) Disputes regarding price, quality, character, or suitability of products produced by FPI are subject to arbitration as specified in 18 U.S.C. 4124. The statute provides that the arbitration shall be conducted by a board consisting of the Comptroller General of the United States, the Administrator of General Services, and the Director of the Office of Management and Budget, or their representatives. The decisions of the board are final and binding on all parties.

8.606 Exceptions.

FPI clearances are not required when—

(a) Public exigency requires immediate delivery or performance;

(b) Suitable used or excess supplies are available;

(c) Purchases are made from GSA of less-than-carload lots of common-use items stocked by GSA (see Schedule A of the Schedule);

(d) The products are acquired and used outside the United States; or

(e) Orders are for listed items totaling $25 or less that require delivery within 10 days.

SUBPART 8.7—ACQUISITION FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

8.700 Scope of subpart.

This subpart prescribes the policies and procedures for implementing the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c), referred to in this subpart as "the Act," and the rules of the Committee for Purchase from the Blind and Other Severely Handicapped (41 CFR Part 51).

8.701 Definitions.

"Allocation," as used in this subpart, means an action taken by a central nonprofit agency to designate the workshops that will produce definite quantities of supplies or perform specific services upon receipt of orders from ordering offices.

"Central nonprofit agency," as used in this subpart, means the National Industries for the Blind, which has been designated to represent workshops serving blind individuals; or the National Industries for the Severely Handicapped, which has been designated to represent workshops serving severely handicapped individuals other than blind.

"Committee," as used in this subpart, means the Committee for Purchase from the Blind and Other Severely Handicapped.

"Government" or "entity of the Government" means any entity of the legislative or judicial branch, any executive agency, military department, Government corporation, or independent establishment, the U.S. Postal Service, or any nonappropriated-fund instrumentality of the Armed Forces.

"Ordering office" means any activity in an entity of the Government that places orders for the purchase of supplies or services.

"Procurement List," as used in this subpart, means a list of supplies (including military resale commodities) and services that the Committee has determined are suitable for purchase by the Government under the Javits-Wagner-O'Day Act.

"Workshop for the blind" or "workshop for the other severely handicapped" (referred to jointly as workshops) means a qualified nonprofit agency for the blind or for the other severely handicapped approved by the Committee to produce a commodity for or provide a service to the Government under the Act.

8.702 General.

The Committee is an independent Government activity with members appointed by the President of the United States. It is responsible for—

(a) Determining those supplies and services to be purchased by all entities of the Government from workshops for the blind and other severely handicapped;

(b) Establishing prices for the supplies and services; and

(c) Establishing rules and regulations to implement the Act.

8.703 Procurement List.

(a) The Committee publishes a Procurement List of all the supplies and services required to be purchased from the workshops. Copies of the Procurement List may be obtained by submitting GSA Form 457 to the General Services Administration, Building 41, Denver Federal Center, Denver, CO 80225. Mailing code OOSC-0002 applies.

(b) The Procurement List identifies workshop supplies available from—

(1) General Services Administration (GSA) stocks at supply distribution facilities;

(2) The Defense Logistics Agency (DLA) system; and

(3) Federal Prison Industries, Inc.

8.704 Purchase priorities.

(a) The Act requires the Government to purchase supplies or services on the Procurement List, at prices established by the Committee, from a qualified workshop if they are available within the period required. When identical supplies or services are on the Procurement List and the Schedule of Products issued by Federal Prison Industries, Inc., ordering offices shall purchase supplies and services in the following priorities:

(1) Supplies:

(i) Federal Prison Industries, Inc. (41 U.S.C. 48).

(ii) Workshops.

(iii) Commercial sources.

(2) Services:

(i) Workshops.

(ii) Federal Prison Industries, Inc.

(iii) Commercial sources.

(b) No other provision of the FAR shall be construed as permitting an exception to the mandatory purchase of items on the Procurement List.

(c) The Procurement List identifies those supplies for which the ordering office must obtain a formal clearance (8.605) from Federal Prison Industries, Inc., before making any purchases from workshops.

8.705 Procedures.

8.705-1 General.

(a) Ordering offices shall obtain supplies and services on the Procurement List from the central nonprofit agency or its designated workshops, except that supplies identified on the Procurement List as available from DLA or GSA supply distribution facilities shall be obtained through DLA or GSA procedures. If a distribution facility cannot provide the supplies, it shall inform the ordering office, which shall then order from the workshop designated by the Committee.

(b) Supply distribution facilities in DLA and GSA shall obtain supplies on the Procurement List from the central nonprofit agency identified or its designated workshops.

8.705-2 Direct-order process.

Central nonprofit agencies may authorize ordering offices to transmit orders for specific supplies or services directly to a workshop. The written authorization remains valid until it is revoked by the central nonprofit agency or the Committee. The central nonprofit agency shall specify the normal delivery or performance leadtime required by the workshop. The ordering office shall reflect this leadtime in its orders.

8.705-3 Allocation process.

(a) When the direct order process has not been authorized, the ordering office shall submit a letter request for allocation (requesting the designation of the workshop to produce the supplies or perform the service) to the central nonprofit agency designated in the Procurement List. Ordering offices shall request allocations in sufficient time for a reply, for orders to be placed, and for the workshop to produce the supplies or provide the service within the required delivery or performance schedule.

(b) The ordering office's request to the central nonprofit agency for allocation shall include the following information:

(1) For supplies—Item name, stock number, latest specification, quantity, unit price, date delivery is required, and destination to which delivery is to be made.

(2) For services—Type and location of service required, latest specification, work to be performed, estimated volume, and required date or dates for completion.

(3) Other requirements; e.g., packing, marking, as necessary.

(c) When an allocation is received, the ordering office shall promptly issue an order to the specified workshop or to the central nonprofit agency, as instructed by the allocation. If the issuance of an order is to be delayed for more than 15 days beyond receipt of the allocation, or canceled, the ordering office shall advise the central nonprofit agency immediately.

(d) Ordering offices may issue orders without limitation as to dollar amount and shall record them upon issuance as obligations. Each order shall include, as a minimum, the information contained in the request for allocation. Ordering offices shall also include additional instructions necessary for performance under the order; e.g., on the handling of

Government-furnished property, reports required, and notification of shipment.

8.705-4 Compliance with orders.

(a) The central nonprofit agency shall inform the ordering office of changes in leadtime experienced by its workshops to minimize requests for extensions once the ordering office places an order.

(b) The ordering office shall grant a request by a central nonprofit agency or workshop for revision in the delivery or completion schedule, if feasible. If extension of the delivery or completion date is not feasible, the ordering office shall notify the appropriate central nonprofit agency and request that it reallocate the order, or grant a purchase exception authorizing acquisition from commercial sources.

(c) When a workshop fails to perform under the terms of an order, the ordering office shall make every effort to resolve the noncompliance with the workshop involved and to negotiate an adjustment before taking action to cancel the order. If the problem cannot be resolved with the workshop, the ordering office shall refer the matter for resolution first to the central nonprofit agency and then, if necessary, to the Committee.

(d) When, after complying with 8.705-4(c), the ordering office determines that it must cancel an order, it shall notify the central nonprofit agency and, if practical, request a reallocation of the order. When the central nonprofit agency cannot reallocate the order, it shall grant a purchase exception permitting use of commercial sources, subject to approval by the Committee when the value of the purchase exception is $2,500 or more.

8.706 Purchase exceptions.

(a) Ordering offices may acquire supplies or services listed on the Procurement List from commercial sources only if the acquisition is specifically authorized in a purchase exception granted by the designated central nonprofit agency.

(b) The central nonprofit agency shall promptly grant purchase exceptions when—

(1) The workshops cannot provide the supplies or services within the time required, and commercial sources can provide them earlier in the quantities required; or

(2) The quantity required cannot be produced or provided economically by the workshops.

(c) The central nonprofit agency granting the exception shall specify the quantity and delivery or performance period covered by the exception.

(d) When a purchase exception is granted, the contracting officer shall—

(1) Initiate purchase action within 15 days following the date of the exception or any extension granted by the central nonprofit agency; and

(2) Provide a copy of the solicitation to the central nonprofit agency when it is issued.

(e) The Committee may also grant a purchase exception, under any circumstances it considers appropriate.

8.707 Prices.

(a) The prices on the Procurement List are fair market prices established by the Committee. All prices for supplies ordered under this subpart are f.o.b. origin.

(b) Prices for supplies are normally adjusted semiannually. Prices for services are normally adjusted annually.

(c) The Committee may request the agency responsible for acquiring the supplies or service to assist it in establishing or revising the fair market price. The Committee has the authority to establish prices without prior coordination with the responsible contracting office.

(d) Price changes shall normally apply to all orders received by the workshop on or after the effective date of the change. In special cases, after considering the views of the ordering office, the Committee may make price changes applicable to orders received by the workshop prior to the effective date of the change.

(e) If an ordering office desires packing, packaging, or marking of supplies other than the standard pack as provided on the Procurement List, any difference in costs shall be included as a separate item on the workshop's invoice. The ordering office shall reimburse the workshop for these costs.

(f) Ordering offices may make recommendations to the Committee at any time for price revisions for supplies and services on the Procurement List.

8.708 Shipping.

(a) Delivery is accomplished when a shipment is placed aboard the vehicle of the initial carrier. The time of delivery is the date shipment is released to and accepted by the initial carrier.

(b) Shipment is normally under Government bills of lading. However, for small orders, ordering offices may specify other shipment methods.

(c) When shipments are under Government bills of lading, the bills of lading may accompany orders or be otherwise furnished promptly. Failure of an ordering office to furnish bills of lading or to designate a method of transportation may result in an excusable delay in delivery (see Subpart 49.4, Termination for Default).

(d) Workshops shall include transportation costs for small shipments paid by workshops as an item on the invoice. The ordering office shall reimburse the workshop for these costs.

8.709 Payments.

The ordering office shall normally make payments for supplies or services on the Procurement List within 20 days, but no later than 30 days after shipment or after receipt of a correct invoice or voucher.

8.710 Quality of merchandise.

Supplies and services provided by workshops shall comply with the applicable Government specifications and standards cited in the order. When no specifications or standards exist—

(a) Supplies shall be of the highest quality and equal to similar items available on the commercial market; and

(b) Services shall conform to good commercial practices.

8.711 Quality complaints.

(a) When the quality of supplies or services received is unsatisfactory, the using activity shall take the following actions:

(1) For supplies received from DLA supply centers or GSA supply distribution facilities, notify the supplying agency.

(2) For supplies or services received from workshops for the blind or other severely handicapped, address complaints to the workshop involved, with a copy to the appropriate central nonprofit agency.

(b) When quality problems cannot be resolved by the workshop and the ordering office, the ordering office shall first contact the central nonprofit agency and then, if necessary, the Committee for resolution.

8.712 Specification changes.

(a) The ordering office shall notify the workshop and appropriate central nonprofit agency of any change in specifications or standards. In the absence of such written notification, the workshop shall produce the supplies or provide the services under the specification or standard cited in the order.

(b) The contracting activity shall provide advance notification to the Committee and the central nonprofit agency on actions that affect supplies on the Procurement List and shall permit them to comment before action is taken, particularly when it involves—

(1) Changes that require new national stock numbers;

(2) Deleting items from the supply system;

(3) Standardization; or

(4) Developing new items to replace items on the Procurement List.

8.713 Optional acquisition of supplies and services.

(a) Ordering offices may acquire supplies and services not included on the Procurement List from a workshop that is the low responsive, responsible offeror under a solicitation issued by other authorized acquisition methods.

(b) Ordering offices should forward solicitations to workshops that may be qualified to provide the supplies or services required.

8.714 Communications with the central nonprofit agencies and the Committee.

(a) The addresses of the central nonprofit agencies are contained in the current issue of the Procurement List.

(b) Any matter requiring referral to the Committee shall be addressed to the Executive Director of the Committee at the address contained in the current issue of the Procurement List.

SUBPART 8.8—ACQUISITION OF PRINTING AND RELATED SUPPLIES

8.800 Scope of subpart.

This subpart provides policy limiting acquisition of Government printing and related supplies as required by 44 U.S.C. 501, 502, 504, and 1121; and the Government Printing and Binding Regulations, published by the Joint Committee on Printing (JCP), Congress of the United States.

8.801 Definitions.

"Government printing" means printing, binding, blank-book, and microform work (including any items requiring the processes of composition, platemaking, presswork, or binding) for the use of an executive department, independent agency, or establishment of the Government.

"Related supplies," as used in this subpart, means supplies that are used and equipment that is usable in printing and binding operations.

8.802 Policy.

(a) Generally, all Government printing authorized by law is done at the Government Printing Office (GPO) except when the JCP specifically approves otherwise. If the GPO is not equipped to do the work, the JCP may grant approval for the Public Printer (head of GPO) to (1) contract the work out or (2) authorize an agency to contract for its own work or establish an in-house capability.

(b) The JCP regulations require the head of each agency to designate a central printing authority to serve as the liaison with the JCP and the Public Printer on matters related to printing. Contracting officers shall obtain approval from their designated central printing authority before contracting in any manner, whether directly or through contracts for other supplies or services, for the items defined in 8.801. Examples of Government printing requiring this approval include composition, platemaking, presswork, binding, and micrographics (when used as a substitute for printing).

(c) Further, 44 U.S.C. 1121 provides that the Public Printer may acquire and furnish paper and envelopes (excluding envelopes printed in the course of manufacture) in common use by two or more Government departments, establishments, or services in the District of Columbia, and provides for reimbursement of the Public Printer from available appropriations or funds. Paper and envelopes that are furnished by the Public Printer may not be acquired in any other manner.

SUBPART 8.9—[RESERVED]

SUBPART 8.10—[RESERVED]

SUBPART 8.11—LEASING OF MOTOR VEHICLES

8.1100 Scope of subpart.

This subpart covers the procedures for the leasing, from commercial concerns, of motor vehicles that comply with Federal Motor Vehicle Safety Standards and applicable State motor vehicle safety regulations. It does not apply to motor vehicles leased outside the United States.

8.1101 Definitions.

"Leasing," as used in this subpart, means the acquisition of motor vehicles, other than by purchase from private or commercial sources, and includes the synonyms "hire" and "rent."

"Motor vehicle" means an item of equipment, mounted on wheels and designed for highway and/or land use, that (a) derives power from a self-contained power unit or (b) is designed to be towed by and used in conjunction with self-propelled equipment.

8.1102 Presolicitation requirements.

(a) Before preparing solicitations for leasing of motor vehicles, contracting officers shall obtain from the requiring activity a written certification that—

(1) The vehicles requested are of maximum fuel efficiency and minimum body size, engine size, and equipment (if any) necessary to fulfill operational needs, and meet prescribed fuel economy standards;

(2) The head of the requiring agency, or a designee, has certified that the requested passenger automobiles (sedans and station wagons) larger than Type IA, IB, or II (small, subcompact, or compact) are essential to the agency's mission;

(3) Internal approvals have been received; and

(4) The General Services Administration has advised that it cannot furnish the vehicles.

(b) Generally, solicitations shall not be limited to current-year production models. However, with the prior approval of the head of the contracting office, solicitations may be limited to current models on the basis of overall economy.

8.1103 Contract requirements.

Contracting officers shall include the following items in each contract for leasing motor vehicles:

(a) Scope of contract.

(b) Method of computing payments.

(c) A listing of the number and type of vehicles required, and the equipment and accessories to be provided with each vehicle.

(d) Responsibilities of the contractor or the Government for furnishing gasoline, motor oil, antifreeze, and similar items.

(e) Unless it is determined that it will be more economical for the Government to perform the work, a statement that the contractor shall perform all maintenance on the vehicles.

(f) A statement as to the applicability of pertinent State and local laws and regulations, and the responsibility of each party for compliance with them.

(g) Responsibilities of the contractor or the Government for emergency repairs and services.

8.1104 Contract clauses.

The contracting officer shall insert the following clauses in solicitations and contracts for leasing of motor vehicles, unless the motor vehicles are leased in foreign countries:

(a) The clause at 52.208-4, Vehicle Lease Payments.

(b) The clause at 52.208-5, Condition of Leased Vehicles.

(c) The clause at 52.208-6, Marking of Leased Vehicles.

(d) The provisions and clauses prescribed elsewhere in the FAR for solicitations and contracts for supplies when a fixed-price contract is contemplated, but excluding—

(1) The clause at 52.212-9, Variation in Quantity;

(2) The clause at 52.232-1, Payments;

(3) The clause at 52.222-20, Walsh-Healey Public Contracts Act; and

(4) The clause at 52.246-16, Responsibility for Supplies.

PART 9—CONTRACTOR QUALIFICATIONS

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

9.000 Scope of part.

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

SUBPART 9.1—RESPONSIBLE PROSPECTIVE CONTRACTORS

9.100 Scope of subpart.

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

9.101 Definitions.

"Preaward survey" means an evaluation by a surveying activity of a prospective contractor's capability to perform a proposed contract.

"Responsible prospective contractor" means a contractor that meets the standards in 9.104.

"Surveying activity" means the cognizant contract administration office or, if there is no such office, another organization designated by the agency to conduct preaward surveys.

9.102 Applicability.

(a) This subpart applies to all proposed contracts with any prospective contractor that is located—

(1) In the United States, its possessions, or Puerto Rico; or

(2) Elsewhere, unless application of the subpart would be inconsistent with the laws or customs where the contractor is located.

(b) This subpart does not apply to proposed contracts with (1) foreign, State, or local governments; (2) other U.S. Government agencies or their instrumentalities; or (3) agencies for the blind or other severely handicapped (see Subpart 8.7).

9.103 Policy.

(a) Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only.

(b) No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility. In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility. If the prospective contractor is a small business concern, the contracting officer shall comply with Subpart 19.6, Certificates of Competency and Determinations of Eligibility. (If Section 8(a) of the Small Business Act (15 U.S.C. 637) applies, see Subpart 19.8.)

(c) The award of a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs.

While it is important that Government purchases be made at the lowest price, this does not require an award to a supplier solely because that supplier submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.

9.104 Standards.

9.104-1 General standards.

To be determined responsible, a prospective contractor must—

(a) Have adequate financial resources to perform the contract, or the ability to obtain them (see 9.104-3(b));

(b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;

(c) Have a satisfactory performance record (see 9.104-3(c));

(d) Have a satisfactory record of integrity and business ethics;

(e) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, and quality assurance measures applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors) (see 9.104-3(b));

(f) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them (see 9.104-3(b)); and

(g) Be otherwise qualified and eligible to receive an award under applicable laws and regulations. For standards pertaining specifically to construction contracts, see Subparts 36.2, 36.3, and 36.4.

9.104-2 Special standards.

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

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

9.104-3 Application of standards.

(a) *Manufacturer or regular dealer.* As prescribed in 22.608, the contracting officer shall investigate and determine Walsh-Healey Act eligibility and not rely on the prospective contractor's representation, if—

(1) A protest as to eligibility has been lodged (see 22.608-3); or

(2) The contracting officer has knowledge that casts doubt on the validity of the representation.

(b) *Ability to obtain resources.* Except to the extent that a prospective contractor has sufficient resources or proposes to perform the contract by subcontracting, the contracting officer shall require acceptable evidence of the prospective contractor's ability to obtain required resources (see 9.104-1(a), (e), and (f)). Acceptable evidence normally consists of a commitment or explicit arrangement, that will be in existence at the time of contract award, to rent, purchase, or otherwise acquire the needed facilities, equipment, other resources, or personnel.

(c) *Satisfactory performance record.* A prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be nonresponsible, unless the contracting officer determines that the circumstances were properly beyond the contractor's control or that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of nonresponsibility. The contracting officer shall consider the number of contracts involved and extent of deficiency of each in making this evaluation.

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

(e) *Small business concerns.* If a small business concern's offer that would otherwise be accepted is to be rejected because of a determination of nonresponsibility, the contracting officer shall refer the matter to the Small Business Administration, which will decide whether or not to issue a Certificate of Competency (see Subpart 19.6).

9.104-4 Subcontractor responsibility.

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

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

9.105 Procedures.

9.105-1 Obtaining information.

(a) Before making a determination of responsibility, the contracting officer shall possess or obtain information sufficient to be satisfied that a prospective contractor currently meets the applicable standards in 9.104.

(b) (1) Generally, the contracting officer shall obtain information regarding the responsibility of prospective contractors, including requesting preaward surveys when necessary (see 9.106), promptly after a bid opening or receipt of offers. However, in negotiated contracting, especially when research and development is involved, the contracting officer may obtain this information before issuing the request for proposals. Requests for information shall ordinarily be limited to information concerning (i) the low bidder or (ii) those offerors in range for award.

(2) Preaward surveys shall be managed and conducted by the surveying activity.

(i) If the surveying activity is a contract administration office—

(A) That office shall advise the contracting officer on prospective contractors' financial competence and credit needs; and

(B) The administrative contracting officer shall obtain from the auditor any information required concerning the adequacy of prospective contractors' accounting systems and these systems'

suitability for use in administering the proposed type of contract.

(ii) If the surveying activity is not a contract administration office, the contracting officer shall obtain from the auditor any information required concerning prospective contractors' financial competence and credit needs, the adequacy of their accounting systems, and these systems' suitability for use in administering the proposed type of contract.

(3) Information on financial resources and performance capability shall be obtained or updated on as current a basis as is feasible up to the date of award.

(c) The contracting officer should use the following sources of information to support determinations of responsibility or nonresponsibility:

(1) The Consolidated List of Debarred, Suspended, and Ineligible Contractors maintained in accordance with Subpart 9.4.

(2) Records and experience data, including verifiable knowledge of personnel within the contracting office, audit offices, contract administration offices, and other contracting offices.

(3) The prospective contractor—including bid or proposal information, questionnaire replies, financial data, information on production equipment, and personnel information.

(4) Preaward survey reports (see 9.106).

(5) Other sources such as publications; suppliers, subcontractors, and customers of the prospective contractor; financial institutions; Government agencies; and business and trade associations.

(d) Contracting offices and cognizant contract administration offices that become aware of circumstances casting doubt on a contractor's ability to perform contracts successfully shall promptly exchange relevant information.

9.105-2 Determinations and documentation.

(a) *Determinations.* (1) The contracting officer's signing of a contract constitutes a determination that the prospective contractor is responsible with respect to that contract. When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be nonresponsible, the contracting officer shall make, sign, and place in the contract file a determination of nonresponsibility, which shall state the basis for the determination.

(2) If the contracting officer determines and documents that a responsive small business lacks certain elements of responsibility, the contracting officer shall comply with the procedures in Subpart 19.6. When a certificate of competency is issued for a small business concern (see Subpart 19.6), the contracting officer may accept the factors covered by the certificate without further inquiry.

(b) *Support documentation.* Documents and reports supporting a determination of responsibility or nonresponsibility, including any preaward survey reports and any applicable Certificate of Competency, must be included in the contract file.

9.105-3 Disclosure of preaward information.

(a) Except as provided in Subpart 24.2, Freedom of Information Act, information (including the preaward survey report) accumulated for purposes of determining the responsibility of a prospective contractor shall not be released or disclosed outside the Government.

(b) The contracting officer may discuss preaward survey information with the prospective contractor before determining responsibility. After award, the contracting officer or, if it is appropriate, the head of the surveying activity or a designee may discuss the findings of the preaward survey with the company surveyed.

9.106 Preaward surveys.

9.106-1 Conditions for preaward surveys.

(a) A preaward survey is normally required when the information on hand or readily available to the contracting officer is not sufficient to make a determination regarding responsibility. However, if the contemplated contract (1) will be for $25,000 or less or (2) will have a fixed price of less than $100,000 and will involve commercial products (see 11.001) only, the contracting officer should *not* request a preaward survey unless circumstances justify its cost or the matter requires referral to the Small Business Administration (see Subpart 19.6, Certificates of Competency and Determinations of Eligibility).

(b) When a cognizant contract administration office becomes aware of a prospective award to a contractor about which unfavorable information exists and no preaward survey has been requested, it shall promptly obtain and transmit details to the contracting officer.

(c) Before beginning a preaward survey, the surveying activity shall ascertain whether the prospective contractor is debarred, suspended, or ineligible (see Subpart 9.4). If the prospective contractor is debarred, suspended, or ineligible, the surveying activity shall advise the contracting officer promptly and not proceed with the preaward survey unless specifically requested to do so by the contracting officer.

9.106-2 Requests for preaward surveys.

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

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

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

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

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

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

9.106-3 Interagency preaward surveys.

When the contracting office and the surveying activity are in different agencies, the procedures of this section 9.106 and Subpart 42.1 shall be followed along with the requlations of the agency in which the surveying activity is located, except that reasonable special requests by the contracting office shall be accommodated.

9.106-4 Reports.

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

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

contractor's responsibility or nonresponsibility.

(c) When a preaward survey discloses previous unsatisfactory performance, the surveying activity shall specify the extent to which the prospective contractor plans, or has taken, corrective action. Lack of evidence that past failure to meet contractual requirements was the prospective contractor's fault does not necessarily indicate satisfactory performance. The narrative shall report any persistent pattern of need for costly and burdensome Government assistance (e.g., engineering, inspection, or testing) provided in the Government's interest but not contractually required.

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

SUBPART 9.2—QUALIFIED PRODUCTS

9.200 Scope of subpart.

This subpart prescribes policies and procedures regarding the acquisition of qualified products.

9.201 Definitions.

"Qualified product" means an item that has been examined and tested for compliance with specification requirements and qualified for inclusion in a qualified products list.

"Qualified products list (QPL)" means a list that identifies the qualified item by specification, Government designation, part or model number or trade name, test or qualification reference, manufacturer's name and address, and place of manufacture.

"Specification preparing activity (SPA)" means the activity designated in a specification as responsible for development and maintenance of the specification, and any qualified products list associated with the specification.

9.202 General.

(a) Qualification is the process by which products are obtained from manufacturers or distributors, examined and tested for compliance with specification requirements, and then included in a list of qualified products. Generally, qualification is performed in advance and independently of any specific acquisition action. After qualification, the products are included in a Federal or Military QPL. Suppliers whose products are qualified and who furnish evidence of the qualification are eligible for award although not yet included in the QPL.

(b) Specifications requiring a qualified product are included in the following publications:

(1) Index of Federal Specifications and Standards, FPMR 101-29.1.

(2) Department of Defense Index of Specifications and Standards.

(c) Instructions concerning qualification procedures are included in the following publications:

(1) Federal Standardization Handbook, FPMR 101-29, Chapter IV.

(2) Defense Standardization Manual 4120.3-M, Chapter IV, as amended by Military Standards 961 and 962.

(d) The publications listed in paragraphs (b) and (c) above are sold to the public by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Civil agencies may obtain the publications from the General Services Administration, Specifications Section (WFSIS), Washington, DC 20407. Defense agencies may obtain the publications from the Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120.

9.203 Responsibilities of a specification preparing activity (SPA).

The responsibilities of a SPA include the following:

(a) Arranging publicity for the qualification requirements.

(b) Qualifying products that meet specification requirements.

(c) Listing manufacturers and suppliers whose products are qualified in the current QPL.

(d) Furnishing QPL's to prospective offerors and the public upon request.

(e) Clarifying, as necessary, qualification requirements.

(f) In appropriate cases, when requested by the contracting officer, providing and publicizing written waivers of qualification requirements.

(g) Withdrawing or omitting qualification of a listed product, as necessary.

(h) Advising persons furnished a QPL, and suppliers whose products are on a QPL, that—

(1) The QPL does not constitute endorsement of the product by the Government;

(2) The products listed have been qualified under the latest applicable specification;

(3) The QPL may be amended without notice;

(4) The listing of a product does not release the supplier from compliance with the specification; and

(5) Use of the QPL information for advertising or publicity is permitted. However, the supplier must not state or imply that the product is the only product of that type qualified, or that the Government in any way recommends or endorses the product.

(i) Reexamining a qualified product when—

(1) The manufacturer has modified the product, changed the material or the processing sufficiently so the validity of previous qualification is questionable;

(2) The requirements in the specification have been amended or revised sufficiently to affect the character of the product; and

(3) It is necessary to determine that the quality of the product is maintained in conformance with the specification.

9.204 Justification for including qualification requirements.

Subject to approval within the SPA's parent agency at a level above the head of the SPA, a qualification requirement may be included in a specification when any of the following conditions exist:

(a) The time required to conduct the examinations and tests to determine compliance with all the technical requirements of the specification will exceed 30 days (720 hours).

(b) The necessary examinations and tests for qualification would require special equipment not commonly available.

(c) The specification covers life survival or emergency lifesaving equipment.

9.205 Opportunity for qualification before solicitation.

(a) If the SPA determines that a product is to be qualified, the SPA shall urge manufacturers to submit their products for qualification and, when possible, give manufacturers sufficient time to arrange for qualification before issuing a solicitation. The SPA shall furnish notice of the qualification requirement to the U.S. Department of Commerce, Office of Field Operations, P.O. Box 5999, Chicago, Illinois 60680, for synopsis in the Commerce Business Daily. The notice shall include—

(1) Intent to establish a QPL for a product;

(2) The specification number and name of the product;

(3) The name and address of the SPA to which the request for qualification should be submitted;

(4) The cut-off date for submission of products for qualification testing;

(5) A precautionary notice that the product submitted for qualification testing will not be tested until the applicant has furnished the SPA with any specific information that may be requested of the manufacturer;

(6) Notification that upon the establishment of a QPL for the product, consideration in all future awards for the product will be given only to those products accepted for inclusion in the applicable QPL's; and

(7) The approximate time period following submission of a product for qualification testing within which the applicant will be notified by the SPA whether the product passed or failed the qualification testing.

(b) The SPA shall keep QPL's open for inclusion of products from additional suppliers, including eligible products from designated countries under the terms of the International Agreement on Government Procurement.

9.206 Acquiring qualified products.

9.206-1 General.

(a) If qualified products are being acquired, the contracting officer shall consider only those offers that offer products identified in the offer as qualified for inclusion in the QPL applicable at the time set for opening of bids or award of negotiated contracts.

(b) If a qualified product is to be acquired by the prime contractor as a component of an end item, the contracting officer shall require the prime contractor to furnish a component that is a qualified product before award of a subcontract for the component. Any delay resulting from the prime contractor's awaiting qualification approval of a component by the Government shall not constitute excusable delay if a previously qualified component could have been acquired by the prime contractor in time to meet the end item delivery schedule (see the clause at 52.209-2, Qualified Products—Components of End Items).

(c) In acquisitions involving qualified products, the contracting officer shall take the following steps:

(1) Use presolicitation notices in appropriate cases to advise potential suppliers before issuing solicitations involving qualified products. The notices shall identify the specification requiring qualification and specify an allowable time period, consistent with delivery requirements, for prospective offerors to qualify their products. The notice shall be synopsized in accordance with 5.204. If a presolicitation notice is not used, the general synopsizing requirements of Subpart 5.2 apply.

(2) Distribute solicitations to prospective contractors whether or not their products are qualified.

(3) In appropriate cases, request the SPA to waive qualification requirements and specify in solicitations when qualification requirements are waived.

(4) Forward requests from potential suppliers for information on qualification to the SPA.

(5) Allow the maximum time, consistent with delivery requirements, between issuing the solicitation and the opening of bids or the award of a negotiated contract. This period shall be not less than 30 calendar days, unless urgency justifies a shorter period and the contracting officer documents the file accordingly.

9.206-2 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.209-1, Qualified Products—End Items, in solicitations when acquiring qualified products as end items.

(b) The contracting officer shall insert the clause at 52.209-2, Qualified Products—Components of End Items, in solicitations and contracts, when acquiring qualified products as components of end items.

9.206-3 Competition.

(a) *Presolicitation.* If qualified products are to be acquired as an end item, the contracting officer shall review the applicable QPL before solicitation to ascertain whether the number of sources is adequate for competition. If the number of sources is inadequate, the contracting officer shall request the SPA to—

(1) Indicate the anticipated date on which any products presently undergoing tests will be qualified so that the solicitation could be rescheduled to include these additional products; or

(2) Indicate an alternate means of quality assurance other than qualification.

(b) *Postsolicitation.* The contracting officer shall submit to the SPA the names and addresses of concerns who request copies of the solicitation and are not included on the QPL. The SPA may then try to interest those concerns in qualifying their products.

9.207 Removal or omission from a qualified products list.

The contracting officer shall promptly report to the SPA conditions that may merit removal or omission of a product from a QPL. These conditions exist when—

(a) Products are submitted for inspection that do not meet the specification;

(b) Products were previously rejected and the defects were not corrected when resubmitted for inspection;

(c) The supplier fails to request reevaluation of a qualification following change of location or ownership of the plant where the qualified product was manufactured (see the provision at 52.209-1, Qualified Products—End Items, and the clause at 52.209-2, Qualified Products—Components of End Items);

(d) The manufacturer has discontinued manufacture of the product;

(e) The supplier requests removal of the item from the QPL;

(f) A condition of the qualification was violated; e.g., advertising or publicity contrary to 9.203(h)(5);

(g) Revised specifications require new testing and qualification;

(h) Manufacturing or design changes require new testing and qualification;

(i) The manufacturer is on the Consolidated List of Debarred, Suspended, and Ineligible Contractors (see Subpart 9.4) (the SPA may remove or omit a product from a QPL for this condition without advance notification but will subsequently notify the manufacturer of the action taken); or

(j) Performance of the contract, under which qualified products are furnished, is otherwise unsatisfactory.

SUBPART 9.3—FIRST ARTICLE TESTING AND APPROVAL

9.301 Definitions.

"Approval," as used in this subpart, means the contracting officer's written notification to the contractor accepting the test results of the first article.

"First article," as used in this subpart, means preproduction models, initial production samples, test samples, first lots, pilot lots, and 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.

9.302 General.

First article testing and approval (hereafter referred to as testing and approval) ensures that the contractor can furnish a product that conforms to all contract requirements for acceptance. Before requiring testing and approval, the contracting officer shall consider the—

(a) Impact on cost or time of delivery;

(b) Risk to the Government of foregoing such test; and

(c) Availability of other, less costly, methods of ensuring the desired quality.

9.303 Use.

Testing and approval may be appropriate when—

(a) The contractor has not previously furnished the product to the Government;

(b) The contractor previously furnished the product to the Government, but—

(1) There have been subsequent changes in processes or specifications;

(2) Production has been discontinued for an extended period of time; or

(3) The product acquired under a previous contract developed a problem during its life.

(c) The product is described by a performance specification; or

(d) It is essential to have an approved first article to serve as a manufacturing standard.

9.304 Exceptions.

Normally, testing and approval is not required in contracts for—

(a) Research or development;

(b) Products requiring qualification before award (e.g., when an applicable qualified products list exists (see Subpart 9.2));

(c) Products normally sold in the commercial market; or

(d) Products covered by complete and detailed technical specifications, unless the requirements are so novel or exacting that it is questionable whether the products would meet the requirements without testing and approval.

9.305 Risk.

Before first article approval, the acquisition of materials or components, or commencement of production, is normally at the sole risk of the contractor. To minimize this risk, the contracting officer shall provide sufficient time in the delivery schedule for acquisition of materials and components, and for production after receipt of first article approval. When Government requirements preclude this action, the contracting officer may, before approval of the first article, authorize the contractor to acquire specific materials or components or commence production to the extent essential to meet the delivery schedule (see Alternate II of the clause at 52.209-3, First Article Approval—Contractor Testing, and Alternate II of the clause at 52.209-4, First Article Approval—Government Testing. Costs incurred based on this authorization are allocable to the contract for (1) progress payments and (2) termination settlements if the contract is terminated for the convenience of the Government.

9.306 Solicitation requirements.

Solicitations containing a testing and approval requirement shall—

(a) Provide, in the circumstance where the contractor is to be responsible for the first article approval testing—

(1) The performance or other characteristics that the first article must meet for approval;

(2) The detailed technical requirements for the tests that must be performed for approval; and

(3) The necessary data that must be submitted to the Government in the first article approval test report.

(b) Provide, in the circumstance where the Government is to be responsible for the first article approval testing—

(1) The performance or other characteristics that the first article must meet for approval; and

(2) The tests to which the first article will be subjected for approval.

(c) Inform offerors that the requirement may be waived when supplies identical or similar to those called for have previously been delivered by the offeror and accepted by the Government;

(d) Permit the submission of alternative offers, one including testing and approval and the other excluding testing and approval (if eligible under 9.306(c));

(e) State clearly the first article's relationship to the contract quantity (see paragraph (e) of the clause at 52.209-3, First Article Approval—Contractor Testing, or 52.209-4, First Article Approval—Government Testing);

(f) Contain a delivery schedule for the production quantity (see 12.104). The delivery schedule may—

(1) Be the same whether or not testing and approval is waived; or

(2) Provide for earlier delivery when testing and approval is waived and the Government desires earlier delivery. In the latter case, any resulting difference in delivery schedules shall not be a factor in evaluation for award. The clause at 52.209-4, First Article Approval—Government Testing, shall contain the delivery schedule for the first article;

(g) Provide for the submission of contract numbers, if any, to document the offeror's eligibility under 9.306(c);

(h) State whether the approved first article will serve as a manufacturing standard; and

(i) Include, when the Government is responsible for first article testing, the Government's estimated testing costs as a factor for use in evaluating offers (when appropriate).

9.307 Government administration procedures.

(a) Before the contractor ships the first article, or the first article test report, to the Government laboratory or other activity responsible for approval at the address specified in the contract, the contract administration office shall provide that activity with as much advance notification as is feasible of the forthcoming shipment, and—

(1) Advise that activity of the contractual requirements for testing and approval, or evaluation, as appropriate;

(2) Call attention to the notice requirement in paragraph (b) of the clause at 52.209-3, First Article Approval— Contractor Testing, or 52.209-4, First Article Approval—Government Testing; and

(3) Request that the activity inform the contract administration office of the date when testing or evaluation will be completed.

(b) The Government laboratory or other activity responsible for first article testing or evaluation shall inform the contracting office whether to approve, conditionally approve, or disapprove the first article. The contracting officer shall then notify the contractor of the action taken and furnish a copy of the notice to the contract administration office. The notice shall include the first article shipment number, when available, and the applicable contract line item number. Any changes in the drawings, designs, or specifications determined by the contracting officer to be necessary shall be made under the Changes clause, and not by the notice of approval, conditional approval, or disapproval furnished the contractor.

9.308 Contract clauses.

9.308-1 Testing performed by the contractor.

(a) (1) The contracting officer shall insert the clause at 52.209-3, First Article Approval—Contractor Testing, in solicitations and contracts when a fixed-price contract is contemplated and it is intended that the contract require (i) first article approval and (ii) that the contractor be required to conduct the first article testing.

(2) If it is intended that the contractor be required to produce the first article and the production quantity at the same facility, the contracting officer shall use the clause with its Alternate I.

(3) If it is necessary to authorize the contractor to purchase material or to commence production before first article approval, the contracting officer shall use the clause with its Alternate II.

(b) (1) The contracting officer shall insert a clause substantially the same as the clause at 52.209-3, First Article Approval—Contractor Testing, in solicitations and contracts when a cost-reimbursement contract is contemplated and it is intended that the contract require (i) first article approval and (ii) that the contractor be required to conduct the first article test.

(2) If it is intended that the contractor be required to produce the first article and the production quantity at the same facility, the contracting officer shall use a clause substantially the same as the clause at 52.209-3, First Article Approval—Contractor Testing, with its Alternate I.

(3) If it is necessary to authorize the contractor to purchase material or to commence production before first article approval, the contracting officer shall use a clause substantially the same as the clause at 52.209-3, First Article Approval—Contractor Testing, with its Alternate II.

9.308-2 Testing performed by the Government.

(a) (1) The contracting officer shall insert the clause at 52.209-4, First Article Approval—Government Testing, in solicitations and contracts when a fixed-price contract is contemplated and it is intended that the contract require first article approval and that the Government will be responsible for conducting the first article test.

(2) If it is intended that the contractor be required to produce the first article and the production quantity at the same facility, the contracting officer shall use the basic clause with its Alternate I.

(3) If it is necessary to authorize the contractor to purchase material or to commence production before first article approval, the contracting officer shall use the basic clause with its Alternate II.

(b) (1) The contracting officer shall insert a clause substantially the same as the clause at 52.209-4, First Article Approval—Government Testing, in solicitations and contracts when a cost-reimbursement contract is contemplated and it is intended that the contract require first article approval and that the Government be responsible for conducting the first article test.

(2) If it is intended that the contractor be required to produce the first article and the production quantity at the same facility, the contracting officer shall use a clause substantially the same as the clause at 52.209-4, First Article Approval—Government Testing, with its Alternate I.

(3) If it is necessary to authorize the contractor to purchase material or to commence production before first article approval, the contracting officer shall use a clause substantially the same as the clause at 52.209-4, First Article Approval—Government Testing, with its Alternate II.

SUBPART 9.4—DEBARMENT, SUSPENSION, AND INELIGIBILITY

9.400 Scope of subpart.

(a) This subpart—

(1) Prescribes policies and procedures governing the debarment and suspension of contractors by agencies for the causes given in 9.406-2 and 9.407-2;

(2) Provides for the listing of these debarred and suspended contractors, and of contractors declared ineligible (see the definition of "ineligible" in 9.403); and

(3) Sets forth the consequences of this listing.

(b) Although this subpart does cover the listing of ineligible contractors (9.404) and the effect of this listing (9.405(b)), it does not prescribe policies and procedures governing declarations of ineligibility.

9.401 Applicability.

This subpart does not apply to recipients of Federal assistance.

9.402 Policy.

(a) Agencies shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. Debarment and suspension are discretionary actions that, taken in accordance with this subpart, are appropriate means to effectuate this policy.

(b) The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the Government's protection and not for purposes of punishment. Agencies shall impose debarment or suspension to protect the Government's interest and only for the causes and in accordance with the procedures set forth in this subpart.

(c) Agencies shall establish appropriate procedures to implement the policies and procedures of this subpart.

9.403 Definitions.

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

"Affiliates." Business concerns or individuals are affiliates if, directly or indirectly, (a) either one controls or can control the other or (b) a third controls or can control both.

"Agency," as used in this subpart, means any executive department, military department or defense agency, or other agency or independent establishment of the executive branch.

"Consolidated List of Debarred, Suspended, and Ineligible Contractors" means a list compiled, maintained, and distributed by the General Services Administration, in accordance with 9.404, containing the names of contractors debarred or suspended by agencies under the procedures of this subpart, as well as contractors declared ineligible under other statutory or regulatory authority.

"Contractor," as used in this subpart, means any individual or other legal entity that (a) submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract or a subcontract under a Government contract or (b) conducts business with the Government as an agent or representative of another contractor.

"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.

"Debarment," as used in this subpart, 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 so excluded is "debarred."

"Debarring official" means (a) an agency head or (b) a designee authorized by the agency head to impose debarment.

"Indictment" means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

"Ineligible," as used in this subpart, means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority other than this regulation 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.

"Legal proceedings" means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

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

"Suspending official" means (a) an agency head or (b) a designee authorized by the agency head to impose suspension.

"Suspension," as used in this subpart, means action taken by a suspending official under 9.407 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor so disqualified is "suspended."

9.404 Consolidated List of Debarred, Suspended, and Ineligible Contractors.

(a) The General Services Administration (GSA) shall—

(1) Compile and maintain a current, consolidated list of all contractors debarred, suspended, or declared ineligible by agencies or by the General Accounting Office;

(2) Revise and distribute the list quarterly and issue monthly supplements to all agencies and the General Accounting Office; and

(3) Provide with the list the name and telephone number of the official responsible for its maintenance and distribution.

(b) The consolidated list shall indicate—

(1) The names and addresses of all debarred, suspended, or ineligible contractors, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The name of the agency or other authority taking the action;

(3) The cause for the action (see 9.406-2 and 9.407-2 for causes authorized under this subpart) or other statutory or regulatory authority;

(4) The scope of the action;

(5) The termination date for each listing; and

(6) The name and telephone number of the point of contact for the action.

(c) Each agency shall—

(1) Notify GSA of the information required by paragraph (b) above within 5 working days after the action becomes effective;

(2) Notify GSA within 5 working days after modifying or rescinding an action;

(3) Notify GSA of the names and addresses of agency organizations that are to receive the consolidated list and the number of copies to be furnished to each;

(4) In accordance with internal retention procedures, maintain records relating to each suspension or debarment action taken by the agency;

(5) Establish procedures to provide for the effective use of the list, to ensure that the agency does not solicit offers from, award contracts to, or consent to subcontracts with listed contractors, except as otherwise provided in this subpart; and

(6) Direct inquiries concerning listed contractors to the agency or other authority that took the action.

9.405 Effect of listing.

(a) Debarred or suspended contractors are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the acquiring agency's head or a designee determines that there is a compelling reason for such action (see 9.405-2, 9.406-1(c), and 9.407-1(d)).

(b) Contractors listed as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts and, if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors under those conditions and for that period.

9.405-1 Continuation of current contracts.

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

(b) Agencies shall not renew current contracts or subcontracts of debarred or suspended contractors, or otherwise extend their duration, unless the acquiring agency's head or a designee states in writing the compelling reasons for renewal or extension.

9.405-2 Restrictions on subcontracting.

When a debarred or suspended contractor is proposed as a subcontractor for any subcontract subject to Government consent, approval shall not be given unless the acquiring agency's head or a designee states in writing the compelling reasons for this approval.

9.406 Debarment.

9.406-1 General.

(a) The debarring official may, in the public interest, debar a contractor for any of the causes in 9.406-2, using the procedures in 9.406-3. The existence of a cause for debarment, however, does not necessarily *require* that the contractor be debarred; the seriousness of the contractor's acts or omissions and any mitigating factors should be considered in making any debarment decision.

(b) Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarring official may extend the debarment decision to include any affiliates of the contractor if they are (1) specifically named and (2) given written notice of the proposed debarment and an opportunity to respond (see 9.406-3(c)).

(c) A contractor's debarment shall be effective throughout the executive branch of the Government, unless an acquiring agency's head or a designee states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

9.406-2 Causes for debarment.

The debarring official may debar a contractor for any of the causes listed in paragraphs (a) through (c) following:

(a) Conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;

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

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

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

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

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

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

(c) Any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

9.406-3 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the debarring official of matters appropriate for that official's consideration.

(b) *Decisionmaking process.* (1) Agencies shall establish procedures governing the debarment decisionmaking process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(2) In actions not based upon a conviction or judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, agencies shall also—

(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of proposal to debar.* Debarment shall be initiated by advising the contractor and any specifically named affiliates, by certified mail, return receipt requested—

(1) That debarment is being considered;

(2) Of the reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under 9.406-2 for proposing debarment;

(4) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;

(5) Of the agency's procedures governing debarment decisionmaking;

(6) Of the potential effect of the proposed debarment; and,

(7) If no suspension is in effect, that the agency will not solicit offers from, award contracts to, renew or otherwise extent contracts with, or consent to subcontracts with the contractor pending a debarment decision.

(d) *Debarring official's decision.* (1) In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the contractor. If no suspension is in effect, the decision shall be made within 30 working days after receipt of any information and argument submitted by the contractor, unless the debarring official extends this period for good cause.

(2) (i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(ii) The debarring official may refer matters involving disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(iii) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(3) In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence.

(e) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice by certified mail, return receipt requested—

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective throughout the executive branch of the Government unless the head of an acquiring agency or a designee makes the statement called for by 9.406-1(c).

(2) If debarment is not imposed, the debarring official shall promptly notify the contractor and any affiliates involved, by certified mail, return receipt requested.

9.406-4 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, a debarment should not exceed 3 years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend the debarment for an additional period, if that official determines that an extension is necessary to protect the Government's interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of 9.406-3 above shall be followed to extend the debarment.

(c) The debarring official may reduce the period or extent of debarment, upon the contractor's request, supported by documentation, for reasons such as—

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring offical deems appropriate.

9.406-5 Scope of debarment.

(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.

(c) The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

9.407 Suspension.

9.407-1 General.

(a) The suspending official may, in the public interest, suspend a contractor for any of the causes in 9.407-2, using the procedures in 9.407-3.

(b) Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, agencies should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as contracts, inspection reports, and correspondence.

(c) Suspension constitutes suspension of all divisions or other organizational elements of the contractor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities. The suspending official may extend the suspension decision to include any affiliates of the contractor if they are (1) specifically named and (2) given written notice of the suspension and an opportunity to respond (see 9.407-3(c)).

(d) A contractor's suspension shall be effective throughout the executive branch of the Government, unless an acquiring agency's head or a designee states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

9.407-2 Causes for suspension.

(a) The suspending official may suspend a contractor suspected, upon adequate evidence, of—

(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;

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

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

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

(b) Indictment for any of the causes in paragraph (a) above constitutes adequate evidence for suspension.

(c) The suspending official may upon adequate evidence also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

9.407-3 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the suspending official of matters appropriate for that official's consideration.

(b) *Decisionmaking process.* (1) Agencies shall establish procedures governing the suspension decisionmaking process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity, following the imposition of suspension, to submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(2) In actions not based on an indictment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of Department of Justice advice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, agencies shall also—

(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of suspension.* When a contractor and any specifically named affiliates are suspended, they shall be immediately advised by certified mail, return receipt requested—

(1) That they have been suspended and that the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities (i) of a serious nature in business dealings with the Government or (ii) seriously reflecting on the propriety of further Government dealings with the contractor—any such irregularities shall be described in terms sufficient to place the contractor on notice without disclosing the Government's evidence;

(2) That the suspension is for a temporary period pending the completion of an investigation and such legal proceeding as may ensure;

(3) Of the cause(s) relied upon under 9.407-2 for imposing suspension;

(4) Of the effect of the suspension;

(5) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over the material facts; and

(6) That additional proceedings to determine disputed material facts will be conducted unless (i) the action is based on an indictment or (ii) a determination is made, on the basis of Department of Justice advice, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(d) *Suspending official's decision.* (1) In actions (i) based on an indictment, (ii) in which the contractor's submission does not raise a genuine dispute over material facts, or (iii) in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official's decision shall be based on all the information in the administrative record, including any submission made by the contractor.

(2) (i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(ii) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(iii) The suspending official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(3) The suspending official may modify or terminate the suspension or leave it in force (for example, see 9.406-

4(c) for the reasons for reducing the period or extent of debarment). However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of (i) suspension by any other agency or (ii) debarment by any agency.

(4) Prompt written notice of the suspending official's decision shall be sent to the contractor and any affiliates involved, by certified mail, return receipt requested.

9.407-4 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal proceedings, unless proceedings, unless sooner terminated by the suspending official or as provided in this subsection.

(b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of the proposed termination of the suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

9.407-5 Scope of suspension.

The scope of suspension shall be the same as that for debarment (see 9.406-5), except that the procedures of 9.407-3 shall be used in imposing suspension.

SUBPART 9.5—ORGANIZATIONAL CONFLICTS OF INTEREST

9.500 Scope of subpart.

This subpart prescribes responsibilities, general rules, and procedures for identifying, evaluating, and resolving organizational conflicts of interest. It also provides examples to assist contracting officers in applying these rules and procedures to individual contracting situations.

9.501 Definition.

An "organizational conflict of interest" exists when the nature of the work to be performed under a proposed Government contract may, without some restriction on future activities, (a) result in an unfair competitive advantage to the contractor or (b) impair the contractor's objectivity in performing the contract work.

9.502 Applicability.

(a) This subpart applies to contracts with either profit or nonprofit organizations, including nonprofit organizations created largely or wholly with Government funds.

(b) The applicability of this subpart is not limited to any particular kind of acquisition. However, organizational conflicts of interest are more likely to occur in contracts involving—

(1) Management support services;

(2) Consultant or other professional services;

(3) Contractor performance of or assistance in technical evaluations; or

(4) Systems engineering and technical direction work performed by a contractor that does not have overall contractual responsibility for development or production.

9.503 Waiver.

The agency head or a designee may waive any general rule or procedure of this subpart by determining that its application in a particular situation would not be in the Government's interest. Any request for waiver must be in writing, shall set forth the extent of the conflict, and requires approval by the agency head or a designee. Agency heads shall not delegate waiver authority below the level of head of a contracting activity.

9.504 Contracting officer responsibilities.

(a) Using the general rules, procedures, and examples in this subpart, contracting officers shall analyze planned acquisitions in order to—

(1) Identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible; and

(2) Avoid, neutralize, or mitigate significant potential conflicts before contract award.

(b) Contracting officers should obtain the advice of counsel and the assistance of appropriate technical specialists in evaluating potential conflicts and in developing any necessary solicitation provisions and contract clauses (see 9.508).

(c) Before issuing a solicitation for a contract that may involve a significant potential conflict, the contracting officer shall recommend to the head of the contracting activity a course of action for resolving the conflict (see 9.507).

(d) In fulfilling their responsibilities for identifying and resolving potential conflicts, contracting officers should avoid creating unnecessary delays, burdensome information requirements, and excessive documentation. The contracting officer's judgment need be formally documented only when a substantive issue concerning potential organizational conflict of interest exists.

9.505 General rules.

The general rules in 9.505-1 through 9.505-4 prescribe limitations on contracting as the means of avoiding, neutralizing, or mitigating organizational conflicts of interest that might otherwise exist in the stated situations. Some illustrative examples are provided in 9.509. Conflicts may arise in situations not expressly covered in this section 9.505 or in the examples in 9.509. Each individual contracting situation should be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. The two underlying principles are—

(a) Preventing the existence of conflicting roles that might bias a contractor's judgment; and

(b) Preventing unfair competitive advantage.

9.505-1 Providing systems engineering and technical direction.

(a) A contractor that provides systems engineering and technical direction for a system but does not have overall contractual responsibility for its development, its integration, assembly, and checkout, or its production shall not (1) be awarded a contract to supply the system or any of its major components or (2) be a subcontractor or consultant to a supplier of the system or any of its major components.

(b) Systems engineering includes a combination of substantially all of the following activities: determining specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and supervising design. Technical direction includes a combination of substantially all of the following activities: developing work statements, determining parameters, directing other contractors' operations, and resolving technical controversies. In performing these activities, a contractor occupies a highly influential and responsible position in determining a system's basic concepts and supervising their execution by other contractors. Therefore this contractor should not be in a position to make decisions favoring its own products or capabilities.

9.505-2 Preparing specifications or work statements.

(a) (1) If a contractor prepares and furnishes complete specifications covering nondevelopmental items, to be used in a competitive acquisition, that contractor shall not be allowed to furnish these items, either as a prime contractor or as a subcontractor, for a reasonable period of time including, at least, the duration of the initial production contract. This rule shall not apply to—

(i) Contractors that furnish at Government request specifications or data regarding a product they provide, even though the specifications or data may have been paid for separately or in the price of the product; or

(ii) Situations in which contractors, acting as industry representatives, help Government agencies prepare, refine, or coordinate specifications, regardless of source, provided this assistance is supervised and controlled by Government representatives.

(2) If a single contractor drafts complete specifications for nondevelopmental equipment, it should be eliminated for a reasonable time from competition for production based on the specifications. This should be done in order to avoid a situation in which the contractor could draft specifications favoring its own products or capabilities. In this way the Government can be assured of getting unbiased advice as to the content of the specifications and can avoid allegations of favoritism in the award of production contracts.

(3) In development work, it is normal to select firms that have done the most advanced work in the field. These firms can be expected to design and develop around their own prior knowledge. Development contractors can frequently start production earlier and more knowledgeably than firms that did not participate in the development, and this can affect the time and quality of production, both of which are important to the Government. In many instances the Government may have financed the development. Thus, while the development contractor has a competitive advantage, it is an unavoidable one that is not considered unfair; hence no prohibition should be imposed.

(b) (1) If a contractor prepares, or assists in preparing, a work statement to be used in competitively acquiring a system or services—or provides material leading directly, predictably, and without delay to such a work statement—that contractor may not supply the system, major components of the system, or the services unless—

(i) It is the sole source;

(ii) It has participated in the development and design work; or

(iii) More than one contractor has been involved in preparing the work statement.

(2) Agencies should normally prepare their own work statements. When contractor assistance is necessary, the contractor might often be in a position to favor its own products or capabilities. To overcome the possibility of bias, contractors are prohibited from supplying a system or services acquired on the basis of work statements growing out of their services, unless excepted in subparagraph (1) above.

(3) For the reasons given in 9.505-2(a)(3), no prohibitions are imposed on development and design contractors.

9.505-3 Providing technical evaluation or consulting services.

Contracts involving (a) technical evaluations of other contractors' offers or products or (b) consulting services (see 37.201) shall not generally be awarded to a contractor that would evaluate, or advise the Government concerning, its own products or activities, or those of a competitor, without proper safeguards to ensure objectivity and protect the Government's interests. In this connection, OMB Circular No. A-120, Guidelines for the Use of Consulting Services, and implementing agency regulations, should be consulted for additional guidance.

9.505-4 Obtaining access to proprietary information.

(a) A contractor that gains access to proprietary information of other companies in performing advisory services for the Government must agree with the other companies to (1) protect their information from unauthorized use or disclosure for as long as it remains proprietary and (2) refrain from using the information for any purpose other than that for which it was furnished. The contracting officer shall obtain copies of these agreements and ensure that they are properly executed.

(b) Proprietary information is information considered so valuable by its owners that it is held secret by them and their licensees. When a contractor requires such information from others to perform a Government contract and can use the leverage of the contract to obtain it, the contractor may gain an unfair competitive advantage unless restrictions are imposed. These restrictions protect the information and encourage companies to provide it when necessary for contract performance. They are not intended to protect information (1) furnished voluntarily without limitations on its use or (2) available to the Government or contractor from other sources without restriction.

9.506 Information sources.

When information concerning prospective contractors is necessary to identify and evaluate potential organizational conflicts of interest or to develop recommended actions, contracting officers should first seek it from within the Government or from other readily available sources. Government sources include the files and the knowledge of personnel within the contracting office, other contracting offices, the cognizant contract administration and audit activities, and offices concerned with contract financing. Non-Government sources include publications and commercial services, such as credit rating services, trade and financial journals, and business directories and registers.

9.507 Procedures.

(a) If the contracting officer initially decides that a particular acquisition involves a significant potential organizational conflict of interest, before issuing the solicitation the contracting officer shall submit to the head of the contracting activity for approval—

(1) A written analysis, including a recommended course of action for avoiding, neutralizing, or mitigating the conflict, based on the general rules in 9.505 or on another basis not expressly stated in that section;

(2) A draft solicitation provision (see 9.508-1); and,

(3) If appropriate, a proposed contract clause (see 9.508-2).

(b) The head of the contracting activity shall—

(1) Review the contracting officer's analysis and recommended course of action, including the draft provision and any proposed clause;

(2) Consider the benefits and detriments to the Government and prospective contractors; and

(3) Approve, modify, or reject the recommendation in writing.

(c) The contracting officer shall—

(1) Include the approved provision and any approved clause in the solicitation;

(2) Consider additional information provided by prospective contractors in response to the solicitation or during negotiations; and,

(3) Before awarding the contract, resolve the potential conflict in a manner consistent with the approval or

other direction by the head of the contracting activity; or,

(4) If the prospective contractor disagrees and requests higher level review, provide the decision and the contractor's position to the agency head or a designee for review and final decision.

(d) If, during the effective period of any restriction (see 9.508), a contracting office transfers acquisition responsibility for the item or system involved, it shall notify the successor contracting office of the restriction, sending a copy of the contract under which the restriction was imposed.

9.508 Solicitation provision and contract clause.

9.508-1 Solicitation provision.

As indicated in the general rules in 9.505, significant potential organizational conflicts of interest are normally resolved by imposing some restraint, appropriate to the nature of the conflict, upon the contractor's eligibility for future contracts or subcontracts. Therefore, affected solicitations shall contain a provision that—

(a) Invites offerors' attention to this Subpart 9.5;

(b) States the nature of the potential conflict as seen by the contracting officer;

(c) States the nature of the proposed restraint upon future contractor activities; and,

(d) Depending on the nature of the acquisition, states whether or not the terms of any proposed clause and the application of this subpart to the contract are subject to negotiation.

9.508-2 Contract clause.

(a) If, as a condition of award, the contractor's eligibility for future prime contract or subcontract awards will be restricted or the contractor must agree to some other restraint, the solicitation shall contain a proposed clause that specifies both the nature and duration of the proposed restraint. The contracting officer shall include the clause in the contract, first negotiating the clause's final terms with the successful offeror, if it is appropriate to do so (see 9.508-1(d) above).

(b) The restraint imposed by a clause shall be limited to a fixed term of reasonable duration, sufficient to avoid the circumstance of unfair competitive advantage or potential bias. This period varies. It might end, for example, when the first production contract using the contractor's specifications or work statement is awarded, or it might extend through the entire life of a system for which the contractor has performed systems engineering and technical direction. In every case, the restriction shall specify termination by a specific date or upon the occurrence of an identifiable event.

9.509 Examples.

The examples in paragraphs (a) through (i) following illustrate situations in which questions concerning organizational conflicts of interest may arise. They are not all inclusive, but are intended to help the contracting officer apply the general rules in 9.505 to individual contract situations.

(a) Company A agrees to provide systems engineering and technical direction for the Navy on the powerplant for a group of submarines (i.e., turbines, drive shafts, propellers, etc.). Company A should not be allowed to supply any powerplant components. Company A can, however, supply components of the submarine unrelated to the powerplant (e.g., fire control, navigation, etc.). In this example, the system is the powerplant, not the submarine, and the ban on supplying components is limited to those for the system only.

(b) Company A is the systems engineering and technical direction contractor for system X. After some progress, but before completion, the system is canceled. Later, system Y is developed to achieve the same purposes as system X, but in a fundamentally different fashion. Company B is the systems engineering and technical direction contractor for system Y. Company A may supply system Y or its components.

(c) Company A develops new electronic equipment and, as a result of this development, prepares specifications. Company A may supply the equipment.

(d) XYZ Tool Company and PQR Machinery Company, representing the American Tool Institute, work under Government supervision and control to refine specifications or to clarify the requirements of a specific acquisition. These companies may supply the item.

(e) Before an ADP equipment acquisition is conducted, Company A is awarded a contract to prepare data system specifications and equipment performance criteria to be used as the basis for the equipment competition. Since the specifications are the basis for selection of commercial hardware, a potential conflict of interest exists. Company A should be excluded from the initial follow-on ADP hardware acquisition.

(f) Company A receives a contract to define the detailed performance characteristics an agency will require for purchasing rocket fuels. Company A has not developed the particular fuels. When the definition contract is awarded, it is clear to both parties that the agency will use the performance characteristics arrived at to choose competitively a contractor to develop or produce the fuels. Company A may not be awarded this follow-on contract.

(g) Company A receives a contract to prepare a detailed plan for scientific and technical training of an agency's personnel. It suggests a curriculum that the agency endorses and incorporates in its request for proposals to institutions to establish and conduct the training. Company A may not be awarded a contract to conduct the training.

(h) Company A is selected to study the use of lasers in communications. The agency intends to ask that firms doing research in the field make proprietary information available to Company A. The contract must require Company A to (1) enter into agreements with these firms to protect any proprietary information they provide and (2) refrain from using the information in supplying lasers to the Government or for any purpose other than that for which it was intended.

(i) An agency that regulates an industry wishes to develop a system for evaluating and processing license applications. Contractor X helps develop the system and process the applications. Contractor X should be prohibited from acting as a consultant to any of the applicants during its period of performance and for a reasonable period thereafter.

SUBPART 9.6—CONTRACTOR TEAM ARRANGEMENTS

9.601 Definition.

"Contractor team arrangement" means an arrangement in which—

(a) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or

(b) A potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified Government contract or acquisition program.

9.602 General.

(a) Contractor team arrangements may be desirable from both a Government and industry standpoint in order to enable the companies involved to (1) complement each other's unique capabilities and (2) offer the Government the best combination of performance, cost, and delivery for the system or product being acquired.

(b) Contractor team arrangements may be particularly appropriate in complex research and development acquisitions, but may be used in other appropriate acquisitions, including production.

(c) The companies involved normally form a contractor team arrangement before submitting an offer. However, they may enter into an arrangement later in the acquisition process, including after contract award.

9.603 Policy.

The Government will recognize the integrity and validity of contractor team arrangements; *provided*, the arrangements are identified and company relationships are fully disclosed in an offer or, for arrangements entered into after submission of an offer, before the arrangement becomes effective. The Government will not normally require or encourage the dissolution of contractor team arrangements.

9.604 Limitations.

Nothing in this subpart authorizes contractor team arrangements in violation of antitrust statutes or limits the Government's rights to—

(a) Require consent to subcontracts (see Subpart 44.2);

(b) Determine, on the basis of the stated contractor team arrangement, the responsibility of the prime contractor (see Subpart 9.1);

(c) Provide to the prime contractor data rights owned or controlled by the Government;

(d) Pursue its policies on competitive contracting, subcontracting, and component breakout after initial production or at any other time; and

(e) Hold the prime contractor fully responsible for contract performance, regardless of any team arrangement between the prime contractor and its subcontractors.

SUBPART 9.7—DEFENSE PRODUCTION POOLS AND RESEARCH AND DEVELOPMENT POOLS

9.701 Definition.

"Pool," as used in this subpart, means a group of concerns (see 19.101) that have—

(a) Associated together in order to obtain and perform, jointly or in conjunction with each other, defense production or research and development contracts;

(b) Entered into an agreement governing their organization, relationship, and procedures; and

(c) Obtained approval of the agreement by either—

(1) The Small Business Administration (SBA) under section 9 or 11 of the Small Business Act (15 U.S.C. 638 or 640) (see 13 CFR 125); or

(2) A designated official under Part V of Executive Order 10480, August 14, 1953 (18 FR 4939, August 20, 1953) and section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158).

9.702 Contracting with pools.

(a) Except as specified in this subpart, a pool shall be treated the same as any other prospective or actual contractor.

(b) The contracting officer shall not award a contract to a pool unless the offer leading to the contract is submitted by the pool in its own name or by an individual pool member expressly stating that the offer is on behalf of the pool.

(c) Upon receipt of an offer submitted by a group representing that it is a pool, the contracting officer shall verify its approved status with the SBA District Office Director or other approving agency and document the contract file that the verification was made.

(d) Contracts with pools are exempt from the "manufacturer or regular dealer" requirement of the Walsh-Healey Public Contracts Act (41 U.S.C. 35) (see Subparts 9.1 and 22.6 and 41 CFR 50-201.604(d)).

(e) Pools approved by the SBA under the Small Business Act are entitled to the preferences and privileges accorded to small business concerns. Approval under the Defense Production Act does not confer these preferences and privileges.

(f) Before awarding a contract to an unincorporated pool, the contracting officer shall require each pool member participating in the contract to furnish a certified copy of a power of attorney identifying the agent authorized to sign the offer or contract on that member's behalf. The contracting officer shall attach a copy of each power of attorney to each signed copy of the contract retained by the Government.

9.703 Contracting with individual pool members.

(a) Pool members may submit individual offers, independent of the pool. However, the contracting officer shall not consider an independent offer by a pool member if that pool member participates in a competing offer submitted by the pool.

(b) If a pool member submits an individual offer, independent of the pool, the contracting officer shall consider the pool agreement, along with other factors, in determining whether that pool member is a responsible prospective contractor under Subpart 9.1.

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

10.000 Scope of part.

This part prescribes policies and procedures for using specifications, standards, and other purchase descriptions in the acquisition process.

10.001 Definitions.

"Brand-name description" means a purchase description that identifies a product by its brand name and model or part number or other appropriate nomenclature by which the product is offered for sale.

"Department of Defense Index of Specifications and Standards" (DODISS) means the Department of Defense (DOD) publication that lists unclassified Federal and military specifications and standards, related standardization documents, and voluntary standards approved for use by DOD.

"Federal specification or standard" means a specification or standard issued or controlled by the General Services Administration (GSA) and listed in the Index of Federal Specifications and Standards.

"General Services Administration Index of Federal Specifications and Standards" means the GSA publication that lists Federal specifications and standards, including supplements, that have been implemented for use by all Federal agencies.

"Purchase description" means a description of the essential physical characteristices and functions required to meet the Government's minimum needs.

"Responsible agency" means the agency controlling the index in which a

particular specification or standard is listed.

"Specification" means a description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met. Specifications shall state only the Government's actual minimum needs in a manner to encourage maximum practicable competition.

"Standard" means a document that establishes engineering and technical limitations and applications of items, materials, processes, methods, designs, and engineering practices. It includes any related criteria deemed essential to achieve the highest practical degree of uniformity in materials or products, or interchangeability of parts used in those products. Standards may be used in specifications, invitations for bids, proposals, and contracts.

"Voluntary standard" means a standard established by a private sector body and available for public use. The term does not include private standards of individual firms. For further guidance, see OMB Circular No. A-119, Federal Participation in Development and Use of Voluntary Standards.

10.002 Policy.

(a) Agency development and use of specifications and purchase descriptions shall, to the maximum extent practicable, promote full and free competition in acquisition and reliance on the private sector.

(b) Agencies shall—

(1) Specify their needs in a form that permits maximum practicable competition and innovation;

(2) State only the minimum agency needs in specifications and purchase descriptions; and

(3) Avoid restrictive features that would limit acceptable offers to one or a few offerors' products unless the features are essential to satisfy the agency's minimum needs.

10.003 Responsibilities.

(a) The Administrator of GSA, under separate authority and regulations, prepares, maintains, and controls specifications and standards covering products commonly used by Government agencies, and lists those descriptions in the Index of Federal Specifications and Standards.

(b) The Secretary of Defense, under separate authority and regulations, prepares, maintains, and controls military specifications, standards, and other documents unique to DOD and lists those product descriptions in the DODISS.

10.004 Selecting specifications or descriptions for use.

(a) (1) Plans, drawings, specifications, standards, or purchase descriptions for acquisitions shall state only the Government's actual minimum needs and describe the supplies and/or services in a manner that will encourage maximum practicable competition.

(2) Items to be acquired shall be described (i) by citing the applicable specifications and standards or (ii) by a description containing the necessary requirements.

(3) Specifications and standards shall be selectively applied and tailored in their application.

(i) "Selective application" is the process of reviewing and selecting from available specifications, standards, and related documents those which have application to a particular acquisition.

(ii) "Tailoring" is the process by which individual sections, paragraphs or sentences of the selected specifications, standards, and related document are reviewed and modified so that each one selected states only the Government's minimum requirements. Such tailoring need not be made a part of the basic specification or standard but will vary with each application, dependent upon the nature of the acquisition.

(b) (1) When authorized by 10.006(a), or when no applicable specification exists, agencies may use a purchase description, subject to pertinent restrictions on repetitive use. An adequate purchase description should set forth the essential physical and functional characteristics of the materials or services required. As many of the following characteristics as are necessary to express the Government's minimum requirements should be used in preparing purchase descriptions:

(i) Common nomenclature.

(ii) Kind of material; i.e., type, grade, alternatives, etc.

(iii) Electrical data, if any.

(iv) Dimensions, size, or capacity.

(v) Principles of operation.

(vi) Restrictive environmental conditions.

(vii) Intended use, including—

(A) Location within an assembly, and

(B) Essential operating condition.

(viii) Equipment with which the item is to be used.

(ix) Other pertinent information that further describes the item, material, or service required.

(2) Purchase descriptions shall not be written so as to specify a product, or a particular feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless it is determined, in accordance with agency procedures, that the particular feature is essential to the Government's requirements, and that other companies' similar products lacking the particular feature would not meet the minimum requirements for the item.

(3) Generally, the minimum acceptable purchase description is the identification of a requirement by use of brand name followed by the words "or equal." This technique should be used only when an adequate specification or more detailed description cannot feasibly be made available by means other than inspection and analysis in time for the acquisition under consideration. Agencies should provide detailed guidance and necessary clauses for use by contracting activities when using this technique.

(4) Purchase descriptions of services should outline to the greatest degree practicable the specific services the contractor is expected to perform.

(c) Except as provided in (b) above, when considering the acquisition of products sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices, agencies should consult Part 11 and implementing agency regulations for guidance on acquiring commercial products.

(d) *Foreign purchase descriptions.* Unless precluded by law, products that are acquired overseas may be acquired by using purchase descriptions prepared by foreign governments or foreign industry associations, if the description will satisfy the agency's actual minimum requirements.

(e) *Packing, packaging, and marking requirements.* In accordance with agency regulations, contracting offices shall require adequate packaging and marking of supplies to prevent deterioration and damage during shipping, handling, and storage. In acquiring commercial products, contracting offices should consult Part 11 and implementing agency regulations.

10.005 Management of purchase descriptions.

(a) Responsible agencies shall ensure compliance with the policies prescribed in this part for all specifications and standards listed in their indexes.

(b) When a responsible agency determines, in accordance with its established procedures and criteria, that a listed specification or standard does not meet a particular minimum need of the Government, applicable amendments, revisions, or new descriptions shall be prepared and used. (See 10.007 with regard to deviations.)

(c) Recommendations for changes in specifications and standards listed in the Index of Federal Specifications and Standards should be submitted to the General Services Administration, Office of Federal Supply and Services, Cataloging Division, Washington, D.C. 20406. Recommendations for changes in military specifications and standards and other standardization documents listed in the DODISS should be submitted to the cognizant preparing activity.

10.006 Using specifications and standards.

(a) *Mandatory specifications and standards.* (1) Unless otherwise authorized by law or approved under 10.007(a) below, specifications and standards listed in the Index of Federal Specifications and Standards are mandatory for use by all agencies acquiring supplies or services covered by such specifications and standards, except when the acquisition is—

(i) Required under a public exigency, and using the indexed product description would delay obtaining the requirement;

(ii) For items purchased under the appropriate small purchase limitation in Part 13;

(iii) For products acquired and used overseas;

(iv) For items, excluding military clothing, acquired for authorized resale; or

(v) For construction or new installations of equipment, where nationally recognized industry or technical source specifications and standards are available.

(2) Military specifications and standards are mandatory for use by the Department of Defense (DOD), as are voluntary standards adopted by DOD and listed in the DODISS, except when any of the exceptions in (a)(1) above apply.

(b) *Commercial exception.* (1) In addition to the exceptions given in paragraph (a) above, agencies should consider stating their needs in a purchase description, when appropriate under Part 11 and implementing agency regulations, even though there is an indexed specification.

(2) The agency responsible for a specification may designate it as one for which this exception cannot be used, if the agency head or a designee determines this to be necessary.

10.007 Deviations.

When the exceptions in 10.006 above do not apply and an existing specification does not meet an agency's minimum needs, agencies may authorize deviations as follows:

(a) Each agency taking deviations shall establish procedures whereby a designated official having substantial contracting responsibility shall be responsible for ensuring that—

(1) Federal specifications are used, and requirements for exceptions and deviations are complied with;

(2) Justification for exceptions and deviations are subject to competent review before authorization, and that such justifications can be fully substantiated if post audit is required;

(3) Major or repeated deviations are not taken except as prescribed in (b) below; and

(4) Notification of deviation or recommendation for change in the specification is sent promptly in duplicate to the General Services Administration (FM), Washington, DC 20406. (A statement of the deviations with a justification and, where applicable, recommendation for revision or amendment of the specification shall be included. A notification is required for major deviations such as those that will result in the introduction of a new item of supply as evidenced by the development of a new item identification, or when a deviation is take repeatedly.)

(b) Deviations taken and reported by the agency in accordance with (a) above may not be continued, except under the following conditions:

(1) When an agency submits notification of major or repeated deviations that have been taken but makes no recommendation for change in the specification, GSA will notify the agency as to whether such deviations may be continued in subsequent contracting. In cases where continued deviations are not approved and the agency contracting has progressed to a point where it would be impracticable to amend or cancel the action, such action may be completed, but the deviation shall not be continued by the agency in subsequent contracts.

(2) When an agency has recommended changing the specification consistent with the deviations it has taken and reported, those deviations may be continued until such time as the recommended change is incorporated in the specification. When coordination with Federal agencies and industry does not result in acceptance of the change, such deviations shall not be continued by the agency in subsequent contracts.

(c) Deviations from military specifications shall be in accordance with any applicable DOD regulations.

10.008 Identification and availability of specifications.

(a) Solicitations citing specifications listed in the Index of Federal Specifications and Standards, DODISS, or other agency index shall identify each specification's approval date and the dates of any applicable amendments and revisions. Contracting offices will not normally furnish these cited specifications with the solicitation, except when—

(1) The product being acquired will be so complex that the specification must be furnished with the solicitation to enable prospective contractors to make a competent initial evaluation of the solicitation;

(2) In the judgment of the contracting officer, it would be impracticable for prospective contractors to obtain the specifications in reasonable time to respond to the solicitation; or

(3) A prospective contractor who has not previously bid on the product requests a copy of the specification.

(b) Solicitations shall not contain general identification references such as "the issue in effect on the date of the solicitation."

(c) Solicitations citing voluntary standards shall advise offerors to obtain the standards from the publisher.

(d) Contracting offices shall clearly identify in the solicitation specifications and any other pertinent documents not listed in the Index of Federal Specifications and Standards or DODISS and normally furnish them with the solicitation.

(e) When specifications refer to other specifications, such references shall (1) be restricted to documents, or appropriate portions of documents, that shall apply in the acquisition; (2) cite the extent of their applicability; (3) not conflict with other specifications and provisions of the solicitation; and (4) identify all applicable first tier references.

(f) Contracting offices shall furnish with the solicitation any brand name or equal description used.

(g) The Index of Federal Specifications and Standards and DODISS may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

10.009 User satisfaction.

(a) Agencies shall encourage users to communicate with acquisition organizations on—

(1) The adequacy of specifications to communicate the user's minimum needs;

(2) Product capability;

(3) Product failures and deficiencies; and

(4) Suggestions for corrective actions.

(b) Whenever practicable, the agency may provide affected industry an opportunity to comment on the critiques.

(c) Acquisition organizations shall consider user critiques and take appropriate action on bona fide complaints and suggestions.

10.010 Acquiring used or reconditioned material, former Government surplus property, and residual inventory.

(a) Generally, all contractually furnished supplies and their components, including former Government property, will be new, including recycled (see Subpart 23.4 for policy on recovered materials). However, agencies may acquire used or reconditioned material, former Government surplus property, or residual inventory conforming to the solicitation's requirements, if the contracting officer determines that it is acceptable. When such a determination is made, the solicitation shall clearly identify the supplies or their components that need not be new, along with the necessary details on their acceptability. Offerors wishing to provide such used or reconditioned material, former Government surplus property, or residual inventory shall do so in accordance with the clause at 52.210-5, New Material, or the provision at 52.210-6, Listing of Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property, and the clause at 52.210-7, Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property, as appropriate.

(b) Contracting officers shall consider the following when determining whether used or reconditioned materials, former Government surplus property, or residual inventory are acceptable:

(1) Safety of persons or property.

(2) Total cost to the Government (including maintenance, inspection, testing, and useful life).

(3) Performance requirements.

(4) Availability and cost of new materials and components.

(c) With regard to former Government surplus property, the contracting officer shall ensure that the prices paid for such items are reasonable considering overall cost savings to the Government. When a contract calls for material to be furnished at cost, the allowable charge for former Government surplus property shall not exceed the cost at which the contractor acquired the property.

10.011 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.210-1, Availability of Specifications Listed in the Index of Federal Specifications and Standards, in solicitations that (i) are issued by civilian agency contracting offices and (ii) cite specifications listed in the Index that are not furnished with the solicitation.

(b) The contracting officer shall insert the provision at 52.210-2, Availability of Specifications Listed in the DOD Index of Specifications and Standards (DODISS), in solicitations that (i) are issued by DOD contracting offices and (ii) cite specifications listed in the DODISS that are not furnished with the solicitation.

(c) The contracting officer shall insert a provision substantially the same as the provision at 52.210-3, Availability of Specifications Not Listed in the GSA Index of Federal Specifications and Standards, in solicitations that cite specifications that are not listed in the Index and are not furnished with the solicitation, but may be obtained from a designated source.

(d) The contracting officer shall insert a provision substantially the same as the provision at 52.210-4, Availability for Examination of Specifications Not Listed in the Index of Federal Specifications and Standards, in solicitations that cite specifications that are not listed in the Index and are available for examination at a specified location.

(e) (1) The contracting officer shall insert the clause at 52.210-5, New Material, in solicitations and contracts for supplies, unless, in the judgment of the contracting officer, the clause would serve no useful purpose.

(2) The contracting officer may insert the clause in solicitations and contracts for services that may involve the incidental furnishing of parts.

(f) (1) The contracting officer shall insert the provision at 52.210-6, Listing of Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property, in solicitations for supplies, unless, in the judgment of the contracting officer, the provision would serve no useful purpose.

(2) The contracting officer may insert the provision in solicitations for services that may involve the incidental furnishing of parts.

(g) (1) The contracting officer shall insert the clause at 52.210-7, Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property, in solicitations and contracts for supplies, unless, in the judgment of the contracting officer, the clause would serve no useful purpose.

(2) The contracting officer may insert the clause in solicitations and contracts for services that may involve the incidental furnishing of parts.

PART 11—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

11.000 Scope of part.

This part prescribes policies and procedures for the acquisition of commercial products and the use of commercial distribution systems.

11.001 Definitions.

"Commercial product" means a product, such as an item, material, component, subsystem, or system, sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices (see 15.804-3(c) for explanation of terms).

"Commercial-type product" means a commercial product (a) modified to meet some Government-peculiar physical requirement or addition or (b) otherwise identified differently from its normal commercial counterparts.

"Market research and analysis" means the process used for collecting and analyzing information about the commercial marketplace to arrive at the best approach for acquiring, distributing, and supporting particular products.

11.002 Policy.

In a manner consistent with statutes, Executive Orders, and governing regulations regarding maximum competition, agencies shall acquire commercial products and use commercial distribution systems whenever these products or distribution systems adequately satisfy the Government's needs (except see Part 8, Required Sources of Supplies and Services).

11.003 General.

Acquisition of commercial products begins with a description of the Government's needs stated in functional terms in sufficient detail so that market research and analysis can be used to

help determine whether commercial products, distribution systems, and logistics support are available to fill those needs.

11.004 Market research and analysis.

(a) *General.* Once the Government's needs have been functionally described, market research and analysis shall be conducted to ascertain the availability of commercial products to meet those needs and to identify the market practices, including warranty terms, of firms engaged in producing, distributing, and supporting these products.

(b) *Requirements.* Agencies shall conduct market research and analysis as needed to assure adequate competition and that the Government's needs are met in a cost effective manner. The extent of market research and analysis will vary depending upon such factors as urgency, estimated dollar value, complexity, and past experience.

(c) *Developing information.* Market research and analysis involves obtaining the following information, as appropriate:

(1) The availability of products suitable, as is or with minor modification, for meeting the need.

(2) The terms and conditions and warranty practices under which commercial sales of the products are made.

(3) The requirements of controlling laws and regulations.

(4) The number of sales and length of time over which they must occur to provide reasonable assurance that a particular product is reliable.

(5) The distribution and support capabilities of potential suppliers, including alternative arrangements and cost estimates.

(6) The potential cost of modifying commercial products to meet particular needs, if required.

(d) *Information sources.* The information described in paragraph (c) above may be acquired from the following sources, among others:

(1) Source lists for items of a similar nature maintained at contracting activities.

(2) Catalogs published by manufacturers, distributors, and dealers.

(3) Informational requests for quotations.

(4) Responses to advance notices and solicitation synopses published in *Commerce Business Daily*.

(5) GSA Federal Supply Schedules.

(6) Other Federal agencies.

11.005 Acceptability.

(a) The acceptability of commercial products to meet Government needs depends upon reliability, performance, logistics support requirements, and cost, among other things.

(b) When products meeting detailed specifications have satisfied user needs in the past, solicitations for commercial or commercial-type products to fill the same requirement should include provisions allowing the former producers to be considered for award under the detailed specifications as long as the specifications are current and all potential suppliers are competing on a similar basis.

11.006 Evaluation.

To establish that a product offered is a commercial or commercial-type product, certain information may be required from each offeror. This information should cover the minimum period of time identified by market research and analysis as necessary to establish reliability. Requested information may include:

(a) Catalogue identification.

(b) Total sales of the same or similar items to the public.

(c) Length of time the product has been sold in the commercial market place.

(d) Period covered by the information.

(e) Other pertinent information necessary to determine that the product is a commercial or commercial-type product.

11.007 Distribution options.

Market research and analysis should examine what commercial distribution systems are available in the market place. If these systems offer economic advantages to the Government, provide adequate logistics support, and are compatible with competitive contracting, they should be considered for use in conjunction with commercial purchases.

PART 12—CONTRACT DELIVERY OR PERFORMANCE

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

12.000 Scope of part.

This part prescribes policies and procedures relating to delivery or performance under contracts for supplies, services, and construction.

SUBPART 12.1—DELIVERY OR PERFORMANCE SCHEDULES

12.101 General.

(a) The time of delivery or performance is an essential contract element and shall be clearly stated in solicitations. Contracting officers shall ensure that delivery or performance schedules are realistic and meet the requirements of the acquisition. Schedules that are unreasonably tight or difficult of attainment (1) tend to restrict competition, (2) are inconsistent with small business policies, and (3) may result in higher contract prices.

(b) Solicitations shall, except when clearly unnecessary, inform bidders or offerors of the basis on which their bids or proposals will be evaluated with respect to time of delivery or performance.

(c) If timely delivery or performance is unusually important to the Government, liquidated damages clauses may be used (see Subpart 12.2).

12.102 Factors to consider in establishing schedules.

(a) *Supplies or services.* When establishing a contract delivery or performance schedule, consideration shall be given to applicable factors such as the—

(1) Urgency of need;

(2) Production time;

(3) Market conditions;

(4) Transportation time;

(5) Industry practices;

(6) Capabilities of small business concerns;

(7) Administrative time for obtaining and evaluating offers and for awarding contracts;

(8) Time for contractors to comply with any conditions precedent to contract performance; and

(9) Time for the Government to perform its obligations under the contract; e.g., furnishing Government property.

(b) *Construction.* When scheduling the time for completion of a construction contract, the contracting officer shall consider applicable factors such as the—

(1) Nature and complexity of the project;

(2) Construction seasons involved;

(3) Required completion date;

(4) Availability of materials and equipment;

(5) Capacity of the contractor to perform; and

(6) Use of multiple completion dates. (In any given contract, separate completion dates may be established for separable items of work. When multiple completion dates are used, requests for extension of time must be evaluated with respect to each item, and the affected completion dates modified when appropriate.)

12.103 Supplies or services.

(a) The contracting officer may express contract delivery or performance schedules in terms of—

(1) Specific calendar dates;

(2) Specific periods from the date of the contract; i.e., from the date of award or acceptance by the Government, or from the date shown as the effective date of the contract;

(3) Specific periods from the date of receipt by the contractor of the notice of award or acceptance by the Government (including notice by receipt of contract document executed by the Government); or

(4) Specific time for delivery after receipt by the contractor of each individual order issued under the contract, as in indefinite delivery type contracts and GSA schedules.

(b) The time specified for contract performance should not be curtailed to the prejudice of the contractor because of delay by the Government in giving notice of award.

(c) If the delivery schedule is based on the date of the contract, the contracting officer shall mail or otherwise furnish to the contractor the contract, notice of award, acceptance of proposal, or other contract document not later than the date of the contract.

(d) If the delivery schedule is based on the date the contractor receives the notice of award, or if the delivery schedule is expressed in terms of specific calendar dates on the assumption that the notice of award will be received by a specified date, the contracting officer shall send the contract, notice of award, acceptance of proposal, or other contract document by certified mail, return receipt requested, or by any other method that will provide evidence of the date of receipt.

(e) In invitations for bids, if the delivery schedule is based on the date of the contract, and a bid offers delivery based on the date the contractor receives the contract or notice of award, the contracting officer shall evaluate the bid by adding 5 days (as representing the normal time for arrival through ordinary mail). If the offered delivery date computed with mailing time is later than the delivery date required by the invitation for bids, the bid shall be considered nonresponsive and rejected. If award is made, the delivery date will be the number of days offered in the bid after the contractor actually receives the notice of award.

12.104 Contract clauses.

(a) *Supplies or services.* (1) The contracting officer may use a time of delivery clause to set forth a required delivery schedule and to allow an offeror to propose an alternative delivery schedule. The clauses and their alternates may be used in solicitations and contracts substantially as shown, they may be changed, or new clauses may be written.

(2) The contracting officer may insert in solicitations and contracts for supplies or services a clause substantially the same as the clause at 52.212-1, Time of Delivery, if the Government requires delivery by a particular time and the delivery schedule is to be based on the date of the contract. If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date of award, the contracting officer may use the clause with its Alternate I. If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date the contractor will receive notice of award, the contracting officer may use the clause with its Alternate II. If the delivery schedule is to be based on the actual date the contractor receives a written notice of award, the contracting officer may use the clause with its Alternate III.

(3) The contracting officer may insert in solicitations and contracts for supplies or services a clause substantially the same as the clause at 52.212-2, Desired and Required Time of Delivery, if the Government desires delivery by a certain time but requires delivery by a specified later time, and the delivery schedule is to be based on the date of the contract. If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date of award, the contracting officer may use the clause with its Alternate I. If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date the contractor will receive notice of award, the contracting officer may use the clause with its Alternate II. If the delivery schedule is to be based on the actual date the contractor receives a written notice of award, the contracting officer may use the clause with its Alternate III.

(b) *Construction.* The contracting officer shall insert the clause at 52.212-3, Commencement, Prosecution, and Completion of Work, in solicitations and contracts when a fixed-price construction contract is contemplated. The clause may be changed to accommodate the issuance of orders under indefinite-delivery contracts. If the completion date is expressed as a specific calendar date, computed on the basis of the contractor receiving the notice to proceed by a certain day, the contracting officer may use the clause with its Alternate I.

SUBPART 12.2—LIQUIDATED DAMAGES

12.201 General.

This subpart provides policies and procedures for the use of liquidated damages clauses in solicitations and contracts for supplies, services, and construction, entered into by formal advertising or negotiation.

12.202 Policy.

(a) Liquidated damages clauses should be used only when both (1) the time of delivery or performance is such an important factor in the award of the contract that the Government may reasonably expect to suffer damage if the delivery or performance is delinquent, and (2) the extent or amount of such damage would be difficult or impossible to ascertain or prove. In deciding whether to include a liquidated damage clause in a contract, the contracting officer should consider the probable effect on such matters as pricing, competition, and the costs and difficulties of contract administration.

(b) The rate of liquidated damages used must be reasonable and considered on a case-by-case basis since liquidated

damages fixed without any reference to probable actual damages may be held to be a penalty, and therefore unenforceable. The contract may also include an overall maximum dollar amount or period of time, or both, during which liquidated damages may be assessed, to ensure that the result is not an unreasonable assessment of liquidated damages.

(c) The contracting officer shall take all reasonable steps to mitigate liquidated damages. If a liquidated damages clause is included in a contract and a basis for termination for default exists, the contracting officer should take appropriate action expeditiously to obtain performance by the contractor or to terminate the contract (see Subpart 49.4). If delivery or performance is desired after termination for default, efforts must be made to obtain the delivery or performance elsewhere within a reasonable time. Efficient administration of contracts containing a liquidated damages clause is imperative to prevent undue loss to defaulting contractors and to protect the interests of the Government.

(d) If a contract provides for liquidated damages for delay, the Comptroller General, on the recommendation of the head of the agency concerned, is authorized and empowered by law to make a remission, that in the discretion of the Comptroller General is just and equitable, of the whole or any part of such damages.

12.203 Procedures.

(a) If a liquidated damages clause is to be used in a contract, the applicable clause and appropriate rate(s) of liquidated damages shall be included in the solicitation.

(b) If a liquidated damages clause is used in a construction contract, the rate(s) of liquidated damages to be assessed against the contractor should be for each day of delay and the rate(s) should as a minimum cover the estimated cost of inspection and superintendence for each day of delay in completion. Whenever the Government will suffer other specific losses due to the failure of the contractor to complete the work on time, the rate(s) should also include an amount for these items. Examples of specific losses are—

(1) The cost of substitute facilities;

(2) The rental of buildings and/or equipment; or

(3) The continued payment of quarters allowances.

(c) If appropriate to reflect the probable damages, considering that the Government can terminate for default or take other appropriate action, the rate of assessment of liquidated damages may be in two or more increments which provide a declining rate of assessment as the delinquency continues. The contract may also include an overall maximum dollar amount or period of time, or both, during which liquidated damages may be assessed, to ensure that the result is not an unreasonable assessment of liquidated damages.

12.204 Contract clauses.

(a) The contracting officer may insert the clause at 52.212-4, Liquidated Damages—Supplies, Services, or Research and Development, in solicitations and contracts when a fixed-price contract is contemplated for supplies, services, or research and development (see 12.202).

(b) The contracting officer may insert the clause at 52.212-5, Liquidated Damages—Construction, in solicitations and contracts for construction, except construction contracts on a cost-plus-fixed-fee basis (see 12.202). If different completion dates are specified in the contract for separate parts or stages of the work, the contracting officer shall use the clause with its Alternate I.

(c) The contracting officer shall insert the clause at 52.212-6, Time Extensions, in solicitations and contracts for construction in which the clause at 52.212-5, Liquidated Damages—Construction, is used with its Alternate I.

SUBPART 12.3—PRIORITIES, ALLOCATIONS, AND ALLOTMENTS

12.300 Scope of subpart.

This subpart implements Department of Commerce regulations in prescribing policies and procedures relating to the use of the Defense Materials System (DMS) and the Defense Priorities System (DPS) in solicitations and contracts. (See 15 CFR 330-354.)

12.301 Definitions.

"Authorized controlled material order (ACM order)" means any delivery order for any controlled material (as distinct from a product containing controlled material) bearing an authorized program identification, the calendar quarter in which delivery is required, and the certification required by DMS Regulation 1 or any other applicable regulation or order of the Office of Industrial Resource Administration, Department of Commerce.

"Controlled material" means domestic and imported steel, copper, aluminum, and nickel alloys, in the forms and shapes specified in Schedule I of DMS Regulation 1, whether new, remelted, rerolled, or redrawn.

"Delivery order" means any purchase order, contract, shipping or other instruction calling for delivery of any material or product, or performance of construction or service, on a particular date or dates or within specified periods of time. (See DMS Regulation 1.)

"Rated order" means any delivery order for any product, service, or material other than controlled material, bearing an authorized rating and the certification required by DPS Regulation 1 or any other applicable regulation or order of the Office of Industrial Resource Administration, Department of Commerce. Two types of ratings are authorized for "rated orders"—a DX rating and a DO rating. DX and DO rated orders have preferential status, and take precedence over unrated orders previously or subsequently received; however, DX rated orders take precedence over DO rated orders.

12.302 General.

(a) The Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), includes provisions for keeping specific defense programs and energy production programs on schedule and maintaining an administrative means of promptly mobilizing the nation's economic resources in the event of war or national emergency. The Act provides that (1) priorities may be used to require contractors to accept and perform rated orders in preference to others, and (2) materials and facilities may be allocated for defense and energy production purposes.

(b) The Office of Industrial Resource Administration, Department of Commerce, has the responsibility for establishing the basic priorities and allocations rules for industrial production to support defense and energy production programs. This is accomplished through a series of regulations and orders called the Defense Materials System and the Defense Priorities System. The DMS Regulation 1 and DPS Regulation 1 specify in their respective schedules the authorized program identifications and agencies.

(c) In supply contracts that are ratable, i.e., required to be supported with rating and allotment authority, agency heads shall ensure compliance with the priorities and allocations program, including DPS Regulation 1, DMS Regulation 1, and other applicable rules and regulations published by the Office of Industrial Resource Administration. The rating of ratable orders under $2,500 is optional.

12.303 Procedures.

(a) Precedence among rated orders is established in DMS Regulation 1 for controlled materials, and in DPS Regulation 1 for all other materials, products, and services. In general, ACM orders and DO rated orders take precedence over unrated orders, and DX rated orders take precedence over ACM orders and DO rated orders.

(b) Rules are provided in DMS Regulation 1 and DPS Regulation 1 for properly identifying and certifying rated orders. To be a valid rated order, contracts shall contain the following in addition to normal contractual requirements:

(1) DO or DX rating.

(2) DMS allotment number on ACM orders.

(3) Certification "Certified for National Defense Use Under DMS Regulation 1" or "Certified for National Defense Use Under DPS Regulation 1", as appropriate.

(4) Required delivery date(s).

(c) In accordance with the DMS and the DPS regulations, rated contracts and purchase orders or ACM orders may be placed on selected suppliers when adequate response to a solicitation is not received. If there are no offers received in response to a solicitation or the offers received do not cover the entire requirement, normal acquisition procedures shall be followed in attempting to locate sources to the extent exigencies will permit. If the efforts are unsuccessful and it is then determined that the acquisition must be accomplished, rated orders in the form of rated contracts, rated purchase orders, or an ACM order shall be presented to one or more (as appropriate) selected suppliers or manufacturers qualified to produce the item or material. This will be accomplished by a cover letter, signed by the contracting officer, citing the requirements of the Defense Production Act and DPS Regulation 1, and requesting timely acceptance by the contractor. The letter will also request that any reasons for rejection be promptly furnished in writing.

(d) Rated orders or ACM orders that are rejected by suppliers shall be forwarded through established agency channels to the Office of Industrial Resource Administration, Department of Commerce, for appropriate action.

12.304 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.212-7, Rated or Authorized Controlled Material Orders, in solicitations that will result in the placement of rated orders or ACM orders.

(b) The contracting officer shall insert the clause at 52.212-8, Priorities, Allocations, and Allotments, in solicitations and contracts that are ratable, except for contracts under $2,500 that are not rated.

SUBPART 12.4—VARIATION IN QUANTITY

12.401 Supply contracts.

(a) A fixed-price supply contract may authorize Government acceptance of a variation in the quantity of items called for if the variation is caused by conditions of loading, shipping, or packing, or by allowances in manufacturing processes. Any permissible variation shall be stated as a percentage and it may be an increase, a decrease, or a combination of both; however, contracts for subsistence items may use other applicable terms of variation in quantity.

(b) There should be no standard or usual variation percentage. The overrun or underrun permitted in each contract should be based upon the normal commercial practices of a particular industry for a particular item, and the permitted percentage should be no larger than is necessary to afford a contractor reasonable protection. The permissible variation shall not exceed plus or minus 10 percent unless a different limitation is established in agency regulations. Consideration shall be given to the quantity to which the percentage variation applies. For example, when delivery will be made to multiple destinations and it is desired that the quantity variation apply to the item quantity for each destination, this requirement must be stated in the contract.

(c) Contractors are responsible for delivery of the specified quantity of items in a fixed-price contract, within allowable variations, if any. If a contractor delivers a quantity of items in excess of the contract requirements plus any allowable variation in quantity, particularly small dollar value overshipments, it results in unnecessary administrative costs to the Government in determining disposition of the excess quantity. Accordingly, the contract may include the clause at 52.212-10, Delivery of Excess Quantities of $100 or Less, to provide that—

(1) Excess quantities of items totaling up to $100 in value may be retained without compensating the contractor; and

(2) Excess quantities of items totaling over $100 in value may, at the Government's option, be either returned at the contractor's expense or retained and paid for at the contract unit price.

12.402 Construction contracts.

Construction contracts may authorize a variation in estimated quantities of unit-priced items. When the variation between the estimated quantity and the actual quantity of a unit-priced item is more than plus or minus 15 percent, an equitable adjustment in the contract price shall be made upon the demand of either the Government or the contractor. The contractor may request an extension of time if the quantity variation is such as to cause an increase in the time necessary for completion. The contracting officer must receive the request in writing within 10 days from the beginning of the period of delay. However, the contracting officer may extend this time limit before the date of final settlement of the contract. The contracting officer shall ascertain the facts and make any adjustment for extending the completion date that the findings justify.

12.403 Contract clauses.

(a) The contracting officer shall insert the clause at 52.212-9, Variation in Quantity, in solicitations and contracts, when a fixed-price supply contract is contemplated for supplies, and for services that involve the furnishing of supplies.

(b) The contracting officer may insert the clause at 52.212-10, Delivery of Excess Quantities of $100 or Less, in solicitations and contracts, when a fixed-price supply contract is contemplated.

(c) The contracting officer shall insert the clause at 52.212-11, Variation in Estimated Quantity, in solicitations and contracts when a fixed-price construction contract is contemplated that authorizes a variation in the estimated quantity of unit-priced items.

SUBPART 12.5—SUSPENSION OF WORK, STOP-WORK ORDERS, AND GOVERNMENT DELAY OF WORK

12.501 General.

Situations may occur during contract performance that cause the Government to order a suspension of work, or a work stoppage. This subpart provides clauses to meet these situations and a clause for settling contractor claims for unordered Government caused delays that are not otherwise covered in the contract.

12.502 Suspension of work.

A suspension of work under a construction or architect-engineer contract may be ordered by the contracting officer for a reasonable

period of time. If the suspension is unreasonable, the contractor may submit a written claim for increases in the cost of performance, excluding profit.

12.503 Stop-work orders.

(a) Stop-work orders may be used, when appropriate, in any negotiated fixed-price or cost-reimbursement supply, research and development, or service contract if work stoppage may be required for reasons such as advancement in the state-of-the-art, production or engineering breakthroughs, or realignment of programs.

(b) Generally, a stop-work order will be issued only if it is advisable to suspend work pending a decision by the Government and a supplemental agreement providing for the suspension is not feasible. Issuance of a stop-work order shall be approved at a level higher than the contracting officer. Stop-work orders shall not be used in place of a termination notice after a decision to terminate has been made.

(c) Stop-work orders should include—

(1) A description of the work to be suspended;

(2) Instructions concerning the contractor's issuance of further orders for materials or services;

(3) Guidance to the contractor on action to be taken on any subcontracts; and

(4) Other suggestions to the contractor for minimizing costs.

(d) Promptly after issuing the stop-work order, the contracting officer should discuss the stop-work order with the contractor and modify the order, if necessary, in light of the discussion.

(e) As soon as feasible after a stop-work order is issued, but before its expiration, the contracting officer shall take appropriate action to—

(1) Terminate the contract;

(2) Cancel the stop-work order (any cancellation of a stop-work order shall be subject to the same approvals as were required for its issuance); or

(3) Extend the period of the stop-work order if it is necessary and if the contractor agrees (any extension of the stop-work order shall be by a supplemental agreement).

12.504 Government delay of work.

(a) The clause at 52.212-15, Government Delay of Work, provides for the administrative settlement of contractor claims that arise from delays and interruptions in the contract work caused by the acts, or failures to act, of the contracting officer. This clause is not applicable if the contract otherwise specifically provides for an equitable adjustment because of the delay or interruption; e.g., when the Changes clause is applicable.

(b) The clause does not authorize the contracting officer to order a suspension, delay, or interruption of the contract work and it shall not be used as the basis or justification of such an order.

(c) If the contracting officer has notice of an unordered delay or interruption covered by the clause, the contracting officer shall act to end the delay or take other appropriate action as soon as practicable.

(d) The contracting officer shall retain in the file a record of all negotiations leading to any adjustment made under the clause, and related cost or pricing data.

12.505 Contract clauses.

(a) The contracting officer shall insert the clause at 52.212-12, Suspension of Work, in solicitations and contracts when a fixed-price construction or architect-engineer contract is contemplated.

(b) The contracting officer may, when contracting by negotiation, insert the clause at 52.212-13, Stop-Work Order, in solicitations and contracts for supplies, services, or research and development. If a cost-reimbursement contract is contemplated, the contracting officer shall use the clause with its Alternate I.

(c) The contracting officer shall insert the clause at 52.212-14, Stop-Work Order—Facilities, in solicitations and contracts when a facilities acquisition contract or a consolidated facilities contract is contemplated.

(d) The contracting officer shall insert the clause at 52.212-15, Government Delay of Work, in solicitations and contracts when a fixed-price contract is contemplated for supplies other than commercial or modified-commercial items. The clause use is optional when a fixed-price contract is contemplated for services, or for supplies that are commercial or modified-commercial items.

SUBCHAPTER C—Contracting Methods and Contract Types

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies, nonpersonal services, and construction from commercial sources, the aggregate amount of which does not exceed—

(a) $10,000 for civil agencies (i.e., agencies subject to Title 41 U.S.C. 252(c)(3)); or

(b) $25,000 for defense agencies subject to Title 10 U.S.C. 2304 (a)(3).

SUBPART 13.1—GENERAL

13.101 Definitions.

"Bulk funding" means a system whereby a 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.

"Delivery Order," as used in this part, means an order for supplies or services placed against an established contract or with Government sources of supply.

"Purchase Order," as used in this part, means an offer by the Government to buy certain supplies or nonpersonal services and construction from commercial sources, upon specified terms and conditions, the aggregate amount of which does not exceed the small purchase limit. The Optional Form 347, Order for Supplies or Services, is designed for this purpose.

"Small purchase" means an acquisition of supplies, nonpersonal services, and construction in the amount of $10,000 or less for civilian agencies and $25,000 or less for defense agencies, using the procedures prescribed in this part.

"Small purchase procedures" means the methods prescribed in this part for making small purchases using imprest funds, purchase orders, and blanket purchase agreements. The term excludes—

(a) Requirements obtained through the use of Delivery Orders;

(b) Contracts with the Small Business Administration (SBA) under Section 8(a) of the Small Business Act (see Part 19); and

(c) Contracts awarded through (1) formal advertising (see Part 14), (2) the negotiation procedures in Part 15, or (3) small business or labor surplus area set-asides (see Part 19 and 20), other than small business-small purchase set-asides prescribed in 13.105.

13.102 Purpose.

The purpose of this part is to prescribe simplified procedures for small purchases in order to (1) reduce administrative costs and (2) improve opportunities for small business concerns and small disadvantaged business concerns to obtain a fair proportion of Government contracts.

13.103 Policy.

(a) The procedures prescribed in this part shall be used to the maximum extent practicable for all purchases of supplies or services not exceeding the small purchase limitation unless requirements can be met by using required sources of supply (see Part 8).

(b) Small purchase procedures shall not be used in the acquisition of supplies and services initially estimated to exceed the small purchase limitation even though resulting awards do not exceed that limit. Requirements aggregating more than the small purchase dollar limitation shall not be broken down into several purchases that are less than the limit merely to permit negotiation under small purchase procedures.

13.104 Procedures.

(a) All purchases covered by this part shall be made by negotiation and shall cite the appropriate negotiation authority (see Subpart 15.2). Contracting officers shall use the small purchase procedure that is most suitable, efficient, and economical in the circumstances of each acquisition. Contracting officers may use the procedures in this part in acquisitions from Government supply sources (see Part 8), if their use is authorized by the basic contract or concurred in by the source.

(b) Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation and the award made on an "all-or-none" basis if suppliers are so advised when quotations are requested.

(c) Agencies shall use bulk funding to the maximum extent practicable to reduce processing time, handling, and documentation. Bulk funding is particularly appropriate if numerous purchases using the same type of funds are to be made during a given period.

(d) Agencies shall inspect items or services acquired under small purchase procedures as prescribed in 46.404.

(e) Agencies shall use United States-owned foreign currency, if appropriate, in making payments for small purchases (see Subpart 25.3).

(f) This part does not preclude using (1) Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)) or (2) negotiated two-party contracts (see Part 15), for acquisitions not exceeding the small purchase limitation.

13.105 Small business-small purchase set-asides.

(a) Except as provided in paragraphs (b), (c), and (d) below, each acquisition of supplies or services that has an anticipated dollar value of $10,000 or less and is subject to small purchase procedures, shall be reserved exclusively for small business concerns. This shall be accomplished by using the category of set-asides established by Pub. L. 95-507, specifically for small purchases, identified as small business-small purchase set-asides.

(b) The requirements of this section 13.105 apply only to purchases in the United States, its territories and possessions, Puerto Rico, and the Trust Territory of the Pacific Islands (see 19.000(b)). Foreign concerns shall not be solicited or awarded acquisitions reserved for small business concerns.

(c) The requirement for small business-small purchase set-asides does not affect the responsibility of agencies to make purchases from required sources of supply, such as Federal Prison Industries, Industries for the Blind and Other Severely Handicapped, and mandatory multiple-award Federal Supply Schedule contracts.

(d) (1) Each written solicitation under a small business-small purchase set-aside shall contain the provision at 52.219-4, Notice of Small Business-Small Purchase Set-Aside. If the solicitation is oral, however, information substantially identical to that which is in the provision shall be given to potential quoters.

(2) If the contracting officer determines there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns (or at least one if the purchase does not exceed the dollar threshold, prescribed in 13.106, for obtaining competition and price reasonableness) that will be competitive in terms of market price, quality, and delivery, the contracting officer need not proceed with the small business-small purchase set-aside and may purchase on an unrestricted basis.

(3) If the contracting officer proceeds with the small business-small purchase set-aside and receives a quotation from only one responsible small business concern at a reasonable price (see 13.106(c)), the contracting officer shall make an award to that concern. However, if the contracting officer does not receive a reasonable quotation from a responsible small business concern, the contracting officer may cancel the small business- small purchase set-aside and complete the purchase on an unrestricted basis.

(4) When proceeding under 13.105(d)(1) or (3), the contracting officer shall ascertain the availability of small business suppliers by telephone or other informal means (see 13.106(b)(4)).

(5) If the purchase is on an unrestricted basis under 13.105(d)(2), the contracting officer shall document in the file the reason for the unrestricted purchase.

(e) Policy concerning nonmanufacturers under small business-small purchase set-asides is prescribed in 19.501(f)(2).

13.106 Competition and price reasonableness.

(a) *Purchases not over $1,000.* (1) Purchases not exceeding this limit may be made without securing competitive quotations if the contracting officer considers the prices to be reasonable.

(2) Such purchases shall be distributed equitably among qualified suppliers.

(3) If practical, a quotation shall be solicited from other than the previous supplier before placing a repeat order.

(4) The administrative cost of verifying the reasonableness of the price of purchases not exceeding $1,000 may more than offset potential savings from detecting instances of overpricing. Therefore, action to verify price reasonableness need be taken only when—

(i) The buyer or contracting officer suspects or has information (e.g., comparison to previous prices paid or personal knowledge of the item involved) to indicate that the price may not be reasonable; or

(ii) Purchasing an item for which no comparable pricing information is readily available (e.g., an item that is not the same as, or is not similar to, other items that have been recently purchased on a competitive basis).

(b) *Purchases over $1,000.* (1) Contracting officers shall solicit quotations from a reasonable number of qualified sources to ensure that the purchase is advantageous to the Government, price and other factors considered, including the administrative cost of the purchase. See Part 5 for requirements regarding publicizing contract actions. Solicitations may be limited to one source if the contracting officer determines that only one source is reasonably available; e.g., if the requirement is for (i) utility services available only from one source, or (ii) educational services available only from an educational or nonprofit institution and for which it is impractical to obtain competition.

(2) Generally, quotations should be solicited orally except that written solicitations shall be used for construction contracts over $2,000. Written solicitations should be used when—

(i) A large number of line items is included in a single proposed acquisition;

(ii) Obtaining oral quotations is not considered economical or practical;

(iii) Special specifications are involved; e.g., the product is different from that normally or previously purchased; or

(iv) The suppliers are located outside the local trade area.

(3) Reasonable competition for small purchases ordinarily can be obtained without soliciting quotations from sources outside the trade area in which the purchasing office is located. Contracting officers shall not limit solicitations to suppliers of well known and widely distributed makes or brands, nor shall quotations be solicited on a personal preference basis. New supply sources, disclosed through trade journals or other media, shall be continuously reviewed and, if appropriate, added to the list of available sources.

(4) (i) Unless exempted from this requirement by the head of the contracting activity, each contracting office shall maintain a small purchase source list (or lists, if more convenient) and shall record on the list the status of each source (when the status is made known to the contracting office) in the following categories:

(A) Small business.

(B) Small disadvantaged business.

(C) Certified in a labor surplus area.

(ii) The status information shall be used to ensure that small business concerns are given opportunities to submit quotations in response to small purchase solicitations. The names of additional concerns may be obtained from the Small and Disadvantaged Business Utilization Specialist who, in turn, may request support from the SBA Procurement Center Representative or other Federal and private sources which maintain lists of small business concerns. (See Subpart 19.1 for pertinent definitions.)

(5) Generally, solicitation should be limited to three suppliers. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations.

(6) The following factors influence the number of quotations required in connection with any particular purchase:

(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) Information obtained in making recent purchases of the same or similar item.

(iii) The urgency of the proposed purchase.

(iv) The dollar value of the proposed purchase.

(v) Past experience concerning specific dealers' prices.

(7) If suppliers furnish standing price quotations on supplies or services required on an intermittent and recurring basis, the information may be used in lieu of obtaining individual quotations each time a purchase is contemplated. The buyer shall ensure that the price information is current and that the Government obtains the benefit of maximum discounts.

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

(9) Notification to unsuccessful suppliers shall be given only if requested.

(c) *Data to support small purchases over $1,000.* (1) The determination that a proposed price is reasonable should be based on competitive quotations. If only one response is received, or the price variance between multiple responses reflects lack of adequate competition, a statement shall be included in the contract file giving the basis of the determination of fair and reasonable price. The determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, value analysis, the contracting officer's personal knowledge of the item being purchased, or any other reasonable basis. In any case, the contracting officer should gain as much knowledge as practicable of the physical and material characteristics and intended use of the item to be purchased as an aid to determine price reasonableness.

(2) If only one source is solicited, an additional notation shall be made to explain the absence of competition, except for acquisition of utility services available only from one source or of educational services from nonprofit institutions.

(3) The following illustrate the extent to which quotation information should be recorded:

(i) *Oral solicitations.* The contracting office shall establish and maintain informal 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. Handwritten notations on the purchase requisition are satisfactory for this purpose.

(ii) *Written solicitations.* Written records of solicitations may be limited to notes or abstracts to show prices, delivery, references to printed price lists used, the vendor or vendors contacted, and other pertinent data.

(4) Purchasing offices shall retain data supporting small purchases to the minimum extent and duration necessary for management review purposes. (See Subpart 4.8, Contract Files.)

13.107 Solicitation and evaluation of quotations.

(a) *Forms.* (1) Except when quotations are solicited orally, Standard Form 18, Request for Quotations (illustrated in 53.301-18), is designed for use in obtaining price, delivery, and related information from suppliers.

(2) Standard Form 18 is available for use by all agencies, and shall be used when using the form is considered economical and efficient for obtaining written quotations for small purchases.

(3) Standard Form 36, Continuation Sheet, may be used with Standard Form 18 when additional space is needed.

(4) If Standard Form 18 is not used for written solicitations, contracting officers may request quotations using an agency-designed form, an agency-approved automated format, or teletype.

(5) Each agency-designed request for quotations form shall conform with Standard Form 18, insofar as practical.

(6) When using a teletype for transmission of a request for quotations, the provisions and clauses applicable to the solicitation shall be incorporated by reference.

(b) *Discounts.* Consistent with the applicable principles in 14.407-3, contracting officers shall make every effort to obtain trade and prompt payment discounts. However, prompt payment discounts shall not be considered in the evaluation of quotations.

(c) *Transportation charges.* Contracting officers shall evaluate quotations inclusive of transportation charges from the shipping point of the supplier to the delivery destination.

13.108 Legal effect of quotations.

(a) A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract (see 15.402(e)). Therefore, issuance by the Government of an order for supplies or services 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 comes into being when the supplier accepts the offer.

(b) When appropriate, the contracting officer may request the supplier to indicate acceptance of an order by notification to the Government, preferably in writing. 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 13.504 for procedures on termination or cancellation of purchase orders.)

13.109 Agency use of indefinite delivery contracts.

Small purchase costs and processing time may be reduced through the use of indefinite delivery contracts (see Subpart 16.5) that permit delivery orders to be placed by several contracting or ordering offices in one or more executive agencies. Therefore, contracting offices are encouraged to seek opportunities to cooperate with each other to achieve small purchase efficiency and economy through the use of indefinite delivery contracts.

SUBPART 13.2—BLANKET PURCHASE AGREEMENTS

13.201 General.

(a) A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply (see Subpart 16.7 for additional coverage of agreements).

(b) BPA's are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents.

(c) BPA's should be established at the appropriate level responsible for providing supplies for its own operations or for other offices, installations, projects, or functions. Such levels, for example, may be organized supply points, separate independent or detached field parties, or one-person posts or activities.

(d) The use of BPA's does not exempt the agency from responsibility for keeping obligations and expenditures within available funds, but this should be done by using simplified methods and by avoiding formal fiscal recording of individual deliveries and transactions.

13.202 Reserved.

13.203 Establishment of Blanket Purchase Agreements.

13.203-1 General.

(a) The following are circumstances under which contracting officers may establish BPA's:

(1) If there is a wide variety of items in a broad class of goods (e.g., hardware) that are generally purchased but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

(2) If there is a need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise.

(3) In any other case in which the writing of numerous purchase orders can be avoided through the use of this procedure.

(b) A BPA may be established without a purchase requisition or a commitment of funds.

(c) To reduce the possibility of dormant funds and to increase flexibility in the use of any given BPA, contracting officers generally should not cite accounting and appropriation data in BPA's (but see 13.204(e)(4)).

(d) BPA's should be made with firms from which numerous individual purchases will likely be made in a given period. For example, if past experience has shown that certain firms are dependable and consistently lower in price than other firms dealing in the same commodities, and if numerous small purchases are usually made from such suppliers, it would be advantageous to establish BPA's with those firms.

(e) To the extent practical, BPA's for items of the same type should be placed concurrently with more than one supplier. All competitive sources should be given an equal opportunity to furnish supplies or services under BPA's.

(f) BPA's may also be established with Federal Supply Schedule contractors (see Subpart 8.4) and ADTS Schedule contractors (see Part 39), if not inconsistent with the terms of the applicable schedule contract.

(g) If it is determined that BPA's would be advantageous, suppliers should be contacted to make the necessary arrangements for securing maximum discounts, documenting the individual purchase transactions, periodic billing, and other necessary details.

(h) A BPA may be limited to furnishing individual items or commodity groups or classes, or it may be unlimited for all items or services that the source of supply is in a position to furnish.

(i) BPA's shall be prepared and issued on any agency-authorized purchase order form.

(j) BPA's shall contain the following terms and conditions:

(1) *Description of agreement.* A statement that the supplier shall furnish supplies or services, described in general terms, if and when requested by the contracting officer (or the authorized representative of the contracting officer) during a specified period and within a stipulated aggregate amount, if any.

(2) *Extent of obligation.* A statement that the Government is obligated only to the extent of authorized purchases actually made under the BPA.

(3) *Pricing.* A statement that the prices to the Government shall be as low or lower than those charged the supplier's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment.

(4) *Purchase limitation.* A statement that specifies the dollar limitation for each individual purchase under the BPA (see 13.204(b)).

(5) *Notice of individuals authorized to purchase under the BPA and dollar limitations.* A statement that a list of names of individuals authorized to purchase under the BPA, identified by organizational component, and the dollar limitation per purchase for each individual shall be furnished to the supplier by the contracting officer.

(6) *Delivery tickets.* A requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

(i) Name of supplier.

(ii) BPA number.

(iii) Date of purchase.

(iv) Purchase number.

(v) Itemized list of supplies or services furnished.

(vi) Quantity, unit price, and extension of each item, less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems; *provided*, that the invoice is itemized to show this information).

(vii) Date of delivery or shipment.

(7) *Invoices.* One of the following statements (except that statement (iii) should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method):

(i) A summary invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipted copies of the delivery tickets.

(ii) An itemized invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets.

(iii) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated; *provided*, that—

(A) A consolidated payment will be made for each specified period; and

(B) The period of any discounts will commence on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.

(iv) An invoice for subscriptions or other charges for newspapers, magazines, or other periodicals shall show the starting and ending dates and shall state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.

(k) BPA's in which the fast payment procedure is used shall include the requirements stated under 13.303(b).

13.203-2 Clauses.

(a) The contracting officer shall insert in each BPA the clauses prescribed elsewhere in the FAR that are required for or applicable to the particular BPA.

(b) Unless a clause prescription specifies otherwise, (e.g., see 22.305(a)(1), 22.605(a)(5), or 22.1006), if the prescription includes a dollar threshold, the amount to be compared to that threshold is that of any particular order under the BPA.

13.204 Purchases under Blanket Purchase Agreements.

(a) The use of a BPA does not authorize purchases that are not otherwise authorized by law or regulation. For example, the blanket purchase agreement, being a method of simplifying the making of individual small purchases, shall not be used to avoid the small purchase limitation.

(b) Unless otherwise specified in agency regulations, individual purchases under BPA's shall not exceed the dollar limitation for small purchases (see 13.103).

(c) The existence of a BPA does not justify sole source purchasing or avoiding small business-small purchase set-asides. The requirements of 13.106 and 13.107 also apply to each order under a BPA.

(d) If there is an insufficient number of BPA's to ensure adequate competition for a particular purchase, the contracting officer shall—

(1) Solicit quotations from other sources and make the purchase as appropriate; and

(2) Establish additional BPA's to facilitate future purchases if (i) recurring requirements for the same or similar items or services seem likely, (ii) qualified sources are willing to accept BPA's, and (iii) it is otherwise practical to do so.

(e) Documentation of purchases under BPA's shall be limited to essential information and forms, as follows:

(1) Purchases under BPA's generally should be made orally, but a purchase document may be issued if written communications are necessary to ensure that the vendor and the purchaser agree concerning the transaction.

(2) If a purchase document is not issued, the essential elements (e.g., date, vendor, items or services, price, delivery date) shall be recorded on the purchase requisition, in an informal memorandum, or on a form developed locally for the purpose.

(3) If a purchase document is issued, informal correspondence, an authorized purchase form, or a form developed locally for the purpose, may be used.

(4) Documentation of individual purchases under BPA's shall also cite the pertinent purchase requisitions and the accounting and appropriation data.

(5) When delivery is made or the services are performed, the vendor's sales document, delivery document, or invoice may (if it reflects the essential elements) be used for the purpose of recording receipt and acceptance of the items or services. However, if the purchase is assigned to another activity for administration, receipt and acceptance of supplies or services shall be documented by signature and date on the agency specified form by the authorized Government representative

after verification and notation of any exceptions.

13.205 Review procedures.

(a) The contracting officer placing orders under a BPA, or the designated representative of the contracting officer, shall review the BPA files at least semiannually to ensure that authorized procedures are being followed.

(b) The contracting officer that entered into the BPA shall—

(1) Ensure that each BPA is reviewed at least annually and, if necessary, updated at that time; and

(2) Maintain awareness of changes in market conditions, sources of supply, and other pertinent factors that may warrant making new arrangements with different suppliers or modifying existing arrangements.

(c) If an office other than the purchasing office that established a BPA is authorized to make purchases under that BPA, the agency that has jurisdiction over the office authorized to make the purchases shall ensure that the procedures in paragraph (a) above are being followed.

13.206 Completion of Blanket Purchase Agreements.

An individual BPA is considered complete when the purchases under it equal its total dollar limitation, if any, or when its stated time period expires.

SUBPART 13.3—FAST PAYMENT PROCEDURE

13.301 General.

The fast payment procedure is designed to reduce lead time to consignees and to improve supplier relations by expediting payment for small purchases. The procedure provides for payment for supplies based on the contractor's submission of an invoice that constitutes a representation that—

(a) The supplies have been delivered to a post office, common carrier, or point of first receipt by the Government; and

(b) The contractor agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase agreements.

13.302 Conditions for use.

If the conditions in paragraphs 13.302(a) through (c) are present, the fast payment procedure should be used to the maximum extent possible, provided the use is consistent with the other conditions of the purchase. Use of the fast payment procedure would not be indicated, for example, for small purchases by an activity if material being purchased is destined for use at that activity and contract administration will be performed by the purchasing office at that activity. The conditions for use of the fast payment procedure are as follows:

(a) Individual orders do not exceed $10,000 for civilian agencies and $25,000 for DOD, except that executive agencies may establish higher dollar limitations for specified activities or items.

(b) Title to the supplies will vest in the Government (1) upon delivery to a post office or common carrier for mailing or shipment to destination, or (2) upon receipt by the Government if the shipment is by means other than Postal Service or common carrier.

(c) The supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

13.303 Preparation and execution of orders.

(a) Orders incorporating the fast payment procedure shall be issued on Optional Form 347, Order for Supplies or Services, or other agency authorized purchase order form (but see 13.204(e) for purchases under BPA's). Orders may be either priced or unpriced.

(b) Contracts, purchase orders, or BPA's using the fast payment procedure shall include the following:

(1) A requirement that the supplies be shipped transportation or postage prepaid.

(2) A requirement that invoices be submitted directly to the finance or other office designated in the order, or in the case of unpriced purchase orders, to the contracting officer (see 13.502(c)).

(3) The following statement on consignee's copy: *Consignee's Notification to Purchasing Activity of Nonreceipt, Damage, or Nonconformance.* The consignee shall notify the purchasing office promptly after the specified date of delivery of supplies not received, damaged in transit, or not conforming to specifications of the purchase order. Unless extenuating circumstances exist, the notification should be made not later than 60 days after the specified date of delivery.

(4) A requirement that the contractor mark outer shipping containers "FAST PAY".

13.304 Responsibility for collection of debts.

The contracting officer shall be primarily responsible for collecting debts resulting from failure of contractors to properly replace, repair, or correct supplies lost, damaged, or not conforming to purchase requirements (see 32.605(b) and 32.606).

13.305 Contract clause.

The contracting officer shall insert the clause at 52.213-1, Fast Payment Procedure, in solicitations and contracts when the conditions in 13.302 are applicable and it is intended that the fast payment procedure be used in the contract (in the case of BPA's, the contracting officer may elect to insert the clause either in the BPA or in orders under the BPA).

SUBPART 13.4—IMPREST FUND

13.401 Definition.

"Imprest fund," as used in this subpart, 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 purchases.

13.402 General.

This subpart prescribes policies and procedures for using imprest funds to make small purchases of supplies or services. Related policies and regulations concerning the establishment of and accounting for imprest funds, including the responsibilities of designated cashiers and alternates, are contained in Part IV of the Treasury Fiscal Requirements Manual for Guidance of Departments and Agencies, Title 7 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, and the agency implementing regulations. Agencies shall also be guided by the Manual of Procedures and Instructions for Cashiers, issued by the Bureau of Financial Operations, Fiscal Service, Department of the Treasury.

13.403 Agency responsibilities.

Each agency using imprest funds shall—

(a) Periodically review and determine whether there is continuing need for each fund established, and that amounts of those funds are not in excess of actual needs;

(b) Take prompt action to have imprest funds adjusted to a level commensurate with demonstrated needs whenever circumstances warrant such action; and

(c) Develop and issue appropriate implementing regulations. These regulations shall include (but are not limited to) procedures covering—

(1) Designation of personnel authorized to make purchases using imprest funds; and

(2) Documentation of purchases using imprest funds, including documentation of (i) receipt and acceptance of supplies and services by the Government, (ii) receipt of cash payments by the suppliers, and (iii) cash advances and reimbursements.

13.404 Conditions for use.

Imprest funds may be used for small purchases when—

(a) The transaction does not exceed $150 ($300 under emergency conditions) or such other limits as have been approved by the Department of the Treasury for an individual agency;

(b) The use of imprest funds is considered to be advantageous to the Government; and

(c) The use of imprest funds for the transaction otherwise complies with any additional conditions established by agencies and with the policies and regulations referenced in 13.402.

13.405 Procedures.

(a) Each purchase using imprest funds shall be based upon an authorized purchase requisition.

(b) Normally, orders to suppliers should be placed orally and without soliciting competition if prices are considered reasonable.

(c) Purchases shall be distributed equitably among qualified suppliers (see 13.105).

(d) Prompt payment discounts shall be solicited.

(e) Any agency-authorized purchase order form or Standard Form 1165, Receipt for Cash-Subvoucher, may be used if a written order is considered necessary; e.g., if required by the supplier for discount, tax exemption, or other reasons. If a purchase order is used for this purpose, it shall be endorsed "Payment to be made from Imprest Fund."

(f) The individual authorized to make purchases using imprest funds shall—

(1) Furnish to the imprest fund cashier a copy of the purchase requisition annotated to reflect (i) that an imprest fund purchase has been made, (ii) the unit prices and extensions, (iii) the supplier's name and address, and (iv) the date of anticipated delivery; and

(2) Require the supplier to include with delivery of the supplies an invoice, packing slip, or other sales instrument giving (i) the supplier's name and address, (ii) list and quantity of items, (iii) unit prices and extensions, and (iv) cash discount, if any.

SUBPART 13.5—PURCHASE ORDERS

13.501 General.

(a) Except as provided under the unpriced purchase order method (see 13.502), purchase orders (1) shall be issued on a fixed-price basis, and (2) shall not contain economic price adjustment or redetermination clauses.

(b) Purchase orders shall include any trade and prompt payment discounts that are offered, consistent with the applicable principles in 14.407-3.

(c) Purchase orders shall specify the quantity of supplies or services ordered (but see Subpart 12.4).

(d) Inspections under small purchases shall be as prescribed in Part 46. Orders generally shall provide that inspection and acceptance will be at destination and source inspection should be specified only if required by Part 46. If inspection and acceptance are to be performed at destination, advance copies of the purchase order shall be furnished to consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of material.

(e) F.o.b. destination shall be specified for supplies to be delivered within the United States, except Alaska and Hawaii, unless there are valid reasons to the contrary.

(f) Each purchase order shall contain a definite calendar date by which delivery of supplies or performance of services are required.

(g) The contracting officer's signature on purchase orders shall be in accordance with 4.201. Facsimile signature may be used in the production of purchase orders by automated methods.

(h) Distribution of copies of purchase orders and related forms shall be limited to those copies required for essential administration and transmission of contractual information.

13.502 Unpriced purchase orders.

(a) An unpriced purchase order is an order for supplies or services, the price of which is not established at the time of issuance of the order.

(b) An unpriced purchase order may be used only when—

(1) It is anticipated that the transaction will not exceed the small purchase limit;

(2) It is impractical to obtain pricing in advance of issuance of the purchase order; and

(3) The purchase is for—

(i) Repairs to equipment requiring disassembly to determine the nature and extent of repairs;

(ii) Sole source material for which cost cannot be readily established; or

(iii) Supplies or services for which prices are known to be competitive but exact prices are not known (e.g., miscellaneous repair parts, maintenance agreements).

(c) Unpriced purchase orders may be issued by using written purchase orders or written telecommunications (see 13.506). A realistic monetary limitation, either for each line item or for the total order, shall be placed on each unpriced purchase order (see 13.507(d)). The monetary limitation shall be an obligation subject to adjustment when the firm price is established. The contracting office shall follow-up each order to ensure timely pricing. The contracting officer or the contracting officer's designated representative shall review the invoice price and, if reasonable (see 13.106(c)), process the invoice for payment.

13.503 Obtaining contractor acceptance and modifying purchase orders.

(a) When it is desired to consummate a binding contract between the parties before the contractor undertakes performance, the contracting officer shall require written acceptance of the purchase order by the contractor.

(b) A purchase order may be modified by use of (1) Standard Form 30, Amendment of Solicitation/Modification of Contract; (2) an agency-designed form or an agency-approved automated format; or (3) if not prohibited by agency regulations, a purchase order form.

(c) Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number.

(d) Contracting officers need not obtain a contractor's written acceptance of a purchase order modification, unless the written acceptance is—

(1) Determined by the contracting officer to be necessary to ensure the contractor's compliance with the purchase order as revised; or

(2) Required by agency regulations.

13.504 Termination or cancellation of purchase orders.

(a) If a purchase order that has been accepted in writing by the contractor is to be terminated, the contracting officer shall process the termination action as prescribed by Part 49.

(b) If a purchase order that has not been accepted in writing by the contractor is to be cancelled, the contracting officer shall notify the contractor in writing that the purchase order has been cancelled, request the contractor's written acceptance of the cancellation, and proceed as follows:

(1) If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action is

required; i.e., the purchase order shall be considered cancelled.

(2) If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the contracting officer shall process the termination action as prescribed by Part 49.

13.505 Purchase order and related forms.

13.505-1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.

(a) *General.* (1) Optional Form 347 (illustrated in 53.302-347) and Optional Form 348 (illustrated in 53.302-348) are multipurpose forms designed for the following uses:

(i) Negotiated purchases of supplies or services not in excess of the small purchase limit.

(ii) A delivery order for ordering or scheduling deliveries against established contracts or from Government sources of supply.

(iii) A receiving and inspection report.

(iv) An invoice.

(2) Optional Forms 347 and 348, may be used when the agency concerned considers it economical and efficient to do so (also see 13.505-2).

(b) *Clauses.* (1) Clauses generally suitable for most small purchases are incorporated by reference on the reverse of Optional Form 347, (but see 13.507).

(2) Agencies may add (i) other clauses prescribed by the FAR, as appropriate, and (ii) agency clauses, if they do not conflict with clauses prescribed by the FAR and are designated as agency clauses.

13.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

(a) Order forms used in lieu of Optional Forms 347 and 348 shall conform insofar as practicable with the forms illustrated in 53.302-347 and 53.302-348.

(b) Agencies using agency order forms in lieu of Optional Form 347 may print on those forms the clauses they consider to be generally suitable for most of their small purchases. The clauses, however, (1) should include the clauses incorporated by reference on the reverse of Optional Form 347, (2) may include clauses not listed on the reverse of Optional Form 347 that are prescribed by the FAR, and (3) may include agency clauses, if they do not conflict with clauses prescribed by the FAR and are designated as agency clauses (see 13.507).

13.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

(a) Standard Form 44, Purchase Order-Invoice-Voucher (illustrated in 53.301-44) is a pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services while away from the purchasing office or at isolated activities. It is a multipurpose form that can be used as a purchase order, receiving report, invoice, and public voucher.

(b) Standard Form 44 may be used if all of the following conditions are satisfied:

(1) Except for purchases made under public exigency circumstances, the amount of the purchase is not over $2,500. Agencies may establish higher dollar limitations for specific activities or items.

(2) The supplies or services are immediately available.

(3) One delivery and one payment will be made.

(4) Its use is determined to be more economical and efficient than use of other small purchase methods.

(c) General procedural instructions governing the use of Standard Form 44 are printed on the form and on the inside front cover of each book of forms.

(d) Agencies shall provide adequate safeguards regarding the control of forms and accounting for purchases.

13.506 Purchase orders via written telecommunications.

(a) A written telecommunicated purchase order is an order for supplies or services that is electrically transmitted to a supplier and is not signed by the contracting officer.

(b) A written telecommunicated purchase order may be used only when all of the following conditions are present:

(1) Its use is more advantageous to the Government than any other small purchase technique.

(2) An unsigned transmitted order is acceptable to the supplier.

(3) The order is approved by the contracting officer before its transmission.

(4) The order does not require written acceptance by the supplier.

(5) The purchasing office retains all contract administration functions.

(c) When a written telecommunicated purchase order is used—

(1) Clauses appropriate to the purchase order shall be incorporated by reference in the transmitted order;

(2) Administrative information that is not needed by the supplier should not be transmitted but should be placed only on copies intended for internal distribution;

(3) The same distribution shall be made of the transmitted order as is made of written purchase orders; and

(4) No purchase order form shall be issued.

(d) A written telecommunicated purchase order may be unpriced if it meets the conditions in 13.502.

13.507 Clauses.

(a) Except as provided in paragraph (b) below, each purchase order (and each purchase order modification (see 13.503)) shall incorporate all clauses required for or applicable to the particular acquisition. The clauses listed on Optional Form 347, are not necessarily all that are required.

(b) Since there is, for all practical purposes, simultaneous placing of purchase orders on Standard Form 44 and delivery of the items ordered, clauses are not required for purchases using this form.

(c) The contracting officer shall insert the clause at 52.213-2, Invoices, in purchase orders that authorize advance payments (see 31 U.S.C. 530) for subscriptions or other charges for newspapers, magazines, periodicals, or other publications (i.e., any publication printed, microfilmed, photocopied, or magnetically or otherwise recorded for auditory or visual usage).

(d) The contracting officer shall insert the clause at 52.213-3, Notice to Supplier, in unpriced purchase orders.

PART 14—FORMAL ADVERTISING

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

14.000 Scope of part.

This part prescribes (a) the basic requirements of contracting for supplies and services (including construction) by formal advertising, (b) the information to be included in the solicitation (invitation for bids), (c) procedures concerning the submission of bids, (d) requirements for opening and evaluating bids and awarding contracts, and (e) procedures for two-step formal advertising.

SUBPART 14.1—USE OF FORMAL ADVERTISING

14.101 Elements of formal advertising.

Formal advertising is a method of contracting that employs competitive bids, public opening of bids, and awards. The following steps are involved:

(a) *Preparation of invitations for bids.* Invitations must describe the requirements of the Government clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders must be avoided. The invitation includes all documents (whether attached or incorporated by reference) furnished prospective bidders for the purpose of bidding.

(b) *Publicizing the invitation for bids.* Invitations must be publicized through distribution to prospective bidders, posting in public places, and such other means as may be appropriate. Publicizing must occur a sufficient time before public opening of bids to enable prospective bidders to prepare and submit bids.

(c) *Submission of bids.* Bidders must submit sealed bids to be opened at the time and place stated in the solicitation for the public opening of bids.

(d) *Contract award.* After bids are publicly opened, an award will be made to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered.

14.102 (Reserved)

14.103 Policy.

14.103-1 General.

(a) Contracts shall be awarded in accordance with formal advertising procedures whenever feasible and practicable. Except where negotiation is specifically required by this regulation (e.g., foreign purchases by overseas activities), this rule shall be followed even though the existing conditions would satisfy one or more of the circumstances permitting negotiation (see Subpart 15.2).

(b) Bids shall be solicited from all qualified sources deemed necessary by the contracting officer to assure full and free competition consistent with the acquisition of the required supplies or services.

(c) Current lists of bidders shall be maintained in accordance with 14.205.

(d) Formal advertising shall be used for classified acquisitions (see 4.401) if its use does not violate agency security requirements.

(e) The policy for pricing modifications of formally advertised contracts appears in 15.804-2.

14.103-2 Limitations.

No awards shall be made as a result of formal advertising unless—

(a) Bids have been solicited as required by Subpart 14.2;

(b) Bids have been submitted as required by Subpart 14.3;

(c) Any business clearances and approvals that are required by agency procedures have been obtained; and

(d) An award is made to the responsible bidder (see 9.1) whose bid is responsive to the terms of the invitation for bids and is most advantageous to the Government, price and other factors considered, as provided in Subpart 14.4.

14.104 Types of contracts.

Firm-fixed-price contracts shall be used when the method of contracting is formal advertising, except that fixed-price contracts with economic price adjustment clauses may be used if authorized in accordance with 16.203 when some flexibility is necessary and feasible. Such clauses must afford all bidders an equal opportunity to bid.

14.105 Solicitations for informational or planning purposes.

See 15.405.

SUBPART 14.2—SOLICITATION OF BIDS

14.201 Preparation of invitation for bids.

14.201-1 Uniform contract format.

(a) Contracting officers shall prepare invitations for bids and contracts using the uniform contract format outlined in Table 14-1 to the maximum practicable extent. The use of the format facilitates preparation of the solicitation and contract as well as reference to, and use of, those documents by bidders and contractors. It need not be used for acquisition of the following:

(1) Construction (see Part 36).

(2) Shipbuilding (including design, construction, and conversion), ship overhaul, and ship repair.

(3) Subsistence items.

(4) Supplies or services requiring special contract forms prescribed elsewhere in this regulation that are inconsistent with the uniform contract format.

(b) Information suitable for inclusion in invitations for bids under the uniform contract format shall also be included in invitations for bids not subject to that format if applicable.

(c) Solicitations to which the uniform contract format applies shall include Parts I, II, III, and IV. If any section of the uniform contract format does not apply, the contracting officer should so mark that section in the solicitation. Upon award, the contracting officer shall not physically include Part IV in the resulting contract, but shall retain it in the contract file. Award by acceptance of a bid on the award portion of Standard Form 33, Solicitation, Offer and Award (SF 33), or Standard Form 26, Award/Contract (SF 26), incorporates Section K, Representations, certifications, and other statements of bidders, in the resultant contract even though not physically attached.

TABLE 14-1

Uniform Contract Format

Section	Title
	Part I—The Schedule
A	Solicitation/contract form
B	Supplies or services and prices
C	Description/specifications
D	Packaging and marking
E	Inspection and acceptance
F	Deliveries or performance
G	Contract administration data
H	Special contract requirements
	Part II—Contract Clauses
I	Contract clauses
	Part III—List of Documents, Exhibits, and Other Attachments
J	List of documents, exhibits, and other attachments

TABLE 14-1—Continued

Uniform Contract Format

Section	Title
	Part IV—Representations and Instructions
K	Representations, certifications, and other statements of bidders
L	Instructions, conditions, and notices to bidders
M	Evaluation factors for award

14.201-2 Part I—The Schedule.

The contracting officer shall prepare the Schedule as follows:

(a) *Section A, Solicitation/contract form.* (1) Prepare the invitation for bids on SF 33, unless otherwise permitted by this regulation. The SF 33 is the first page of the solicitation and includes Section A of the uniform contract format.

(2) When the SF 33 is not used, include the following on the first page of the invitation for bids:

(i) Name, address, and location of issuing activity, including room and building where bids must be submitted.

(ii) Invitation for bids number.

(iii) Date of issuance.

(iv) Time specified for receipt of bids.

(v) Number of pages.

(vi) Requisition or other purchase authority.

(vii) Requirement for bidder to provide its name and complete address, including street, city, county, State, and ZIP code.

(viii) A statement that bidders should include in the bid the address to which payment should be mailed, if that address is different from that of the bidder.

(b) *Section B, Supplies or services and prices.* Include a brief description of the supplies or services; e.g., item number, national stock number/part number if applicable, title or name identifying the supplies or services, and quantities (see Part 10, Specifications, Standards, and Other Product Descriptions). The SF 33 may be supplemented as necessary by the Standard Form 36 (SF 36), Continuation Sheet (53.301-36).

(c) *Section C, Description/specifications.* Include any description or specifications needed in addition to Section B to permit full and free competition (see Part 10, Specifications, Standards, and Other Product Descriptions).

(d) *Section D, Packaging and marking.* Provide packaging, packing, preservation, and marking requirements, if any (see 10.004(e)).

(e) *Section E, Inspection and acceptance.* Include inspection, acceptance, quality assurance, and reliability requirements (see Part 46, Quality Assurance).

(f) *Section F, Deliveries or performance.* Specify the requirements for time, place, and method of delivery or performance (see Part 12, Contract Delivery or Performance).

(g) *Section G, Contract administration data.* Include any required accounting and appropriation data and any required contract administration information or instructions other than those on the solicitation form.

(h) *Section H, Special contract requirements.* Include a clear statement of any special contract requirements that are not included in Section I, Contract clauses, or in other sections of the uniform contract format.

14.201-3 Part II—Contract clauses.

Section I, Contract clauses. The contracting officer shall include in this section the clauses required by law or by this regulation and any additional clauses expected to apply to any resulting contract, if these clauses are not required to be included in any other section of the uniform contract format. Clauses that are incorporated by reference shall be included in this section (see 52.102-1(c)).

14.201-4 Part III—Documents, exhibits, and other attachments.

Section J, List of documents, exhibits, and other attachments. The contracting officer shall list the title, date, and number of pages for each attached document.

14.201-5 Part IV—Representations and instructions.

The contracting officer shall prepare the representations and instructions as follows:

(a) *Section K, Representations, certifications, and other statements of bidders.* Include in this section those solicitation provisions that require representations, certifications, or the submission of other information by bidders.

(b) *Section L, Instructions, conditions, and notices to bidders.* Insert in this section solicitation provisions and other information and instructions not required elsewhere to guide bidders. Provisions that are incorporated by reference shall be included in this section (see 52.102-1(c)).

(c) *Section M, Evaluation factors for award.* Identify all factors other than the bid price that will be considered in evaluating bids and awarding the contract. See 14.407-5.

14.201-6 Solicitation provisions.

(a) The provisions prescribed in this subsection are limited to subjects that are general in nature, do not come under

other subject areas of the FAR, and pertain to the preparation and submission of bids.

(b) The contracting officer shall insert in all invitations for bids the provisions at—

(1) 52.214-1, Solicitation Definitions—Formal Advertising;

(2) 52.214-2, Type of Business Organization—Formal Advertising;

(3) 52.214-3, Acknowledgment of Amendments to Invitations for Bids; and

(4) 52.214-4, False Statements in Bids.

(c) The contracting officer shall insert the following provisions in invitations for bids unless they are for construction that is not estimated to exceed $10,000. The use of these provisions in invitations for bids for construction that is not estimated to exceed $10,000 is optional:

(1) 52.214-5, Submission of Bids.

(2) 52.214-6, Explanation to Prospective Bidders.

(3) 52.214-7, Late Submissions, Modifications, and Withdrawals of Bids.

(d) The contracting officer shall insert in invitations for bids, unless they are for construction that is not estimated to exceed $10,000, the provision at 52.214-8, Parent Company and Identifying Data.

(e) The contracting officer shall insert in invitations for bids, except those for construction, the provisions at—

(1) 52.214-9, Failure to Submit Bid; and

(2) 52.214-10, Contract Award—Formal Advertising.

(f) The contracting officer shall insert in invitations for bids to which the uniform contract format applies, the provisions at—

(1) 52.214-11, Order of Precedence—Formal Advertising; and

(2) 52.214-12, Preparation of Bids.

(g) The contracting officer shall insert the provision at 52.214-13, Telegraphic Bids, in invitations for bids if the contracting officer decides to authorize telegraphic bids.

(h) The contracting officer shall insert the provision at 52.214-14, Place of Performance—Formal Advertising, in invitations for bids except those in which the place of performance is specified by the Government.

(i) The contracting officer shall insert the provision at 52.214-15, Period for Acceptance of Bids, in invitations for bids (IFB's) that are not issued on SF 33 except IFB's (1) for construction work or (2) in which the Government specifies a minimum acceptance period.

(j) The contracting officer shall insert the provision at 52.214-16, Minimum Bid Acceptance Period, in invitations for bids, except for construction, if the contracting officer determines that a minimum acceptance period must be specified.

(k) The contracting officer shall insert the provision at 52.214-17, Affiliated Bidders, in invitations for bids if the contracting officer determines that disclosure of affiliated bidders is necessary to prevent practices prejudicial to fair and open competition, such as improper multiple bidding.

(l) The contracting officer shall insert the provision at 52.214-18, Preparation of Bids—Construction, in invitations for bids for construction work estimated to exceed $10,000. The use of this provision in invitations for bids for construction work that is not estimated to exceed $10,000 is optional.

(m) The contracting officer shall insert the provision at 52.214-19, Contract Award—Formal Advertising—Construction, in all invitations for bids for construction work that is estimated to exceed $10,000.

(n) Use of the provision at 52.215-4, Notice of Possible Standardization, may be appropriate in invitations for bids involving supplies that are likely to become standardized. See 15.213(c)(2) and the prescription in 15.407(b).

(o) (1) The contracting officer shall insert the provision at 52.214-20, Bid Samples, in invitations for bids if bid samples are required.

(2) If it appears that the conditions in 14.202-4(f)(1) will apply and the contracting officer anticipates granting waivers thereunder and—

(i) If the nature of the required product *does not* necessitate limiting the grant of a waiver to a product produced at the same plant in which the product previously acquired or tested was produced, the contracting officer shall use the provision with its Alternate I; or

(ii) If the nature of the required product necessitates limiting the grant of a waiver to a product produced at the same plant in which the product previously acquired or tested was produced, the contracting officer shall use the provision with its Alternate II.

(3) See 14.202-4(f)(2) regarding waiving the requirement for all bidders.

(p) (1) The contracting officer shall insert the provision at 52.214-21, Descriptive Literature, in invitations for bids if (i) descriptive literature is required to evaluate the technical acceptability of an offered product and (ii) the required information will not be readily available unless it is submitted by bidders.

(2) Use the basic clause with its Alternate I if the possibility exists that the contracting officer may waive the requirement for furnishing descriptive literature for a bidder offering a previously supplied product that meets specification requirements of the current solicitation.

(3) See 14.202-5(e)(2) regarding waiving the requirement for all bidders.

(q) The contracting officer shall insert the provision at 52.214-22, Evaluation of Bids for Multiple Awards, in invitations for bids if the contracting officer determines that multiple awards might be made if doing so is economically advantageous to the Government.

(r) The contracting officer shall insert the provision at 52.214-23, Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Formal Advertising, in solicitations for technical proposals in step one of two-step formal advertising.

(s) The contracting officer shall insert the provision at 52.214-24, Multiple Technical Proposals, in solicitations for technical proposals in step one of two-step formal advertising if the contracting officer permits the submission of multiple technical proposals.

(t) The contracting officer shall insert the provision at 52.214-25, Step Two of Two-Step Formal Advertising, in invitations for bids issued under step two of two-step formal advertising.

14.201-7 Contract clauses.

(a) When contracting by formal advertising, the contracting officer shall insert the clause at 52.214-26, Audit—Formal Advertising, in solicitations and contracts if the contract amount is expected to exceed $100,000.

(b) (1) When contracting by formal advertising, the contracting officer shall insert the clause at 52.214-27, Price Reduction for Defective Cost or Pricing Data—Modifications—Formal Advertising, in solicitations and contracts if the contract amount is expected to exceed $500,000.

(2) In exceptional cases, the head of the contracting activity may waive the requirement for inclusion of the clause in a contract with a foreign government or agency of that government. The authorizations for the waiver and the reasons for granting it shall be in writing.

(c) (1) When contracting by formal advertising, the contracting officer shall insert the clause at 52.214-28, Subcontractor Cost or Pricing Data—Modifications—Formal Advertising, in solicitations and contracts if the contract amount is expected to exceed $500,000.

(2) In exceptional cases, the head of the contracting activity may waive the requirement for inclusion of the clause in a contract with a foreign government or agency of that government. The authorizations for the waiver and the reasons for granting it shall be in writing.

14.202 General Rules for solicitation of bids.

14.202-1 Bidding time.

(a) *Policy.* A reasonable time for prospective bidders to prepare and submit bids shall be allowed in all invitations, consistent with the needs of the Government. A bidding time (i.e., the time between issuance of the solicitation and opening of bids) of at least 30 calendar days shall be provided, unless the contracting officer determines that a shorter period is reasonable (or is both reasonable and necessary to satisy an urgent requirement). For construction contracts see 36.303(a).

(b) *Factors to be considered.* Because of unduly limited bidding time, some potential sources may be precluded from bidding and others may be forced to include amounts for contingencies that, with additional time, could be eliminated. To avoid unduly restricting competition or paying higher-than-necessary prices, consideration shall be given to such factors as the following in establishing a reasonable bidding time: (1) degree of urgency; (2) complexity of requirement; (3) anticipated extent of subcontracting; (4) whether use was made of preinvitation notices; (5) geographic distribution of bidders; and (6) normal mailing time for both invitations and bids.

14.202-2 Telegraphic bids.

(a) Telegraphic bids and mailgrams shall be authorized only when—

(1) The date for the opening of bids will not allow bidders sufficient time to submit bids on the prescribed forms; or

(2) Prices are subject to frequent changes.

(b) If telegraphic bids are to be authorized, see 14.201-6(g). Unauthorized telegraphic bids shall not be considered (see 14.301(b)).

14.202-3 Bid envelopes.

(a) Postage or envelopes bearing "Postage and Fees Paid" indicia shall not be distributed with the invitation for bids or otherwise supplied to prospective bidders.

(b) To provide for ready identification and proper handling of bids, Optional Form 17, Sealed Bid Label, may be furnished with each bid set. The form may be obtained from the General Services Administration (see 53.107).

14.202-4 Bid samples.

(a) *Definition.* "Bid sample" means a sample to be furnished by a bidder to show the characteristics of the product offered in a bid.

(b) *Policy.*

(1) Bidders shall not be required to furnish bid samples unless there are characteristics of the product that cannot be described adequately in the specification or purchase description.

(2) Bid samples will be used only to determine the responsiveness of the bid and will not be used to determine a bidder's ability to produce the required items.

(3) Bid samples may be examined for any required characteristic, whether or not such characteristic is adequately described in the specification, if listed in accordance with subdivision (e)(1)(ii) below.

(4) Bids will be rejected as nonresponsive if the sample fails to conform to each of the characteristics listed in the invitation.

(c) *When to use.* The use of bid samples would be appropriate for products that must be suitable from the standpoint of balance, facility of use, general "feel," color, pattern, or other characteristics that cannot be described adequately in the specification. However, when more than a minor portion of the characteristics of the product cannot be adequately described in the specification, products should be acquired by two-step formal advertising or negotiation, as appropriate.

(d) *Justification.* The reasons why acceptable products cannot be acquired without the submission of bid samples shall be set forth in the contract file, except where the submission is required by the formal specifications (Federal, Military, or other) applicable to the acquisition.

(e) *Requirements for samples in invitations for bids.* (1) Invitations for bids shall—

(i) State the number and, if appropriate, the size of the samples to be submitted and otherwise fully describe the samples required; and

(ii) List all the characteristics for which the samples will be examined.

(2) If bid samples are required, see 14.201-6(o).

(f) *Waiver of requirement for bid samples.* (1) The requirement for furnishing bid samples may be waived when a bidder offers a product previously or currently being contracted for or tested by the Government and found to comply with specification requirements conforming in every material respect with those in the current invitation for bids. When the requirement may be waived, see 14.201-6(o)(2).

(2) Where samples required by a Federal, Military, or other formal specification are not considered necessary and a waiver of the sample requirements of the specification has been authorized, a statement shall be included in the invitation that notwithstanding the requirements of the specification, samples will not be required.

(g) *Unsolicited samples.* Bid samples furnished with a bid that are not required by the invitation generally will not be considered as qualifying the bid and will be disregarded. However, the bid sample will not be disregarded if it is clear from the bid or accompanying papers that the bidder's intention was to qualify the bid. (See 14.404-2(d) if the qualification does not conform to the solicitation.)

(h) *Handling of bid samples.*

(1) Samples that are not destroyed in testing shall be returned to bidders at their request and expense, unless otherwise specified in the invitation.

(2) Disposition instructions shall be requested from bidders and samples disposed of accordingly.

(3) Samples ordinarily will be returned collect to the address from which received if disposition instructions are not received within 30 days. Small items may be returned by mail, postage prepaid.

(4) Samples that are to be retained for inspection purposes in connection with deliveries shall be transmitted to the inspecting activity concerned, with instructions to retain the sample until completion of the contract or until disposition instructions are furnished.

(5) Where samples are consumed or their usefulness is impaired by tests, they will be disposed of as scrap unless the bidder requests their return.

14.202-5 Descriptive literature.

(a) *Definition.* "Descriptive literature" means information, such as cuts, illustrations, drawings, and brochures, which shows the characteristics or construction of a product or explains its operation. It is furnished by bidders as a part of their bids to describe the products offered. The term includes only information required to determine acceptability of the product. It excludes other information such as that furnished in connection with the qualifications of a bidder or for use in operating or maintaining equipment.

(b) *Policy.* Bidders shall not be required to furnish descriptive literature unless the contracting office needs it to determine before award whether the products offered meet the specification and to establish exactly what the bidder proposes to furnish.

(c) *Justification.* The reasons why product acceptability cannot be determined without the submission of descriptive literature shall be set forth in the contract file, except when such submission is required by formal

specifications (Federal, Military, or other) applicable to the acquisition.

(d) *Requirements of invitation for bids.*

(1) The invitation shall clearly state (i) what descriptive literature is to be furnished, (ii) the purpose for which it is required, (iii) the extent to which it will be considered in the evaluation of bids, and (iv) the rules that will apply if a bidder fails to furnish the literature before bid opening or if the literature furnished does not comply with the requirements of the invitation.

(2) If bidders are to furnish descriptive literature, see 14.201-6(p).

(e) *Waiver of requirements for descriptive literature.*

(1) The requirement for furnishing descriptive literature may be waived if—

(i) The bidder states in the bid that the product being offered is the same as a product previously or currently being furnished to the contracting activity; and

(ii) The contracting officer determines that the product offered by the bidder complies with the specification requirements of the current invitation for bids. When the requirement may be waived, see 14.201-6(p)(2).

(2) When descriptive literature is not considered necessary and a waiver of literature requirements of a Federal, Military, or other formal specification has been authorized, a statement shall be included in the invitation that, notwithstanding the requirements of the specifications, descriptive literature will not be required.

(3) If the solicitation provides for a waiver, a bidder may submit a bid on the basis of either the descriptive literature to be furnished or a previously furnished product. If the bid is submitted on one basis, the bidder is precluded from having it considered on the other basis after bids are opened.

(f) *Unsolicited descriptive literature.* If descriptive literature is furnished when not required by the invitation for bids, the procedures set forth in 14.202-4(g) shall be followed.

14.202-6 Final review of invitations for bids.

Each invitation for bids shall be thoroughly reviewed before issuance to detect and correct discrepancies or ambiguities that could limit competition or result in the receipt of nonresponsive bids. Contracting officers are responsible for the reviews.

14.203 Methods of soliciting bids.

14.203-1 Mailing or delivery to prospective bidders.

Invitations for bids or pre-invitation notices shall be mailed or delivered to a sufficient number of prospective bidders to ensure adequate competition. Invitations may be provided in accordance with 5.102 to others having a legitimate interest, to the extent that invitations for bids are available. When a contracting office is located in the United States, any solicitation sent to a prospective bidder located at a foreign address shall be sent by international air mail if security classification permits.

14.203-2 Dissemination of information concerning invitations for bids.

(a) Procedures concerning display of bids in a public place, information releases to newspapers and trade journals, paid advertisements, and synopsizing in the Commerce Business Daily are set forth in 5.101 and 5.2.

(b) For procedures that apply to publishing notices in the Commerce Business Daily when it is necessary in developing cost comparisons to determine whether commercial sources are available, as prescribed by OMB Circular A-76, see 5.205(d) and 7.303(b).

14.204 Records of invitations for bids and records of bids.

(a) Each contracting office shall retain a record of each invitation that it issues and each abstract or record of bids. Contracting officers shall review and utilize the information available in connection with subsequent acquisitions of the same or similar items.

(b) The file for each invitation shall show the distribution that was made and the date the invitation was issued. The names and addresses of prospective bidders who requested the invitation and were not included on the original solicitation list shall be added to the list and made a part of the record.

14.205 Solicitation mailing lists.

14.205-1 Establishment of lists.

(a) Solicitation mailing lists shall be established by contracting activities to assure access to adequate sources of supplies and services. This rule need not be followed, however, when the requirements of the contracting office can be obtained within the local trade area through use of the small purchase procedures (see Part 13), or are nonrecurring. Lists may be established as (1) a central list for use by all contracting offices within the contracting activity or (2) local lists maintained by each contracting office.

(b) All eligible and qualified concerns that have submitted solicitation mailing list applications, or that the contracting office considers capable of filling the requirements of a particular acquisition, shall be placed on the appropriate solicitation mailing list. See also 5.403(b). Planned producers under the Industrial Preparedness Planning Program shall be included on lists for their planned items. Prospective bidders shall be notified that they have been added to solicitation mailing lists in accordance with agency procedures. The issuance of a solicitation within a reasonable time may be considered appropriate notification. Applicants shall be notified if they do not meet the criteria for placement on the list.

(c) The names of prospective bidders who are furnished invitations in response to their requests shall be added to the list of those initially mailed copies of a particular solicitation, so that they will be furnished copies of any solicitation amendments, etc. However, when it is known that the request was made by a person or an organization that is known not to be a prospective bidder, no entry shall be made on the list.

(d) (1) Standard Form 129, Solicitation Mailing List Application, shall be used for obtaining information needed to establish and maintain lists. Supplemental information, where required, may be obtained as specified in agency implementing regulations.

(2) The application shall be submitted and signed by the supplier (the manufacturer or regular dealer), as distinguished from an agent of the supplier. However, suppliers are not precluded from designating, in the Standard Form 129, their agents to receive solicitations.

(3) In order to enable suppliers to indicate readily the items on which they will generally desire to submit bids, there shall be attached to Standard Form 129 forwarded to suppliers for completion, a list of items, or item groups, or an index to such listing of the items, acquired by the contracting activity maintaining the list, which are considered applicable to the supplier's type of business.

(e) Business concerns listed on solicitation mailing lists shall be identified by size in accordance with 19.102. Size status should be established before listing a business concern on a list. Disadvantaged business concern designations shall be shown on the list whenever noted on the Standard Form 129 submitted by a particular concern.

14.205-2 Removal of names from solicitation mailing lists.

(a) The name of each concern failing to either (1) submit a bid, (2) respond to a pre-invitation notice (see 14.205-4(c)), or (3) otherwise respond to an invitation for bids may be removed from the solicitation mailing list without notice to

the concern. However, the removal shall be limited to the items involved in the invitation or notice. When a concern fails to respond to two consecutive invitations or preinvitation notices, its name shall be removed from the list to the extent indicated in this paragraph. However, in individual cases, concerns failing to respond may be retained on a list if retention is in the best interest of the Government. Both actual bids and written requests for retention on the lists shall be deemed to be "responses" to invitations for bids or preinvitation notices. If this procedure results in limited solicitation mailing lists, the contracting officer should request an explanation from the concerns that did not respond.

(b) Concerns that have been debarred from Government contracts or otherwise determined to be ineligible to receive an award shall be removed from solicitation mailing lists to the extent required by the debarment, suspension, or other determination of ineligibility.

14.205-3 Reinstatement on solicitation mailing lists.

Concerns that have been removed from solicitation mailing lists may be reinstated (a) upon written request, (b) by filing a new application on Standard Form 129, or (c) by the submission of a bid. Debarred or suspended firms shall not be reinstated during the period of a debarment or suspension.

14.205-4 Excessively long solicitation mailing lists.

(a) *General.* Solicitation mailing lists should be used to promote competition commensurate with the dollar value of the proposed contract. As much of the solicitation mailing list shall be used as is compatible with efficiency and economy in securing competition. Where the number of bidders on a mailing list is excessive in relation to a specific acquisition, the list may be reduced consistent with this paragraph and paragraphs (b) and (c) below. Nonetheless, solicitations should be furnished to others upon request, in accordance with 5.102. Also, bids shall not be disregarded merely because the bidder was not formally invited to bid.

(b) *Rotation of lists.* By using different portions of a list for separate acquisitions, solicitation mailing lists may be rotated. However, considerable judgment must be exercised in determining whether the size of the acquisiton justifies the rotation. The use of a pre-invitation notice (see paragraph (c) below), time permitting, also should be considered. In rotating a list, the interests of small businesses (see 19.202-4) and labor surplus areas (see 20.104(e) and (f)) shall be considered. Whenever a list is rotated, bids shall be solicited from (1) the previously successful bidder, (2) prospective suppliers who have been added to the solicitation mailing list since the last solicitation, and (3) concerns on the segment of the list selected for use in a particular acquisition. However, the rule does not apply when such action would be precluded by use of a total set-aside (see Parts 19 and 20).

(c) *Pre-invitation notices.* In lieu of initially forwarding complete bid sets, the contracting officer may send pre-invitation notices to concerns on the solicitation mailing list. The notice shall (1) specify the final date for receipt of requests for a complete bid set, (2) briefly describe the requirement and furnish other essential information to enable concerns to determine whether they have an interest in the invitation, and (3) notify concerns that, if no bid is to be submitted, they should advise the issuing office in writing if future invitations are desired for the type of supplies or services involved. Drawings, plans, and specifications normally will not be furnished with the pre-invitation notice. The return date of the notice must be sufficiently in advance of the mailing date of the invitation for bids to permit an accurate estimate of the number of bid sets required. Bid sets shall be sent to concerns that request them in response to the notice. This procedure is particularly suitable when invitations for bids and solicitation mailing lists are lengthy.

14.205-5 Release of solicitation mailing lists.

(a) Contracting activities shall make the central and local solicitation mailing lists established under this part available to the public in response to written requests made in accordance with agency regulations implementing Subpart 24.2.

(b) When invitations for bids for construction contracts have been issued, trade journals, prospective subcontractors, material suppliers, bidders, and others having a bona fide interest will be supplied upon request with a list of all prospective bidders furnished copies of the plans and specifications.

14.206 Small business and labor surplus area set-asides.

See parts 19 and 20.

14.207 Pre-bid conference.

A pre-bid conference may be used, generally in a complex acquisition, as a means of briefing prospective bidders and explaining complicated specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened. It shall never be used as a substitute for amending a defective or ambiguous invitation. The conference shall be conducted in accordance with the procedure prescribed in 15.409.

14.208 Amendment of invitation for bids.

(a) If it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, such changes shall be accomplished by amendment of the invitation for bids using Standard Form 30, Amendment of Solicitation/Modification of Contract. The fact that a change was mentioned at a pre-bid conference does not relieve the necessity for issuing an amendment. Amendments shall be sent, before the time for bid opening, to everyone to whom invitations have been furnished and shall be displayed in the bid room.

(b) Before amending an invitation for bids, the period of time remaining until bid opening and the need to extend this period shall be considered. When only a short time remains before the time set for bid opening, consideration should be given to notifying bidders of an extension of time by telegrams or telephone. Such extension must be confirmed in the amendment.

(c) Any information given to a prospective bidder concerning an invitation for bids shall be furnished promptly to all other prospective bidders as an amendment to the invitation (1) if such information is necessary for bidders to submit bids or (2) if the lack of such information would be prejudicial to uninformed bidders. The information shall be furnished even though a pre-bid conference is held. No award shall be made on the invitation unless such amendment has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their bids.

14.209 Cancellation of invitations before opening.

(a) The cancellation of an invitation for bids usually involves a loss of time, effort, and money spent by the Government and bidders. Invitations should not be cancelled unless cancellation is clearly in the public interest; e.g., (1) where there is no longer a requirement for the supplies or services or (2) where amendments to the invitation would be of such magnitude that a new invitation is desirable.

(b) When an invitation is cancelled, bids that have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom invitations were issued.

(c) The notice of cancellation shall (1) identify the invitation for bids by number and short title or subject matter, (2) briefly explain the reason the invitation is being cancelled, and (3) where appropriate, assure prospective bidders that they will be given an opportunity to bid on any resolicitation of bids or any future requirements for the type of supplies or services involved. Cancellations shall be recorded in accordance with 14.403(d).

14.210 Qualified products.

See Subpart 9.2.

14.211 Release of acquisition information.

(a) *Before synopsis or solicitation.* Information concerning proposed acquisitions shall not be released outside the Government before solicitation except when pre-invitation notices have been used in accordance with 14.205-4(c) or 36.302, or long-range acquisition estimates have been issued in accordance with 5.404. Within the Government, such information shall be restricted to those having a legitimate interest. Releases of information shall be made (1) to all prospective bidders, and (2) as nearly as possible at the same time, so that one prospective bidder shall not be given unfair advantage over another.

(b) *After synopsis or solicitation.* Discussions with prospective bidders regarding a solicitation shall be conducted and technical or other information shall be transmitted only by the contracting officer or superiors having contractual authority or by others specifically authorized. Such personnel shall not furnish any information to a prospective bidder that alone or together with other information may afford an advantage over others. However, general information that would not be prejudical to other prospective bidders may be furnished upon request; e.g., explanation of a particular contract clause or a particular condition of the schedule in the invitation for bids, and more specific information or clarifications may be furnished by amending the solicitation (see 14.208).

SUBPART 14.3—SUBMISSION OF BIDS

14.301 Responsiveness of bids.

(a) To be considered for award, a bid must comply in all material respects with the invitation for bids. Such compliance enables all bidders to stand on an equal footing and maintains the integrity of the formal advertising system.

(b) Telegraphic bids shall not be considered unless permitted by the invitation. The term "telegraphic bids" means bids submitted by telegram or by mailgram.

(c) Bids should be filled out, executed, and submitted in accordance with the instructions in the invitation. If a bidder uses its own bid form or a letter to submit a bid, the bid may be considered only if (1) the bidder accepts all the terms and conditions of the invitation and (2) award on the bid would result in a binding contract with terms and conditions that do not vary from the terms and conditions of the invitation.

14.302 Bid submission.

(a) Bids shall be submitted so that they will be received in the office designated in the invitation for bids (referred to in paragraphs (b) and (c) below as the "designated office") not later than the exact time set for opening of bids.

(b) Except as specified in paragraph (c) below, if telegraphic bids are authorized, a telegraphic bid that is communicated by means of a telephone call to the designated office shall be considered if—

(1) Agency regulations authorize such consideration;

(2) The telephone call is made by the telegraph office that received the telegraphic bid;

(3) The telephone call is received by the designated office not later than the time set for the bid opening;

(4) The telegraph office that received the telegraphic bid sends the designated office the telegram that formed the basis for the telephone call;

(5) The telegram indicates on its face that it was received in the telegraph office before the telephone call was received by the designated office; and

(6) The bid in the telegram is identical in all essential respects to the bid received in the telephone call from the telegraph office.

(c) If the conditions in paragraph (b) above apply and the bid received by telephone is the apparent low bid, award may not be made until the telegram is received by the designated office; however, if the telegram is not received by the designated office within 5 days after the bid opening date, the bid shall be rejected.

14.303 Modification or withdrawal of bids.

(a) Bids may be modified or withdrawn by written or telegraphic notice received in the office designated in the invitation for bids not later than the exact time set for opening of bids. Unless proscribed by agency regulations, a telegraphic modification or withdrawal of a bid received in such office by telephone from the receiving telegraph office shall be considered. However, the message shall be confirmed by the telegraph company by sending a copy of the written telegram that formed the basis for the telephone call. Modifications received by telegram (including a record of those telephoned by the telegraph company) shall be sealed in an envelope by a proper official. The official shall write on the envelope (1) the date and time of receipt and by whom and (2) the number of the invitation for bids, and shall sign the envelope. No information contained in the envelope shall be disclosed before the time set for bid opening.

(b) A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening of bids, the identity of the persons requesting withdrawal is established and that person signs a receipt for the bid.

14.304 Late bids, late modifications of bids, or late withdrawal of bids.

14.304-1 General.

Bids received in the office designated in the invitation for bids after the exact time set for opening are "late bids."

(a) A late bid, modification of bid, or withdrawal of bid shall not be considered unless received before contract award, and either—

(1) It was sent by registered or certified mail not later than 5 calendar days before the bid receipt date specified; or

(2) It was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

(b) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is a U. S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U. S. or Canadian Postal Service. If neither postmark shows a legible date, the bid, modification, or withdrawal shall be deemed to have been mailed late. (The term "postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed on the

date of mailing by employees of the U. S. or Canadian Postal Service. Therefore, bidders should request the postal clerk to place a hand cancellation bull's-eye "postmark" on both the receipt and the envelope or wrapper.)

(c) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

(d) Notwithstanding the above, a late modification of an otherwise successful bid which makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

14.304-2 Notification to late bidders.

When a bid, modification of bid, or withdrawal of bid is received late and it is clear from available information that it cannot be considered, the contracting officer shall promptly notify the bidder accordingly. However, when a late bid, modification of bid, or withdrawal of bid is transmitted by registered or certified mail and is received before award but it is not clear from available information whether it can be considered, the bidder shall be promptly notified substantially as follows:

Your bid in response to Invitation for Bids Number ..... dated ..... for ..... [*insert subject matter or short title*] was received after the time for opening specified in the Invitation. Accordingly, your bid will not be opened or considered for award unless there is received from you by .....[*insert date*] the original post office receipt for registered or certified mail showing a date of mailing not later than the fifth calendar day before the date specified for opening (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier).

14.304-3 Disposition of late submissions.

Late bids, modification of bids, or withdrawal of bids that are not considered for award shall be held unopened, unless opened for identification, until after award and then retained with other unsuccessful bids. However, any bid bond or guarantee shall be returned.

14.304-4 Records.

The following shall, if available, be included in the contracting office files with respect to each late bid, modification of bid, or withdrawal of bid:

(a) A statement of the date and hour of mailing, filing, or delivery.

(b) A statement of the date and hour of receipt.

(c) The determination, with supporting facts, as to whether or not the late bid was considered for award.

(d) A statement of the disposition of the late bid.

(e) The envelope, or other covering, if the late bid was considered for award.

SUBPART 14.4—OPENING OF BIDS AND AWARD OF CONTRACT

14.400 Scope of subpart.

This subpart contains procedures for the receipt, handling, opening, and disposition of bids including mistakes in bids, and subsequent award of contract.

14.401 Receipt and safeguarding of bids.

(a) All bids (including modifications) received before the time set for the opening of bids shall be kept secure. Except as provided in paragraph (b) below, the bids shall remain unopened in a locked bid box or safe. If an invitation for bids is cancelled, bids shall be returned to the bidders. Necessary precautions shall be taken to ensure the security of the bid box or safe. Before bid opening, information concerning the identity and number of bids received shall be made available only to Government employees. Such disclosure shall be only on a "need to know" basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

(b) Envelopes marked as bids but not identifying the bidder or the solicitation may be opened solely for the purpose of identification, and then only by an official designated for this purpose. If a sealed bid is opened by mistake (e.g., because it is not marked as being a bid), the envelope shall be signed by the opener, whose position shall also be written thereon, and delivered to the designated official. This official shall immediately write on the envelope (1) an explanation of the opening, (2) the date and time opened, and (3) the invitation for bids number, and shall sign the envelope. The official shall then immediately reseal the envelope.

14.402 Opening of bids.

14.402-1 Unclassified bids.

(a) The bid opening officer shall decide when the time set for opening bids has arrived and shall inform those present of that decision. The officer shall then (1) personally and publicly open all bids received before that time, (2) if practical, read the bids aloud to the persons present, and (3) have the bids recorded. The original of each bid shall be carefully safeguarded, particularly until the abstract of bids required by 14.403 has been made and its accuracy verified.

(b) Performance of the procedure in paragraph (a) above may be delegated to an assistant, but the bid opening officer remains fully responsible for the actions of the assistant.

(c) Examination of bids by interested persons shall be permitted if it does not interfere unduly with the conduct of Government business. Original bids shall not be allowed to pass out of the hands of a Government official unless a duplicate bid is not available for public inspection. The original bid may be examined by the public only under the immediate supervision of a Government official and under conditions that preclude possibility of a substitution, addition, deletion, or alteration in the bid.

14.402-2 Classified bids.

The opening of classified bids shall not be accessible to the general public. Openings may be witnessed and the results recorded by those bidder representatives (a) who have been previously cleared from a security standpoint and (b) who represent bidders who were invited to bid. Bids shall be made available to those persons authorized to attend the opening of bids. No public record shall be made of bids or bid prices received in response to classified invitations for bids.

14.402-3 Postponement of openings.

(a) A bid opening may be postponed even after the time scheduled for bid opening (but otherwise in accordance with 14.208) and—

(1) The contracting officer has reason to believe that the bids of an important segment of bidders have been delayed in the mails for causes beyond their control and without their fault or negligence (e.g., flood, fire, accident, weather conditions, or strikes); or

(2) Emergency or unanticipated events interrupt normal governmental processes so that the conduct of bid openings as scheduled is impractical.

(b) At the time of a determination to postpone a bid opening under subparagraph (a)(1) above, an announcement of the determination shall be publicly posted. If practical before issuance of a formal amendment of the invitation, the determination shall be otherwise communicated to prospective bidders who are likely to attend the scheduled bid opening.

(c) In the case of subparagraph (a)(2) above, the contracting officer may proceed with the bid opening as soon as practical after the time scheduled

without prior amendment to the invitation for bids or notice to bidders, whenever the delay incident to the amendment or notice is not in the Government's interest. In such cases, the time of actual bid opening shall be deemed to be the time set for bid opening for the purpose of determining "late bids" under 14.303. A note should be made on the abstract of bids or otherwise added to the file explaining the circumstances of the postponement.

14.403 Recording of bids.

(a) Standard Form 1409, Abstract of Offers, or Standard Form 1419, Abstract of Offers—Construction (or automated equivalent), shall be completed and certified as to its accuracy by the bid opening officer as soon after bid opening as practicable. Where bid items are too numerous to warrant complete recording of all bids, abstract entries for individual bids may be limited to item numbers and bid prices. In preparing these forms, the extra columns and SF 1409 Back, Abstract of Offers—Continuation, may be used to label and record such information as the contracting activity deems necessary.

(b) Abstracts of offers for unclassified acquisitions shall be available for public inspection. Such abstracts shall not contain information regarding failure to meet minimum standards of responsibility, apparent collusion of bidders, or other notations properly exempt from disclosure to the public in accordance with agency regulations implementing Subpart 24.2.

(c) The forms identified in paragraph (a) above need not be used by the Defense Fuel Supply Center for acquisitions of coal or petroleum products or by the Defense Personnel Support Center for perishable subsistence items.

(d) If an invitation for bids is cancelled before the time set for bid opening, this fact shall be recorded together with a statement of the number of bids invited and the number of bids received.

14.404 Rejection of bids.

14.404-1 Cancellation of invitations after opening.

(a) (1) Preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation.

(2) Every effort shall be made to anticipate changes in a requirement before the date of opening and to notify all prospective bidders of any resulting modification or cancellation. This will permit bidders to change their bids and prevent unnecessary exposure of bid prices.

(3) As a general rule, after the opening of bids, an invitation should not be cancelled and readvertised due solely to increased requirements for the items being acquired. Award should be made on the initial invitation for bids and the additional quantity should be treated as a new acquisition.

(b) When it is determined before award but after opening that the requirements of 10.008 (relating to the availability and identification of specifications) have not been met, the invitation shall be cancelled.

(c) Invitations may be cancelled before award but after opening when, consistent with subparagraph (a)(1) above, the contracting officer determines in writing that—

(1) Inadequate or ambiguous specifications were cited in the invitation;

(2) Specifications have been revised;

(3) The supplies or services being contracted for are no longer required;

(4) The invitation did not provide for consideration of all factors of cost to the Government, such as cost of transporting Government-furnished property to bidders' plants;

(5) Bids received indicate that the needs of the Government can be satisfied by a less expensive article differing from that for which the bids were invited;

(6) All otherwise acceptable bids received are at unreasonable prices;

(7) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith (see Subpart 3.3 for reports to be made to the Department of Justice);

(8) A cost comparison as prescribed in OMB Circular A-76 and Subpart 7.3 shows that performance by the Government is more economical; or

(9) For other reasons, cancellation is clearly in the Government's interest.

(d) Should administrative difficulties be encountered after bid opening that may delay award beyond bidders' acceptance periods, the several lowest bidders whose bids have not expired (irrespective of the acceptance period specified in the bid) should be requested, before expiration of their bids, to extend in writing the bid acceptance period (with consent of sureties, if any) in order to avoid the need for readvertisement.

(e) Under some circumstances, use of negotiation is authorized to complete a cancelled formally advertised acquisition. See 15.210(b)(3) and (4) and 15.214.

14.404-2 Rejection of individual bids.

(a) Any bid that fails to conform to the essential requirements of the invitation for bids shall be rejected.

(b) Any bid that does not conform to the applicable specifications shall be rejected unless the invitation authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation.

(c) Any bid that fails to conform to the delivery schedule or permissible alternates stated in the invitation shall be rejected.

(d) A bid shall be rejected when the bidder imposes conditions that would modify requirements of the invitation or limit the bidder's liability to the Government, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids shall be rejected in which the bidder—

(1) Protects against future changes in conditions, such as increased costs, if total possible costs to the Government cannot be determined;

(2) Fails to state a price and indicates that price shall be "price in effect at time of delivery";

(3) States a price but qualifies it as being subject to "price in effect at time of delivery";

(4) When not authorized by the invitation, conditions or qualifies a bid by stipulating that it is to be considered only if, before date of award, the bidder receives (or does not receive) award under a separate solicitation;

(5) Requires that the Government is to determine that the bidder's product meets applicable Government specifications; or

(6) Limits rights of the Government under any contract clause.

(e) A low bidder may be requested to delete objectionable conditions from a bid provided the conditions do not go to the substance, as distinguished from the form, of the bid, or work an injustice on other bidders. A condition goes to the substance of a bid where it affects price, quantity, quality, or delivery of the items offered.

(f) Any bid may be rejected if the contracting officer determines in writing that it is unreasonable as to price.

(g) Bids received from any person or concern that is suspended, debarred, or ineligible (see Subpart 9.4) shall be rejected if the period of suspension, debarment, or ineligibility has not expired as of the bid opening date.

(h) Low bids received from concerns determined to be not responsible

pursuant to Subpart 9.1 shall be rejected (but if a bidder is a small business concern, see 19.6 with respect to certificates of competency).

(i) When a bid guarantee is required and a bidder fails to furnish the guarantee in accordance with the requirements of the invitation for bids, the bid shall be rejected, except as otherwise provided in 28.101-4.

(j) The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved with the papers relating to the acquisition.

(k) After submitting a bid, if all of a bidder's assets or that part related to the bid are transferred during the period between the bid opening and the award, the transferee may not be able to take over the bid. Accordingly, the contracting officer shall reject the bid unless the transfer is effected by merger, operation of law, or other means not barred by 41 U.S.C. 15 or 31 U.S.C. 203.

14.404-3 Notice to bidders of rejection of all bids.

When it is determined necessary to reject all bids, the contracting officer shall notify each bidder that all bids have been rejected and shall state the reason for such action.

14.404-4 Restrictions on disclosure of descriptive literature.

When a bid is accompanied by descriptive literature (as defined in 14.202-5(a)), and the bidder imposes a restriction that prevents the public disclosure of such literature, the restriction may render the bid nonresponsive. The restriction renders the bid nonresponsive if it prohibits the disclosure of sufficient information to permit competing bidders to know the essential nature and type of the products offered or those elements of the bid that relate to quantity, price, and delivery terms. The provisions of this paragraph do not apply to unsolicited descriptive literature submitted by a bidder if such literature does not qualify the bid (see 14.202-5(f)).

14.404-5 All or none qualifications.

Unless the solicitation provides otherwise, a bid may be responsive notwithstanding that the bidder specifies that award will be accepted only on all, or a specified group, of the items. Bidders shall not be permitted to withdraw or modify "all or none" qualifications after bid opening since such qualifications are substantive and affect the rights of other bidders.

14.405 Minor informalities or irregularities in bids.

A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in a bid or variation of a bid from the exact requirements of the invitation that can be corrected or waived without being prejudicial to other bidders. The defect or variation is immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the supplies or services being acquired. The contracting officer either shall give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive the deficiency, whichever is to the advantage of the Government. Examples of minor informalities or irregularities include failure of a bidder to—

(a) Return the number of copies of signed bids required by the invitation;

(b) Furnish required information concerning the number of its employees;

(c) Sign its bid, but only if—

(1) The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid (such as the submission of a bid guarantee or a letter signed by the bidder, with the bid, referring to and clearly identifying the bid itself); or

(2) The firm submitting a bid has formally adopted or authorized, before the date set for opening of bids, the execution of documents by typewritten, printed, or stamped signature and submits evidence of such authorization and the bid carries such a signature;

(d) Acknowledge receipt of an amendment to an invitation for bids, but only if—

(1) The bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the invitation and the bidder submitted a bid on the item; or

(2) The amendment involves only a matter of form or has either no effect or merely a negligible effect on price, quantity, quality, or delivery of the item bid upon;

(e) Furnish affidavits concerning parent company and affiliates, if required pursuant to the clause at 52.214-8, Parent Company and Identifying Data, and 52.214-17, Affiliated Bidders; and

(f) Execute the certifications with respect to Equal Opportunity and Affirmative Action Programs, as set forth in the clauses at 52.222-22, Previous Contracts and Compliance Reports, and 52.222-25, Affirmative Action Compliance.

14.406 Mistakes in bids.

14.406-1 General.

After the opening of bids, contracting officers shall examine all bids for mistakes. In cases of apparent mistakes and in cases where the contracting officer has reason to believe that a mistake may have been made, the contracting officer shall request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter shall be processed in accordance with this section 14.406. Such actions shall be taken before award.

14.406-2 Apparent clerical mistakes.

(a) Any clerical mistake, apparent on its face in the bid, may be corrected by the contracting officer before award. The contracting officer first shall obtain from the bidder a verification of the bid intended. Examples of apparent mistakes are—

(1) Obvious misplacement of a decimal point;

(2) Obviously incorrect discounts (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days);

(3) Obvious reversal of the price f.o.b. destination and price f.o.b. origin; and

(4) Obvious mistake in designation of unit.

(b) Correction of the bid shall be effected by attaching the verification to the original bid and a copy of the verification to the duplicate bid. Correction shall not be made on the face of the bid; however, it shall be reflected in the award document.

14.406-3 Other mistakes disclosed before award.

In order to minimize delays in contract awards, administrative determinations may be made as described in this 14.406-3 in connection with mistakes in bids alleged after opening of bids and before award. The authority to permit correction of bids is limited to bids that, as submitted, are responsive to the invitation and may not be used to permit correction of bids to make them responsive. This authority is in addition to that in 14.406-2 or that may be otherwise available.

(a) If a bidder requests permission to correct a mistake and clear and convincing evidence establishes both the existence of the mistake and the bid actually intended, the agency head may make a determination permitting the bidder to correct the mistake; *provided*, that if this correction would result in displacing one or more lower bids, such a determination shall not be made unless the existence of the mistake and the bid actually intended are

ascertainable substantially from the invitation and the bid itself.

(b) If (1) a bidder requests permission to withdraw a bid rather than correct it, (2) the evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended, and (3) the bid, both as uncorrected and as corrected, is the lowest received, the agency head may make a determination to correct the bid and not permit its withdrawal.

(c) If, under paragraph (a) or (b) above, (1) the evidence of a mistake is clear and convincing only as to the mistake but not as to the intended bid, or (2) the evidence reasonably supports the existence of a mistake but is not clear and convincing, the agency head may make a determination permitting the bidder to withdraw the bid. The contracting officer may make this determination if the agency head elects not to make a determination under paragraph (a) or (b) above or (d) below.

(d) If the evidence does not warrant a determination under paragraph (a), (b), or (c) above, the agency head may make a determination that the bid be neither withdrawn nor corrected.

(e) Heads of agencies may delegate their authority to make the determinations under paragraphs (a), (b), (c), and (d) of this 14.406-3 to a central authority, or a limited number of authorities as necessary, in their agencies, without power of redelegation.

(f) Each proposed determination shall have the concurrence of legal counsel within the agency concerned before issuance.

(g) Suspected or alleged mistakes in bids shall be processed as follows. A mere statement by the administrative officials that they are satisfied that an error was made is insufficient.

(1) The contracting officer shall immediately request the bidder to verify the bid. Action taken to verify bids must be sufficient to reasonably assure the contracting officer that the bid as confirmed is without error, or to elicit the allegation of a mistake by the bidder. To assure that the bidder will be put on notice of a mistake suspected by the contracting officer, the bidder should be advised as appropriate—

(i) That its bid is so much lower than the other bids or the Government's estimate as to indicate a possibility of error;

(ii) Of important or unusual characteristics of the specifications;

(iii) Of changes in requirements from previous purchases of a similar item; or

(iv) Of other data proper for disclosure, that will put the bidder on notice of the suspected mistake.

(2) If the bid is verified, the contracting officer shall consider the bid as originally submitted. If the time for acceptance of bids is likely to expire before a decision can be made, the contracting officer shall request all bidders whose bids may become eligible for award to extend the time for acceptance of their bids in accordance with 14.404-1(d). If the bidder whose bid is believed erroneous does not (or cannot) grant an extension of time, the bid shall be considered as originally submitted (but see subparagraph (5) below). If the bidder alleges a mistake, the contracting officer shall advise the bidder to make a written request to withdraw or modify the bid. The request must be supported by statements (sworn statements, if possible) and shall include all pertinent evidence such as the bidder's file copy of the bid, the original worksheets and other data used in preparing the bid, subcontractors' quotations, if any, published price lists, and any other evidence that establishes the existence of the error, the manner in which it occurred, and the bid actually intended.

(3) When the bidder furnishes evidence supporting an alleged mistake, the contracting officer shall refer the case to the appropriate authority (see paragraph (e) above) together with the following data:

(i) A signed copy of the bid involved.

(ii) A copy of the invitation for bids and any specifications or drawings relevant to the alleged mistake.

(iii) An abstract or record of the bids received.

(iv) The written request by the bidder to withdraw or modify the bid, together with the bidder's written statement and supporting evidence.

(v) A written statement by the contracting officer setting forth—

(A) A description of the supplies or services involved;

(B) The expiration date of the bid in question and of the other bids submitted;

(C) Specific information as to how and when the mistake was alleged;

(D) A summary of the evidence submitted by the bidder;

(E) In the event only one bid was received, a quotation of the most recent contract price for the supplies or services involved or, in the absence of a recent comparable contract, the contracting officer's estimate of a fair price for the supplies or services;

(F) Any additional pertinent evidence; and

(G) A recommendation that either the bid be considered for award in the form submitted, or the bidder be authorized to withdraw or modify the bid.

(4) When time is of the essence because of the expiration of bids or otherwise, the contracting officer may refer the case by telegraph or telephone to the appropriate authority. Ordinarily, the contracting officer will not refer mistake in bid cases by telegraph or telephone to the appropriate authority when the determination set forth in paragraphs (a) or (b) above is applicable, since actual examination is generally necessary to determine whether the evidence presented is clear and convincing.

(5) Where the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the contracting officer shall consider the bid as submitted unless (1) the amount of the bid is so far out of line with the amounts of other bids received, or with the amount estimated by the agency or determined by the contracting officer to be reasonable, or (ii) there are other indications of error so clear, as to reasonably justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders. Attempts made to obtain the information required and the action taken with respect to the bid shall be fully documented.

(h) Each agency shall maintain records of all determinations made in accordance with this subsection 14.406-3, the facts involved, and the action taken in each case. Copies of all such determinations shall be included in the file.

(i) Nothing contained in this subsection 14.406-3 prevents an agency from submitting doubtful cases to the Comptroller General for advance decision.

14.406-4 Mistakes after award.

If a contractor's discovery and request for correction of a mistake in bid is not made until after the award, it shall be processed under the procedures of Part 33 and the following:

(a) When a mistake in a contractor's bid is not discovered until after award, the mistake may be corrected by contract amendment if correcting the mistake would be favorable to the Government without changing the essential requirements of the specifications.

(b) In addition to the cases contemplated in paragraph (a) above or as otherwise authorized by law, agencies are authorized to make a determination—

(1) To rescind a contract;

(2) To reform a contract (i) to delete the items involved in the mistake or (ii) to increase the price if the contract

price, as corrected, does not exceed that of the next lowest acceptable bid under the original invitation for bids; or

(3) That no change shall be made in the contract as awarded, if the evidence does not warrant a determination under subparagraphs (1) or (2) above.

(c) Determinations under subparagraphs (b)(1) and (2) above may be made only on the basis of clear and convincing evidence that a mistake in bid was made. In addition, it must be clear that the mistake was (1) mutual, or (2) if unilaterally made by the contractor, so apparent as to have charged the contracting officer with notice of the probability of the mistake.

(d) Each proposed determination shall be coordinated with legal counsel in accordance with agency procedures.

(e) Mistakes alleged or disclosed after award shall be processed as follows:

(1) The contracting officer shall request the contractor to support the alleged mistake by submission of written statements and pertinent evidence, such as (i) the contractor's file copy of the bid, (ii) the contractor's original worksheets and other data used in preparing the bid, (iii) subcontractors' and suppliers' quotations, if any, (iv) published price lists, and (v) any other evidence that will serve to establish the mistake, the manner in which the mistake occurred, and the bid actually intended.

(2) The case file concerning an alleged mistake shall contain the following:

(i) All evidence furnished by the contractor in support of the alleged mistake.

(ii) A signed statement by the contracting officer—

(A) Describing the supplies or services involved;

(B) Specifying how and when the mistake was alleged or disclosed;

(C) Summarizing the evidence submitted by the contractor and any additional evidence considered pertinent;

(D) Quoting, in cases where only one bid was received, the most recent contract price for the supplies or services involved, or in the absence of a recent comparable contract, the contracting officer's estimate of a fair price for the supplies or services and the basis for the estimate;

(E) Setting forth the contracting officer's opinion whether a bona fide mistake was made and whether the contracting officer was, or should have been, on constructive notice of the mistake before the award, together with the reasons for, or data in support of, such opinion;

(F) Setting forth the course of action with respect to the alleged mistake that the contracting officer considers proper on the basis of the evidence, and if other than a change in contract price is recommended, the manner by which the supplies or services will otherwise be acquired; and

(G) Disclosing the status of performance and payments under the contract, including contemplated performance and payments.

(iii) A signed copy of the bid involved.

(iv) A copy of the invitation for bids and any specifications or drawings relevant to the alleged mistake.

(v) An abstract of written record of the bids received.

(vi) A written request by the contractor to reform or rescind the contract, and copies of all other relevant correspondence between the contracting officer and the contractor concerning the alleged mistake.

(vii) A copy of the contract and any related change orders or supplemental agreements.

(f) Each agency shall include in the contract file a record of (1) all determinations made in accordance with this 14.406-4, (2) the facts involved, and (3) the action taken in each case.

14.407 Award.

14.407-1 General.

(a) The contracting officer shall make a contract award (1) by written notice, (2) within the time for acceptance specified in the bid or an extension (see 14.404-1(d), and (3) to that responsible bidder whose bid, conforming to the invitation, will be most advantageous to the Government, price and other factors considered (for a discussion of other factors to be considered, see 14.407-5). Award shall not be made until all required approvals have been obtained and the award otherwise conforms with 14.103-2.

(b) If less than three bids have been received, the contracting officer shall examine the situation to ascertain whether the small number of responses is attributable to an absence of any of the prerequisites of formal advertising (see 14.101). Award shall be made notwithstanding the limited number of bids. However, the contracting officer shall initiate, if appropriate, corrective action to increase competition in future solicitations for the same or similar items, and include a notation of such action in the records of the invitation for bids (see 14.204).

(c) (1) Award shall be made by mailing or otherwise furnishing a properly executed award document to the successful bidder.

(2) When a notice of award is issued, it shall be followed as soon as possible by the formal award.

(3) When more than one award results from any single invitation for bids, separate award documents shall be suitably numbered and executed.

(4) When an award is made to a bidder for less than all of the items that may be awarded to that bidder and additional items are being withheld for subsequent award, the first award to that bidder shall state that the Government may make subsequent awards on those additional items within the bidder's bid acceptance period.

(5) All provisions of the invitation for bids, including any acceptable additions or changes made by a bidder in the bid, shall be clearly and accurately set forth (either expressly or by reference) in the award document. The award is an acceptance of the bid, and the bid and the award constitute the contract.

(d) (1) Award is generally made by using the Award portion of Standard Form (SF) 33, Solicitation, Offer and Award. If an offer leads to further changes, the resulting contract shall be prepared as a bilateral document on SF 26, Award/Contract. However, if the prospective contractor amends its offer in writing to reflect any necessary changes, the amended offer may be accepted by using the Award portion of either SF 33 or SF 26.

(2) Use of the Award portion of SF 33 or SF 26 does not preclude the additional use of informal documents, including telegrams, as notices of awards.

14.407-2 Responsible bidder—reasonableness of price.

The contracting officer shall determine that a prospective contractor is responsible (see Subpart 9.1) and that the prices offered are reasonable before awarding the contract. The price analysis techniques in 15.805-2 may be used as guidelines. In each case the determination shall be made in the light of all prevailing circumstances. Particular care must be taken in cases where only a single bid is received.

14.407-3 Prompt payment discounts.

Prompt payment discounts shall not be considered in the evaluation of bids. However, any discount offered will form a part of the award, and will be taken by the payment center if payment is made within the discount period specified by the bidder. As an alternative to indicating a discount in conjunction with the offer, bidders may prefer to offer discounts on individual invoices.

14.407-4 Economic price adjustment.

(a) *Bidder proposes economic price adjustment.*

(1) When a solicitation does not contain an economic price adjustment clause but a bidder proposes one with a ceiling that the price will not exceed, the bid shall be evaluated on the basis of the maximum possible economic price adjustment of the quoted base price.

(2) If the bid is eligible for award, the contracting officer shall request the bidder to agree to the inclusion in the award of an approved economic price adjustment clause (see 16.203) that is subject to the same ceiling. If the bidder will not agree to an approved clause, the award may be made on the basis of the bid as originally submitted.

(3) Bids that contain economic price adjustments with no ceiling shall be rejected unless a clear basis for evaluation exists.

(b) *Government proposes economic price adjustment.*

(1) When an invitation contains an economic price adjustment clause and no bidder takes exception to the provisions, bids shall be evaluated on the basis of the quoted prices without the allowable economic price adjustment being added.

(2) When a bidder increases the maximum percentage of economic price adjustment stipulated in the invitation or limits the downward economic price adjustment provisions of the invitation, the bid shall be rejected as nonresponsive.

(3) When a bid indicates deletion of the economic price adjustment clause, the bid shall be rejected as nonresponsive since the downward economic price adjustment provisions are thereby limited.

(4) When a bidder decreases the maximum percentage of economic price adjustment stipulated in the invitation, the bid shall be evaluated at the base price on an equal basis with bids that do not reduce the stipulated ceiling. However, after evaluation, if the bidder offering the lower ceiling is in a position to receive the award, the award shall reflect the lower ceiling.

14.407-5 Other factors to be considered.

The factors set forth in paragraphs (a) through (f) below may be applicable in evaluating bids for award.

(a) Foreseeable costs or delays to the Government resulting from such factors as differences in inspection, locations of supplies, and transportation. If bids are on an f.o.b. origin basis (see 47.303 and 47.305), transportation costs to the designated points shall be considered in determining the lowest cost to the Government.

(b) Changes made, or requested by the bidder, in any of the provisions of the invitation for bids if the change does not constitute a ground for rejection under 14.404.

(c) Advantages or disadvantages to the Government that might result from making more than one award (see 14.201-6(q)). The contracting officer shall assume, for the purpose of making multiple awards, that $250 would be the administrative cost to the Government for issuing and administering each contract awarded under a solicitation. Individual awards shall be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(d) Qualified products (see Subpart 9.2).

(e) Federal, State, and local taxes (see Part 29).

(f) Origin of supplies, and, if foreign, the application of the Buy American Act or any other prohibition on foreign purchases (see Part 25).

14.407-6 Equal low bids.

(a) Contracts shall be awarded in the following order of priority when two or more low bids are equal in all respects:

(1) Small business concerns that are also labor surplus area concerns.

(2) Other small business concerns.

(3) Other business concerns that are also labor surplus area concerns.

(4) Other business concerns.

(b) If two or more bidders still remain equally eligible after application of paragraph (a) above, award shall be made by a drawing by lot limited to those bidders. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least three persons, and the contract file shall contain the names and addresses of the witnesses and the person supervising the drawing.

(c) When an award is to be made by using the priorities under this 14.407-6, the contracting officer shall include a written agreement in the contract that the contractor will perform, or cause to be performed, the contract in accordance with the circumstances justifying the priority used to break the tie or select bids for a drawing by lot.

14.407-7 Documentation of award.

(a) The contracting officer shall document compliance with 14.103-2 in the contract file.

(b) The documentation shall either state that the accepted bid was the lowest bid received, or list all lower bids with reasons for their rejection in sufficient detail to justify the award.

(c) When an award is made after receipt of equal low bids, the documentation shall describe how the tie was broken.

14.407-8 Protests against award.

(a) *General.*

(1) Contracting officers shall consider all protests or objections to the award of a contract, whether submitted before or after award. If a protest is oral and the matter cannot be resolved, written confirmation of the protest shall be requested. The protester shall be notified in writing of the final decision of the written protest. (See 19.302 for protests of small business status and 22.608-3 for protests involving eligibility under the Walsh-Healey Public Contracts Act.) An interested party wishing to protest to the Comptroller General of the United States against an award of a contract should do so in accordance with General Accounting Office (GAO) Regulations (4 CFR Part 21).

(2) When a protest, before or after award, has been lodged with a higher authority or the GAO and the contracting officer is requested to submit a report, it should include a copy of—

(i) The protest;

(ii) The bid submitted by the protesting bidder and a copy of the bid of the bidder who is being considered for award, or whose bid is being protested.

(iii) The invitation, including the specifications or portions relevant to the protest;

(iv) The abstract of offers or relevant portions;

(v) Any other documents that are relevant to the protest; and

(vi) The contracting officer's signed statement setting forth findings, actions, and recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegation of the protest. If the award was made after receipt of the protest, the contracting officer's report will include the determination prescribed in subparagraph (b)(4) below.

(3) Other persons, including bidders, involved in or affected by the protest shall be given notice of the protest and its basis in appropriate cases. These persons shall also be advised that they may submit their views and relevant information to the contracting officer within a specified period of time. Normally, the time specified will be 1 week. In addition, these persons should be further advised that, if the protest has

been lodged with the GAO, copies of such submissions should be furnished directly to the GAO.

(4) Since timely action on protests is essential, they should be handled on a priority basis. Upon receipt of informal advice that a protest has been lodged with the GAO, the contracting officer shall immediately begin compiling the information necessary for a report to the GAO. To further expedite processing, the official who furnishes the agency's report to the GAO should, upon request of the protester or the GAO, simultaneously furnish a complete copy (except for classified or privileged information) to the protester and advise the GAO that this has been done. In such instances, the protester shall be requested to furnish a copy of any comments on the administrative report directly to the GAO as well as to the contracting officer.

(5) 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 regarding protests. Each agency shall be responsible for promptly advising the GAO of any change in the designated officials. Agencies may provide for reports to be forwarded directly to the GAO by the office handling the contract.

(b) *Protests before award.*

(1) The contracting officer may require that written confirmation of an oral protest be submitted by a specified time and inform the protester that award will be withheld until the specified time. If the written protest is not received by the time specified, the oral protest may be disregarded. Award may be made in the normal manner unless the contracting officer finds it necessary to take remedial action.

(2) When a protest against the making of an award is received and award will be withheld pending disposition of the protest, the bidders whose bids might become eligible for award should be informed of the protest. In addition, those bidders should be requested, before expiration of the time for acceptance of their bids, to extend the time for acceptance in accordance with 14.404-1(d) to avoid the need for readvertisement. In the event of failure to obtain such extensions of bids, consideration should be given to proceeding with award under subparagraph (4) below.

(3) When a protest has been lodged with the contracting office, the views of the GAO should be obtained before award if considered desirable. When it is known that a protest has been lodged directly with the GAO, a determination to make award under subparagraph (4) below must be approved at a level above the contracting officer in accordance with agency procedures. While award need not be withheld pending final disposition by the GAO of a protest, a notice of intent to make award in such circumstances shall be furnished the GAO. Formal or informal advice should be obtained concerning the current status of the case before making the award.

(4) When a written protest is received, award shall not be made until the matter is resolved, unless the contracting officer determines that—

(i) The materials and services to be contracted for are urgently required;

(ii) Delivery or performance will be unduly delayed by failure to make award promptly; or

(iii) A prompt award will otherwise be advantageous to the Government.

(5) If award is made under subparagraph (4) above, the contracting officer shall document the file to explain the need for an immediate award. The contracting officer also shall give written notice to the protester and others concerned of the decision to proceed with the award.

(c) *Protests after award.* Protests received after award shall be handled in accordance with agency procedures. Although persons involved in or affected by the filing of a protest may be limited, at least the contractor shall be furnished the notice of protest and its basis in accordance with subparagraph (a)(3) above. When it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest, the contracting officer should consider seeking a mutual agreement with the contractor to suspend performance on a no-cost basis.

14.408 Information to bidders.

14.408-1 Award of unclassified contracts.

(a) The contracting office shall as a minimum (subject to any restrictions in Subpart 9.4)—

(1) Notify unsuccessful bidders promptly that their bids were not accepted;

(2) Extend appreciation for the interest the unsuccessful bidders have shown in submitting a bid; and

(3) When award is made to other than a low bidder, state the reason for rejection in the notice to each of the unsuccessful low bidders.

(b) Notification to unsuccessful bidders may be oral or in writing through the use of a form postal card or other appropriate means.

(c) Should additional information be requested, the contracting office shall provide the unsuccessful bidders with the name and address of the successful bidder, the contract price, and the location where a copy of the abstract of offers is available for inspection. However, when multiple awards have been made and furnishing information on the successful bids would require so much work as to interfere with normal operations of the contracting office, only information concerning location of the abstract of offers need be given.

(d) When a request is received concerning an unclassified invitation from an inquirer who is neither a bidder nor a representative of a bidder, the contracting office should make every effort to furnish the names of successful bidders and, if requested, the prices at which awards were made. However, when such requests require so much work as to interfere with the normal operations of the contracting office, the inquirer will be advised where a copy of the abstract of offers may be seen.

(e) Requests for records shall be governed by agency regulations implementing Subpart 24.2.

14.408-2 Award of classified contracts.

In addition to 14.408-1, if classified information was furnished or created in connection with the solicitation, the contracting officer shall advise the unsuccessful bidders, including any who did not bid, to take disposition action in accordance with agency procedures. The name of the successful bidder and the contract price will be furnished to unsuccessful bidders only upon request. Information regarding a classified award shall not be furnished by telephone.

SUBPART 14.5—TWO-STEP FORMAL ADVERTISING

14.501 General.

Two-step formal advertising is a method of contracting designed to obtain the benefits of formal advertising 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 formal advertising. 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 negotiation; e.g., see 15.213, two-step formal advertising shall 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 to permit full and free competition 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 formal advertising:

(1) Multi-year contracting.

(2) Government-owned facilities or special tooling to be made available to the successful bidder.

(3) A total small business and/or labor surplus area set-aside (see 19.502-2 and 20.201).

(4) 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 distributed to qualified sources in accordance with 14.103-1(b). In addition, the request shall be published in the Commerce Business Daily 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.

(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 Government'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 15.413 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 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 and as soon as possible after award, the

contracting officer shall debrief unsuccessful offerors (see 15.1002).

(h) Late technical proposals are governed by 15.412.

(i) If it is necessary to discontinue two-step formal advertising, 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 under the authority of 15.210(b)(3) (but see 15.210(c)).

14.503-2 Step two.

(a) Formal advertising procedures shall be followed except that invitations for bids will—

(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 synopsized in the Commerce Business Daily 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 in the Commerce Business Daily for the benefit of prospective subcontractors (see 5.206(b)).

PART 15—CONTRACTING BY NEGOTIATION

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

15.000 Scope of part.

This part prescribes policies and procedures governing contracting for supplies and services by negotiation.

SUBPART 15.1—GENERAL REQUIREMENTS FOR NEGOTIATION

15.100 Scope of subpart.

This subpart covers general requirements regarding negotiated contracts. Detailed and specific requirements appear throughout this regulation.

15.101 Definition.

"Negotiation" means contracting without formal advertising. Any contract awarded without the use of formal advertising procedures is a negotiated contract (see 14.101).

15.102 General.

Compared to formal advertising, negotiation is a more flexible procedure that includes the receipt of proposals from offerors, permits bargaining, and usually affords offerors an opportunity to revise their offers before award of a contract. Bargaining—in the sense of discussion, persuasion, alteration of initial assumptions and positions, and give-and-take—may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

15.103 Use of negotiation.

Negotiation may be used only when permitted under one of the statutory authorizations discussed in Subpart 15.2. Notwithstanding the existence of conditions permitting negotiation under one of these statutory authorizations, formal advertising shall be used for acquisitions in excess of the applicable small purchase limitation in Part 13 whenever it is feasible and practicable to do so. Contracting officers must exercise good judgment in selecting the method of contracting.

15.104 Authorization and approval.

No contract shall be entered into as a result of negotiation unless—

(a) The contemplated contract action comes under one of the statutory authorizations permitting negotiation;

(b) All required determinations and findings have been made; and

(c) All required clearances and approvals have been obtained.

15.105 Competition.

Negotiated contracts shall be awarded on a competitive basis to the maximum practical extent. To this end:

(a) Offers shall be solicited from the maximum number of qualified sources consistent with the nature of and the need for the supplies or services being acquired. Acquisition information shall be publicized in accordance with 5.101.

(b) Before negotiating a contract on a noncompetitive basis, the contracting officer is responsible not only for ensuring that competition is not feasible and practicable under the existing conditions and circumstances but also for acting whenever possible to avoid the need for subsequent noncompetitive contracts. This process shall include—

(1) Examination of the reasons precluding competition for the current requirement; and

(2) Taking steps to foster competition in the future, particularly with respect to the availability of complete and accurate data, reasonableness of delivery requirements, and possible breakout of components for competitive contracting.

(c) Contracts in excess of the applicable small purchase limitation in Part 13 shall not be negotiated on a noncompetitive basis without prior review at a level above the contracting officer. However, prior review is not required for acquisitions of electric power or energy, gas (natural or manufactured), water, other utility services, or educational services from nonprofit institutions, provided that acquisitions of public utility services shall comply with Subpart 8.3, Acquisition of Utility Services. Competition should be obtained in the case of bottled gas distributors.

15.106 Contract clauses.

15.106-1 Examination of Records clause.

(a) This subsection implements 10 U.S.C. 2313(b) and (c) and 41 U.S.C. 254(c).

(b) When contracting by negotiation (including small business restricted advertising), the contracting officer shall insert the clause at 52.215-1, Examination of Records by Comptroller General, in solicitations and contracts, except when—

(1) Making small purchases (see Part 13);

(2) Contracting for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge; or

(3) Making contracts with foreign contractors for which the agency head authorizes omission under Subpart 25.9.

(c) In connection with administration of the clause in research and development contracts with nonprofit institutions, including subcontracts under these contracts, the Comptroller General does not require original documentation of transportation costs (exclusive of travel).

15.106-2 Audit—Negotiation clause.

(a) This subsection implements 10 U.S.C. 2313(a), 41 U.S.C. 254(b), and 10 U.S.C. 2306(f).

(b) The contracting officer shall, when contracting by negotiation, insert the clause at 52.215-2, Audit—Negotiation, in solicitations and contracts, unless the acquisition is a small purchase under Part 13. In facilities contracts, the contracting officer shall use the clause with its Alternate I.

SUBPART 15.2—NEGOTIATION AUTHORITIES

15.200 Scope of subpart.

(a) This subpart identifies the statutory authorities (including application and limitations) for using negotiation as a method of contracting. These authorities are exceptions to the general requirement for formal advertising. Requirements for determinations and findings to support use of these authorities are in Subpart 15.3.

(b) The Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c)) and 10 U.S.C. 2304(a), formerly referred to as the Armed Services Procurement Act of 1947, each authorize, under certain conditions, the negotiation of purchases and contracts. The Department of Defense, Coast Guard, and National Aeronautics and Space Administration are subject to 10 U.S.C. 2304(a). Other executive agencies are subject to 41 U.S.C. 252(c).

(c) Conditions for the use of negotiation authorities are listed in 15.201 through 15.217 (see 36.401 for construction contracts). Contracting officers shall use the U.S. Code citation applicable to their agency. Note that

15.216 and 15.217 each list only one authority and that its applicability is not extended by this regulation to agencies not already subject to that authority. Each negotiated contract shall contain a reference to the specific authority under which it was negotiated. When appropriate, priorities for use of a specific negotiation authority are included in the limitations paragraphs of this subpart.

15.201 National emergency.

(a) *Authorities.*

(1) Citation: 10 U.S.C. 2304(a)(1) or 41 U.S.C. 252(c)(1) (see 15.200).

(2) Purchases and contracts may be negotiated if determined to be necessary in the public interest during a national emergency declared by Congress or the President. At present, a state of national emergency exists by reason of Presidential Proclamation No. 2914 of December 16, 1950.

(b) *Application.* (1) As required by 41 U.S.C. 252(c)(1) and 10 U.S.C. 2304(a)(1), it has been determined necessary in the public interest during this period of national emergency that contracts be negotiated by executive agencies under these authorities—

(i) In keeping with the labor surplus area set-aside program; and

(ii) For unilateral small business set-asides.

(2) In addition, it has been determined for those agencies subject to 10 U.S.C 2304(a)(1) (see 15.200(b)) that contracts may be negotiated under this authority in the following instances—

(i) For disaster area programs;

(ii) For the total or any part of the requirements set aside that are not filled by awards made in accordance with the terms of the Notice of Labor Surplus Area Set-Aside, when the use of formal advertising is not feasible and practicable under the circumstances and no other negotiation authority is more appropriate; and

(iii) To place the total or any part of the requirements set aside (unilateral or joint) that are not filled by awards to small business concerns when the use of formal advertising is not feasible and practicable under the circumstances and no other negotiation authority is more appropriate.

(c) *Limitations.* These authorities shall not be used when negotiation is authorized under 15.206 except that, in the event of a labor surplus area or small business set-aside, these authorities shall be used in preference to any other negotiation authority. These authorities shall not be used to negotiate a reasonable price with a responsible low small business bidder whose bid the contracting officer has determined to be unreasonable under Small Business Restricted Advertising procedures. When such an unreasonable bid is received, the contracting officer shall dissolve the set-aside and solicit offers on an unrestricted basis by the use of formal advertising if feasible and practicable or, if appropriate, by other negotiation authority.

15.202 Public exigency.

(a) *Authorities.*

(1) Citation: 10 U.S.C. 2304(a)(2) or 41 U.S.C. 252(c)(2) (see 15.200).

(2) Purchases and contracts may be negotiated if the public exigency will not permit the delay incident to advertising.

(b) *Application.* In order to use these authorities, the need must be compelling and of unusual urgency (*as when the Government would be seriously injured, financially or otherwise, if the supplies or services were not furnished by a certain date, and if they could not be purchased by that date by means of formal advertising*). These authorities apply regardless of whether the urgency could or should have been foreseen. When negotiating under these authorities, competition to the maximum extent practicable, within the time allowed, shall be obtained.

(c) *Limitations.* Every contract negotiated under these authorities shall be supported by a determination and findings justifying the use of the appropriate authority and signed by the contracting officer (15.307). These authorities shall not be used when negotiation is authorized for purchases not in excess of the applicable small purchase limitation in Part 13 (see 15.203) or for purchase outside the United States (see 15.206).

15.203 Purchases under the small purchase limitation.

(a) *Authorities.*

(1) Citation: 10 U.S.C. 2304(a)(3) or 41 U.S.C. 252(c)(3) (see 15.200).

(2) Purchases and contracts may be negotiated if the aggregate amount involved is not in excess of the applicable small purchase limitation in Part 13.

(b) *Application.* Purchases or contracts aggregating not more than the applicable small purchase limitation in Part 13 shall be made using the small purchase procedures (see Part 13).

(c) *Limitations.* These authorities shall not be used when negotiation is authorized for purchases outside the United States (15.206). When small business set-asides are made, the authority for unilateral set-asides (15.201) or for joint set-asides (15.215) shall be cited. When negotiations have been initiated under another authority in this subpart, that authority shall be cited as the negotiation authority for any resulting contract, even though one or more contracts of less than the applicable small purchase limitation in Part 13 may result.

15.204 Personal or professional services.

(a) *Authorities.*

(1) Citation: 10 U.S.C. 2304(a)(4) or 41 U.S.C. 252(c)(4) (see 15.200).

(2) Purchases and contracts may be negotiated for personal or professional services.

(b) *Application.* These authorities shall be used only when all of the following conditions have been satisfied:

(1) If personal services, they must be performed by an individual and not by a concern (professional services, on the other hand, may be performed by an individual contractor in person or by a concern or organization) (see Part 37).

(2) The services are of a professional nature, or are to be performed under Government supervision and paid for on a time basis.

(3) Acquisition of the services is authorized by law and is accomplished in accordance with requirements of any such law and applicable agency procedures.

(c) *Limitations.* These authorities shall not be used to negotiate contracts for services when any other authority in this subpart is available and appropriate.

15.205 Services of educational institutions.

(a) *Authorities.*

(1) Citation: 10 U.S.C. 2304(a)(5) or 41 U.S.C. 252(c)(5) (see 15.200).

(2) Purchases and contracts may be negotiated for any service to be rendered by any university, college, or other educational institution.

(b) *Application.* Examples of services by a university, college, or other educational institution that may be contracted for under these authorities are:

(1) Educational or vocational training services rendered in connection with the training and education of personnel, and for related necessary material, services, and supplies.

(2) Experimental, developmental, or research work (including services, tests, and reports necessary or incidental to this work), and related reports.

(3) Analyses, studies, or reports.

(c) *Limitations.* Except as authorized for Educational Service Agreements, these authorities shall not be used when negotiation is authorized for purchases not in excess of the applicable small

purchase limitation in Part 13 (15.203) or for purchases outside the United States (15.206).

15.206 Purchases outside the United States.

(a) *Authorities.*

(1) Citation: 10 U.S.C. 2304(a)(6) or 41 U.S.C. 252(c)(6) (see 15.200).

(2) Purchases and contracts may be negotiated if the supplies or services are to be acquired and used outside the United States, its possessions, its territories, and Puerto Rico.

(b) *Application.* These authorities shall be used only to acquire supplies or services that are actually purchased from sources outside and used outside the limits of the United States, its possessions, its territories, and Puerto Rico, such as supplies or services (including construction) for overseas installations or for the use of overseas personnel.

(c) *Limitations.* When these authorities are available for the negotiation of a contract, no other negotiation authority shall be used, nor shall formal advertising be used.

15.207 Medicines or medical supplies.

(a) *Authorities.*

(1) Citation: 10 U.S.C. 2304(a)(7) or 41 U.S.C. 252(c)(7) (see 15.200).

(2) Purchases and contracts may be negotiated for medicines or medical supplies.

(b) *Application.* These authorities shall be used only for supplies that are peculiar to the field of medicine, including technical equipment such as surgical and orthopedic appliances, X-ray supplies and equipment, and the like, but not including prosthetic equipment.

(c) *Limitations.* (1) Every contract negotiated under these authorities shall be supported by a determination and findings justifying the use of the appropriate authority and signed by the contracting officer (see 15.307). These authorities shall not be used when negotiation is authorized for purchases not in excess of the applicable small purchase limitation in Part 13 (15.203), or for purchases outside the United States (15.206).

(2) Whenever it is determined to be practicable, suitable advance publicity shall be given regarding the supplies involved and other relevant considerations for a period of at least 15 days before contracting under these authorities.

15.208 Supplies purchased for authorized resale.

(a) *Authorities.*

(1) Citation: 10 U.S.C. 2304(a)(8) or 41 U.S.C. 252(c)(8) (see 15.200).

(2) Purchases and contracts may be negotiated for supplies purchased for authorized resale.

(b) *Application.* These authorities shall be used only for purchases for resale through commissaries or other similar facilities. Ordinarily, these purchases will involve only brand name or proprietary articles desired or preferred by customers of the selling activities.

(c) *Limitations.* (1) Every contract negotiated under these authorities shall be supported by a determination and findings justifying their use and signed by the contracting officer (see 15.307). These authorities shall not be used when negotiation is authorized for purchases not in excess of the applicable small purchase limitation in Part 13 (15.203), for purchase outside the United States (15.206), or for subsistence supplies (15.209).

(2) Whenever it is determined to be practicable, suitable advance publicity shall be given regarding the supplies involved and other relevant considerations for a period of at least 15 days before contracting under these authorities.

15.209 Subsistence supplies.

(a) *Authorities.*

(1) Citation: 10 U.S.C. 2304(a)(9) or 41 U.S.C. 252(c)(9) (see 15.200).

(2) Purchases and contracts may be negotiated for perishable or nonperishable subsistence supplies.

(b) *Application.* These authorities may be used for the purchase of any kind of subsistence supplies.

(c) *Limitations.* These authorities shall not be used when negotiation is authorized for purchases not in excess of the applicable small purchase limitation in Part 13 (15.203) or for purchases outside the United States (15.206).

15.210 Impracticable to secure competition by formal advertising.

(a) *Authorities.*

(1) Citation: 10 U.S.C. 2304(a)(10) or 41 U.S.C. 252(c)(10) (see 15.200).

(2) Purchases and contracts may be negotiated for supplies or services for which it is impracticable to secure competition by formal advertising.

(b) *Application.* Illustrative circumstances in which these authorities may be used are:

(1) When supplies or services can be obtained only from one person or firm ("sole source of supply").

(2) When competition is precluded because of the existence of patent rights, copyrights, secret processes, control of basic raw material, or similar circumstances (however, the mere existence of such rights or circumstances does not in and of itself justify the use of these authorities) (see Part 27).

(3) When bids have been solicited using formal advertising (see Part 14), and no responsive bid has been received from a responsible bidder, or step one of two-step formal advertising results in no or only one acceptable technical proposal.

(4) When bids have been solicited using formal advertising (see Part 14), and the responsive bid or bids do not cover the quantitative requirements of the invitation for bids, in which case negotiation is permitted for the remaining requirements.

(5) When acquiring electric power or energy, gas (natural or manufactured), water, or other utility services, or when the contemplated contract is for construction of a part of a utility system and it would not be practicable to allow a contractor other than the utility company itself to work upon the system.

(6) When acquiring training film, motion picture production, manuscripts, or similar products or services.

(7) When acquiring technical nonpersonal services involving the assembly, installation, or servicing (or instruction in these matters) of equipment of a highly technical or specialized nature.

(8) When acquiring studies or surveys other than those calling for services of educational institutions (15.205) or for experimental, developmental, or research work (15.211).

(9) When acquiring construction, maintenance, repairs, alterations, or inspection, and the exact nature or amount of the work to be done is not known.

(10) When acquiring stevedoring, terminal, warehousing, or switching services, and the rates either are (i) established by law or regulation or (ii) so numerous or complex that it is impracticable to set them forth in the specifications of an invitation for bids.

(11) When acquiring commercial transportation, including (i) services for the operation of Government-owned vehicles, vessels, or aircraft and (ii) time, space, trip, and voyage charters, except for transportation services furnished by common carriers (for which negotiation is authorized under 15.215, and Section 321 of the Transportation Act of 1940, 49 U.S.C. 10721).

(12) When acquiring services related to the acquisition of perishable subsistence (such as protective storage, icing, processing, packaging, handling, and transportation), when it is impracticable to advertise for such

services a sufficient time in advance of the delivery of the perishable subsistence.

(13) When it is impossible to draft, for an invitation for bids, adequate specifications or any other adequately detailed description of the required supplies or services.

(14) When acquiring, under applicable agency regulations, storage (and related services) of household goods.

(15) When acquiring parts or components as replacement parts in support of equipment specially designed by the manufacturer, when the data available are not adequate to assure that the part or component will perform the same function in the equipment as the part or component it is to replace.

(16) When the proposed contract is for facilities (as defined in 45.301), and the performance required can be obtained from only one person or firm.

(17) When acquiring construction where a contractor or group of contractors is already at work on the site, and it would not be practicable to allow another contractor or an additional contractor to work on the same site, or when the amount is too small to interest other contractors to mobilize and demobilize.

(18) When the contemplated acquisition is to be reimbursed by a foreign country and requires that the product be obtained from a particular firm as specified in a Letter of Agreement or other written direction.

(c) *Limitations.* (1) Every contract negotiated under these authorities shall be supported by a determination and findings justifying the use of the appropriate authority and signed by the contracting officer (15.307).

(2) These authorities shall not be used when negotiation is authorized by any other authority, except that these authorities shall be used if appropriate in preference to the authorities to negotiate purchases not to be publicly disclosed (15.212) and for foreign military sales (as illustrated in subparagraph (b)(18) above).

(3) The applications illustrated in subparagraphs (b)(3) and (4) above shall not be used when Small Business Restricted Advertising has been used (see Subpart 19.5). However, these authorities may be used in the case of partial set-asides, unless the contracting officer decides that the failure to obtain sufficient responsive bids was caused by the existence of the set-asides (see 15.201).

15.211 Experimental, developmental, or research work.

(a) *Authorities.*

(1) Citation: 10 U.S.C. 2304(a)(11) or 41 U.S.C. 252(c)(11) (see 15.200).

(2) Purchases and contracts may be negotiated for supplies or services that the agency head determines to be for experimental, developmental, or research work, or for making or furnishing supplies for experiment, test, development, or research.

(b) *Application.* Illustrative circumstances in which these authorities might be used are—

(1) Contracts relating to theoretical analysis, exploratory studies, and experiment in any field of science or technology;

(2) Developmental contracts calling for the practical application of investigative findings and theories of a scientific or technical nature;

(3) Contracts for such quantities and kinds of equipment, supplies, parts, accessories, or patent rights to these, and drawings or designs of them, as are necessary for experiment, development, research, or test; and

(4) Contracts for services, tests, and reports necessary or incidental to experimental, developmental, or research work.

(c) *Limitations.* (1) Every contract negotiated under these authorities shall be supported by a determination and findings justifying the use of the appropriate authority (see 15.307 for signatory authority).

(2) These authorities shall not be used for—

(i) Purchases not in excess of the applicable small purchase limitation in Part 13 when negotiation could be authorized under 15.203, or for purchases outside the United States when negotation could be authorized under 15.206;

(ii) Negotiated contracts with educational institutions, which shall be negotiated in accordance with 15.205; or

(iii) Contracts for quantity production, except that quantities necessary to permit complete and adequate experiment, development, research, or testing may be purchased under these authorities. (Research or development contracts calling for the production of a reasonable number of experimental or test models or prototypes are not contracts for quantity production.)

15.212 Purchases not to be publicly disclosed.

(a) *Authorities.*

(1) Citation: 10 U.S.C. 2304(a)(12) or 41 U.S.C. 252(c)(12) (see 15.200).

(2) Purchases and contracts may be negotiated for supplies or services whose acquisition the agency head determines should not be publicly disclosed because of their character, ingredients, or components.

(b) *Application.* These authorities may be used for purchases or contracts classified "Confidential" or higher, or when, because of other considerations, the contract should not be publicly disclosed.

(c) *Limitations.* (1) Every contract negotiated under these authorities shall be supported by a determination and findings justifying the use of the appropriate authority and signed by the agency head (see 15.307).

(2) These authorities shall not be used in preference to any other authority in 15.201 through 15.217, except as provided in 15.204(c).

15.213 Technical equipment requiring standardization and interchangeability of parts.

(a) *Authorities.*

(1) Citation: 10 U.S.C. 2304(a)(13) or 41 U.S.C. 252(c)(13) (see 15.200).

(2) Purchases and contracts may be negotiated for equipment that the the agency head determines to be technical equipment for which (i) standardization and interchangeability of parts are necessary in the public interest and (ii) acquisition by negotiation is necessary to ensure that standardization and interchangeability.

(3) In addition, 41 U.S.C. 252(c)(13) requires that, if its authority is to be used, the agency head must determine that acquisition without advertising "is necessary in special situations or in particular localities in order to assure standardization of equipment and interchangeability of parts and such standardization and interchangeability are necessary in the public interest."

(b) *Application.* (1) These authorities may be used to acquire additional units and replacement items of specified makes and models of technical equipment and parts—

(i) When 41 U.S.C. 252(c)(13) applies for use in special situations or in particular localities; or

(ii) When technical requirements of the armed forces or other agencies are involved, and the equipment or parts have been adopted as standard items of supply in accordance with agency procedures and are—

(A) For forces whose primary mission is to participate in combat or for their integral supporting elements;

(B) An integral part of or used in direct support of a weapons system; or

(C) For use in Alaska or Hawaii or outside the rest of the United States, in theaters of operations, on board maritime vessels, or at advanced or detached bases.

(2) These authorities may be used, for example—

(i) To limit the variety and quantity or parts that must be carried in stock;

(ii) To make available, by standardization, parts that may be interchanged among items of damaged or worn equipment;

(iii) To acquire from selected suppliers technical equipment that is available from a number of suppliers but that otherwise would vary so in performance or design characteristics (notwithstanding detailed specifications and rigid inspection) as to prevent standardization and interchangeability of parts; or

(iv) To provide a uniform configuration of equipment for material programmed for Military Assistance Program countries.

(3) Before an agency decides to acquire specified makes and models under these authorities, it shall consider—

(i) The feasibility, from an economical and timely deployment standpoint, of distributing or redistributing on a selected geographic basis the equipment and parts already in the supply system;

(ii) The practicability or economy of using or developing an agency design that would permit standardization of components and parts under an agency standardization program;

(iii) Whether standardization will impair the capability of industry to meet mobilization requirements of all agencies;

(iv) The practicability of interchanging parts and cannibalizing equipment;

(v) Whether future acquisition of the selected item of equipment can be effected at reasonable prices;

(vi) Whether standardization will appreciably reduce the variety and quantity of parts that must be carried in stock;

(vii) Whether standardization will render obsolete large dollar value inventories of equipment and supporting parts already in the supply system, without compensating benefits;

(viii) Whether standardization will enhance agency mission capability;

(ix) Possible savings in training personnel or in acquiring technical literature;

(x) Whether the standardization will adversely affect existing specifications and standards;

(xi) The degree to which the current design of the specified make and model has been changed from the design of the equipment in the supply system;

(xii) In cases when agency mission capability is not overriding, whether the benefits and/or cost savings anticipated from standardization will equal or exceed those to be expected from unrestricted competition.

(4) In arriving at a determination to standardize under these authorities, the originating agency shall consult other user agencies, as appropriate, in order to ensure the full benefit of the action.

(5) Standardization approval under these authorities shall be for a stated period bearing a reasonable relationship to the life of the equipment. Agency procedures shall provide for periodic reviews to determine whether the standardization should be continued, revised, or canceled.

(c) *Limitations.* (1) Every contract negotiated under these authorities shall be supported by a determination and findings justifying the use of the appropriate authority and signed by the agency head (see 15.307).

(2) These authorities shall not be used for initial acquisitions of equipment or spare parts, or to select arbitrarily the equipment or parts of certain suppliers. If supplies subsequently might possibly be standardized for applications specified in 15.213(b)(1), see paragraph (d) below.

(3) These authorities shall not be used unless the agency head determines that—

(i) The equipment constitutes technical equipment;

(ii) Standardization of the equipment and interchangeability of its parts are necessary in the public interest; and

(iii) When 41 U.S.C. 252(c)(13) applies, negotiation is necessary in special situations or in particular localities to ensure required standardization and interchangeability; or

(iv) When 10 U.S.C. 2304(a)(13) applies, acquisition of the equipment or of its parts by negotiation is necessary to ensure the necessary standardization and interchangeability of its parts.

(4) Each agency shall maintain, on a current basis, a master list of items for which determinations and findings have been made under these authorities.

(d) *Approval for using standardization solicitation provision.* The contracting officer shall obtain the approval of the chief of the contracting office before using the provision at 52.215-4, Notice of Possible Standardization (see 15.213(c) and 15.407(b)).

15.214 Negotiation after advertising.

(a) *Authorities.*

(1) Citation: 10 U.S.C. 2304(a)(15) or 41 U.S.C. 252(c)(14) (see 15.200).

(2) Purchases and contracts may be negotiated for supplies or services for which the agency head determines that bid prices received after formal advertising are unreasonable as to all or part of the requirements, or were not independently reached in open competition.

(b) *Application.* These authorities shall be used only when the agency head determines, in accordance with the requirements of 15.307, that bid prices, after formal advertising for such supplies or services, are unreasonable or were not independently reached in open competition. Indications of possible violation of antitrust laws or collusive bidding are to be reported to the Department of Justice as provided in 3.303.

(c) *Limitations.* (1) Every contract negotiated under these authorities shall be supported by a determination and findings justifying the use of the appropriate authority and signed by the agency head or, where permitted by law, the agency head's designee (see Table 15-1 in 15.307).

(2) After such determination, and after rejection of all bids, no negotiated purchase or contract shall be entered into unless—

(i) Prior notice of intention to negotiate and a reasonable opportunity to negotiate have been given by the contracting officer to each responsible bidder that submitted a bid in response to the invitation for bids;

(ii) The negotiated price is the lowest negotiated price offered by any responsible supplier; and

(iii) The negotiated price is lower than the lowest rejected bid price of a responsible bidder, as determined by the agency head.

15.215 Otherwise authorized by law.

(a) *Authorities.*

(1) Citation: 10 U.S.C. 2304(a)(17) or 41 U.S.C. 252(c)(15) (see 15.200).

(2) Purchases and contracts may be negotiated if otherwise authorized by law.

(b) *Application.* This statutory provision preserves the authority to negotiate contracts conferred by other legislation. For example, the Small Business Act (15 U.S.C. 644(a) Supp V, 1981), is the basis for the negotiation of contracts set aside for small business concerns through joint determinations.

(1) When negotiating pursuant to this authority, cite the authorizing law in the purchase or contract instrument.

(2) When 10 U.S.C. 2304(a)(17) applies, this authority shall be used only to the extent authorized by agency acquisition regulations.

(3) When 41 U.S.C. 252(c)(15) applies—

(i) The requirement of 41 U.S.C. 254 (concerning such matters as contingent fees, examination of records, and

various aspects of cost-type contracting) shall also apply; and

(ii) Other statutory authority of an agency to acquire "without advertising" or "without regard to section 3709 of the Revised Statutes" is construed to authorize negotiation pursuant to 41 U.S.C. 252(c)(15) and without regard to the advertising requirements of 41 U.S.C. 252(c) and 253.

15.216 Technical or specialized supplies requiring substantial initial investment or extended period of preparation for manufacture.

(a) *Authority.*

(1) Citation: 10 U.S.C. 2304(a)(14). 41 U.S.C. 252(c) contains no comparable negotiation authority (see 15.200).

(2) A purchase or contract may be negotiated for technical or special supplies if the agency head determines—

(i) That they require a substantial initial investment or an extended period of preparation for manufacture; and

(ii) That formal advertising (A) would be likely to result in additional cost to the Government because of duplication of investment or (B) would result in duplication of necessary preparation that would delay the acquisition unduly.

(b) *Application.* (1) This authority may be used to acquire technical or specialized supplies such as aircraft, tanks, radar, guided missiles, rockets, and similar items; their major components; and any supplies of a technical or specialized nature that may be needed for their use or operation. Such acquisition generally involves—

(i) High starting costs already paid for by the Government or by the supplier;

(ii) Preliminary engineering and development work that would not be useful to or usable by any other supplier;

(iii) Elaborate special tooling already acquired;

(iv) Substantial time and effort already expended in developing a prototype or an initial production model; or

(v) Important design changes that will continue to be developed by the supplier.

(2) This authority will, in general, be used in situations when it is preferable to place a production contract with the supplier that developed the equipment. In such instances, the Government would (i) be assured of the benefit of the techniques, tooling, and equipment already acquired by that supplier, or (ii) avoid undue delay arising from a new supplier having to acquire such techniques, tooling, and equipment. However, this exception should not be used to avoid duplication of private investment, unless the duplication would be likely to result in additional cost to the Government.

(c) *Limitations.* This authority shall not be used unless the agency head determines, in accordance with the requirements of 15.307, that—

(1) The supplies are of a technical or special nature requiring a substantial initial investment or an extended period of preparation for manufacture; and

(2) Contracting by formal advertising either—

(i) Would be likely to result in additional cost to the Government by reason of duplication of investment; or

(ii) Would result in duplication of necessary preparation that would unduly delay the acquisition.

15.217 Purchases in the interest of national defense or industrial mobilization.

(a) *Authority.*

(1) Citation: 10 U.S.C. 2304(a)(16). 41 U.S.C. 252(c) contains no comparable negotiation authority (see 15.200).

(2) Purchases and contracts may be negotiated if the agency head determines that (i) it is in the interest of national defense to have a plant, mine, or other facility, or a producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency; or (ii) the interest of industrial mobilization in case of such an emergency, or the interest of national defense in maintaining active engineering, research, and development, would otherwise be subserved.

(b) *Application.* This authority may be used to implement plans and programs developed under the direction of the agency head to provide an industrial mobilization base that can meet production requirements for essential supplies and services. Use of this authority should be considered, for instance, when it is necessary to—

(1) Keep vital facilities or suppliers in business or make them available in the event of a national emergency;

(2) Train a selected supplier in the furnishing of critical supplies or services, prevent the loss of a supplier's ability and employees' skills, or maintain active engineering, research, and development work;

(3) Maintain properly balanced sources of supply for meeting the requirements of acquisition programs in the interest of industrial mobilization (when the quantity required is substantially larger than the quantity that must be awarded in order to meet the objectives of this authority, that portion not required to meet such objectives will ordinarily be acquired by formal advertising or by negotiation under another negotiation authority);

(4) Limit competition for current acquisition of selected supplies or services approved for production planning under the Industrial Preparedness Program to planned producers with whom industrial preparedness agreements for those items exist, or limit award to offerors who agree to enter into industrial preparedness agreements;

(5) Create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in the United States or the United States and Canada (it is not necessary to use this negotiation authority when acquiring items covered by Subpart 8.2, Jewel Bearings and Related Items);

(6) Continue in production contractors that are manufacturing critical items when there would otherwise be a break in production; or

(7) Divide current production requirements among two or more contractors to provide for an adequate industrial mobilization base.

(c) *Limitations.* Every contract negotiated under this authority shall be supported by a determination and findings justifying its use and signed by the agency head (see 15.307). This authority shall not be used unless the agency head determines, in accordance with the requirements of Subpart 15.3, that—

(1) It is in the interest of national defense to have a particular plant, mine, or other facility or a particular producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency, and negotiation is necessary to that end;

(2) The interest of industrial mobilization in case of a national emergency would be subserved by negotiation with a particular supplier; or

(3) The interest of national defense in maintaining active engineering, research, and development, would be subserved by negotiation with a particular supplier.

SUBPART 15.3—DETERMINATIONS AND FINDINGS TO JUSTIFY NEGOTIATION

15.300 Scope of subpart.

This subpart prescribes policies and procedures for the use of determinations and findings (D&F's) to justify the use of negotiation in lieu of formal advertising. Requirements for D&F's for other actions can be found with the appropriate subject matter.

15.301 Definition.

"Determination and findings" (D&F) means a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contracting actions. The "determination" is a conclusion or decision supported by the "findings." The findings are statements of fact or rationale essential to support the determination and must cover each requirement of the statute or regulation.

15.302 General.

(a) A D&F is required to authorize use of certain statutory authorities for contracting by negotiation in lieu of formal advertising. Paragraph (c), "Limitations," under the negotiation authorities described in Subpart 15.2 states whether a D&F is required (see also 15.307).

(b) A D&F shall ordinarily be for an individual purchase or contract. Under the procedures described in 15.303, class D&F's may be executed for classes of purchases or contracts.

(c) The approval to negotiate granted by a D&F is restricted to the proposed acquisition(s) reasonably described in that D&F. D&F's may provide for a reasonable degree of flexibility, if such flexibility is not inconsistent with the negotiation authority involved. Furthermore, in the application of an approved D&F to a negotiation situation, reasonable variations in estimated quantities or prices are permitted, unless the D&F specifies otherwise.

(d) When an option is anticipated, the D&F shall state the approximate quantity to be awarded initially and the extent of the increase to be permitted by the option.

15.303 Class D&F's.

(a) A class D&F authorizes negotiation of classes of purchases or contracts. A class may consist of the same or related supplies or services, or require essentially identical justification under the same negotiation authority.

(b) The findings in a class D&F shall fully support the use of the proposed negotiation authority either for the class of items as a whole or for each item.

(c) A class D&F shall be for a specified period, with the expiration date stated in the document.

(d) A class D&F shall not be construed to authorize negotiation of any purchase or contract within the class that feasibly and practicably could be accomplished through formal advertising.

15.304 Content.

Each D&F shall set forth enough facts and circumstances to clearly and convincingly justify the specific determination made and establish that the use of formal advertising would not be feasible or practicable. As a minimum, each D&F shall include, in the prescribed agency format, the following information:

(a) Identification of the agency and of the contracting activity, and specific identification of the document as a "Determination and Findings."

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

(c) Citation of the appropriate statute and/or regulation upon which the D&F is based (see Subpart 15.2).

(d) Findings that detail the particular circumstances, facts, or reasoning essential to support the determination. Necessary supporting documentation shall be obtained from appropriate requirements and technical personnel.

(e) A determination, based on the findings, that the proposed action is justified under the applicable statute or regulation.

(f) Expiration date of the D&F, if required (see 15.306).

(g) The signature of the official authorized to sign the D&F (see 15.307) and the date signed.

15.305 Supersession, modification, and cancellation.

(a) If a D&F is superseded by another D&F, that action shall not render invalid any action taken under the original D&F.

(b) A modification of the D&F will not require cancellation of the solicitation if the D&F, as modified, supports negotiation under any applicable statutory authority.

(c) If a D&F is canceled, but the facts continue to support negotiation under a statutory authority for which a D&F is not required (see Subpart 15.2), cancellation of the solicitation is not required.

15.306 Expiration.

Expiration dates are required for class D&F's and are optional for individual D&F's. Authority to act under a D&F expires when it is exercised or on an expiration date specified in the document, whichever occurs first. When a request for proposal has been furnished to prospective offerors before the expiration date, the authority under the D&F will continue until award of the contract(s) resulting from that solicitation.

15.307 Signatory authority.

When a D&F is required, it shall be signed by the appropriate official in accordance with agency regulations before the solicitation is issued. Authority to sign and/or delegate signature authority for D&F's approving use of various negotiation authorities is as shown in Table 15-1. Under the applicable statutes, agency heads may not delegate their authority to sign D&F's except as shown in Table 15-1.

Table 15-1. Signatory Authority

Negotiation Authority	Signatory Authority
Public Exigency (see 15.202) Medicines/Medical Supplies (see 15.207) Supplies Purchased for Authorized Resale (see 15.206) Impracticable to Secure Competition (see 15.210)	Individual D&F's may be signed by the contracting officer. Class D&F's shall be signed by the agency head or any agency official to whom such authority is delegated.
Experimental, Developmental, or Research Work (see 15.211)	
(For agencies subject to 10 U.S.C. 2304(a)(11))	Individual D&F's for contracts negotiated under 10 U.S.C. 2304(a)(11) shall be signed by the agency head when more than $5,000,000 will be expended. Unless reserved to a higher organizational level by agency regulations, the D&F may be signed by the contracting officer when neither the contract nor any single modification will be over $5,000,000. When it is known in advance that the scope of the contract will be expanded to include additional phases or when it will be incrementally funded, total estimated costs will be used to determine the level of signature. Authority to make class D&F's for contracts negotiated under 10 U.S.C. 2304(a)(11) may be delegated by the agency head, provided that any such delegation related to (a)(11) shall limit individual transactions under a class to $5,000,000 or less.
(For agencies subject to 41 U.S.C. 252(c)(11))	Individual D&F's for contracts negotiated under 41 U.S.C. 252(c)(11) shall be signed by the agency head when more than $25,000 will be obligated. Authority to sign D&F's may be delegated to a chief officer responsible for contracting when neither the contract nor any single modification will be over $25,000. When it is known in advance that the scope of the contract will be expanded to include additional phases or when it will be incrementally funded, total estimated costs will be used to determine the level of signature. Class D&F's for contracts negotiated under 41 U.S.C. 252(c)(11) shall be signed only by the agency head.
Purchases Not to be Publicly Disclosed (see 15.212) Technical Equipment Requiring Standardization and Interchangeability of Parts (see 15.213)	Both individual and class D&F's shall be signed only by the agency head.

Table 15-1. Signatory Authority—Continued

Negotiation Authority	Signatory Authority
Technical Specialized Supplies Requiring Substantial Initial Investment or Extended Period of Preparation for Manufacturing (applicable to agencies under 10 U.S.C. only) (see 15.216)	
Purchases in the Interest of National Defense or Industrial Mobilization (applicable to agencies under 10 U.S.C. only) (see 15.217)	
Negotiation After Formal Advertising (see 15.214)	
(For agencies subject to 10 U.S.C. 2304(a)(15))	Both individual and class D&F's for contracts negotiated under 10 U.S.C. 2304(a)(15) shall be signed only by the agency head.
(For agencies subject to 41 U.S.C. 252(c)(14))	Both individual and class D&F's for contracts negotiated under 41 U.S.C. 252(c)(14) shall be signed by the agency head or any official to whom such authority is delegated.

SUBPART 15.4—SOLICITATION AND RECEIPT OF PROPOSALS AND QUOTATIONS

15.400 Scope of subpart.

This subpart prescribes policies and procedures for (a) preparing and issuing requests for proposals (RFP's) and requests for quotations (RFQ's) and (b) receiving proposals and quotations.

15.401 Applicability.

This subpart applies to solicitations issued when contracting by negotiation, except—

(a) Small purchases (see Part 13);

(b) Small business restricted advertising and other types of restricted advertising (see Part 14); and

(c) Two-step formal advertising (see Subpart 14.5).

15.402 General.

(a) Requests for proposals (RFP's) or requests for quotations (RFQ's) are used in negotiated acquisitions to communicate Government requirements to prospective contractors and to solicit proposals or quotations from them. Except as permitted by paragraph (f) below, contracting officers shall issue written solicitations. Solicitations shall contain the information necessary to enable prospective contractors to prepare proposals or quotations properly. Solicitation provisions and contract clauses may be incorporated into solicitations and contracts by reference, when authorized by Subpart 52.1.

(b) Contracting officers shall furnish identical information concerning a proposed acquisition to all prospective contractors. Government personnel shall not provide the advantage of advance knowledge concerning a future solicitation to any prospective contractor (but see 5.404, 15.404, and 15.405).

(c) Except for solicitations for information or planning purposes (see subparagraph (e)(1) below and 15.405), contracting officers shall solicit proposals or quotations only when there is a definite intention to award a contract. Subpart 7.3 provides additional instructions for solicitations involving cost comparisons between Government and contractor performance.

(d) A proposal received in response to an RFP is an offer that can be accepted by the Government to create a binding contract, either following negotiations or, when authorized by 15.610, without discussion. Contracting officers should normally issue RFP's when they consider it reasonable to expect prospective contractors to respond with offers, even though they anticipate negotiations after receipt of offers. An RFP shall not be used for a solicitation for information or planning purposes. Solicitations involving cost comparisons between Government and contractor performance (see 7.302(b)) are not for information or planning purposes.

(e) A quotation received in response to an RFQ is not an offer and cannot be accepted by the Government to create a binding contract. It is informational in character. An RFQ may be used when the Government does not intend to award a contract on the basis of the solicitation but wishes to obtain price, delivery, or other market information for planning purposes (see 15.405).

(f) Oral solicitations are authorized for perishable subsistence. An oral solicitation may also be used when processing a written solicitation would delay the acquisition of supplies or services to the detriment of the Government. Use of an oral solicitation does not relieve the contracting officer from complying with other requirements of this regulation. In addition to other applicable documentation requirements (see Subpart 4.1), documentation of oral solicitations shall include—

(1) A justification for use of an oral solicitation;

(2) Item description, quantity, and delivery schedule;

(3) Sources solicited, including the date, time, name of individual contacted, and prices quoted; and

(4) The solicitation number provided to the prospective contractors.

15.403 Solicitation mailing lists.

Contracting offices shall establish, maintain, and use lists of potential sources in accordance with 14.205.

15.404 Presolicitation notices and conferences.

(a) *General.* Presolicitation notices and conferences may be used as preliminary steps in negotiated acquisitions in order to—

(1) Develop or identify interested sources;

(2) Request preliminary information based on a general description of the supplies or services involved;

(3) Explain complicated specifications and requirements to interested sources; and

(4) Aid prospective contractors in later submitting proposals without undue expenditure of effort, time, and money.

(b) *Presolicitation notices.* (1) When presolicitation notices are used, the contracting officer shall prepare and issue the notice to potential sources and shall synopsize the notice in accordance with Subpart 5.2.

(2) Each presolicitation notice shall—

(i) Define as explicitly as possible the information to be furnished in the response;

(ii) Indicate whether it is contemplated that the presolicitation notice will be followed by a conference and a formal solicitation; and

(iii) Request an expression of interest in the contemplated acquisition by a specified date.

(3) In complex acquisitions, the presolicitation notice may also request information pertaining to management, engineering, and production capabilities. Detailed drawings, specifications, or plans will not normally be included with a presolicitation notice.

(4) The contracting officer shall furnish copies of the solicitation to (i) all those responding affirmatively to the presolicitation notice and (ii) other prospective contractors upon their request (but see Subpart 9.4, Debarment, Suspension, and Ineligibility).

(c) *Presolicitation conferences.* (1) The presolicitation conference may be used only when approved at a level higher than the contracting officer. It shall not be used as a method for prequalification of offerors.

(2) The contracting officer shall—

(i) Advise all organizations responding to the presolicitation notice of the details of any pending presolicitation conference;

(ii) Conduct the conference and arrange for technical and legal personnel to attend, as appropriate; and

(iii) Furnish copies of the solicitation to all organizations attending the conference, unless they decline to participate in the acquisition.

15.405 Solicitations for information or planning purposes.

15.405-1 General.

When information necessary for planning purposes cannot be obtained from potential sources by more economical and less formal means, the contracting officer may determine in writing that a solicitation for information or planning purposes is justified. If this determination is approved, in accordance with agency procedures, at a level higher than that of the contracting officer, the contracting officer shall then issue the solicitation.

15.405-2 Solicitation provision.

The contracting officer shall insert on the face of each solicitation (other than those excluded by 15.401) issued for information or planning purposes the provision at 52.215-3, Solicitation for Information or Planning Purposes.

15.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

15.406-1 Uniform contract format.

(a) Contracting officers shall prepare solicitations and resulting contracts using the uniform contract format outlined in Table 15-2. The format facilitates preparation of the solicitation and contract, as well as reference to and use of those documents by offerors and contractors. The uniform contract format is optional for acquisitions outside the United States, its possessions, its territories, and Puerto Rico. It does not apply to the following:

(1) Basic agreements (see 16.702).

(2) Construction and architect-engineer contracts (see Part 36).

(3) Shipbuilding (including design, construction, and conversion), ship overhauls, and ship repairs.

(4) Subsistence.

(5) Contracts requiring special contract forms prescribed elsewhere in this regulation that are inconsistent with the uniform contract format.

(6) Contracts exempted by the agency head or a designee.

(b) Solicitations to which the uniform contract format applies shall include Parts I, II, III, and IV (see 15.406-2 through 15.406-5). Upon award, contracting officers shall not physically include Part IV in the resulting contract, but shall retain in their contract file Section K, Representations, certifications, and other statements of offerors, as completed by the contractor. Award by acceptance of a proposal on the award portion of SF 33 or SF 26 incorporates Section K by reference in the resultant contract. Contracts requiring a bilateral document shall incorporate Section K by reference in the signed contract.

TABLE 15-2

Uniform Contract Format

Section	Title
	Part I—The Schedule
A	Solicitation/contract form
B	Supplies or services and prices/costs
C	Description/specifications/ work statement
D	Packaging and marking
E	Inspection and acceptance
F	Deliveries or performance
G	Contract administration data
H	Special contract requirements
	Part II—Contract Clauses
I	Contract clauses
	Part III—List of Documents, Exhibits, and Other Attachments
J	List of attachments
	Part IV—Representations and Instructions
K	Representations, certifications, and other statements of offerors or quoters
L	Instructions, conditions, and notices to offerors or quoters
M	Evaluation factors for award

15.406-2 Part I—The Schedule.

The contracting officer shall prepare the contract Schedule as follows:

(a) *Section A, Solicitation/contract form.*

(1) Prepare RFP's on Standard Form 33, Solicitation, Offer and Award (53.301-33), unless otherwise permitted by Part 53. The first page of the SF 33 is the first page of the solicitation and includes section A of the uniform contract format.

(2) Prepare RFQ's on Standard Form 18, Request for Quotations (53.301-18). Agencies may overprint the SF 18 to provide for Section A of the uniform contract format.

(3) When neither SF 33 nor SF 18 is used, include the following on the first page of the solicitation:

(i) Name, address, and location of issuing activity, including room and building where proposals or quotations must be submitted.

(ii) Solicitation number.

(iii) Date of issuance.

(iv) Closing date and time.

(v) Number of pages.

(vi) Requisition or other purchase authority.

(vii) Brief description of item or service.

(viii) Requirement for the offeror or quoter to provide its name and complete address, including street, city, county, State, Zip code, and the Data Universal Numbering System (DUNS) Number applicable to that name and address.

(ix) A statement that offerors or quoters should include in the offer or quotation the address to which payment should be mailed, if that address is different from that shown for the offeror or quoter.

(b) *Section B, Supplies or services and prices/costs.* Include on the second page of the solicitation brief descriptions of the supplies or services; e.g., item number, national stock number/part number if applicable, nouns, and quantities. (This includes incidental deliverables such as manuals and reports.) The second page may be supplemented as necessary by Standard Form 36, Continuation Sheet (53.301-36).

(c) *Section C, Description/ specifications/work statement.* Include any description or specifications needed in addition to Section B (see Part 10, Specifications, Standards, and Other Product Descriptions).

(d) *Section D, Packaging and marking.* Provide packaging, packing, preservation, and marking requirements, if any (see 10.004(e)).

(e) *Section E, Inspection and acceptance.* Include inspection, acceptance, quality assurance, and reliability requirements (see Part 46, Quality Assurance).

(f) *Section F, Deliveries or performance.* Specify the requirements for time, place, and method of delivery or performance (see Part 12, Contract Delivery or Performance, and 47.301-1).

(g) *Section G, Contract administration data.* Include any required accounting and appropriation data and any required contract administration information or instructions other than those on the solicitation form.

(h) *Section H, Special contract requirements.* Include a clear statement of any special contract requirements that are not included in Section I, Contract clauses, or in other sections of the uniform contract format.

15.406-3 Part II—Contract clauses.

Section I, Contract clauses. The contracting officer shall include in this section the clauses required by law or by this regulation and any additional clauses expected to be included in any resulting contract, if these clauses are not required in any other section of the uniform contract format. Any alteration pertaining to the contract shall be included in this section as part of the clause at 52.252-4, Alterations in

Contract. See Part 52, Solicitation Provisions and Contract Clauses. Clauses that are incorporated by reference shall be included in this section (see 52.102-1(c)).

15.406-4 Part III—List of Documents, exhibits, and other attachments.

Section J, List of attachments. The contracting officer shall list the title, date, and number of pages for each attached document, exhibit, and other attachment.

15.406-5 Part IV—Representations and Instructions.

The contracting officer shall prepare the representations and instructions as follows:

(a) *Section K, Representations, certifications, and other statements of offerors or quoters.* Include in this section those solicitation provisions that require representations, certifications, or the submission of other information by offerors or quoters.

(b) *Section L, Instructions, conditions, and notices to offerors or quoters.* Insert in this section solicitation provisions and other information and instructions not required elsewhere to guide offerors or quoters in preparing proposals or quotations. Any alteration pertaining to the solicitation shall be included in this section as part of the provision at 52.252-3, Alterations in Solicitation. Provisions that are incorporated by reference shall be included in this section. Prospective offerors or quoters may be instructed to submit technical proposals in severable parts to meet agency requirements. The severable parts should provide for separation of technical and cost or pricing data. The instructions may specify further organization of proposal or quotation parts, such as (1) administrative, (2) management, (3) technical, and (4) cost or pricing data.

(c) *Section M, Evaluation factors for award.* Identify any factors other than price that will be major considerations in awarding the contract (see 15.605(e)). When technical proposals or quotations are requested and award will be based on technical and other factors in addition to price or cost, the solicitation shall specify at least (1) the significant evaluation factors and (2) the relative importance the Government places on the evaluation factors.

15.407 Solicitation provisions.

(a) "Solicitations," as used in this section, means requests for proposals (RFP's) and requests for quotations (RFQ's) other than those excluded by 15.401 and those for information or planning purposes. See 15.405-2 for the solicitation provision used with solicitations for information or planning purposes.

(b) The contracting officer may, upon the approval of the chief of the contracting office (see 15.213(d)), insert the provision at 52.215-4, Notice of Possible Standardization, in solicitations for supplies that subsequently might be standardized for applications specified in 15.213(b)(1). See 14.201-6(n) regarding use of the provision in invitations for bids.

(c) The contracting officer shall insert in solicitations the provisions at—

(1) 52.215-5, Solicitation Definitions;

(2) 52.215-6, Type of Business Organization;

(3) 52.215-7, Unnecessarily Elaborate Proposals or Quotations;

(4) 52.215-8, Acknowledgment of Amendments to Solicitations;

(5) 52.215-9, Submission of Offers;

(6) 52.215-10, Late Submissions, Modifications, and Withdrawals of Proposals;

(7) 52.215-11, Authorized Negotiators; and

(8) 52.215-12, Restriction on Disclosure and Use of Data.

(d) The contracting officer shall insert in RFP's the provisions at—

(1) 52.215-13, Preparation of Offers;

(2) 52.215-14, Explanation to Prospective Offerors;

(3) 52.215-15, Failure to Submit Offer; and

(4) 52.215-16, Contract Award.

(e) The contracting officer shall insert the provision at 52.215-17, Telegraphic Proposals, in solicitations that authorize telegraphic proposals or quotations.

(f) The contracting officer shall insert the provision at 52.215-18, Order of Precedence, in solicitations to which the uniform contract format applies.

(g) The contracting officer shall insert the provision at 52.215-19, Period for Acceptance of Offer, in RFP's that are not issued on SF 33 except those (1) for construction work or (2) in which the Government specifies a minimum acceptance period.

(h) The contracting officer shall insert the provision at 52.215-20, Place of Performance, in solicitations except those in which the place of performance is specified by the Government.

15.408 Issuing solicitations.

(a) The contracting officer shall issue unclassified solicitations to potential sources in conformance with the policy in 15.105 and the policy and procedures in Part 5.

(b) Solicitations involving classified information shall be handled as prescribed by agency regulations.

(c) If the contracting office is located in the United States and the security classification permits, any solicitation or related correspondence sent to a foreign address shall be sent by international air mail. Similarly, if the security classification permits, contracting offices located outside the United States shall use international air mail in appropriate circumstances.

15.409 Pre-proposal conferences.

(a) A pre-proposal conference may be held to brief prospective offerors after a solicitation has been issued but before offers are submitted. Generally, the Government uses these conferences in complex negotiated acquisitions to explain or clarify complicated specifications and requirements.

(b) The contracting officer shall decide if a pre-proposal conference is required and make the necessary arrangements, including the following:

(1) If notice was not in the solicitation, give all prospective offerors who received the solicitation adequate notice of the time, place, nature, and scope of the conference.

(2) If time allows, request prospective offerors to submit written questions in advance. Prepared answers can then be delivered during the conference.

(3) Arrange for technical and legal personnel to attend the conference, if appropriate.

(c) The contracting officer or a designated representative shall conduct the pre-proposal conference, furnish all prospective offerors identical information concerning the proposed acquisition, make a complete record of the conference, and promptly furnish a copy of that record to all prospective offerors. Conferees shall be advised that—

(1) Remarks and explanations at the conference shall not qualify the terms of the solicitation; and

(2) Terms of the solicitation and specifications remain unchanged unless the solicitation is amended in writing.

15.410 Amendment of solicitations before closing date.

(a) After issuance of a solicitation, but before the date set for receipt of proposals, it may be necessary to (1) make changes to the solicitation, including, but not limited to, significant changes in quantity, specifications, or delivery schedules, (2) correct defects or ambiguities, or (3) change the closing date for receipt of proposals. Standard Form 30, Amendment of Solicitation/Modification of Contract (53.301-30), shall be used for amending a request for proposals (RFP).

(b) The contracting officer shall determine if the closing date needs to be changed when amending a solicitation. If the time available before closing is insufficient, prospective offerors or quoters shall be notified by telegram or telephone of an extension of the closing date, and the notification shall be confirmed in the written amendment to the solicitation. The contracting officer shall not award a contract unless any amendments made to an RFP have been issued in sufficient time to be considered by prospective offerors.

(c) Any information given to a prospective offeror or quoter shall be furnished promptly to all other prospective offerors or quoters as a solicitation amendment if (1) the information is necessary in submitting proposals or quotations or (2) the lack of such information would be prejudicial to a prospective offeror or quoter.

15.411 Receipt of proposals and quotations.

(a) The procedures for receipt and handling of proposals and quotations in negotiated acquisitions should be similar to the receipt and safeguarding of bids in formal advertising (see 14.401). Proposals and quotations shall be marked with the date and time of receipt.

(b) After receipt, proposals and quotations shall be safeguarded from unauthorized disclosure. Classified proposals and quotations shall be handled in accordance with agency regulations. Also see OMB Circular No. A-76, the supplemental Handbook, and Subpart 7.3, Contractor Versus Government Performance, for safeguarding cost-comparison information.

15.412 Late proposals and modifications.

(a) "Modification," as used in this section, means a modification of a proposal, including a final modification in response to the contracting officer's request for "best and final" offers. The term does not include normal revisions of offers made during the conduct of negotiations by offerors selected for discussion.

(b) Offerors are responsible for submitting offers, and any modifications to them, so as to reach the Government office designated in the solicitation on time. Unless the solicitation states a specific time, the time for receipt is 4:30 p.m., local time for the designated Government office on the date that proposals are due.

(c) Except as authorized for NASA in its regulations, proposals, and modifications to them, that are received in the designated Government office after the exact time specified are "late" and shall be considered only if (1) they are received before award is made, and (2) the circumstances, including acceptable evidence of date of mailing or receipt at the Government installation, meet the specific requirements of the provision at 52.215-10, Late Submissions, Modifications, and Withdrawals of Proposals.

(d) When a late proposal or modification is received and it is clear from available information that it cannot be considered for award, the contracting officer shall promptly notify the offeror that it was received late and will not be considered. The notice need not be given when the proposed contract is to be awarded within a few days and the notice prescribed in 15.1001(c)(1) would suffice.

(e) When a late proposal or modification is transmitted by registered or certified mail and is received before award, but it is not clear from available information whether it can be considered, the offeror shall be promptly notified substantially in accordance with the notice in 14.304-2, appropriately modified to relate to proposals.

(f) Late proposals and modifications that are not considered shall be held unopened, unless opened for identification, until after award and then retained with other unsuccessful proposals.

(g) The following shall, if available, be included in the contracting office files for each late proposal, quotation, or modification:

(1) The date of mailing, filing, or delivery.

(2) The date and hour of receipt.

(3) Whether or not considered for award.

(4) The envelope, wrapper, or other evidence of date of submission.

15.413 Disclosure and use of information before award.

15.413-1 Alternate I.

(a) After receipt of proposals, none of the information contained in them or concerning the number or identity of offerors shall be made available to the public or to anyone in the Government not having a legitimate interest.

(b) During the preaward or preacceptance period of a negotiated acquisition, only the contracting officer, the contracting officer's superiors having contractual authority, and others specifically authorized shall transmit technical or other information and conduct discussions with prospective contractors. Information shall not be furnished to a prospective contractor if, alone or together with other information, it may afford the prospective contractor an advantage over others (see 15.610, Written and oral discussion). However, general information that is not prejudicial to others may be furnished upon request.

(c) Prospective contractors and subcontractors may place restrictions on the disclosure and use of data in proposals and quotations (see 15.407(c)(8) and the provision at 52.215-12, Restriction on Disclosure and Use of Data). Contracting officers shall not exclude proposals from consideration merely because they restrict disclosure and use of data, nor shall they be prejudiced by that restriction. The portions of the proposal that are so restricted (except for information that is also obtained from another source without restriction) shall be used only for evaluation and shall not be disclosed outside the Government without permission of the prospective contractor (but see Subpart 24.2, Freedom of Information Act).

15.413-2 Alternate II.

Agency regulations may provide that the following alternate procedures may be used instead of those specified in 15.413-1.

(a) Proposals furnished to the Government are to be used for evaluation purposes only. Disclosure outside the Government for evaluation is permitted only to the extent authorized by, and in accordance with the procedures in, 15.413-2(f).

(b) While the Government's limited use of proposals does not require that the proposal bear a restrictive notice, proposers should, if they desire to maximize protection of their trade secrets or confidential or privileged commercial and financial information contained in them, apply the restrictive notice prescribed in the provision at 52.215-12, Restriction on Disclosure and Use of Data, to such information (also see 15.407(c)(8)). In any event, information contained in proposals will be protected to the extent permitted by law, but the Government assumes no liability for the use or disclosure of information (data) not made subject to such notice in accordance with the provision at 52.215-12.

(c) If proposals are received with more restrictive conditions than those in the provision at 52.215-12, the contracting officer or coordinating officer shall inquire whether the submitter is willing to accept the conditions of the provision of 52.215-12. If the submitter does not, the contracting officer or coordinating officer shall, after consultation with counsel, either return

the proposal or accept it as marked. Contracting officers shall not exclude from consideration any proposals merely because they contain an authorized or agreed-to notice, nor shall they be prejudiced by such notice.

(d) Release of proposal information (data) before decision as to the award of a contract, or the transfer of valuable and sensitive information between competing offerors during the competitive phase of the acquisition process, would seriously disrupt the Government's decision-making process and undermine the integrity of the competitive acquisition process, thus adversely affecting the Government's ability to solicit competitive proposals and award a contract which would best meet the Government's needs and serve the public interest. Therefore, to the extent permitted by law, none of the information (data) contained in proposals (except as authorized in agency regulations) is to be disclosed outside the Government before the Government's decision as to the award of a contract. In the event an outside evaluation is to be obtained, it shall be only to the extent authorized by, and in accordance with the procedures of, 15.413-2(f).

(e) In order to assure that solicited proposals (whether bearing a restrictive notice or not) are properly handled, agency implementing regulations may require the following Government notice to be placed on the cover sheet upon their receipt. (This notice is required for all unsolicited proposals, see 15.508.) This is a Government notice for internal handling purposes and does not affect any obligations or rights the Government may have with regard to the use or disclosure of any information (data) contained in the proposal or quotation.

GOVERNMENT NOTICE FOR HANDLING PROPOSALS

This proposal shall be used and disclosed for evaluation purposes only, and a copy of this Government notice shall be applied to any reproduction or abstract thereof. Any authorized restrictive notices which the submitter places on this proposal shall also be strictly complied with. Disclosure of this proposal outside the Government for evaluation purposes shall be made only to the extent authorized by, and in accordance with, the procedures in (cite agency regulations implementing 15.413-2(f)).

If agency implementing regulations do not authorize release of proposals outside the Government for evaluation purposes, the last sentence of the foregoing Government notice is to be deleted.

(f) If authorized in agency implementing regulations, agencies may release proposals outside the Government for evaluation, consistent with the following:

(1) Decisions to release proposals outside the Government for evaluation purposes shall be made by the agency head or designee;

(2) Written agreement must be obtained from the evaluator that the information (data) contained in the proposal will be used only for evaluation purposes and will not be further disclosed;

(3) Any authorized restrictive legends placed on the proposal by the prospective contractor or subcontractor or by the Government shall be applied to any reproduction or abstracted information made by the evaluator;

(4) Upon completing the evaluation, all copies of the proposal, as well as any abstracts thereof, shall be returned to the Government office which initially furnished them for evaluation; and

(5) All determinations to release the proposal outside the Government take into consideration requirements for avoiding organizational conflicts of interest and the competitive relationship, if any, between the prospective contractor or subcontractor and the prospective outside evaluator.

(g) The submitter of any proposal shall be provided notice adequate to afford an opportunity to take appropriate action before release of any information (data) contained therein pursuant to a request under the Freedom of Information Act (5 U.S.C. 552); and, time permitting, the submitter should be consulted to obtain assistance in determining the eligibility of the information (data) in question as an exemption under the Act. (See also Subpart 24.2, Freedom of Information Act.)

15.414 Forms.

(a) Standard Form 33 (SF 33), Solicitation, Offer and Award (see 53.301-33), shall be used in connection with negotiated acquisitions when it appears advantageous to begin negotiations by soliciting written offers whose written acceptance by the Government will create a binding contract without further action. Award may be made using the Award portion of SF 33.

(b) Standard Form 26 (SF 26), Award/Contract (see 53.301-26), shall be used when entering into negotiated contracts when the signature of both parties on a single document is appropriate, unless—

(1) The contract is entered into by means of Standard Form 33;

(2) The contract is for the construction, alteration, or repair of buildings, bridges, roads, or other real property;

(3) The acquisition is one for which the FAR prescribes special contract forms; or

(4) Use of a purchase order is appropriate.

SUBPART 15.5—UNSOLICITED PROPOSALS

15.500 Scope of subpart.

This subpart prescribes policies and procedures for submission, receipt, evaluation, and acceptance of unsolicited proposals.

15.501 Definitions.

"Advertising material," as used in this subpart, means material designed to acquaint the Government with a prospective contractor's present products or potential capabilities, or to determine the Government's interest in buying these products.

"Commercial product offer" means an offer of a commercial product that is usually sold to the general public and that the vendor wishes to see introduced in the Government's supply system as an alternate or replacement for an existing supply item.

"Contribution," as used in this subpart, means a concept, suggestion, or idea presented to the Government for its use with no indication that the source intends to devote any further effort to it on the Government's behalf.

"Coordinating office," as used in this subpart, means a point of contact established within the agency to coordinate the receipt, evaluation, and disposition of unsolicited proposals.

"Technical correspondence," as used in this subpart, means written requests for information regarding Government interest in research areas, submissions of research descriptions, preproposal explorations, and other written technical inquiries.

"Unsolicited proposal" means a written offer to perform a task or effort submitted to the Government by an offeror without solicitation by the Government, with the objective of obtaining a contract.

15.502 Policy.

Agencies shall encourage the submission of unsolicited proposals and avoid organizational or regulatory constraints that may inhibit generation and acceptance of innovative or unique ideas from prospective contractors.

15.503 General.

(a) Unsolicited proposals are a valuable means for Government agencies to obtain innovative or unique methods or approaches to accomplishing their missions from sources outside the Government.

(b) Advertising material, commercial product offers, contributions, or technical correspondence as defined in 15.501 are not unsolicited proposals.

(c) A valid unsolicited proposal must—

(1) Be innovative or unique;

(2) Be independently originated and developed by the offeror;

(3) Be prepared without Government supervision;

(4) Include sufficient detail to permit a determination that Government support could be worthwhile and the proposed work could benefit the agency's research and development or other mission responsibilities; and

(5) Not be an advance proposal for a specific documented agency requirement that can be acquired by competitive methods.

(d) Unsolicited proposals in response to broad agency announcements are considered to be independently originated.

(e) Agencies that receive unique or innovative unsolicited proposals not related to their missions may identify for the offeror other agencies whose missions bear a reasonable relationship to the proposal's subject matter.

15.504 Advance guidance.

(a) Agencies shall encourage potential offerors to make preliminary contacts with appropriate agency personnel before expending extensive effort on a detailed unsolicited proposal or submitting proprietary data to the Government. These preliminary contacts should include—

(1) Inquiries as to the general need for the type of effort contemplated; and

(2) Contacts with agency technical personnel for the limited purpose of obtaining an understanding of the agency mission and responsibilities relative to the type of effort contemplated.

(b) Agencies shall make available to potential offerors of unsolicited proposals at least the following free written information:

(1) Definition (see 15.501), and content (see 15.505), of an unsolicited proposal acceptable for formal evaluation.

(2) Requirements concerning responsible prospective contractors (see Subpart 9.1), and organizational conflicts of interest (see Subpart 9.5).

(3) Role of technical correspondence before proposal preparation.

(4) Agency contact points for information regarding advertising, contributions, solicitation mailing lists, and other types of transactions frequently mistaken for unsolicited proposals.

(5) Procedures for submission and evaluation of unsolicited proposals.

(6) Information sources on agency objectives and areas of potential interest.

(7) Instructions for identifying and marking proprietary information so that restrictive legends conform to 15.509.

(c) Agency personnel shall conduct personal contacts without making any agency commitments concerning the acceptance of unsolicited proposals.

15.505 Content of unsolicited proposals.

Unsolicited proposals should contain the following information to permit consideration in an objective and timely manner:

(a) Basic information including—

(1) Offeror's name and address and type of organization; e.g., profit, nonprofit, educational, small business;

(2) Names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;

(3) Identity of proprietary data to be used only for evaluation purposes;

(4) Names of other Federal, State, local agencies, or parties receiving the proposal or funding the proposed effort;

(5) Date of submission; and

(6) Signature of a person authorized to represent and contractually obligate the offeror.

(b) Technical information including—

(1) Concise title and abstract (approximately 200 words) of the proposed effort;

(2) A reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the nature and extent of the anticipated results, and the manner in which the work will help to support accomplishment of the agency's mission;

(3) Names and biographical information on the offeror's key personnel who would be involved, including alternates; and

(4) Type of support needed from the agency; e.g., facilities, equipment, materials, or personnel resources.

(c) Supporting information including—

(1) Proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;

(2) Period of time for which the proposal is valid (a six month minimum is suggested);

(3) Type of contract preferred;

(4) Proposed duration of effort;

(5) Brief description of the organization, previous experience in the field, and facilities to be used; and

(6) Required statements, if applicable, about organizational conflicts of interest, security clearances, and environmental impacts.

15.506 Agency procedures.

(a) Agencies shall establish procedures, including assurance of accountability, for controlling the receipt, evaluation, and timely disposition of proposals consistent with the requirements of this subpart. The procedures shall include controls on the reproduction and disposition of proposal material, particularly data identified by the offeror as subject to duplication, use, or disclosure restrictions.

(b) Agencies shall establish contact points (see 15.501) to coordinate the receipt and handling of unsolicited proposals. Contact points outside agency contracting offices shall coordinate with qualified contracting personnel.

15.506-1 Receipt and initial review.

(a) Before initiating a comprehensive evaluation, the agency contact point shall determine if the unsolicited proposal—

(1) Contains sufficient technical and cost information;

(2) Has been approved by a responsible official or other representative authorized to contractually obligate the offeror; and

(3) Complies with the marking requirements of 15.509.

(b) If the proposal meets these requirements, the contact point shall promptly acknowledge and process the proposal. If it does not, the contact point shall provide the offeror an opportunity to submit the required data.

(c) Agencies are not required to perform comprehensive evaluations of unsolicited proposals not related to their missions. If such proposals are received, the agency contact point shall promptly reply to the offeror, state how the agency interprets the proposal, and why it is not being evaluated.

15.506-2 Evaluation.

(a) Comprehensive evaluations shall be coordinated by the agency contact point, who shall attach or imprint on each unsolicited proposal circulated for evaluation the legend required by 15.509(d). When performing a comprehensive evaluation of an unsolicited proposal, evaluators shall consider the following factors, in addition to any others appropriate for the particular proposal:

(1) Unique or innovative methods, approaches or ideas originated or assembled by the offeror.

(2) Overall scientific, technical or socio-economic merits of the proposal.

(3) Potential contribution of the effort to the agency's specific mission.

(4) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(5) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.

(b) The evaluators shall notify the coordinating office of their conclusions and recommendations when the evaluation is completed.

15.507 Contracting methods.

(a) A favorable comprehensive evaluation of an unsolicited proposal does not, in itself, necessarily justify negotiating on a noncompetitive basis. Agency contact points shall return an unsolicited proposal to the offeror, citing reasons, when its substance—

(1) Is available to the Government without restriction from another source;

(2) Closely resembles a pending competitive solicitation; or

(3) Is otherwise not sufficiently innovative or unique to justify acceptance.

(b) The contracting officer may award a negotiated noncompetitive contract when—

(1) An unsolicited proposal has received a favorable comprehensive evaluation;

(2) It is not of the character described in 15.507(a); and

(3) The agency technical office sponsoring the contract supports its recommendation with facts and circumstances that preclude competition, including consideration of the evaluation factors in 15.506-2(a), and furnishes the necessary funds.

(c) If the unsolicited proposal is acceptable for award without competition, the agency and offeror shall use the proposal as the basis for negotiation.

15.508 Prohibitions.

(a) Government personnel shall not use any data, concept, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a solicitation or in negotiations with any other firm unless the offeror is notified of and agrees to the intended use. However, this prohibition does not preclude using any data, concept, or idea available to the Government from other sources without restriction.

(b) Government personnel shall not disclose restrictively marked information (see 15.509) included in an unsolicited proposal. The disclosure of such information concerning trade secrets, processes, operations, style of work, apparatus, and other matters, except as authorized by law, may result in criminal penalties under 18 U.S.C. 1905.

15.509 Limited use of data.

(a) An unsolicited proposal may include data that the offeror does not want disclosed for any purpose other than evaluation. If the offeror wishes to restrict the proposal, the title page must be marked with the following legend:

USE AND DISCLOSURE OF DATA

The data in this proposal shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate the proposal; *provided*, that if a contract is awarded to this offeror as a result of or in connection with the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the contract. This restriction does not limit the Government's right to use information contained in the data if it is obtainable from another source without restriction. The data subject to this restriction are contained in Sheets _____.

(b) The offeror shall also mark each restricted sheet with the following legend:

Use or disclosure of proposal data is subject to the restriction on the title page of this Proposal.

(c) The coordinating office shall return to the offeror any unsolicited proposal marked with a legend different from that provided in 15.509(a). The return letter will state that the proposal cannot be considered because it is impracticable for the Government to comply with the legend and that the agency will consider the proposal if it is resubmitted with the proper legend.

(d) The coordinating office shall place a cover sheet on the proposal or clearly mark it as follows, unless the offeror clearly states in writing that no restrictions are imposed on the disclosure or use of the data contained in the proposal:

UNSOLICITED PROPOSAL
USE OF DATA LIMITED

All Government personnel must exercise EXTREME CARE to ensure that the information in this proposal is not disclosed outside the Government and is NOT DUPLICATED, USED, OR DISCLOSED in whole or in part for any purpose other than evaluation of the proposal, without the written permission of the offeror. If a contract is awarded on the basis of this proposal, the terms of the contract shall control disclosure and use.

This notice does not limit the Government's right to use information contained in the proposal if it is obtainable from another source without restriction.

This is a Government notice, and shall not by itself be construed to impose any liability upon the Government or Government personnel for disclosure or use of data contained in this proposal.

(e) The above notice is used solely as a manner of handling unsolicited proposals that will be compatible with this subpart. However, the use of this notice shall not be used to justify the withholding of a record nor to improperly deny the public access to a record where an obligation is imposed on an agency by the Freedom of Information Act, 5 U.S.C. 552, as amended. A prospective offeror should identify trade secrets, commercial or financial information, and privileged or confidential information to the Government (see 15.509(a)).

(f) When an agency receives an unsolicited proposal without any restrictive legend from an educational or nonprofit organization or institution, and an evaluation outside the Government is necessary, the coordinating office shall—

(1) Attach a cover sheet clearly marked with the legend in 15.509(d);

(2) Change the beginning of this legend to read "*All Government and non-Government personnel....*";

(3) Delete the words "*is not disclosed outside the Government and*"; and

(4) Require any non-Government evaluator to give a written agreement stating that data in the proposal will not be disclosed to others outside the Government.

(g) If the proposal is received with the restrictive legend (15.509(a)), the modified cover sheet shall also be used and permission shall be obtained from the offeror before release of the proposal for outside evaluation.

(h) When an agency receives an unsolicited proposal with or without a restrictive legend from other than an educational or nonprofit organization or institution, and evaluation by Government personnel outside the agency or by experts outside of the Government is necessary, written permission must be obtained from the offeror before release of the proposal for evaluation. The coordinating office shall (1) clearly mark the cover sheet with the legend in 15.509(d) or as modified in 15.509(f) and (2) obtain a written agreement from any non-Government evaluator stating that data in the

proposal will not be disclosed to persons outside the Government.

SUBPART 15.6—SOURCE SELECTION

15.600 Scope of subpart.

This subpart prescribes policies and procedures for selection of a source or sources in competitive negotiated acquisitions. Formal source selection procedures, involving boards, councils, or other groups for proposal evaluation, are in 15.612. Alternative procedures that limit discussions with offerors during the competition are discussed in 15.613.

15.601 Definitions.

"Clarification," as used in this subpart, means communication with an offeror for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal. It is achieved by explanation or substantiation, either in response to Government inquiry or as initiated by the offeror. Unlike discussion (see definition below), clarification does not give the offeror an opportunity to revise or modify its proposal, except to the extent that correction of apparent clerical mistakes results in a revision.

"Deficiency," as used in this subpart, means any part of a proposal that fails to satisfy the Government's requirements.

"Discussion," as used in this subpart, means any oral or written communication between the Government and an offeror, whether or not initiated by the Government, that (a) involves information essential for determining the acceptability of a proposal, or (b) provides the offeror an opportunity to revise or modify its proposal.

"Source selection authority" means the Government official in charge of selecting the source. This title is most often used when the selection process is formal and the official is someone other than the contracting officer.

15.602 Applicability.

(a) This subpart applies to negotiated contracting when source selection is based on—

(1) Cost or price competition between proposals that meet the Government's minimum requirements stated in the solicitation; or

(2) Competition involving an evaluation and comparison of cost or price and other factors.

(b) This subpart does not apply to sole-source awards or to small purchases under Part 13.

15.603 Purpose.

Source selection procedures are designed to—

(a) Maximize competition;

(b) Minimize the complexity of the solicitation, evaluation, and the selection decision;

(c) Ensure impartial and comprehensive evaluation of offerors' proposals; and

(d) Ensure selection of the source whose proposal has the highest degree of realism and whose performance is expected to best meet stated Government requirements.

15.604 Responsibilities.

(a) Agency heads or their designees are responsible for source selection.

(b) The cognizant technical official is responsible for the technical requirements related to the source selection process.

(c) The contracting officer is responsible for contractual actions related to the source selection process, including—

(1) Issuing solicitations to which this subpart applies in accordance with Subpart 15.4 and this subpart;

(2) Conducting or coordinating cost or price analyses as prescribed in Subpart 15.8;

(3) Conducting or controlling all negotiations concerning cost or price, technical requirements, and other terms and conditions; and

(4) Selecting the source for contract award, unless another official is designated as the source selection authority.

15.605 Evaluation factors.

(a) The factors that will be considered in evaluating proposals should be tailored to each acquisition and include only those factors that will have an impact on the source selection decision.

(b) The evaluation factors that apply to an acquisition and the relative importance of those factors are within the broad discretion of agency acquisition officials. However, price or cost to the Government shall be included as an evaluation factor in every source selection. Other evaluation factors that may apply to a particular acquisition are cost realism, technical excellence, management capability, personnel qualifications, experience, past performance, schedule, and any other relevant factors.

(c) While the lowest price or lowest total cost to the Government is properly the deciding factor in many source selections, in certain acquisitions the Government may select the source whose proposal offers the greatest value to the Government in terms of performance and other factors. This may be the case, for example, in the acquisition of research and development or professional services, or when cost-reimbursement contracting is anticipated.

(d) In awarding a cost-reimbursement contract, the cost proposal should not be controlling, since advance estimates of cost may not be valid indicators of final actual costs. There is no requirement that cost-reimbursement contracts be awarded on the basis of lowest proposed cost, lowest proposed fee, or the lowest total proposed cost plus fee. The award of cost-reimbursement contracts primarily on the basis of estimated costs may encourage the submission of unrealistically low estimates and increase the likelihood of cost overruns. The primary consideration should be which offeror can perform the contract in a manner most advantageous to the Government, as determined by evaluation of proposals according to the established evaluation criteria.

(e) The solicitation shall clearly state the evaluation factors that will be considered in making the source selection and their relative importance (see 15.406-5(c)). Numerical weights, which may be employed in the evaluation of proposals, need not be disclosed in solicitations. The solicitation shall inform offerors of minimum requirements that apply to particular evaluation factors.

15.606 Changes in Government requirements.

(a) When, either before or after receipt of proposals, the Government changes, relaxes, increases, or otherwise modifies its requirements, the contracting officer shall issue a written amendment to the solicitation. When time is of the essence, oral advice of changes may be given if the changes involved are not complex and all firms to be notified (see paragraph (b) below) are notified as near to the same time as possible. The contracting officer shall make a record of the oral advice and promptly confirm that advice in writing (see 15.410).

(b) In deciding which firms to notify of a change, the contracting officer shall consider the stage in the acquisition cycle at which the change occurs and the magnitude of the change, as follows:

(1) If proposals are not yet due, the amendment shall be sent to all firms that have received a solicitation.

(2) If the time for receipt of proposals has passed but proposals have not yet been evaluated, the amendment should

normally be sent only to the responding offerors.

(3) If the competitive range (see 15.609(a)) has been established, only those offerors within the competitive range shall be sent the amendment.

(4) If a change is so substantial that it warrants complete revision of a solicitation, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition. The new solicitation shall be issued to all firms originally solicited and to any firms added to the original list.

(c) If the proposal considered to be most advantageous to the Government (as determined according to the established evaluation criteria) involves a departure from the stated requirements, the contracting officer shall provide all offerors an opportunity to submit new or amended proposals on the basis of the revised requirements; *provided*, that this can be done without revealing to the other offerors the solution proposed in the original departure or any other information that is entitled to protection (see 15.407(b)(8) and 15.610(d)).

15.607 Disclosure of mistakes before award.

(a) Contracting officers shall examine all proposals for minor informalities or irregularities and apparent clerical mistakes (see 14.405 and 14.406). Communication with offerors to resolve these matters is clarification, not discussion within the meaning of 15.610. However, if the resulting communication prejudices the interest of other offerors, the contracting officer shall not make award without discussions with all offerors within the competitive range.

(b) Except as indicated in paragraph (c) below, mistakes not covered in paragraph (a) above are usually resolved during discussion (see 15.610).

(c) When award without discussion is contemplated, the contracting officer shall comply with the following procedure:

(1) If a mistake in a proposal is suspected, the contracting officer shall advise the offeror (pointing out the suspected mistake or otherwise identifying the area of the proposal where the suspected mistake is) and request verification. If the offeror verifies its proposal, award may be made.

(2) If an offeror alleges a mistake in its proposal, the contracting officer shall advise the offeror that it may withdraw the proposal or seek correction in accordance with subparagraph (3) below.

(3) If an offeror requests permission to correct a mistake in its proposal, the agency head (or a designee not below the level of chief of the contracting office) may make a written determination permitting the correction; *provided*, that (i) both the existence of the mistake and the proposal actually intended are established by clear and convincing evidence from the solicitation and the proposal and (ii) legal review is obtained before making the determination.

(4) If the determination under subparagraph (3) above cannot be made, and the contracting officer still contemplates award without discussion, the offeror shall be given a final opportunity to withdraw or to verify its proposal.

(5) Verification, withdrawal, or correction under subparagraphs (1) through (4) above is not considered discussion within the meaning of 15.610. If, however, correction of a mistake requires reference to documents, worksheets, or other data outside the solicitation and proposal in order to establish the existence of the mistake, the proposal intended, or both, the mistake may be corrected only through discussions under 15.610.

15.608 Proposal evaluation.

Proposal evaluation is an assessment of both the proposal and the offeror's ability (as conveyed by the proposal) to successfully accomplish the prospective contract.

(a) *Cost or price evaluation.* The contracting officer shall use cost or price analysis (see Subpart 15.8) to evaluate the cost estimate or price, not only to determine whether it is reasonable, but also to determine the offeror's understanding of the work and ability to perform the contract. The contracting officer shall document the cost or price evaluation.

(b) *Technical evaluation.* If any technical evaluation is necessary beyond ensuring that the proposal meets the minimum requirements in the solicitation, the cognizant technical official, in documenting the technical evaluation, shall include—

(1) The basis for evaluation;

(2) An analysis of the technically acceptable and unacceptable proposals, including an assessment of each offeror's ability to accomplish the technical requirements;

(3) A summary, matrix, or quantitative ranking of each technical proposal in relation to the best rating possible; and

(4) A summary of findings.

15.609 Competitive range.

(a) The contracting officer shall determine which proposals are in the competitive range for the purpose of conducting written or oral discussion (see 15.610(b)). The competitive range is determined on the basis of cost or price and other factors that were stated in the solicitation and shall include all proposals that have a reasonable chance of being selected for award. When there is doubt as to whether a proposal is in the competitive range, the proposal should be included.

(b) If the contracting officer, after complying with 15.610(b), determines that a proposal no longer has a reasonable chance of being selected for contract award, it may no longer be considered for selection.

(c) The contracting officer shall notify in writing an unsuccessful offeror at the earliest practicable time that its proposal is no longer eligible for award (see 15.1001(b)(1)).

(d) If the contracting officer initially solicits unpriced technical proposals, they shall be evaluated to determine which are acceptable to the Government or could, after discussion, be made acceptable. After necessary discussion of these technical proposals is completed, the contracting officer shall (1) solicit price proposals for all the acceptable technical proposals which offer the greatest value to the Government in terms of performance and other factors and (2) make award to the low responsible offeror, either without or following discussion, as appropriate. Except in acquisition of architect-engineer services (see Subpart 36.6), a competitive range determination must include cost or price proposals.

15.610 Written or oral discussion.

(a) The requirement in paragraph (b) below for written or oral discussion need not be applied in acquisitions—

(1) Of $25,000 or less;

(2) In which prices are fixed by law or regulation;

(3) In which date of delivery or performance will not permit discussion;

(4) Of the set-aside portion of a partial set-aside;

(5) Involving small business restricted advertising; or

(6) In which adequate competition or accurate prior cost experience with the product or service clearly demonstrates that acceptance of the most favorable initial proposal without discussion would result in a fair and reasonable price; *provided*, that—

(i) The solicitation notified all offerors of the possibility that award might be made without discussion; and

(ii) The award is in fact made without any written or oral discussion with any offeror.

(b) Except as provided in paragraph (a) above, the contracting officer shall conduct written or oral discussion with all responsible offerors who submit proposals within the competitive range. The content and extent of the discussions is a matter of the contracting officer's judgment, based on the particular facts of each acquisition (but see paragraphs (c) and (d) below).

(c) The contracting officer shall—

(1) Control all discussions;

(2) Advise the offeror of deficiencies in its proposal so that the offeror is given an opportunity to satisfy the Government's requirements;

(3) Attempt to resolve any uncertainties concerning the technical proposal and other terms and conditions of the proposal;

(4) Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offerors' proposals or the evaluation process (see 15.607 and Part 24); and

(5) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal that may result from the discussions.

(d) The contracting officer and other Government personnel involved shall not engage in—

(1) Technical leveling (i.e., helping an offeror to bring its proposal up to the level of other proposals through successive rounds of discussion, such as by pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposal);

(2) Technical transfusion (i.e., Government disclosure of technical information pertaining to a proposal that results in improvement of a competing proposal); or

(3) Auction techniques, such as—

(i) Indicating to an offeror a cost or price that it must meet to obtain further consideration;

(ii) Advising an offeror of its price standing relative to another offeror (however, it is permissible to inform an offeror that its cost or price is considered by the Government to be too high or unrealistic); and

(iii) Otherwise furnishing information about other offerors' prices.

15.611 Best and final offers.

(a) Upon completion of discussions, the contracting officer shall issue to all offerors still within the competitive range a request for best and final offers.

(b) The request shall include—

(1) Notice that discussions are concluded;

(2) Notice that this is the opportunity to submit a best and final offer;

(3) A common cutoff date and time that allows a reasonable opportunity for submission of written best and final offers; and

(4) Notice that if any modification is submitted, it must be received by the date and time specified and is subject to the Late Submissions, Modifications, and Withdrawals of Proposals or Quotations provision of the solicitation (see 15.412).

(c) After receipt of best and final offers, the contracting officer should not reopen discussions unless it is clearly in the Government's interest to do so (e.g., it is clear that information available at that time is inadequate to reasonably justify contractor selection and award based on the best and final offers received). If discussions are reopened, the contracting officer shall issue an additional request for best and final offers to all offerors still within the competitive range.

(d) Following evaluation of the best and final offers, the contracting officer (or other designated source selection authority) shall select that source whose best and final offer is most advantageous to the Government, consistent with the established evaluation factors.

15.612 Formal source selection.

(a) *General.* A source selection process is considered "formal" when a specific evaluation group structure is established to evaluate proposals and select the source for contract award. This approach is generally used in high-dollar-value acquisitions and may be used in other acquisitions as prescribed in agency regulations. The source selection organization typically consists of an evaluation board, advisory council, and designated source selection authority at a management level above that of the contracting officer.

(b) *Responsibilities.* When using formal source selection, the agency head or a designee shall ensure that—

(1) The official to be responsible for the source selection is formally designated as the source selection authority;

(2) The source selection authority formally establishes an evaluation group structure appropriate to the requirements of the particular solicitation; and

(3) Before conducting any presolicitation conferences (see 15.404) or issuing the solicitation, the source selection authority approves a source selection plan.

(c) *Source Selection Plan.* As a minimum, the plan shall include—

(1) A description of the organization structure;

(2) Proposed presolicitation activities;

(3) A summary of the acquisition strategy;

(4) A statement of the proposed evaluation factors and their relative importance;

(5) A description of the evaluation process, methodology, and techniques to be used; and

(6) A schedule of significant milestones.

(d) *Source Selection Decision.* The source selection authority shall use the factors established in the solicitation (see 15.605) to make the source selection decision.

(1) The source selection authority shall consider any rankings and ratings, and, if requested, any recommendations prepared by evaluation and advisory groups.

(2) The supporting documentation prepared for the selection decision shall show the relative differences among proposals and their strengths, weaknesses, and risks in terms of the evaluation factors. The supporting documentation shall include the basis and reasons for the recommendation.

(e) *Safeguarding information.* Consistent with Part 24, agencies shall exercise particular care to protect source selection information on a strict need-to-know basis.

(1) During the selection process, approval by the source selection authority shall be obtained before any release of source selection data. After the source selection, releasing authority shall be as prescribed in agency procedures. In all cases, agency procedures should prescribe the releasing authority.

(2) Government personnel shall not contact or visit a contractor regarding a proposal under source selection evaluation, without the prior approval of the source selection authority.

(f) *Postaward notices and debriefings.* See 15.1001(c) and 15.1002.

15.613 Alternative source selection procedures.

(a) The National Aeronautics and Space Administration (NASA) and the Department of Defense (DOD) have developed, and use in appropriate situations, source selection procedures that limit discussions with offerors during the competition, and that differ from other procedures prescribed in Subpart 15.6. The procedures are the NASA Source Evaluation Board procedures and the DOD "Four-Step"

Source Selection Procedures. Detailed coverage of these procedures is in the respective agency acquisition regulations.

(b) Other agencies may use either the NASA or DOD procedure as a model in developing their own procedures, including applicability criteria, consistent with mission needs.

SUBPART 15.7—MAKE-OR-BUY PROGRAMS

15.700 Scope of subpart.

This subpart prescribes policies and procedures for obtaining, evaluating, negotiating, and agreeing to prime contractors' proposed make-or-buy programs and for incorporating make-or-buy programs into contracts. Consent to subcontracts and review of contractors' purchasing systems are separate actions covered in Part 44, Subcontracting Policies and Procedures.

15.701 Definitions.

"Buy item" means an item or work effort to be produced or performed by a subcontractor.

"Make item" means an item or work effort to be produced or performed by the prime contractor or its affiliates, subsidiaries, or divisions.

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

15.702 General.

The prime contractor is responsible for managing contract performance, including planning, placing, and administering subcontracts as necessary to ensure the lowest overall cost and technical risk to the Government. Although the Government does not expect to participate in every management decision, it may reserve the right to review and agree on the contractor's make-or-buy program when necessary to ensure (a) negotiation of reasonable contract prices, (b) satisfactory performance, or (c) implementation of socioeconomic policies.

15.703 Acquisitions requiring make-or-buy programs.

(a) Contracting officers shall require prospective contractors to submit make-or-buy programs for all negotiated acquisitions whose estimated value is $2 million or more, except when the proposed contract—

(1) Is for research or development and—if prototypes or hardware are involved—no significant follow-on production under the same contract is anticipated;

(2) Is priced on the basis of (i) adequate price competition or (ii) established catalog or market prices of commercial items sold in substantial quantities to the general public, or has only prices set by law or regulation (see 15.804-3); or

(3) Involves only work that the contracting officer determines is not complex.

(b) Contracting officers may require prospective contractors to submit make-or-buy programs for negotiated acquisitions whose estimated value is under $2 million only if the contracting officer (1) determines that the information is necessary and (2) documents the reasons in the contract file.

15.704 Items and work included.

The information required from a prospective contractor in a make-or-buy program shall be confined to those major items or work efforts that would normally require company management review of the make-or-buy decision because they are complex, costly, needed in large quantities, or require additional facilities to produce. Raw materials, commercial products (see 11.001), and off-the-shelf items (see 46.101) shall not be included, unless their potential impact on contract cost or schedule is critical. As a rule, make-or-buy programs should not include items or work efforts estimated to cost less than (a) 1 percent of the total estimated contract price or (b) a dollar amount set by the agency, whichever is greater.

15.705 Solicitation requirements.

When prospective contractors are required to submit proposed make-or-buy programs (see 15.703), the solicitation shall include—

(a) A statement that the program and required supporting information must accompany the offer;

(b) A description of factors to be used in evaluating the proposed program, such as capability, capacity, availability of small business and labor surplus area concerns for subcontracting, establishment of new facilities in or near labor surplus areas, delivery or performance schedules, control of technical and schedule interfaces, proprietary processes, technical superiority or exclusiveness, and technical risks involved; and

(c) A requirement that the offeror's program include or be supported by the following information:

(1) A description of each major item or work effort (see 15.704).

(2) Categorization of each major item or work effort as "must make," "must buy," or "can either make or buy."

(3) For each item or work effort categorized as "can either make or buy," a proposal either to "make" or to "buy."

(4) Reasons for (i) categorizing items and work efforts as "must make" or "must buy" and (ii) proposing to "make" or to "buy" those categorized as "can either make or buy." The reasons must include the consideration given to the evaluation factors described in the solicitation and be in sufficient detail to permit the contracting officer to evaluate the categorization or proposal.

(5) Designation of the plant or division proposed to make each item or perform each work effort and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(6) Identification of proposed subcontractors, if known, and their location and size status (see also Subpart 19.7 for subcontracting plan requirements).

(7) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(8) Any other information the contracting officer requires in order to evaluate the program.

15.706 Evaluation, negotiation, and agreement.

(a) Contracting officers shall evaluate and negotiate proposed make-or-buy programs as soon as practicable after their receipt and before contract award. When the program is to be incorporated in the contract (see 15.707) and the design status of the product being acquired does not permit accurate precontract identification of major items or work efforts, the contracting officer shall notify the prospective contractor in writing that these items or efforts, when identifiable, shall be added under the clause at 52.215-21, Changes or Additions to Make-or-Buy Program.

(b) In preparing to evaluate and negotiate prospective contractors' make-or-buy programs, the contracting officer shall request the recommendations of appropriate personnel, including technical and program management personnel, and the activity small and disadvantaged business utilization specialist. The proposed program shall also be made available to the Small Business Administration representative, if any, for review and recommendation. The contracting officer shall request these recommendations early enough to consider them fully before (1) agreeing to a make-or-buy program or (2)

consenting to a change in a make-or-buy program already incorporated in a contract.

(c) The contractor has the basic responsibility for make-or-buy decisions. Therefore, its recommendations should be accepted unless they are inconsistent with Government interests or policy.

(d) Contracting officers shall give primary consideration to the effect of the proposed make-or-buy program on price, quality, delivery, and performance, including technical or financial risk involved. The evaluation of "must make" and "must buy" items should normally be confined to ensuring that they are properly categorized. The effect of the following factors on the Government's interests shall also be considered:

(1) Whether the contractor has justified performing work in plant that differs significantly from its normal operations.

(2) Whether the contractor's recommended program requires Government investment in new or other facilities in order for the contractor to perform the work in plant. (This additional cost to the Government would not be reflected in the contract price.)

(3) The impact of the contractor's projected plant work loading on indirect costs.

(4) The contractor's consideration of the competence, ability, experience, and capacity available in other firms, especially small business, small disadvantaged business, or labor surplus area concerns.

(5) The projected location of any required additional facilities in or near labor surplus areas.

(6) The contractor's make-or-buy history regarding the type of item concerned.

(7) The scope of proposed subcontracts, including the type and level of technical effort involved.

(8) Other factors such as future requirements, engineering, tooling, starting load costs, market conditions, technical superiority, and the availability of personnel and materials.

(e) Contracting officers shall not normally agree to proposed "make items" when the products or services are (1) not regularly manufactured or provided by the contractor and are available—quality, quantity, delivery, and other essential factors considered— from another firm at equal or lower prices or when they are (2) regularly manufactured or provided by the contractor, but available—quality, quantity, delivery, and other essential factors considered— from another firm at lower prices. However, the contracting officer may agree to these as "make items" if their categorization as "buy items" would increase the Government's overall cost for the contract or acquisition program.

15.707 Incorporating make-or-buy programs in contracts.

(a) After agreement is reached, the contracting officer may incorporate the make-or-buy program in negotiated contracts for—

(1) Major systems (see Part 34) or their subsystems or components, regardless of contract type; or

(2) Other supplies and services if (i) the contract is a cost-reimbursable contract, or a cost-sharing contract in which the contractor's share of the cost is less than 25 percent, and (ii) the contracting officer determines that technical or cost risks justify Government review and approval of changes or additions to the make-or-buy program.

(b) It may be necessary to incorporate some items of significant value in the make-or-buy program as "make" or, alternatively, as "buy" even though the opposite categorization would result in greater economy for the Government. If this situation occurs in any fixed-price incentive or cost-plus-incentive-fee contract, the contracting officer shall specify these items in the contract and state that they are subject to paragraph (d) of the clause at 52.215-21, Changes or Additions to Make-or-Buy Program (see 15.708 below). If the contractor proposes to reverse the categorization of such items during contract performance, the contract price shall be subject to equitable reduction.

15.708 Contract clause.

The contracting officer shall insert the clause at 52.215-21, Changes or Additions to Make-or-Buy Program, in solicitations and contracts when it is contemplated that a make-or-buy program will be incorporated in the contract. If a less economical "make" or "buy" categorization is selected for one or more items of significant value, the contracting officer shall use the clause with (a) its Alternate I, if a fixed-price incentive contract is contemplated, or (b) its Alternate II, if a cost-plus-incentive-fee contract is contemplated.

SUBPART 15.8—PRICE NEGOTIATION

15.800 Scope of subpart.

This subpart prescribes the cost and price negotiation policies and procedures applicable to initial and revised pricing of (a) negotiated prime contracts (including subcontract pricing under them when required) and (b) contract modifications (including modifications to contracts awarded by formal advertising).

15.801 Definitions.

"Cost analysis" means the review and evaluation of the separate cost elements and proposed profit of (a) an offeror's or contractor's cost or pricing data and (b) the judgmental factors applied in projecting from the data to the estimated costs, in order to form an opinion on the degree to which the proposed costs represent what the contract should cost, assuming reasonable economy and efficiency.

"Cost or pricing data" means all facts as of the time of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as (a) vendor quotations; (b) nonrecurring costs; (c) information on changes in production methods and in production or purchasing volume; (d) data supporting projections of business prospects and objectives and related operations costs; (e) unit-cost trends such as those associated with labor efficiency; (f) make-or-buy decisions; (g) estimated resources to attain business goals; and (h) information on management decisions that could have a significant bearing on costs.

"Field pricing support" means a review and evaluation of the contractor's or subcontractor's proposal by any or all field pricing support personnel (see 15.805-5(a)(2)).

"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. Such 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 labor, indirect costs, material obsolescence and usage, spare parts provisioning, and material handling.

"Price," as used in this subpart, means cost plus any fee or profit applicable to the contract type.

"Price analysis" means the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

"Technical analysis," as used in this subpart, means the examination and evaluation by personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management of proposed quantities and kinds of materials, labor, processes, special tooling, facilities, and associated factors set forth in a proposal in order to determine and report on the need for and reasonableness of the proposed resources assuming reasonable economy and efficiency.

15.802 Policy.

(a) The Truth in Negotiations Act, Pub. L. 87-653 (10 U.S.C. 2306(f)), provides that the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard shall require a prime contractor or any subcontractor to submit and certify cost or pricing data under certain circumstances. The Act also requires inclusion of contract clauses that provide for reduction of the contract price by any significant amounts that such price was increased because of submission of contractor or subcontractor defective cost or pricing data. The Act's requirements are applied as a matter of policy to all other executive agencies by the Administrator, General Services Administration.

(b) Contracting officers shall—

(1) Purchase supplies and services from responsible sources at fair and reasonable prices;

(2) Price each contract separately and independently and not (i) use proposed price reductions under other contracts as an evaluation factor or (ii) consider losses or profits realized or anticipated under other contracts; and

(3) Not include in a contract price any amount for a specified contingency to the extent that the contract provides for price adjustment based upon the occurrence of that contingency.

15.803 General.

(a) Since information from sources other than an offeror's or contractor's records may significantly affect the Government's negotiating position, Government personnel shall not disclose to an offeror or contractor any conclusions, recommendations, or portions of administrative contracting officer or auditor reports regarding the offeror's or contractor's proposal without the concurrence of the contracting officer responsible for negotiation. This prohibition does not preclude disclosing discrepancies or mistakes of fact (such as duplications, omissions, and errors in computation) contained in the cost or pricing data supporting the proposal.

(b) Before issuing a solicitation, the contracting officer shall (when it is feasible to do so) develop an estimate of the proper price level or value of the supplies or services to be purchased. Estimates can range from simple budgetary estimates to complex estimates based on inspection of the product itself and review of such items as drawings, specifications, and prior data.

(c) Price negotiation is intended to permit the contracting officer and the offeror to agree on a fair and reasonable price. Price negotiation does not require that agreement be reached on every element of cost. Reasonable compromises may be necessary, and it may not be possible to negotiate a price that is in accord with all the contributing specialists' opinions or with the contracting officer's prenegotiation objective. The contracting officer is responsible for exercising the requisite judgment and is solely responsible for the final pricing decision. The recommendations and counsel of contributing specialists, including auditors, are advisory only. However, the contracting officer should include comments in the price negotiation memorandum when significant audit or other specialist recommendations are not adopted.

(d) The contracting officer's primary concern is the price the Government actually pays; the contractor's eventual cost and profit or fee should be a secondary concern. The contracting officer's objective is to negotiate a contract of a type and with a price providing the contractor the greatest incentive for efficient and economical performance. The negotiation of a contract type and a price are related and should be considered together with the issues of risk and uncertainty to the contractor and the Government. Therefore the contracting officer should not become preoccupied with any single element and should balance the contract type, cost, and profit or fee negotiated to achieve a total result and price fair and reasonable to both the Government and the contractor. If, however, the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable and the contracting officer has taken all authorized actions (including determining the feasibility of developing an alternative source) without success, the contracting officer shall then refer the contract action to higher authority. Disposition of the action by higher authority should be documented.

15.804 Cost or pricing data.

15.804-1 General.

(a) Cost or pricing data submitted by an offeror or contractor enable the Government to perform cost or price analysis and ultimately enable the Government and the contractor to negotiate fair and reasonable prices. Cost or pricing data may be submitted actually or by specific identification in writing.

(b) The Armed Services Procurement Regulation Manual for Contract Pricing (ASPM No. 1) was issued by the Department of Defense to guide pricing and negotiating personnel. It provides detailed discussions and examples applying pricing policies to pricing problems. ASPM No. 1 is available for use for instruction and professional guidance. However, it is not directive, and its references to Department of Defense forms and regulations should be considered informational only. Copies of ASPM No. 1 (Stock No. 008-000-00221-5) may be purchased from the Superintendent of Documents, Attn: Mail List Section, U.S. Government Printing Office, Washington, DC 20402.

15.804-2 Requiring certified cost or pricing data.

(a) (1) Except as provided in 15.804-3, certified cost or pricing data are required before accomplishing any of the following actions:

(i) The award of any negotiated contract (except for unpriced actions such as letter contracts) expected to exceed $500,000.

(ii) The modification of any formally advertised or negotiated contract (whether or not cost or pricing data were initially required) when the modification involves a price adjustment expected to exceed $500,000. (For example, a $150,000 modification resulting from a reduction of $350,000 and an increase of $200,000 is a pricing adjustment exceeding $500,000). This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for adminstrative convenience in the same modification.

(iii) The award of a subcontract at any tier, if the contractor and each higher tier subcontractor have been required to furnish certified cost or pricing data, when the subcontract is expected to exceed $500,000.

(iv) The modification of any subcontract covered by subdivision (iii) above, when the price adjustment (see subdivision (ii) above) is expected to exceed $500,000.

(2) If cost or pricing data are needed for pricing actions over $25,000 and not in excess of $500,000, certified cost or pricing data may be obtained. There should be relatively few instances where certified cost or pricing data and inclusion of defective pricing clauses would be justified in awards between $25,000 and $500,000. The amount of data required to be submitted should be limited to that data necessary to allow the contracting officer to determine the reasonableness of the price. Whenever certified cost or pricing data are required for pricing actions of $500,000 or less, the contracting officer shall document the file to justify the requirement. When awarding a contract of $25,000 or less, the contracting officer shall not require certified cost or pricing data.

(b) When certified cost or pricing data are required, the contracting officer shall require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The cost or pricing data.

(2) A certificate of current cost or pricing data, in the format specified in 15.804-4, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of final agreement on price.

15.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) *General.* Except as provided in paragraphs (b) and (c) below, the contracting officer shall not require submission or certification of cost or pricing data when the contracting officer determines that prices are—

(1) Based on adequate price competition (see paragraph (b) below);

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public (see paragraph (c) below); or

(3) Set by law or regulation (see paragraph (d) below).

(b) *Adequate price competition.* (1) Price competition exists if—

(i) Offers are solicited;

(ii) Two or more responsible offerors that can satisfy the Government's requirements submit priced offers responsive to the solicitation's expressed requirements; and

(iii) These offerors compete independently for a contract to be awarded to the responsible offeror submitting the lowest evaluated price.

(2) If price competition exists, the contracting officer shall presume that it is adequate unless—

(i) The solicitation is made under conditions that unreasonably deny to one or more known and qualified offerors an opportunity to compete;

(ii) The low offeror has such a decided advantage that it is practically immune from competition; or

(iii) There is a finding, supported by a statement of the facts and approved at a level above the contracting officer, that the lowest price is unreasonable.

(3) A price is "based on" adequate price competition if it results directly from price competition or if price analysis alone clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or substantially the same items purchased in comparable quantities, terms, and conditions under contracts that resulted from adequate price competition.

(c) *Established catalog or market prices.* A proposal is exempt from the requirement for submission of certified cost or pricing data if the prices are, or are based on, established catalog or established market prices of commercial items sold in substantial quantities to the general public. In order to qualify for this exemption, the terms of the proposed purchase, such as quantity and delivery requirements, should be sufficiently similar to those of the commercial sales that the catalog or market price will be fair and reasonable.

(1) "Established catalog prices" must be recorded in a form regularly maintained by the manufacturer or vendor. This form may be a catalog, price list, schedule, or other verifiable and established record. The record must (i) be published or otherwise available for customer inspection and (ii) state current or last sales price to a significant number of buyers constituting the general public (see subparagraph (5) below).

(2) "Established market prices" are current prices that (i) are established in the course of ordinary and usual trade between buyers and sellers free to bargain and (ii) can be substantiated by data from sources independent of the manufacturer or vendor.

(3) "Commercial items" are supplies or services regularly used for other than Government purposes and sold or traded to the general public in the course of normal business operations.

(4) An item is "sold in substantial quantities" only when the quantities regularly sold are sufficient to constitute a real commercial market. Nominal quantities, such as models, samples, prototypes, or experimental units, do not meet this requirement. For services to be sold in substantial quantities, they must be customarily provided by the offeror, using personnel regularly employed and equipment (if any is necessary) regularly maintained solely or principally to provide the services.

(5) The "general public" is a significant number of buyers other than the Government or affiliates of the offeror; the item involved must not be for Government end use. For the purpose of this subsection 15.804-3, items acquired for "Government end use" include items acquired for foreign military sales.

(6) A price is "based on" a catalog or market price only if the item being purchased is sufficiently similar to the catalog- or market-priced commercial item to ensure that any difference in prices can be identified and justified without resort to cost analysis.

(7) If an item is substantially similar to a commercial item for which there is an established catalog or market price at which substantial quantities are sold to the general public, but the price proposed is not *based on* this catalog or market price (see subparagraph (6) above), the contracting officer may, if doing so will result in a fair and reasonable price, limit any requirement for cost or pricing data to those data that pertain to the differences between the items. When the difference between the catalog or market price of an item or items and the proposed total contract price is $500,000 or more, the contracting officer shall require submission of certified cost or pricing data to identify and justify that difference unless an exemption or waiver is granted.

(8) Even though there is an established catalog or market price of commercial items sold in substantial quantities to the general public, the contracting officer may require cost or pricing data if (i) the contracting officer makes a written finding that the price is not reasonable, including the facts upon which the finding is based, and (ii) the finding is approved at a level above the contracting officer.

(d) *Prices set by law or regulation.* A price set by law or regulation is exempt from the requirement for submission of certified cost or pricing data. Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws, are sufficient to establish the price.

(e) *Claiming and granting exemption.* To receive an exemption under paragraph (c) or (d) above, the offeror must ordinarily claim it on Standard Form 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, when the total proposed amount exceeds $500,000 and more than one catalog item for which an exemption is claimed exceeds $25,000. When an exemption is claimed for more than one item in a proposal, a separate SF 1412 is required for each such item exceeding $25,000 except as otherwise provided in the solicitation. The contracting officer may grant an exemption and need not require the submission of SF 1412 when—

(1) The Government has acted favorably on an exemption claim for the same item or similar items within the past year. In that case, except as otherwise directed by the contracting officer, the offeror may furnish a copy of the prior claim and related Government action. The offeror must also submit a statement to the effect that to its knowledge since the prior submission, except as expressly set forth in the statement, there have been no changes in the catalog price or discounts, volume of actual sales, or the ratio of sales for Government end use to sales in other categories which would cause a cumulative change in price exceeding $25,000;

(2) Special arrangements for the submission of exemption claims have been made in anticipation of repetitive acquisitions of catalog items;

(3) There is evidence, before solicitation, that the item has an acceptable established catalog or market price or a price set by law or regulation. Evidence may include (i) recent submissions by offerors or (ii) the contracting officer's knowledge of market conditions, prevailing prices, or sources.

(f) *Verification.* (1) When a prospective contractor requests exemption from submission of certified cost or pricing data, the contracting officer shall ensure that applicable criteria in either paragraph (c) or (d) above, as appropriate, are satisfied before issuing the exemption.

(2) SF 1412 lists three categories of sales related to the established catalog price of a commercial item sold in substantial quantities to the general public: A, Sales to the U.S. Government or to contractors for U.S. Government use; B, Sales at catalog price to the general public; and C, Sales to the general public at other than catalog price. Although "substantial quantities" cannot be precisely defined (see subparagraph (c)(4) above), the following guidelines are provided for determining whether exemption claims submitted under the catalog price provision of SF 1412 meet the "substantial quantities" criterion:

(i) Sales to the general public are normally regarded as substantial if (A) Category B and C sales are not negligible in themselves and comprise at least 55 percent of total sales of the item and (B) Category B sales comprise at least 75 percent of the total of Category B and C sales.

(ii) Sales to the general public are rarely considered substantial enough to grant an exemption if (A) Category B and C sales comprise less than 35 percent of total sales of the item or (B) Category B sales comprise less than 55 percent of the total of Category B and C sales.

(iii) When percentages fall between those above, the contracting officer should analyze the individual situation in order to determine whether or not an exemption is justified.

(3) The contracting officer may verify or obtain verification (including audit or contract administration assistance) of the submitted data pertaining to catalog or market prices or prices set by law or regulation. Access to the prospective contractor's records is limited to access to the facts bearing directly on the exemption claimed. It does not extend to cost, profit, or other data relevant solely to the reasonableness of the catalog or proposed price.

(g) *Individual or class exemptions.* The chief of the contracting office may authorize individual or class exemptions for exceptional cases when the contracting officer recommends that an exemption should be made, even though the case does not strictly meet all the criteria for catalog- or market-price exemption. The quantity and prices of actual commercial sales compared with prices offered to the Government, and price relationships as influenced by prevailing trade practices, are the important factors for consideration. The Government's need and the prospective contractor's resistance are not appropriate considerations.

(h) *Price analysis.* Even though an item qualifies for exemption from the requirement for submission of certified cost or pricing data, the contracting officer shall make a price analysis to determine the reasonableness of the price and any need for further negotiation. Unless information is available from Government sources, it may be necessary to obtain from the prospective contractor information such as that regarding—

(1) The supplier's marketing system (e.g., use of jobbers, brokers, sales agencies, or distributors);

(2) The services normally provided commercial purchasers (e.g., engineering, financing, or advertising or promotion);

(3) Normal quantity per order; and

(4) Annual volume of sales to largest customers.

(i) *Waiver for exceptional cases.* The agency head (or, if the contract is with a foreign government or agency, the head of the contracting activity) may, in exceptional cases, waive the requirement for submission of certified cost or pricing data. The authorization for the waiver and the reasons for granting it shall be in writing. The agency head may delegate this authority.

15.804-4 Certificate of Current Cost or Pricing Data.

(a) When certified cost or pricing data are required under 15.804-2, the contracting officer shall require the contractor to execute a Certificate of Current Cost or Pricing Data, shown below, and shall include the executed certificate in the contract file. The certificate states that the cost or pricing data are accurate, complete, and current as of the date the contractor and the Government agreed on a price. Only one certificate shall be required; the contractor shall submit it as soon as practicable after price agreement is reached.

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.801 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.804-2) submitted, either actually or by specific identification in writing, to the contracting officer or to the contracting officer's representative in support of .....* are accurate, complete, and current as of .....**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm.....

Name.....

Title.....

Date of execution*** .....

* Identify the proposal, quotation, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

** Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

*** Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(End of certificate)

(b) The certificate does not constitute a representation as to the accuracy of the contractor's judgment on the estimate of future costs or projections. It does apply to the data upon which the judgment or estimate was based. This distinction between fact and judgment should be clearly understood. If the contractor had information reasonably available at the time of agreement showing that the negotiated price was not based on accurate, complete, and current data, the contractor's responsibility is not limited by any lack of personal knowledge of the information on the part of its negotiators.

(c) Closing or cutoff dates should be included as part of the data submitted with the proposal. Certain data may not be reasonably available before normal periodic closing dates (e.g., actual indirect costs). Before agreement on price, the contractor shall update all data as of the latest dates for which information is reasonably available. Data within the contractor's or a subcontractor's organization on matters significant to contractor management and to the Government will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

(d) Possession of a Certificate of Current Cost or Pricing Data is not a substitute for examining and analyzing the contractor's proposal.

(e) Even though the solicitation may have requested cost or pricing data, the contracting officer shall not require a Certificate of Current Cost or Pricing Data when the resulting award is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation (see 15.804-3(a) through (d)).

(f) The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data were used does not require recertification.

(g) Contracting officers shall not require certification at the time of agreement for data supplied in support of forward pricing rate agreements (see 15.809) or other advance agreements. When a forward pricing rate agreement or other advance agreement is used in partial support of a later contractual action that requires a certificate, the price proposal certificate shall cover (1) the data originally supplied to support the forward pricing rate agreement or other advance agreement and (2) all data required to update the price proposal to the time of agreement on contract price.

(h) Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring certified cost or pricing data if (1) the total final price agreement for such settlements or agreements exceeds $500,000 or (2) the partial termination settlement plus the estimate to complete the continued portion of the contract exceeds $500,000 (see 49.105(c)(15)).

15.804-5 Reserved.

15.804-6 Procedural requirements.

(a) The contracting officer shall specify (1) whether or not cost or pricing data are required, (2) whether or not certification will be required, (3) the extent of cost or pricing data required if complete data are not necessary, and (4) the form (see paragraph (b) below) in which the cost or pricing data shall be submitted. Even if the solicitation does not so specify, however, the contracting officer is not precluded from requesting such data if they are later found necessary.

(b) (1) Cost or pricing data shall be submitted on Standard Form 1411 (SF 1411), Contract Pricing Proposal Cover Sheet, unless required to be submitted on one of the termination forms specified in Subpart 49.6. Data supporting forward pricing rate agreements or final indirect cost proposals shall be submitted in a format acceptable to the contracting officer.

(2) Contract pricing proposals submitted on SF 1411 with supporting attachments shall be prepared to satisfy the instructions and appropriate format of Table 15-3.

TABLE 15-3 INSTRUCTIONS FOR SUBMISSION OF A CONTRACT PRICING PROPOSAL

1. SF 1411 provides a vehicle for the offeror to submit to the Government a pricing proposal of estimated and/or incurred costs by contract line item with supporting information, adequately cross-referenced, suitable for detailed analysis. A cost-element breakdown, using the applicable format prescribed in 7A, B, or C below, shall be attached for each proposed line item and must reflect any specific requirements established by the contracting officer. Supporting breakdowns must be furnished for each cost element, consistent with offeror's cost accounting system. When more than one contract line item is proposed, summary total amounts covering all line items must be furnished for each cost element. If agreement has been reached with Government representatives on use of forward pricing rates/factors, identify the agreement, include a copy, and describe its nature. Depending on offeror's system, breakdowns shall be provided for the following basic elements of cost, as applicable:

Materials—Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.).

Subcontracted Items—Include parts, components, assemblies, and services that are to be produced or performed by others in accordance with offeror's design, specifications, or direction and that are applicable only to the prime contract. For each subcontract over $500,000, the support should provide a listing by source, item, quantity, price, type of subcontract, degree of competition, and basis for establishing source and reasonableness of price, as well as the results of review and evaluation of subcontract proposals when required by FAR 15.806.

Standard Commercial Items—Consists of items that offeror normally fabricates, in whole or in part, and that are generally stocked in inventory. Provide an appropriate explanation of the basis for pricing. If price is based on cost, provide a cost breakdown; if priced at other than cost, provide justification for exemption from submission of cost or pricing data, as required by FAR 15.804-3(e).

Interorganizational Transfer (at other than cost)—Explain pricing method used. (See FAR 31.205-26).

Raw Material—Consists of material in a form or state that requires further processing. Provide priced quantities of items required for the proposal.

Purchased Parts—Includes material items not covered above. Provide priced quantities of items required for the proposal.

Interorganizational Transfer (at cost)—Include separate breakdown of cost by element.

Direct Labor—Provide a time-phased (e.g., monthly, quarterly, etc.) breakdown of labor hours, rates, and cost by appropriate category, and furnish bases for estimates.

Indirect Costs—Indicate how offeror has computed and applied offeror's indirect costs, including cost breakdowns, and showing trends and budgetary data, to provide a basis for evaluating the reasonableness of proposed rates. Indicate the rates used and provide an appropriate explanation.

Other Costs—List all other costs not otherwise included in the categories described above (e.g., special tooling, travel, computer and consultant services, preservation, packaging and packing, spoilage and rework, and Federal excise tax on finished articles) and provide bases for pricing.

Royalties—If more than $250, provide the following information on a separate page for each separate royalty or license fee: name and address of licensor; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (including any part or model numbers of each contract item or component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties. In addition, if specifically requested by the contracting officer, provide a copy of the current license agreement and identification of applicable claims of specific patents. (See FAR 27.204 and 31.205-37).

Facilities Capital Cost of Money—When the offeror elects to claim facilities capital cost of money as an allowable cost, the offeror must submit Form CASB-CMF and show the calculation of the proposed amount (see FAR 31.205-10).

2. As part of the specific information required, the offeror must submit with offeror's proposal, and clearly identify as such, cost or pricing data (that is, data that are verifiable and factual and otherwise as defined at FAR 15.801). In addition, submit with offeror's proposal any information reasonably required to explain offeror's estimating process, including—

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

b. The nature and amount of any contingencies included in the proposed price.

3. There is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of cost or pricing data is met when all accurate cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the contracting officer or an authorized representative. As later information comes into the offeror's possession, it should be promptly submitted to the contracting officer. The requirement for submission of cost or pricing data continues up to the time of final agreement on price.

4. In submitting offeror's proposal, offeror must include an index, appropriately referenced, of all the cost or pricing data and information accompanying or identified in the proposal. In addition, any future additions and/or revisions, up to the date of agreement on price, must be annotated on a supplemental index.

5. By submitting offeror's proposal, the offeror, if selected for negotiation, grants the contracting officer or an authorized representative the right to examine those books, records, documents, and other supporting data that will permit adequate evaluation of the proposed price. This right may be exercised at any time before award.

6. As soon as practicable after final agreement on price, but before the award resulting from the proposal, the offeror shall, under the conditions stated in FAR 15.804-4, submit a Certificate of Current Cost or Pricing Data.

7. HEADINGS FOR SUBMISSION OF LINE-ITEM SUMMARIES:

A. New Contracts (including Letter contracts).

COST ELEMENTS	PROPOSED CONTRACT ESTIMATE—TOTAL COST	PROPOSED CONTRACT ESTIMATE—UNIT COST	REFERENCE
(1)	(2)	(3)	(4)

Under Column (1)—Enter appropriate cost elements.

Under Column (2)—Enter those necessary and reasonable costs that in offeror's judgment will properly be incurred in efficient contract performance. When any of the costs in this column have already been incurred (e.g., under a letter contract or unpriced order), describe them on an attached supporting schedule. When preproduction or startup costs are significant, or when specifically requested to do so by the contracting officer, provide a full identification and explanation of them.

Under Column (3)—Optional, unless required by the contracting officer.

Under Column (4)—Identify the attachment in which the information supporting the specific cost element may be found. Attach separate pages as necessary.

B. Change Orders (modifications).

COST ELEMENTS	ESTIMATED COST OF ALL WORK DELETED	COST OF DELETED WORK ALREADY PERFORMED	NET COST TO BE DELETED	COST OF WORK ADDED	NET COST OF CHANGE	REFERENCE
(1)	(2)	(3)	(4)	(5)	(6)	(7)

Under Column (1)—Enter appropriate cost elements.

Under Column (2)—Include (i) current estimates of what the cost would have been to complete deleted work not yet performed, and (ii) the cost of deleted work already performed.

Under Column (3)—Include the incurred cost of deleted work already performed, actually computed if possible, or estimated in the contractor's accounting records. Attach a detailed inventory of work, materials, parts, components, and hardware already purchased, manufactured, or performed and deleted by the change, indicating the cost and proposed disposition of each line item. Also, if offeror desires to retain these items or any portion of them, indicate the amount offered for them.

Under Column (4)—Enter the net cost to be deleted which is the estimated cost of all deleted work less the cost of deleted work already performed. Column (2) less Column (3) = Column (4).

Under Column (5)—Enter the offeror's estimate for cost of work added by the change. When nonrecurring costs are significant, or when specifically requested to do so by the contracting officer, provide a full identification and explanation of them.

Under Column (6)—Enter the net cost of change which is the cost of work added, less the net cost to be deleted. When this result is negative, place the amount in parentheses. Column (4) less Column (5) = Column (6).

Under Column (7)—Identify the attachment in which the information supporting the specific cost element may be found. Attach separate pages as necessary.

C. Price Revision/Redetermination.

CUTOFF DATE	NUMBER OF UNITS COMPLETED	NUMBER OF UNITS TO BE COMPLETED	CONTRACT AMOUNT	REDETERMINATION PROPOSAL AMOUNT	DIFFERENCE
(1)	(2)	(3)	(4)	(5)	(6)

COST ELEMENTS	INCURRED COST—PREPRODUCTION	INCURRED COST—COMPLETED UNITS	INCURRED COST—WORK IN PROCESS	TOTAL INCURRED COST	ESTIMATED COST TO COMPLETE	ESTIMATED TOTAL COST	REFERENCE
(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)

Under Column (1)—Enter the cutoff date required by the contract, if applicable.
Under Column (2)—Enter the number of units completed during the period for which experienced costs of production are being submitted.
Under Column (3)—Enter the number of units remaining to be completed under the contract.
Under Column (4)—Enter the cumulative contract amount.
Under Column (5)—Enter the offeror's redetermination proposal amount.
Under Column (6)—Enter the difference between the contract amount and the redetermination proposal amount. When this result is negative, place the amount in parenthesis. Column (4) less Column (5) = Column (6).
Under Column (7)—Enter appropriate cost elements. When residual inventory exists, the final costs established under fixed-price-incentive and fixed-price-redeterminable arrangements should be net of the fair market value of such inventory. In support of subcontract costs, submit a listing of all subcontracts subject to repricing action, annotated as to their status.
Under Column (8)—Enter all costs incurred under the contract before starting production and other nonrecurring costs (usually referred to as startup costs) from offeror's books and records as of the cutoff date. These include such costs as preproduction engineering, special plant rearrangement, training program, and any identifiable nonrecurring costs such as initial rework, spoilage, pilot runs, etc. In the event the amounts are not segregated in or otherwise available from offeror's records, enter in this column offeror's best estimates. Explain the basis for each estimate and how the costs are charged on offeror's accounting records (e.g., included in production costs as direct engineering labor, charged to manufacturing overhead, etc.). Also show how the costs would be allocated to the units at their various stages of contract completion.
Under Columns (9) and (10)—Enter in Column (9) the production costs from offeror's books and records (exclusive of preproduction costs reported in Column (8)) of the units completed as of the cutoff date. Enter in Column (10) the costs of work in process as determined from offeror's records or inventories at the cutoff date. When the amounts for work in process are not available in contractor's records but reliable estimates for them can be made, enter the estimated amounts in Column (10) and enter in Column (9) the differences between the total incurred costs (exclusive of preproduction costs) as of the cutoff date and these estimates. Explain the basis for the estimates, including identification of any provision for experienced or anticipated allowances, such as shrinkage, rework, design changes, etc. Furnish experienced unit or lot costs (or labor hours) from inception of contract to the cutoff date, improvement curves, and any other available production cost history pertaining to the item(s) to which offeror's proposal relates.
Under Column (11)—Enter total incurred costs (Total of Columns (8), (9), and (10)).
Under Column (12)—Enter those necessary and reasonable costs that in contractor's judgment will properly be incurred in completing the remaining work to be performed under the contract with respect to the item(s) to which contractor's proposal relates.
Under Column (13)—Enter total estimated cost (Total of Columns (11) and (12)).
Under Column (14)—Identify the attachment in which the information supporting the specific cost element may be found. Attach separate pages as necessary.

(c) Closing or cutoff dates should be included as part of the data submitted with the proposal. If possible, the contracting officer and offeror should reach a prior understanding on criteria for establishing closing or cutoff dates (see 15.804-4(c)).

(d) The requirement for submission of cost or pricing data is met if all cost or pricing data reasonably available to the offeror are either submitted or identified in writing by the time of agreement on price. However, there is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The latter does not constitute "submission" of cost or pricing data.

(e) If cost or pricing data are required and the offeror initially refuses to provide necessary data, the contracting officer shall again attempt to secure the data. If the offeror persists in the refusal, the contracting officer shall withhold the award or price adjustment and refer the contract action to higher authority, including details of the attempts made to resolve the matter and a statement of the practicability of obtaining the supplies or services from another source.

(f) Preproduction and startup costs include costs such as preproduction engineering, special tooling, special plant rearrangement, training programs, and such nonrecurring costs as initial rework, initial spoilage, and pilot runs. When these costs may be a significant cost factor in an acquisition, the contracting officer shall require in the solicitation that the offeror provide (1) an estimate of total preproduction and startup costs, (2) the extent to which these costs are included in the proposed price, and (3) the intent to absorb, or plan for recovery of, any remaining costs. If a successful offeror has indicated an intent to absorb any portion of these costs, the contract shall expressly provide that such portion will not be charged to the Government in any future noncompetitive pricing action.

(g) (1) The requirement for contractors to obtain cost or pricing data from prospective subcontractors is prescribed at 15.806. However, these data do not have to be submitted to the Government unless called for under subparagraph (2) below.

(2) The contracting officer shall require a contractor that is required to submit certified cost or pricing data also to submit to the Government (or cause the submission of) accurate, complete, and current cost or pricing data from prospective subcontractors in support of each subcontract cost estimate that is (i) $1,000,000 or more, (ii) both more than $500,000 and more than 10 percent of the prime contractor's proposed price, or (iii) considered to be necessary for adequately pricing the prime contract.

(3) If the prospective contractor satisfies the contracting officer that a subcontract will be priced on the basis of one of the exemptions in 15.804-3, the contracting officer normally shall not require submission of subcontractor cost or pricing data to the Government in that case. If the subcontract estimate is based upon the cost or pricing data of the prospective subcontractor most likely to be awarded the subcontract, the contracting officer shall not require submission to the Government of data from more than one proposed subcontractor for that subcontract.

(4) The contracting officer shall require the prospective contractor to support subcontractor cost estimates below the threshold in 15.806(b) with any data or information (including other subcontractor quotations) needed to establish a reasonable price.

(h) Subcontractor cost or pricing data shall be accurate, complete, and current as of the date of final price agreement given on the contractor's Certificate of Current Cost or Pricing Data. The prospective contractor shall be responsible for updating a prospective subcontractor's data.

(i) When the prospective contractor has generally complied with subcontract cost or pricing data requirements, the contracting officer may, in exceptional cases, excuse failure to do so for particular subcontracts and award the prime contract. Each such excuse, unless limited to allowing additional time, requires approval by the chief of the contracting office. For each subcontract involved, the contractor remains obligated to obtain prospective subcontractor cost or pricing data before actual award of that subcontract. For each such subcontract, the contracting officer shall—

(1) Allow additional time for submission of data up to the date of agreement upon the prime contract price;

(2) Withdraw the requirement if data submitted are adequate to support the subcontract estimate;

(3) Reserve the subcontract item for future pricing;

(4) Consider another contract type; or

(5) Make other arrangements to provide an adequate basis for price agreement.

15.804-7 Defective cost or pricing data.

(a) If, before agreement on price, the contracting officer learns that any cost or pricing data submitted are inaccurate,

incomplete, or noncurrent, the contracting officer shall immediately bring the matter to the attention of the prospective contractor, whether the defective data increase or decrease the contract price. The contracting officer shall negotiate, using any new data submitted or making satisfactory allowance for the incorrect data. The price negotiation memorandum shall reflect the revised facts.

(b) If, after award, cost or pricing data are found to be inaccurate, incomplete, or noncurrent as of the date of final agreement on price given on the contractor's or subcontractor's Certificate of Current Cost or Pricing Data, the Government is entitled to a price adjustment, including profit or fee, of any significant amount by which the price was increased because of the defective data. This entitlement is ensured by including in the contract one of the clauses prescribed in 15.804-8 and set forth at 52.215-22, Price Reduction for Defective Cost or Pricing Data, and 52.215-23, Price Reduction for Defective Cost or Pricing Data—Modifications. The clauses give the Government the right to a price adjustment for defects in cost or pricing data submitted by the contractor, a prospective subcontractor, or an actual subcontractor. In arriving at a price adjustment under the clause, the contracting officer shall consider—

(1) The time by which the cost or pricing data became reasonably available to the contractor;

(2) The extent to which the Government relied upon the defective data; and

(3) Any understated cost or pricing data submitted in support of price negotiations, up to the amount of the Government's claim for overstated pricing data arising out of the same pricing action (for example, the initial pricing of the same contract or the pricing of the same change order). Such offsets need not be in the same cost groupings (e.g., material, direct labor, or indirect costs).

(c) If, after award, the contracting officer learns or suspects that the data furnished were not accurate, complete, and current, or were not adequately verified by the contractor as of the time of negotiation, the contracting officer shall request an audit to evaluate the accuracy, completeness, and currency of the data. Only if the audit reveals that the data certified by the contractor were defective may the Government evaluate the profit-cost relationships. The contracting officer shall not reprice the contract solely because the profit was greater than forecast or because some contingency specified in the submission failed to materialize.

(d) For each advisory audit received based on a postaward review which indicates defective pricing, the contracting officer shall make a determination as to whether or not the data submitted were defective and relied upon. Before making such a determination, the contracting officer should give the contractor an opportunity to support the accuracy, completeness, and currency of the data in question. The contracting officer shall prepare a memorandum indicating (1) the contracting officer determination as to whether or not the submitted data were accurate, complete, and current as of the certified date and whether or not the Government relied on the data, and (2) the results of any contractual action taken. The contracting officer shall send one copy of this memorandum to the auditor and, if the contract has been assigned for administration, one copy to the administrative contracting officer (ACO). The contracting officer shall notify the contractor by copy of this memorandum, or otherwise, of the determination.

(e) If (1) both contractor and subcontractor submitted and (2) the contractor certified cost or pricing data, the Government has the right, under the clauses at 52.215-22, Price Reduction for Defective Cost or Pricing Data, and 52.215-23, Price Reduction for Defective Cost or Pricing Data—Modifications, to reduce the prime contract price if it was significantly increased because a subcontractor submitted defective data. This right applies whether these data supported subcontract cost estimates or supported firm agreements between subcontractor and contractor.

(f) If Government audit discloses defective subcontractor cost or pricing data, the information necesssary to support a reduction in prime contract and subcontract prices may be available only from the Government. To the extent necessary to secure a prime contract price reduction, the contracting officer should make this information available to the prime contractor or appropriate subcontractors upon request. If release of the information would compromise Government security or disclose trade secrets or confidential business information, the contracting officer shall release it only under conditions that will protect it from improper disclosure. Information made available under this paragraph shall be limited to that used as the basis for the prime contract price reduction. In order to afford an opportunity for corrective action, the contracting officer should give the prime contractor reasonable advance notice before determining to reduce the prime contract price.

(1) When a prime contractor includes defective subcontract data in arriving at the price but later awards the subcontract to a lower priced subcontractor (or does not subcontract for the work), any adjustment in the prime contract price due to defective subcontract data is limited to the difference (plus applicable indirect cost and profit markups) between (i) the subcontract price used for pricing the prime contract and (ii) either the actual subcontract price or the actual cost to the contractor, if not subcontracted, provided the data on which the actual subcontract price is based are not themselves defective.

(2) Under cost-reimbursement contracts and under all fixed-price contracts except (i) firm-fixed-price contracts and (ii) contracts with economic price adjustment, payments to subcontractors that are higher than they would be had there been no defective subcontractor cost or pricing data shall be the basis for disallowance or nonrecognition of costs under the clauses prescribed in 15.804-8. The Government has a continuing and direct financial interest in such payments that is unaffected by the initial agreement on prime contract price.

15.804-8 Contract clauses.

(a) *Price Reduction for Defective Cost or Pricing Data.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215-22, Price Reduction for Defective Cost or Pricing Data, in solicitations and contracts when it is contemplated that cost or pricing data will be required (see 15.804-2).

(b) *Price Reduction for Defective Cost or Pricing Data—Modifications.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215-23, Price Reduction for Defective Cost or Pricing Data—Modifications, in solicitations and contracts when (1) it is contemplated that cost or pricing data will be required (see 15.804-2) for the pricing of contract modifications, and (2) the clause prescribed in paragraph (a) above has not been included.

(c) *Subcontractor Cost or Pricing Data.* The contracting officer shall insert the clause at 52.215-24, Subcontractor Cost or Pricing Data, in solicitations and contracts when the clause prescribed in paragraph (a) above is included.

(d) *Subcontractor Cost or Pricing Data—Modifications.* The contracting officer shall insert the clause at 52.215-25, Subcontractor Cost or Pricing Data—Modifications, in solicitations and

contracts when the clause prescribed in paragraph (b) above is included.

15.805 Proposal analysis.

15.805-1 General.

(a) The contracting officer, exercising sole responsibility for the final pricing decision, shall, as appropriate, coordinate a team of experts and request and evaluate the advice of specialists in such fields as contracting, finance, law, contract audit, packaging, quality control, engineering traffic management, and contract pricing. The contracting officer should have appropriate specialists attend the negotiations when complex problems involving significant matters will be addressed. The contracting officer may assign responsibility to a negotiator or price analyst for (1) determining the extent of specialists' advice needed and evaluating that advice, (2) coordinating a team of experts, (3) consolidating pricing data and developing a prenegotiation objective (see 15.807), and (4) conducting negotiations.

(b) When cost or pricing data are required, the contracting officer shall make a cost analysis to evaluate the reasonableness of individual cost elements. In addition, the contracting officer should make a price analysis to ensure that the overall price offered is fair and reasonable. When cost or pricing data are not required, the contracting officer shall make a price analysis to ensure that the overall price offered is fair and reasonable.

(c) The contracting officer shall require prospective contractors to perform (1) price analysis for all significant proposed subcontracts and purchase orders and (2) cost analysis when the prospective subcontractor is required to submit cost or pricing data or the contractor is unable to perform an adequate price analysis (see 15.806(a)).

15.805-2 Price analysis.

The contracting officer is responsible for selecting and using whatever price analysis techniques will ensure a fair and reasonable price. One or more of the following techniques may be used to perform price analysis:

(a) Comparison of price quotations received in response to the solicitation.

(b) Comparison of prior quotations and contract prices with current quotations for the same or similar end items.

(c) Application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.

(d) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.

(e) Comparison of proposed prices with independent Government cost estimates (see 15.803(b)).

15.805-3 Cost analysis.

The contracting officer shall, as appropriate, use the techniques and procedures outlined in paragraphs (a) through (f) below to perform cost analysis:

(a) Verification of cost or pricing data and evaluation of cost elements, including—

(1) The necessity for and reasonableness of proposed costs, including allowances for contingencies;

(2) Projection of the offeror's cost trends, on the basis of current and historical cost or pricing data;

(3) A technical appraisal of the estimated labor, material, tooling, and facilities requirements and of the reasonableness of scrap and spoilage factors; and

(4) The application of audited or negotiated indirect cost rates (see Subpart 42.7), labor rates, and cost of money or other factors.

(b) Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, the contracting officer shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed, complex equipment, the contracting officer should make a trend analysis of basic labor and materials even in periods of relative price stability.

(c) Comparison of costs proposed by the offeror for individual cost elements with—

(1) Actual costs previously incurred by the same offeror;

(2) Previous cost estimates from the offeror or from other offerors for the same or similar items;

(3) Other cost estimates received in response to the Government's request;

(4) Independent Government cost estimates by technical personnel; and

(5) Forecasts or planned expenditures.

(d) Verification that the offeror's cost submissions are in accordance with the contract cost principles and procedures in Part 31 and, when applicable, the requirements and procedures in Part 30, Cost Accounting Standards.

(e) Review to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have not been either submitted or identified in writing by the contractor. If there are such data, the contracting officer shall attempt to obtain them and negotiate, using them or making satisfactory allowance for the incomplete data.

(f) Analysis of the results of any make-or-buy program reviews, in evaluating subcontract costs.

15.805-4 Technical analysis.

When cost or pricing data are required, the contracting officer should generally request a technical analysis of proposals, asking that requirements, logistics, or other appropriate qualified personnel review and assess, as a minimum—

(a) The quantities and kinds of material proposed;

(b) The need for the number and kinds of labor hours and the labor mix;

(c) The special tooling and facilities proposed;

(d) The reasonableness of proposed scrap and spoilage factors; and

(e) Any other data that may be pertinent to the cost or price analysis.

15.805-5 Field pricing support.

(a) (1) When cost or pricing data are required, contracting officers shall request a field pricing report (which may include an audit review by the cognizant contract audit activity) before negotiating any contract or modification resulting from a proposal in excess of $500,000, except as otherwise authorized under agency procedures, unless information available to the contracting officer is considered adequate to determine the reasonableness of the proposed cost or price. When available data are considered adequate for a reasonableness determination, the contracting officer shall document the contract file to reflect the basis of the determination.

(2) Field pricing reports are intended to give the contracting officer a detailed analysis of the proposal, for use in contract negotiations. Field pricing support personnel include, but are not limited to, administrative contracting officers, contract auditors, price analysts, quality assurance personnel, engineers, and small business and legal specialists.

(b) Contracting officers should not request field pricing support for proposed contracts or modifications of an amount less than that specified in subparagraph (a)(1) above. An exception may be made when a reasonable pricing result cannot be established, because of (1) lack of knowledge of the particular contractor, (2) sensitive conditions, or (3) an inability to evaluate the price

reasonableness through price analysis or cost analysis of existing data.

(c) (1) When initiating field pricing support, the contracting officer shall do so by sending a request to the cognizant administrative contracting officer (ACO). When field pricing support is not available, or is exempted by agency regulations, the contracting officer may initiate an audit by sending the request directly to the cognizant audit office. In both cases, the contracting officer shall, in the request, (i) prescribe the extent of the support needed, (ii) state the specific areas for which input is required, (iii) include the information necessary to perform the review (such as the offeror's proposal and the applicable portions of the solicitation, particularly those describing requirements and delivery schedules), and (iv) assign a realistic deadline for receipt of the report.

(2) Assignment of unrealistically short deadlines may reduce the quality of the audit and field pricing reports and may make it impossible to establish the fairness and reasonableness of the price.

(3) Agency field pricing procedures shall not preclude free and open communication among the contracting officer, ACO, and auditor.

(d) Only the auditor shall have general access to the offeror's books and financial records. This limitation does not preclude the contracting officer, the ACO, or their representatives from requesting any data from or reviewing offeror records necessary to the discharge of their responsibilities. The duties of auditors and those of other specialists may require both to evaluate the same elements of estimated costs. They shall review the data jointly or concurrently when possible, the auditor rendering services within the audit area of responsibility and the other specialists rendering services within their own areas of responsibility. The auditor shall promptly report to the contracting officer any denial of access to records or to cost or pricing data considered essential to the preparation of a satisfactory audit report.

(e) The auditor shall begin the audit as soon as possible after receiving the contracting officer's request. The auditor is responsible for the scope and depth of the audit. As a minimum, the audit report shall include the following:

(1) The findings on specific areas listed in the contracting officer's request.

(2) An explanation of the basis and method used by the offeror in proposal preparation.

(3) An identification of the original proposal and of all subsequent written formal and other identifiable submissions by which cost or pricing data were either submitted or identified.

(4) A description of cost or pricing data coming to the attention of the auditor that were not submitted but that may have a significant effect on the proposed cost or price.

(5) A list of any cost or pricing data submitted that are not accurate, complete, and current and of any cost representations that are unsupported. When the result of deficiencies is so great that the auditor considers the proposal impaired as a basis for negotiation, the contracting officer should be advised so that prompt corrective action may be taken.

(6) The originals of all technical analyses received by the auditor and a quantification of the dollar effect of the technical analysis findings.

(7) If the auditor believes that the offeror's estimating methods or accounting system are inadequate to support the proposal or to permit satisfactory administration of the contract contemplated, a statement to that effect.

(8) A statement of the extent to which the auditor has discussed discrepancies or mistakes of fact in the proposal with the offeror.

(f) The auditor shall not discuss auditor conclusions or recommendations on the offeror's estimated or projected costs with the offeror unless specifically requested to do so by the contracting officer.

(g) If field pricing support was not requested, the auditor shall send the completed audit report directly to the contracting officer. If field pricing support was requested, the auditor shall send the completed audit report to the ACO for forwarding, without change, with the field pricing report. The ACO shall consolidate the field pricing report inputs and send a field pricing report, accompanied by the original copy of the audit report, to the contracting officer by the assigned date. The ACO shall send the auditor a copy of the field pricing report (without the audit report and technical analysis). Audit and field pricing reports shall be made a part of the official contract file.

(h) If any information is disclosed after submission of the audit report that may significantly affect the audit findings, the contracting officer or the ACO should promptly advise the auditor, who shall determine whether to issue a supplemental report.

(i) The prime contractor or higher tier subcontractor is responsible for conducting appropriate cost analyses before awarding subcontracts. However, the contracting officer may request audit or field pricing support to analyze and evaluate the proposal of a subcontractor at any tier (notwithstanding availability of data or analyses performed by the prime contractor) if the contracting officer believes that such support is necessary to ensure reasonableness of the total proposed price. This step may be appropriate when, for example—

(1) There is a business relationship between the contractor and subcontractor not conducive to independence and objectivity;

(2) The contractor is a sole source and the subcontract costs represent a substantial part of the contract cost;

(3) The contractor has been denied access to the subcontractor's records; or

(4) The contracting officer determines that, because of factors such as the size of the proposed subcontractor price, audit or field pricing support for a subcontract or subcontracts at any tier is critical to a fully detailed analysis of the prime contract proposal.

(j) When the contracting officer requests the cognizant ACO or auditor to review a subcontractor's cost estimates, the request shall include, when available, a copy of any review prepared by the prime contractor or higher tier subcontractor, the subcontractor's proposal, cost or pricing data provided by the subcontractor, and the results of the prime contractor's cost or price analysis.

(k) When the Government performs the subcontract analysis, the Government shall furnish to the prime contractor or higher tier subcontractor, with the consent of the subcontractor reviewed, a summary of the analysis performed in determining any unacceptable costs, by element, included in the subcontract proposal. If the subcontractor withholds consent, the Government shall furnish a range of unacceptable costs for each element in such a way as to prevent giving away subcontractor proprietary data.

15.806 Subcontract pricing considerations.

(a) Subcontractors must submit to the contractor or higher tier subcontractor cost or pricing data or claims for exemption from the requirement to submit them. The contractor and higher tier subcontractor are responsible for (1) conducting price analysis and, when the subcontractor is required to submit cost or pricing data or if the contractor or higher tier subcontractor is unable to perform an adequate price analysis, cost analysis for all subcontracts and (2) including the results of subcontract reviews and evaluations as part of their own cost or pricing data submission (see 15.805-5(i) through (k)).

(b) Except when the subcontract prices are based on adequate price competition or on established catalog or market prices of commercial items sold in substantial quantities to the general public or are set by law or regulation, any contractor required to submit certified cost or pricing data also shall obtain certified cost or pricing data before awarding any subcontract or purchase order expected to exceed $500,000 or issuing any modification involving a price adjustment expected to exceed $500,000 (see example of pricing adjustment at 15.804-2(a)(1)(ii) and see 15.804-6(g) through (i)).

(c) The requirements in paragraphs (a) and (b) above, modified to relate to higher tier subcontractors rather than to the prime contractor, shall apply to lower tier subcontracts for which subcontractor cost or pricing data are required.

15.807 Prenegotiation objectives.

(a) The process of determining prenegotiation objectives helps the contracting officer to judge the overall reasonableness of proposed prices and to negotiate a fair and reasonable price or cost and fee. In setting the prenegotiation objectives, the contracting officer shall analyze the offeror's proposal, taking into account the field pricing report, if any; any audit report and technical analysis whether or not part of a field pricing report; and other pertinent data such as independent Government cost estimates and price histories. This process may include fact-finding sessions with the offeror when the contracting officer deems appropriate.

(b) The contracting officer shall establish prenegotiation objectives before the negotiation of any pricing action. The scope and depth of the analysis supporting the objectives should be directly related to the dollar value, importance, and complexity of the pricing action. When cost analysis is required, the analysis shall address (1) the pertinent issues to be negotiated, (2) the cost objectives, and (3) a profit or fee objective.

(c) The Government's cost objective and proposed pricing arrangement directly affect the profit or fee objective. Because profit or fee is only one of several interrelated variables, the contracting officer shall not agree on profit or fee without concurrent agreement on cost and type of contract. Specific agreement on the exact values or weights assigned to individual profit-analysis factors (see 15.905) is not required during negotiations and should not be attempted.

15.808 Price negotiation memorandum.

(a) At the conclusion of each negotiation of an initial or revised price, the contracting officer shall promptly prepare a memorandum of the principal elements of the price negotiation. The memorandum shall be included in the contract file and shall contain the following minimum information:

(1) The purpose of the negotiation.

(2) A description of the acquisition, including appropriate identifying numbers (e.g., RFP No.).

(3) The name, position, and organization of each person representing the contractor and the Government in the negotiation.

(4) The current status of the contractor's purchasing system when material is a significant cost element.

(5) If certified cost or pricing data were required, the extent to which the contracting officer—

(i) Relied on the cost or pricing data submitted and used them in negotiating the price; and

(ii) Recognized as inaccurate, incomplete, or noncurrent any cost or pricing data submitted; the action taken by the contracting officer and the contractor as a result; and the effect of the defective data on the price negotiated.

(6) If cost or pricing data were not required in the case of any price negotiation over $500,000, the exemption or waiver used and the basis for claiming or granting it.

(7) If certified cost or pricing data were required in the case of any price negotiation under $500,000, the rationale for such requirement.

(8) A summary of the contractor's proposal, the field pricing report recommendations, and the reasons for any pertinent variances from the field pricing report recommendations.

(9) The most significant facts or considerations controlling the establishment of the prenegotiation price objective and the negotiated price including an explanation of any significant differences between the two positions.

(10) The basis for determining the profit or fee prenegotiation objective and the profit or fee negotiated.

(b) Whenever a field pricing report has been submitted, the contracting officer shall forward a copy of the price negotiation memorandum (PNM) to the cognizant audit office and a copy to the cognizant administrative contracting officer. When appropriate, information on how the advisory services of the field pricing support team can be made more effective should be provided separately.

15.809 Forward pricing rate agreements.

(a) Negotiation of forward pricing rate agreements (FPRA's) may be requested by the contracting officer or the contractor or initiated by the administrative contracting officer (ACO). In determining whether or not to establish such an agreement, the ACO should consider whether the benefits to be derived from the agreement are commensurate with the effort of establishing and monitoring it. Normally, FPRA's should be negotiated only with contractors having a significant volume of Government contract proposals. The cognizant contract administration agency shall determine whether an FPRA will be established.

(b) The ACO shall obtain the contractor's proposal and require that it include cost or pricing data that are accurate, complete, and current as of the date of submission. The ACO shall invite the cognizant contract auditor and contracting offices having a significant interest to participate in developing a Government objective and in the negotiations. Upon completing negotiations, the ACO shall prepare a price negotiation memorandum (PNM) (see 15.808) and forward copies of the PNM and FPRA to the cognizant auditor and to all contracting offices that are known to be affected by the FPRA. A Certificate of Current Cost or Pricing Data shall not be required at this time (see 15.804-4(g)).

(c) The FPRA shall provide specific terms and conditions covering expiration, application, and data requirements for systematic monitoring to assure the validity of the rates. The agreement shall provide for cancellation at the option of either party and shall require the contractor to submit to the ACO and to the cognizant contract auditor any significant change in cost or pricing data.

(d) Offerors are required (see 15.804-4(g)) to describe any FPRA's in each specific pricing proposal to which the rates apply and identify the latest cost or pricing data already submitted in accordance with the agreement. All data submitted in connection with the agreement, updated as necessary, form a part of the total data that the offeror certifies to be accurate, complete, and current at the time of agreement on price for an initial contract or for a contract modification.

(e) Contracting officers will use FPRA rates as bases for pricing all contracts, modifications, and other contractual actions to be performed during the period covered by the agreement, unless the ACO determines that changed

conditions have invalidated part or all of the agreement. Conditions that may affect the agreement's validity shall be promptly reported to the ACO.

(1) If the ACO determines that the agreement is still valid, the ACO shall notify the individual or agency that reported the changed conditions.

(2) If the ACO determines that a changed condition has invalidated the agreement, the ACO shall notify all interested parties of the extent of its effect and initiate revision of the agreement.

(f) When an FPRA has been invalidated, the contractor, ACO, and contracting officer shall reflect the changed condition in proposals, cost analyses, and negotiations, pending revision of the agreement.

15.810 Should-cost analysis.

(a) Should-cost analysis is a specialized form of cost analysis employing an integrated team of Government contracting, contract administration, pricing, audit, and engineering representatives. It differs from regular cost analysis in its depth, in the fact that it is conducted at the contractor's plant, and in the extent to which the Government identifies and challenges inefficiencies in the contractor's management and operations rather than merely challenging certain proposed costs. The purpose of should-cost analysis is to (1) identify uneconomical or inefficient practices in the contractor's management and operations, (2) quantify their impact on cost in order to develop a realistic price objective for negotiation, and (3) lead to both short- and long-range improvements in the contractor's economy and efficiency.

(b) A should-cost analysis should be considered, particularly in the case of a major system acquisition (see Part 34), when—

(1) Some initial production has already taken place;

(2) The contract will be awarded on a sole-source basis;

(3) There are future year production requirements for substantial quantities of like items;

(4) The items being acquired have a history of increasing costs;

(5) The work is sufficiently defined to permit an effective analysis and major changes are unlikely;

(6) Sufficient time is available to plan and conduct the should-cost analysis adequately; and

(7) Personnel with the required skills are available or can be assigned for the duration of the should-cost analysis.

(c) When a should-cost analysis is planned, the contracting officer should state this fact (1) in the acquisition plan (see Subpart 7.1) and (2) in the solicitation.

(d) The contracting officer should decide which elements of the contractor's operation have the greatest potential for cost savings and assign the available personnel resources accordingly. While the particular elements to be analyzed are a function of the contract work task, elements such as manufacturing, pricing and accounting, management and organization, and subcontract and vendor management are normally reviewed in a should-cost analysis.

(e) In acquisitions for which a should-cost analysis is conducted, field pricing reports (see 15.805) are required only to the extent that they contribute to the combined team position. The contracting officer shall consider the findings and recommendations of the should-cost analysis when negotiating the contract price. After completing the negotiation, the contracting officer shall provide the administrative contracting officer a report of any identified uneconomical or inefficient practices, together with a report of correction or disposition agreements reached with the contractor.

15.811 Estimating systems.

(a) The consistent preparation of proposals using an acceptable estimating system benefits both the Government and the contractor by increasing the accuracy and reliability of individual proposals. Cognizant audit activities, when it is appropriate to do so, shall establish and manage regular programs for reviewing selected contractors' estimating systems or methods, in order to (1) reduce the scope of reviews to be performed on individual proposals, (2) expedite the negotiation process, and (3) increase the reliability of proposals. The results of estimating system reviews shall be documented in survey reports.

(b) The auditor shall send a copy of the estimating system survey report and a copy of the official notice of corrective action required to each contracting office and contract administration office having substantial business with that contractor. Significant deficiencies not corrected by the contractor shall be a consideration in subsequent proposal analyses and negotiations.

(c) In determining the acceptability of a contractor's estimating system, the auditor should consider—

(1) The source of data for estimates and the procedures for ensuring that the data are accurate, complete, and current;

(2) The documentation developed and maintained in support of the estimate;

(3) The assignment of responsibilities for originating, reviewing, and approving estimates;

(4) The procedures followed for developing estimates for direct and indirect cost elements;

(5) The extent of coordination and communication between organizational elements responsible for the estimate; and

(6) Management support, including estimate approval, establishment of controls, and training programs.

SUBPART 15.9—PROFIT

15.900 Scope of subpart.

This subpart—

(a) Prescribes policies for establishing the profit or fee portion of the Government prenegotiation objective;

(b) Applies to price negotiations based on cost analysis;

(c) Prescribes policies for agencies' development and use of a structured approach for determining the profit or fee prenegotiation objective (see 15.905 for the contents of a structured approach); and

(d) Specifies (1) situations requiring contracting officers to analyze profit and (2) considerations for that analysis.

15.901 General.

(a) Profit or fee prenegotiation objectives do not necessarily represent net income to contractors. Rather, they represent that element of the potential total remuneration that contractors *may* receive for contract performance over and above allowable costs. This potential remuneration element and the Government's estimate of allowable costs to be incurred in contract performance together equal the Government's total prenegotiation objective. Just as actual costs may vary from estimated costs, the contractor's actual realized profit or fee may vary from negotiated profit or fee, because of such factors as efficiency of performance, incurrence of costs the Government does not recognize as allowable, and contract type.

(b) It is in the Government's interest to offer contractors opportunities for financial rewards sufficient to (1) stimulate efficient contract performance, (2) attract the best capabilities of qualified large and small business concerns to Government contracts, and (3) maintain a viable industrial base.

(c) Both the Government and contractors should be concerned with profit as a motivator of efficient and effective contract performance. Negotiations aimed merely at reducing prices by reducing profit, without proper

recognition of the function of profit, are not in the Government's interest. Negotiation of extremely low profits, use of historical averages, or automatic application of predetermined percentages to total estimated costs do not provide proper motivation for optimum contract performance. With the exception of statutory ceilings in 15.903(d) on profit and fee, agencies shall not (1) establish administrative ceilings or (2) create administrative procedures that could be represented to contractors as de facto ceilings.

15.902 Policy.

(a) Structured approaches (see 15.905) for determining profit or fee prenegotiation objectives provide a discipline for ensuring that all relevant factors are considered. Subject to the authorities in 1.301(c), agencies making noncompetitive contract awards over $100,000 totaling $50 million or more a year—

(1) Shall use a structured approach for determining the profit or fee objective in those acquisitions that require cost analysis; and

(2) May prescribe specific exemptions for situations in which mandatory use of a structured approach would be clearly inappropriate.

(b) Agencies may use another agency's structured approach.

15.903 Contracting officer responsibilities.

(a) When the price negotiation is not based on cost analysis, contracting officers are not required to analyze profit.

(b) When the price negotiation is based on cost analysis, contracting officers in agencies that have a structured approach shall use it to analyze profit. When not using a structured approach, contracting officers shall comply with 15.905-1 in developing profit or fee prenegotiation objectives.

(c) Contracting officers shall use the Government prenegotiation cost objective amounts as the basis for calculating the profit or fee prenegotiation objective. Before the allowability of facilities capital cost of money, this cost was included in profits or fees. Therefore, before applying profit or fee factors, the contracting officer shall exclude any facilities capital cost of money included in the cost objective amounts. If the prospective contractor fails to identify or propose facilities capital cost of money in a proposal for a contract that will be subject to the cost principles for contracts with commercial organizations (see Subpart 31.2), facilities capital cost of money will not be an allowable cost in any resulting contract (see 15.904).

(d) (1) The contracting officer shall not negotiate a price or fee that exceeds the following statutory limitations, imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b):

(i) For experimental, developmental, or research work performed under a cost-plus-fixed-fee contract, the fee shall not exceed 15 percent of the contract's estimated cost, excluding fee.

(ii) For architect-engineering services for public works or utilities, the contract price or the estimated cost and fee for production and delivery of designs, plans, drawings, and specifications shall not exceed 6 percent of the estimated cost of construction of the public work or utility, excluding fees.

(iii) For other cost-plus-fixed-fee contracts, the fee shall not exceed 10 percent of the contract's estimated cost, excluding fee.

(2) The limitations in subdivisions (1)(i) and (iii) above shall apply also to the maximum fees on cost-plus-incentive-fee and cost-plus-award-fee contracts. However, the maximum-fee limitation for a specific cost-plus-incentive-fee or cost-plus-award-fee contract may be waived in accordance with Subpart 1.4.

(e) The contracting officer shall not require any prospective contractor to submit details of its profit or fee objective but shall consider them if they are submitted voluntarily.

(f) If a change or modification (1) calls for essentially the same type and mix of work as the basic contract and (2) is of relatively small dollar value compared to the total contract value, the contracting officer may use the basic contract's profit or fee rate as the prenegotiation objective for that change or modification.

15.904 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 52.215-30, Facilities Capital Cost of Money, and the clause at 52.215-31, Waiver of Facilities Capital Cost of Money, in solicitations and contracts that are subject to the cost principles for contracts with commercial organizations (see Subpart 31.2). If, however, the contractor elects to claim facilities capital cost of money as an allowable cost in the contractor's proposal, the clause at 52.215-31 is inapplicable in the resulting contract.

15.905 Profit-analysis factors.

15.905-1 Common factors.

Unless it is clearly inappropriate or not applicable, each factor outlined in paragraphs (a) through (f) following shall be considered by agencies in developing their structured approaches and by contracting officers in analyzing profit whether or not using a structured approach.

(a) *Contractor effort.* This factor measures the complexity of the work and the resources required of the prospective contractor for contract performance. Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities, and technical assets can be expected to lead to efficient and economical contract performance. Subfactors (1) through (4) following shall be considered in determining contractor effort, but they may be modified in specific situations to accommodate differences in the categories used by prospective contractors for listing costs:

(1) *Material acquisition.* This subfactor measures the managerial and technical effort needed to obtain the required purchased parts and material, subcontracted items, and special tooling. Considerations include (i) the complexity of the items required, (ii) the number of purchase orders and subcontracts to be awarded and administered, (iii) whether established sources are available or new or second sources must be developed, and (iv) whether material will be obtained through routine purchase orders or through complex subcontracts requiring detailed specifications. Profit consideration should correspond to the managerial and technical effort involved.

(2) *Conversion direct labor.* This subfactor measures the contribution of direct engineering, manufacturing, and other labor to converting the raw materials, data, and subcontracted items into the contract items. Considerations include the diversity of engineering, scientific, and manufacturing labor skills required and the amount and quality of supervision and coordination needed to perform the contract task.

(3) *Conversion-related indirect costs.* This subfactor measures how much the indirect costs contribute to contract performance. The labor elements in the allocable indirect costs should be given the profit consideration they would receive if treated as direct labor. The other elements of indirect costs should be evaluated to determine whether they (i) merit only limited profit consideration because of their routine nature or (ii) are elements that contribute significantly to the proposed contract.

(4) *General management.* This subfactor measures the prospective contractor's other indirect costs and general and administrative (G&A) expense, their composition, and how much they contribute to contract performance. Considerations include (i) how labor in the overhead pools would be treated if it were direct labor, (ii) whether elements within the pools are routine expenses or instead are elements that contribute significantly to the proposed contract, and (iii) whether the elements require routine as opposed to unusual managerial effort and attention.

(b) *Contract cost risk.* (1) This factor measures the degree of cost responsibility and associated risk that the prospective contractor will assume (i) as a result of the contract type contemplated and (ii) considering the reliability of the cost estimate in relation to the complexity and duration of the contract task. Determination of contract type should be closely related to the risks involved in timely, cost-effective, and efficient performance. This factor should compensate contractors proportionately for assuming greater cost risks.

(2) The contractor assumes the greatest cost risk in a closely priced firm-fixed-price contract under which it agrees to perform a complex undertaking on time and at a predetermined price. Some firm-fixed-price contracts may entail substantially less cost risk than others because, for example, the contract task is less complex or many of the contractor's costs are known at the time of price agreement, in which case the risk factor should be reduced accordingly. The contractor assumes the least cost risk in a cost-plus-fixed-fee level-of-effort contract, under which it is reimbursed those costs determined to be allocable and allowable, plus the fixed fee.

(3) In evaluating assumption of cost risk, contracting officers shall, except in unusual circumstances, treat time-and-materials, labor-hour, and firm-fixed-price, level-of-effort terms contracts as cost-plus-fixed-fee contracts.

(c) *Federal socioeconomic programs.* This factor measures the degree of support given by the prospective contractor to Federal socioeconomic programs, such as those involving small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, handicapped sheltered workshops, labor surplus areas, and energy conservation. Greater profit opportunity should be provided contractors who have displayed unusual initiative in these programs.

(d) *Capital investments.* This factor takes into account the contribution of contractor investments to efficient and economical contract performance.

(e) *Cost-control and other past accomplishments.* This factor allows additional profit opportunities to a prospective contractor that has previously demonstrated its ability to perform similar tasks effectively and economically. In addition, consideration should be given to (1) measures taken by the prospective contractor that result in productivity improvements and (2) other cost-reduction accomplishments that will benefit the Government in follow-on contracts.

(f) *Independent development.* Under this factor, the contractor may be provided additional profit opportunities in recognition of independent development efforts relevant to the contract end item without Government assistance. The contracting officer should consider whether the development cost was recovered directly or indirectly from Government sources.

15.905-2 Additional factors.

In order to foster achievement of program objectives, each agency may include additional factors in its structured approach or take them into account in the profit analysis of individual contract actions.

SUBPART 15.10—PREAWARD AND POSTAWARD NOTIFICATIONS, PROTESTS, AND MISTAKES

15.1001 Notifications to offerors.

(a) *General.* The contracting officer shall notify each offeror whose proposal is determined to be unacceptable or whose offer is not selected for award, unless disclosure might prejudice the Government's interest. However, notice is not required if the contract is for—

(1) Subsistence;

(2) Personal or professional services (see 15.204);

(3) Services of educational institutions (see 15.205);

(4) Supplies or services purchased and used outside the United States (see 15.206); or

(5) Supplies or services for which only foreign firms have been solicited.

(b) *Preaward notices.* (1) When the proposal evaluation period for a solicitation estimated at over $10,000 is expected to exceed 30 days, or when a limited number of offerors have been selected as being within the competitive range (see 15.609), the contracting officer, upon determining that a proposal is unacceptable, shall promptly notify the offeror. The notice shall at least state (i) in general terms the basis for the determination and (ii) that a revision of the proposal will not be considered.

(2) In a small business set-aside (see Subpart 19.5), upon completion of negotiations and determinations of responsibility, but prior to award, the contracting officer shall inform each unsuccessful offeror in writing of the name and location of the apparent successful offeror. The notice shall also state that (i) the Government will not consider subsequent revisions of the unsuccessful proposal and (ii) no response is required unless a basis exists to challenge the small business size status of the apparently successful offeror. The notice is not required under the circumstances described in paragraph (a) above or when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay.

(c) *Postaward notices.* (1) Promptly after award of contracts resulting from solicitations over $10,000, the contracting officer shall notify unsuccessful offerors in writing, unless preaward notice was given under paragraph (b) above. 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 unit prices of each award (if the number of items or other factors makes listing unit prices impracticable, only the total contract price need be furnished); and

(v) In general terms, the reason the offeror's proposal was not accepted, unless the price information in (iv) above 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 also furnish the information described in 15.1001(c)(1)(i) through (iv) above to the successful offeror.

(3) Upon request and subject to the exceptions in 15.1001(a), the contracting officer shall furnish the information described in 15.1001(c)(1)(i) through (v) above to unsuccessful offerors in solicitations of $10,000 or less.

15.1002 Debriefing of unsuccessful offerors.

(a) When a contract is awarded on a basis other than price (see Subpart 15.6), unsuccessful offerors, upon their written request, shall be debriefed and

furnished the basis for the selection decision and contract award.

(b) Debriefing information shall include the Government's evaluation of the significant weak or deficient factors in the proposal; however, point-by-point comparisons with other offerors' proposals shall not be made. Debriefing shall not reveal the relative merits or technical standing of competitors or the evaluation scoring. Moreover, debriefing shall not reveal any information that is not releasable under the Freedom of Information Act; for example—

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques; and

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

(c) The contracting officer shall include a summary of the debriefing in the contract file.

15.1003 Protests against award.

Protests against award in negotiated acquisitions shall be treated substantially the same as in formal advertising (see 14.407-8).

15.1004 Discovery of mistakes.

For treatment of mistakes in an offeror's proposal that are discovered before award, see 15.607. Mistakes in a contractor's proposal that are disclosed after award shall be processed in accordance with 14.406-4.

PART 16—TYPES OF CONTRACTS

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

16.000 Scope of part.

This part describes types of contracts that may be used in acquisitions other than small purchases under Part 13. It prescribes policies and procedures and provides guidance for selecting a contract type appropriate to the circumstances of the acquisition.

SUBPART 16.1—SELECTING CONTRACT TYPES

16.101 General.

(a) A wide selection of contract types is available to the Government and contractors in order to provide needed flexibility in acquiring the large variety and volume of supplies and services required by agencies. Contract types vary according to (1) the degree and timing of the responsibility assumed by the contractor for the costs of performance and (2) the amount and nature of the profit incentive offered to the contractor for achieving or exceeding specified standards or goals.

(b) The contract types are grouped into two broad categories: fixed-price contracts (see Subpart 16.2) and cost-reimbursement contracts (see Subpart 16.3). The specific contract types range from firm-fixed-price, in which the contractor has full responsibility for the performance costs and resulting profit (or loss), to cost-plus-fixed-fee, in which the contractor has minimal responsibility for the performance costs and the negotiated fee (profit) is fixed. In between are the various incentive contracts (see Subpart 16.4), in which the contractor's responsibility for the performance costs and the profit or fee incentives offered are tailored to the uncertainties involved in contract performance.

16.102 Policies.

(a) Contracts resulting from formal advertising shall be firm-fixed-price contracts or fixed-price contracts with economic price adjustment.

(b) Contracts negotiated under Part 15 may be of any type or combination of types that will promote the Government's interest, except as restricted in this part (see 10 U.S.C. 2306(a) and 41 U.S.C. 254(a)). Contract types not described in this regulation shall not be used, except as a deviation under Subpart 1.4.

(c) The cost-plus-a-percentage-of-cost system of contracting shall not be used (see 10 U.S.C. 2306(a) and 41 U.S.C. 254(b)). Prime contracts (including letter contracts) other than firm-fixed-price contracts shall, by an appropriate clause, prohibit cost- plus-a-percentage-of-cost subcontracts (see clauses

prescribed in Subpart 44.2 for cost-reimbursement contracts and Subparts 16.2 and 16.4 for fixed-price contracts).

(d) No contract may be awarded before the execution of any determination and findings (D&F's) required by this part. Minimum requirements for the content of D&F's required by this part are substantially the same as those for the D&F's treated in 15.304.

16.103 Negotiating contract type.

(a) Selecting the contract type is generally a matter for negotiation and requires the exercise of sound judgment. Negotiating the contract type and negotiating prices are closely related and should be considered together. The objective is to negotiate a contract type and price (or estimated cost and fee) that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.

(b) A firm-fixed-price contract, which best utilizes the basic profit motive of business enterprise, shall be used when the risk involved is minimal or can be predicted with an acceptable degree of certainty. However, when a reasonable basis for firm pricing does not exist, other contract types should be considered, and negotiations should be directed toward selecting a contract type (or combination of types) that will appropriately tie profit to contractor performance.

(c) In the course of an acquisition program, a series of contracts, or a single long-term contract, changing circumstances may make a different contract type appropriate in later periods than that used at the outset. In particular, contracting officers should avoid protracted use of a cost-reimbursement or time-and-materials contract after experience provides a basis for firmer pricing.

(d) Each contract file shall include documentation to show why the particular contract type was selected, except for (1) small purchases under Part 13, (2) repetitive purchases on a firm fixed-price basis, and (3) awards made on the set-aside portion of formally advertised solicitations partially set aside for either small business, labor surplus area concerns, or disaster area concerns.

16.104 Factors in selecting contract types.

There are many factors that the contracting officer should consider in selecting and negotiating the contract type. They include the following:

(a) *Price competition.* Normally, effective price competition results in realistic pricing, and a fixed-price contract is ordinarily in the Government's interest.

(b) *Price analysis.* Price analysis (see 15.805-2), with or without competition, may provide a basis for selecting the contract type. The degree to which price analysis can provide a realistic pricing standard should be carefully considered, even when there may not be full and free competition.

(c) *Cost analysis.* In the absence of effective price competition and if price analysis is not sufficient, the cost estimates of the offeror and the Government provide the bases for negotiating contract pricing arrangements. It is essential that the uncertainties involved in performance and their possible impact upon costs be identified and evaluated, so that a contract type that places a reasonable degree of cost responsibility upon the contractor can be negotiated.

(d) *Type and complexity of the requirement.* Complex requirements, particularly those unique to the Government, usually result in greater risk assumption by the Government. This is especially true for complex research and development contracts, when performance uncertainties or the likelihood of changes makes it difficult to estimate performance costs in advance. As a requirement recurs or as quantity production begins, the cost risk should shift to the contractor, and a fixed-price contract should be considered.

(e) *Urgency of the requirement.* If urgency is a primary factor, the Government may choose to assume a greater proportion of risk or it may offer incentives to ensure timely contract performance.

(f) *Period of performance or length of production run.* In times of economic uncertainty, contracts extending over a relatively long period may require economic price adjustment terms.

(g) *Contractor's technical capability and financial responsibility.*

(h) *Adequacy of the contractor's accounting system.* Before agreeing on a contract type other than firm-fixed-price, the contracting officer shall ensure that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type. This factor may be critical when the contract type requires price revision while performance is in progress, or when a cost-reimbursement contract is being considered and all current or past experience with the contractor has been on a fixed-price basis.

(i) *Concurrent contracts.* If performance under the proposed contract involves concurrent operations under other contracts, the impact of those contracts, including their pricing arrangements, should be considered.

(j) *Extent and nature of proposed subcontracting.* If the contractor proposes extensive subcontracting, a contract type reflecting the actual risks to the prime contractor should be selected.

16.105 Solicitation provision.

The contracting officer shall complete and insert the provision at 52.216-1, Type of Contract, in requests for proposals and in requests for quotations unless the solicitation is for (a) a small purchase (see Part 13) or (b) information or planning purposes (see 15.405).

SUBPART 16.2—FIXED-PRICE CONTRACTS

16.201 General.

Fixed-price types of contracts provide for a firm price or, in appropriate cases, an adjustable price. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price is subject to adjustment only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

16.202 Firm-fixed-price contracts.

16.202-1 Description.

A firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties.

16.202-2 Application.

A firm-fixed-price contract is suitable for acquiring commercial products or commercial-type products (see 11.001) or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications (see 10.001) when the contracting officer can establish fair and reasonable prices at the outset, such as when—

(a) There is adequate price competition;

(b) There are reasonable price comparisons with prior purchases of the

same or similar supplies or services made on a competitive basis or supported by valid cost or pricing data;

(c) Available cost or pricing information permits realistic estimates of the probable costs of performance; or

(d) Performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm fixed price representing assumption of the risks involved.

16.203 Fixed-price contracts with economic price adjustment.

16.203-1 Description.

A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon the occurrence of specified contingencies. Economic price adjustments are of three general types:

(a) *Adjustments based on established prices.* These price adjustments are based on increases or decreases from an agreed-upon level in published or otherwise established prices of specific items or the contract end items.

(b) *Adjustments based on actual costs of labor or material.* These price adjustments are based on increases or decreases in specified costs of labor or material that the contractor actually experiences during contract performance.

(c) *Adjustments based on cost indexes of labor or material.* These price adjustments are based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the contract.

16.203-2 Application.

A fixed-price contract with economic price adjustment may be used when (i) there is serious doubt concerning the stability of market or labor conditions that will exist during an extended period of contract performance, and (ii) contingencies that would otherwise be included in the contract price can be identified and covered separately in the contract. Price adjustments based on established prices should normally be restricted to industry-wide contingencies. Price adjustments based on labor and material costs should be limited to contingencies beyond the contractor's control. For use of economic price adjustment in formally advertised contracts, see 14.407-4.

(a) In establishing the base level from which adjustment will be made, the contracting officer shall ensure that contingency allowances are not duplicated by inclusion in both the base price and the adjustment requested by the contractor under economic price adjustment clause.

(b) In contracts that do not require submission of cost or pricing data, the contracting officer shall obtain adequate information to establish the base level from which adjustment will be made and may require verification of data submitted.

16.203-3 Limitations.

A fixed-price contract with economic price adjustment shall not be used unless the contracting officer determines that it is necessary either to protect the contractor and the Government against significant fluctuations in labor or material costs or to provide for contract price adjustment in the event of changes in the contractor's established prices.

16.203-4 Contract clauses.

(a) *Adjustment based on established prices—standard supplies.* (1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-2, Economic Price Adjustment—Standard Supplies, or an agency-prescribed clause as authorized in subparagraph (2) below, in solicitations and contracts when all of the following conditions apply:

(i) A fixed-price contract is contemplated.

(ii) The requirement is for standard supplies that have an established catalog or market price, verified using the criteria in 15.804-3.

(iii) The contracting officer has made the determination specified in 16.203-3.

(2) If all the conditions in subparagraph (a)(1) above apply and the contracting officer determines that the use of the clause at 52.216-2 is inappropriate, the contracting officer may use an agency-prescribed clause instead of the clause at 52.216-2.

(3) If the negotiated unit price reflects a net price after applying a trade discount from a catalog or list price, the contracting officer shall document in the contract file both the catalog or list price and the discount. (This does not apply to prompt payment or cash discounts.)

(b) *Adjustment based on established prices—semistandard supplies.* (1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-3, Economic Price Adjustment—Semistandard Supplies, or an agency-prescribed clause as authorized in subparagraph (2) below, in solicitations and contracts when all of the following conditions apply:

(i) A fixed price is contemplated.

(ii) The requirement is for semistandard supplies for which the prices can be reasonably related to the prices of nearly equivalent standard supplies that have an established catalog or market price, verified using the criteria in 15.804-3.

(iii) The contracting officer has made the determination specified in 16.203-3.

(2) If all conditions in subparagrph (b)(1) above apply and the contracting officer determines that the use of the clause at 52.216-3 is inappropriate, the contracting officer may use an agency-prescribed clause instead of the clause at 52.216-3.

(3) If the negotiated unit price reflects a net price after applying a trade discount from a catalog or list price, the contracting officer shall document in the contract file both the catalog or list price and the discount. (This does not apply to prompt payment or cash discounts.)

(4) Before entering into the contract, the contracting officer and contractor must agree in writing on the identity of the standard supplies and the corresponding contract line items to which the clause applies.

(5) If the supplies are standard, except for preservation, packaging, and packing requirements, the clause prescribed in 16.203-4(a), shall be used rather than this clause.

(c) *Adjustments based on actual cost of labor or material.* (1) The contracting officer shall, when contracting by negotiation, insert a clause that is substantially the same as the clause at 52.216-4, Economic Price Adjustment—Labor and Material, or an agency-prescribed clause as authorized in subparagraph (2) below, in solicitation and contracts when all of the following conditions apply:

(i) A fixed-price contract is contemplated.

(ii) There is no major element of design engineering or development work involved.

(iii) One or more identifiable labor or material cost factors are subject to change.

(iv) The contracting officer has made the determination specified in 16.203-3.

(2) If all conditions in subparagraph (c)(1) above apply and the contracting officer determines that the use of the clause at 52.216-4 is inappropriate, the contracting officer may use an agency-prescribed clause instead of the clause at 52.216-4.

(3) The contracting officer shall describe in detail in the contract Schedule—

(i) The types of labor and materials subject to adjustment under the clause;

(ii) The labor rates, including fringe benefits (if any) and unit prices of materials that may be increased or decreased; and

(iii) The quantities of the specified labor and materials allocable to each unit to be delivered under the contract.

(4) In negotiating adjustments under the clause, the contracting officer shall—

(i) Consider work in process and materials on hand at the time of changes in labor rates, including fringe benefits (if any) or material prices;

(ii) Not include in adjustments any indirect cost (except fringe benefits as defined in 31.205-6(m)) or profit; and

(iii) Consider only those fringe benefits specified in the contract Schedule.

(d) *Adjustments based on cost indexes of labor or material.* The contracting officer should consider using an economic price adjustment clause based on cost indexes of labor or material under the circumstances and subject to approval as described in subparagraphs (1) and (2) below.

(1) A clause providing adjustment based on cost indexes of labor or materials may be appropriate when—

(i) The contract involves an extended period of performance with significant costs to be incurred beyond 1 year after performance begins;

(ii) The contract amount subject to adjustment is substantial; and

(iii) The economic variables for labor and materials are too unstable to permit a reasonable division of risk between the Government and the contractor, without this type of clause.

(2) Any clause using this method shall be prepared and approved under agency procedures. Because of the variations in circumstances and clause wording that may arise, no standard clause is prescribed.

16.204 Fixed-price incentive contracts.

A fixed-price incentive contract is a fixed-price contract that provides for adjusting profit and establishing the final contract price by a formula based on the relationship of final negotiated total cost to total target cost. Fixed-price incentive contracts are covered in Subpart 16.4, Incentive Contracts. See 16.403 for more complete descriptions and for application, limitations, and prescribed clauses for these contracts.

16.205 Fixed-price contracts with prospective price redetermination.

16.205-1 Description.

A fixed-price contract with prospective price redetermination provides for (a) a firm fixed price for an initial period of contract deliveries or performance and (b) prospective redetermination, at a stated time or times during performance, of the price for subsequent periods of performance.

16.205-2 Application.

A fixed-price contract with prospective price redetermination may be used in acquisitions of quantity production or services for which it is possible to negotiate a fair and reasonable firm fixed price for an initial period, but not for subsequent periods of contract performance.

(a) The initial period should be the longest period for which it is possible to negotiate a fair and reasonable firm fixed price. Each subsequent pricing period should be at least 12 months.

(b) The contract may provide for a ceiling price based on evaluation of the uncertainties involved in performance and their possible cost impact. This ceiling price should provide for assumption of a reasonable proportion of the risk by the contractor and, once established, may be adjusted only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

16.205-3 Limitations.

This contract type shall not be used unless—

(a) Negotiations have established that (1) the conditions for use of a firm-fixed-price contract are not present (see 16.202-2), and (2) a fixed-price incentive contract would not be more appropriate;

(b) The contractor's accounting system is adequate for price redetermination;

(c) The prospective pricing periods can be made to conform with operation of the contractor's accounting system; and

(d) There is reasonable assurance that price redetermination actions will take place promptly at the specified times.

16.205-4 Contract clause.

The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-5, Price Redetermination—Prospective, in solicitations and contracts when a fixed-price contract is contemplated and the conditions specified in 16.205-2 and 16.205-3(a) through (d) apply.

16.206 Fixed-ceiling-price contracts with retroactive price redetermination.

16.206-1 Description.

A fixed-ceiling-price contract with retroactive price redetermination provides for (a) a fixed ceiling price and (b) retroactive price redetermination within the ceiling after completion of the contract.

16.206-2 Application.

A fixed-ceiling-price contract with retroactive price redetermination is appropriate for research and development contracts estimated at $100,000 or less when it is established at the outset that a fair and reasonable firm fixed price cannot be negotiated and that the amount involved and short performance period make the use of any other fixed-price contract type impracticable.

(a) A ceiling price shall be negotiated for the contract at a level that reflects a reasonable sharing of risk by the contractor. The established ceiling price may be adjusted only if required by the operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

(b) The contract should be awarded only after negotiation of a billing price that is as fair and reasonable as the circumstances permit.

(c) Since this contract type provides the contractor no cost control incentive except the ceiling price, the contracting officer should make clear to the contractor during discussion before award that the contractor's management effectiveness and ingenuity will be considered in retroactively redetermining the price.

16.206-3 Limitations.

This contract type shall not be used unless—

(a) The contract is for research and development and the estimated cost is $100,000 or less;

(b) The contractor's accounting system is adequate for price redetermination;

(c) There is reasonable assurance that the price redetermination will take place promptly at the specified time; and

(d) The head of the contracting activity (or a higher-level official, if required by agency procedures) approves its use in writing.

16.206-4 Contract clause.

The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-6, Price Redetermination—Retroactive, in solicitations and contracts when a fixed-price contract is contemplated and the conditions in 16.206-2 and 16.206-3(a) through (d) apply.

16.207 Firm-fixed-price, level-of-effort term contracts.

16.207-1 Description.

A firm-fixed-price, level-of-effort term contract requires (a) the contractor to provide a specified level of effort, over a stated period of time, on work that can be stated only in general terms and (b)

the Government to pay the contractor a fixed dollar amount.

16.207-2 Application.

A firm-fixed-price, level-of-effort term contract is suitable for investigation or study in a specific research and development area. The product of the contract is usually a report showing the results achieved through application of the required level of effort. However, payment is based on the effort expended rather than on the results achieved.

16.207-3 Limitations.

This contract type may be used only when—

(a) The work required cannot otherwise be clearly defined;

(b) The required level of effort is identified and agreed upon in advance;

(c) There is reasonable assurance that the intended result cannot be achieved by expending less than the stipulated effort; and

(d) The contract price is $100,000 or less, unless approved by the chief of the contracting office.

SUBPART 16.3—COST-REIMBURSEMENT CONTRACTS

16.301 General.

16.301-1 Description.

Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer.

16.301-2 Application.

Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

16.301-3 Limitations.

A cost-reimbursement contract may be used only when—

(a) The contractor's accounting system is adequate for determining costs applicable to the contract;

(b) Appropriate Government surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used; and

(c) A determination and findings has been executed, in accordance with agency procedures, showing that (1) this contract type is likely to be less costly than any other type or (2) it is impractical to obtain supplies or services of the kind or quality required without the use of this contract type (see 10 U.S.C. 2306(c), 2310(b), and 2311 or 41 U.S.C. 254(b), 257(c), and 257(a)).

(d) See 15.903(e) for statutory limitations on price or fee.

16.302 Cost contracts.

(a) *Description.* A cost contract is a cost-reimbursement contract in which the contractor receives no fee.

(b) *Application.* A cost contract may be appropriate for research and development work, particularly with nonprofit educational institutions or other nonprofit organizations, and for facilities contracts.

(c) *Limitations.* See 16.301-3.

16.303 Cost-sharing contracts.

(a) *Description.* A cost-sharing contract is a cost-reimbursement contract in which the contractor receives no fee and is reimbursed only for an agreed-upon portion of its allowable costs.

(b) *Application.* A cost-sharing contract may be used when the contractor agrees to absorb a portion of the costs, in the expectation of substantial compensating benefits.

(c) *Limitations.* See 16.301-3.

16.304 Cost-plus-incentive-fee contracts.

A cost-plus-incentive-fee contract is a cost-reimbursement contract that provides for an initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. Cost-plus-incentive-fee contracts are covered in Subpart 16.4, Incentive Contracts. See 16.404-1 for a more complete description and discussion of application of these contracts. See 16.301-3 for limitations.

16.305 Cost-plus-award-fee contracts.

A cost-plus-award-fee contract is a cost-reimbursement contract that provides for a fee consisting of (a) a base amount (which may be zero) fixed at inception of the contract and (b) an award amount, based upon a judgmental evaluation by the Government, sufficient to provide motivation for excellence in contract performance. Cost-plus-award-fee contracts are covered in Subpart 16.4, Incentive Contracts. See 16.404-2 for a more complete description and discussion of application of these contracts. See 16.301-3 and 16.404-2(c) for limitations.

16.306 Cost-plus-fixed-fee contracts.

(a) *Description.* A cost-plus-fixed-fee contract is a cost-reimbursement contract that provides for payment to the contractor of a negotiated fee that is fixed at the inception of the contract. The fixed fee does not vary with actual cost, but may be adjusted as a result of changes in the work to be performed under the contract. This contract type permits contracting for efforts that might otherwise present too great a risk to contractors, but it provides the contractor only a minimum incentive to control costs.

(b) *Application.* (1) A cost-plus-fixed-fee contract is suitable for use when the conditions of 16.301-2 are present and, for example—

(i) The contract is for the performance of research or preliminary exploration or study, and the level of effort required is unknown; or

(ii) The contract is for development and test, and using a cost-plus-incentive-fee contract is not practical.

(2) A cost-plus-fixed-fee contract normally should not be used in development of major systems (see Part 34) once preliminary exploration, studies, and risk reduction have indicated a high degree of probability that the development is achievable and the Government has established reasonably firm performance objectives and schedules.

(c) *Limitations.* No cost-plus-fixed-fee contract shall be awarded unless—

(1) All limitations in 16.301-3 are complied with; and

(2) The agency head or designee has signed a determination and findings establishing the basis for application of the statutory price or fee limitation (see 15.903(e)).

(d) *Completion and term forms.* A cost-plus-fixed-fee contract may take one of two basic forms—completion or term.

(1) The completion form describes the scope of work by stating a definite goal or target and specifying an end product. This form of contract normally requires the contractor to complete and deliver the specified end product (e.g., a final report of research accomplishing the goal or target) within the estimated cost, if possible, as a condition for payment of the entire fixed fee. However, in the event the work cannot be completed within the estimated cost, the Government may require more effort without increase in fee, provided the Government increases the estimated cost.

(2) The term form describes the scope of work in general terms and obligates the contractor to devote a specified level of effort for a stated time period. Under this form, if the performance is considered satisfactory by the Government, the fixed fee is payable at the expiration of the agreed-upon period, upon contractor certification that

the level of effort specified in the contract has been expended in performing the contract work. Renewal for further periods of performance is a new acquisition that involves new cost and fee arrangements.

(3) Because of the differences in obligation assumed by the contractor, the completion form is preferred over the term form whenever the work, or specific milestones for the work, can be defined well enough to permit development of estimates within which the contractor can be expected to complete the work.

(4) The term form shall not be used unless the contractor is obligated by the contract to provide a specific level of effort within a definite time period.

16.307 Contract clauses.

(a) The contracting officer shall insert the clause at 52.216-7, Allowable Cost and Payment, in solicitations and contracts when a cost-reimbursement contract (other than a facilities contract) is contemplated.

(b) The contracting officer shall insert the clause at 52.216-8, Fixed Fee, in solicitations and contracts when a cost-plus-fixed-fee contract (other than a facilities contract or a construction contract) is contemplated.

(c) The contracting officer shall insert the clause at 52.216-9, Fixed-Fee—Construction, in solicitations and contracts when a cost-plus-fixed-fee construction contract is contemplated.

(d) The contracting officer shall insert the clause at 52.216-10, Incentive Fee, in solicitations and contracts when a cost-plus-incentive-fee contract (other than a facilities contract) is contemplated.

(e) (1) The contracting officer shall insert the clause at 52.216-11, Cost Contract—No Fee, in solicitations and contracts when a cost-reimbursement contract is contemplated that provides no fee and is not a cost-sharing contract or a facilities contract.

(2) If a cost-reimbursement research and development contract with an educational institution or a nonprofit organization that provides no fee or other payment above cost and is not a cost-sharing contract is contemplated, and if the contracting officer determines that withholding of a portion of allowable costs is not required, the contracting officer shall use the clause with its Alternate I.

(f) (1) The contracting officer shall insert the clause at 52.216-12, Cost-Sharing Contract—No Fee, in solicitations and contracts when a cost-sharing contract (other than a facilities contract) is contemplated.

(2) If a cost-sharing research and development contract with an educational institution or a nonprofit organization is contemplated, and if the contracting officer determines that withholding of a portion of allowable costs is not required, the contracting officer shall use the clause with its Alternate I.

(g) (1) The contracting officer shall insert the clause at 52.216-13, Allowable Cost and Payment—Facilities, in solicitations and contracts when a cost-reimbursement consolidated facilities contract or a cost-reimbursement facilities acquisition contract (see 45.302-6) is contemplated.

(2) If a facilities acquisition contract is contemplated and, in the judgment of the contracting officer, it may be necessary to withhold payment of an amount to protect the Government's interest, the contracting officer shall use the clause with its Alternate I.

(h) The contracting officer shall insert the clause at 52.216-14, Allowable Cost and Payment—Facilities Use, in solicitations and contracts when a facilities use contract is contemplated.

(i) The contracting officer shall insert the clause at 52.216-15, Predetermined Indirect Cost Rates, in solicitations and contracts when a cost-reimbursement research and development contract with an educational institution (see 42.705-3(b)) is contemplated and predetermined indirect cost rates are to be used.

SUBPART 16.4—INCENTIVE CONTRACTS

16.401 General.

(a) Incentive contracts as described in this subpart are appropriate when a firm-fixed-price contract is not appropriate and the required supplies or services can be acquired at lower costs and, in certain instances, with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the contractor's performance. Incentive contracts are designed to obtain specific acquisition objectives by—

(1) Establishing reasonable and attainable targets that are clearly communicated to the contractor; and

(2) Including appropriate incentive arrangements designed to (i) motivate contractor efforts that might not otherwise be emphasized and (ii) discourage contractor inefficiency and waste.

(b) When predetermined, formula-type incentives on technical performance or delivery are included, increases in profit or fee are provided only for achievement that surpasses the targets, and decreases are provided for to the extent that such targets are not met. The incentive increases or decreases are applied to performance targets rather than minimum performance requirements.

(c) The two basic categories of incentive contracts are fixed-price incentive contracts (see 16.403) and cost-reimbursement-incentive contracts (see 16.404). Since it is usually to the Government's advantage for the contractor to assume substantial cost responsibility and an appropriate share of the cost risk, fixed-price incentive contracts are preferred when contract costs and performance requirements are reasonably certain. Cost-reimbursement incentive contracts are subject to the overall limitations in 16.301 that apply to all cost-reimbursement contracts.

16.402 Application of predetermined, formula-type incentives.

16.402-1 Cost incentives.

(a) Most incentive contracts include only cost incentives, which take the form of a profit or fee adjustment formula and are intended to motivate the contractor to effectively manage costs. No incentive contract may provide for other incentives without also providing a cost incentive (or constraint).

(b) Except for cost-plus-award-fee contracts (see 16.404-2), incentive contracts include a target cost, a target profit or fee, and a profit or fee adjustment formula that (within the constraints of a price ceiling or minimum and maximum fee) provides that—

(1) Actual cost that meets the target will result in the target profit or fee;

(2) Actual cost that exceeds the target will result in downward adjustment of target profit or fee; and

(3) Actual cost that is below the target will result in upward adjustment of target profit or fee.

16.402-2 Technical performance incentives.

(a) Technical performance incentives may be considered in connection with specific product characteristics (e.g., a missile range, an aircraft speed, an engine thrust, or a vehicle maneuverability) or other specific elements of the contractor's performance. These incentives should be designed to tailor profit or fee to results achieved by the contractor, compared with specified target goals.

(b) Technical performance incentives may be particularly appropriate in major systems contracts, both in development (when performance objectives are known and the fabrication of prototypes for test and evaluation is required) and in production (if improved performance

is attainable and highly desirable to the Government).

(c) Technical performance incentives may involve a variety of specific characteristics that contribute to the overall performance of the end item. Accordingly, the incentives on individual technical characteristics must be balanced so that no one of them is exaggerated to the detriment of the overall performance of the end item.

(d) Performance tests are generally essential in order to determine the degree of attainment of performance targets. Therefore, the contract must be as specific as possible in establishing test criteria such as testing conditions, instrumentation precision, and data interpretation.

(e) Because performance incentives present complex problems in contract administration, the contracting officer should negotiate them in full coordination with Government engineering and pricing specialists.

(f) It is essential that the Government and contractor agree explicitly on the effect that contract changes (e.g., pursuant to the Changes clause) will have on performance incentives.

(g) The contracting officer must exercise care, in establishing performance criteria, to recognize that the contractor should not be rewarded or penalized for attainments of Government-furnished components.

16.402-3 Delivery incentives.

(a) Delivery incentives should be considered when improvement from a required delivery schedule is a significant Government objective. It is important to determine the Government's primary objectives in a given contract (e.g., earliest possible delivery or earliest quantity production).

(b) Incentive arrangements on delivery should specify the application of the reward-penalty structure in the event of Government-caused delays or other delays beyond the control, and without the fault or negligence, of the contractor or subcontractor.

16.402-4 Structuring multiple-incentive contracts.

A properly structured multiple-incentive arrangement should—

(a) Motivate the contractor to strive for outstanding results in all incentive areas; and

(b) Compel trade-off decisions among the incentive areas, consistent with the Government's overall objectives for the acquisition. Because of the interdependency of the Government's cost, the technical performance, and the delivery goals, a contract that emphasizes only one of the goals may jeopardize control over the others. Because outstanding results may not be attainable for each of the incentive areas, all multiple-incentive contracts must include a cost incentive (or constraint) that operates to preclude rewarding a contractor for superior technical performance or delivery results when the cost of those results outweighs their value to the Government.

16.403 Fixed-price incentive contracts.

(a) *Description.* A fixed-price incentive contract is a fixed-price contract that provides for adjusting profit and establishing the final contract price by application of a formula based on the relationship of total final negotiated cost to total target cost. The final price is subject to a price ceiling, negotiated at the outset. The two forms of fixed-price incentive contracts, firm target and successive targets, are further described in 16.403-1 and 16.403-2 below.

(b) *Application.* A fixed-price incentive contract is appropriate when—

(1) A firm-fixed-price contract is not suitable;

(2) The nature of the supplies or services being acquired and other circumstances of the acquisition are such that the contractor's assumption of a degree of cost responsibility will provide a positive profit incentive for effective cost control and performance; and

(3) If the contract also includes incentives on technical performance and/or delivery, the performance requirements provide a reasonable opportunity for the incentives to have a meaningful impact on the contractor's management of the work.

(c) *Limitations.* A fixed-price incentive contract may be used only when a determination and findings has been executed, in accordance with agency procedures, showing that (1) this contract type is likely to be less costly than any other type or (2) it is impractical to obtain supplies or services of the kind or quality required without the use of this contract type (see 10 U.S.C. 2306(c), 2310(b), and 2311 or 41 U.S.C. 254(b), 257(b), and 257(a)).

(d) *Billing prices.* In fixed-price incentive contracts, billing prices are established as an interim basis for payment. These billing prices may be adjusted, within the ceiling limits, upon request of either party to the contract, when it becomes apparent that final negotiated cost will be substantially different from the target cost.

16.403-1 Fixed-price incentive (firm target) contracts.

(a) *Description.* A fixed-price incentive (firm target) contract specifies a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a profit adjustment formula. These elements are all negotiated at the outset. The price ceiling is the maximum that may be paid to the contractor, except for any adjustment under other contract clauses. When the contractor completes performance, the parties negotiate the final cost, and the final price is established by applying the formula. When the final cost is less than the target cost, application of the formula results in a final profit greater than the target profit; conversely, when final cost is more than target cost, application of the formula results in a final profit less than the target profit, or even a net loss. If the final negotiated cost exceeds the price ceiling, the contractor absorbs the difference as a loss. Because the profit varies inversely with the cost, this contract type provides a positive, calculable profit incentive for the contractor to control costs.

(b) *Application.* A fixed-price incentive (firm target) contract is appropriate when the parties can negotiate at the outset a firm target cost, target profit, and profit adjustment formula that will provide a fair and reasonable incentive and a ceiling that provides for the contractor to assume an appropriate share of the risk. When the contractor assumes a considerable or major share of the cost responsibility under the adjustment formula, the target profit should reflect this responsibility.

(c) *Limitations.* This contract type may be used only when—

(1) The contractor's accounting system is adequate for providing data to support negotiation of final cost and incentive price revision;

(2) Adequate cost or pricing information for establishing reasonable firm targets is available at the time of initial contract negotiation; and

(3) The determination and findings required by 16.403(c) has been signed.

(d) *Contract Schedule.* The contracting officer shall specify in the contract Schedule the target cost, target profit, and target price for each item subject to incentive price revision.

16.403-2 Fixed-price incentive (successive targets) contracts.

(a) *Description.* (1) A fixed-price incentive (successive targets) contract specifies the following elements, all of which are negotiated at the outset:

(i) An initial target cost.

(ii) An initial target profit.

(iii) An initial profit adjustment formula to be used for establishing the firm target profit, including a ceiling and floor for the firm target profit. (This formula normally provides for a lesser degree of contractor cost responsibility than would a formula for establishing final profit and price.)

(iv) The production point at which the firm target cost and firm target profit will be negotiated (usually before delivery or shop completion of the first item).

(v) A ceiling price that is the maximum that may be paid to the contractor, except for any adjustment under other contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

(2) When the production point specified in the contract is reached, the parties negotiate the firm target cost, giving consideration to cost experience under the contract and other pertinent factors. The firm target profit is established by the formula. At this point, the parties have two alternatives, as follows:

(i) They may negotiate a firm fixed price, using the firm target cost plus the firm target profit as a guide.

(ii) If negotiation of a firm fixed price is inappropriate, they may negotiate a formula for establishing the final price using the firm target cost and firm target profit. The final cost is then negotiated at completion, and the final profit is established by formula, as under the fixed-price incentive (firm target) contract (see 16.403-1 above).

(b) *Application.* A fixed-price incentive (successive targets) contract is appropriate when—

(1) Available cost or pricing information is not sufficient to permit the negotiation of a realistic firm target cost and profit before award;

(2) Sufficient information is available to permit negotiation of initial targets; and

(3) There is reasonable assurance that additional reliable information will be available at an early point in the contract performance so as to permit negotiation of either (i) a firm fixed price or (ii) firm targets and a formula for establishing final profit and price that will provide a fair and reasonable incentive. This additional information is not limited to experience under the contract, itself, but may be drawn from other contracts for the same or similar items.

(c) *Limitations.* This contract type may be used only when—

(1) The contractor's accounting system is adequate for providing data for negotiating firm targets and a realistic profit adjustment formula, as well as later negotiation of final costs;

(2) Cost or pricing information adequate for establishing a reasonable firm target cost is reasonably expected to be available at an early point in contract performance; and

(3) The determination and findings required by 16.403(c) has been signed.

(d) *Contract Schedule.* The contracting officer shall specify in the contract Schedule the initial target cost, initial target profit, and initial target price for each item subject to incentive price revision.

16.404 Cost-reimbursement incentive contracts.

See 16.301 for requirements applicable to all cost-reimbursement contracts, for use in conjunction with the following subsections.

16.404-1 Cost-plus-incentive-fee contracts.

(a) *Description.* The cost-plus-incentive-fee contract is a cost-reimbursement contract that provides for the initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. This contract type specifies a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula. After contract performance, the fee payable to the contractor is determined in accordance with the formula. The formula provides, within limits, for increases in fee above target fee when total allowable costs are less than target costs, and decreases in fee below target fee when total allowable costs exceed target costs. This increase or decrease is intended to provide an incentive for the contractor to manage the contract effectively. When total allowable cost is greater than or less than the range of costs within which the fee-adjustment formula operates, the contractor is paid total allowable costs, plus the minimum or maximum fee.

(b) *Application.* (1) A cost-plus-incentive-fee contract is appropriate for development and test programs when (i) a cost-reimbursement contract is necessary (see 16.301-2) and (ii) a target cost and a fee adjustment formula can be negotiated that are likely to motivate the contractor to manage effectively.

(2) The contract may include technical performance incentives when it is highly probable that the required development of a major system is feasible and the Government has established its performance objectives, at least in general terms. This approach may also apply to other development programs, if the use of both cost and technical performance incentives is desirable and administratively practical.

(3) The fee adjustment formula should provide an incentive that will be effective over the full range of reasonably foreseeable variations from target cost. If a high maximum fee is negotiated, the contract shall also provide for a low minimum fee that may be a zero fee or, in rare cases, a negative fee.

(c) *Limitations.* No cost-plus-incentive-fee contract shall be awarded unless all limitations in 16.301-3 are complied with.

16.404-2 Cost-plus-award-fee contracts.

(a) *Description.* A cost-plus-award-fee contract is a cost-reimbursement contract that provides for a fee consisting of (1) a base amount fixed at inception of the contract and (2) an award amount that the contractor may earn in whole or in part during performance and that is sufficient to provide motivation for excellence in such areas as quality, timeliness, technical ingenuity, and cost-effective management. The amount of the award fee to be paid is determined by the Government's judgmental evaluation of the contractor's performance in terms of the criteria stated in the contract. This determination is made unilaterally by the Government and is not subject to the Disputes clause.

(b) *Application.* (1) The cost-plus-award-fee contract is suitable for use when—

(i) The work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, technical performance, or schedule;

(ii) The likelihood of meeting acquisition objectives will be enhanced by using a contract that effectively motivates the contractor toward exceptional performance and provides the Government with the flexibility to evaluate both actual performance and the conditions under which it was achieved; and

(iii) Any additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits.

(2) The number of evaluation criteria and the requirements they represent will differ widely among contracts. The criteria and rating plan should motivate the contractor to improve performance in the areas rated, but not at the expense of at least minimum acceptable performance in all other areas.

(3) Cost-plus-award-fee contracts shall provide for evaluation at stated intervals during performance, so that the

contractor will periodically be informed of the quality of its performance and the areas in which improvement is expected. Partial payment of fee shall generally correspond to the evaluation periods. This makes effective the incentive which the award fee can create by inducing the contractor to improve poor performance or to continue good performance.

(c) *Limitations.* No cost-plus-award-fee contract shall be awarded unless—

(1) All of the limitations in 16.301-3 are complied with;

(2) The maximum fee payable (i.e., the base fee plus the highest potential award fee) complies with the limitations in 16.301-3; and

(3) The contract amount, performance period, and expected benefits are sufficient to warrant the additional administrative effort and cost involved.

16.405 Contract clauses.

(a) The contracting officer shall insert the clause at 52.216-16, Incentive Price Revision—Firm Target, in solicitations and contracts when a fixed-price incentive (firm target) contract is contemplated. If the contract calls for supplies or services to be ordered under a provisioning document or Government option and the prices are to be subject to the incentive price revision under the clause, the contracting officer shall use the clause with its Alternate I.

(b) The contracting officer shall insert the clause at 52.216-17, Incentive Price Revision—Successive Targets, in solicitations and contracts when a fixed-price incentive (successive targets) contract is contemplated. If the contract calls for supplies or services to be ordered under a provisioning document or Government option and the prices are to be subject to incentive price revision under the clause, the contracting officer shall use the clause with its Alternate I.

(c) The clause at 52.216-7, Allowable Cost and Payment, is prescribed in 16.307(a) for insertion in solicitations and contracts when a cost-plus-incentive-fee contract or a cost-plus-award-fee contract is contemplated.

(d) The clause at 52.216-10, Incentive Fee, is prescribed in 16.307(d) for insertion in solicitations and contracts when a cost-plus-incentive-fee contract is contemplated.

(e) The contracting officer shall insert an appropriate award fee clause in solicitations and contracts when a cost-plus-award-fee contract is contemplated, provided that the clause—

(1) Is prescribed by or approved under agency acquisition regulations;

(2) Is compatible with the clause at 52.216-7, Allowable Cost and Payment; and

(3) Expressly excludes from the operation of the Disputes clause any disagreement by the contractor concerning the amount of the award fee.

SUBPART 16.5—INDEFINITE-DELIVERY CONTRACTS

16.501 General.

(a) There are three types of indefinite-delivery contracts—definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used when the exact times and/or quantities of future deliveries are not known at the time of contract award.

(b) The various types of indefinite-delivery contracts offer the following advantages:

(1) All three types permit (i) Government stocks to be maintained at minimum levels and (ii) direct shipment to users.

(2) Indefinite-quantity contracts and requirements contracts also permit (i) flexibility in both quantities and delivery scheduling and (ii) ordering of supplies or services after requirements materialize.

(3) Indefinite-quantity contracts limit the Government's obligation to the minimum quantity specified in the contract.

(4) Requirements contracts may permit faster deliveries when production lead time is involved, because contractors are usually willing to maintain limited stocks when the Government will obtain all of its actual purchase requirements from the contractor.

(c) Indefinite-delivery contracts may provide for firm fixed prices (see 16.202), fixed prices with economic price adjustment (see 16.203), fixed prices with prospective redetermination (see 16.205), or prices based on catalog or market prices (see 15.804-3(c)). When prices are based on catalog or market prices, the price to be paid may be determined by establishing an adjustment factor and applying it to the price in industrywide pricing guides or manufacturers' price catalogs. Normally, the adjustment factor will be a fixed percentage discount to be applied to the price in effect on the date of each order. When fast payment procedures are included in indefinite-delivery contracts, the contracting officer shall include in the contract the special data required by 13.303(b).

16.502 Definite-quantity contracts.

(a) *Description.* A definite-quantity contract provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries to be scheduled at designated locations upon order.

(b) *Application.* A definite-quantity contract may be used when it can be determined in advance that (1) a definite quantity of supplies or services will be required during the contract period and (2) the supplies or services are regularly available or will be available after a short lead time.

16.503 Requirements contracts.

(a) *Description.* A requirements contract provides for filling all actual purchase requirements of designated Government activities for specific supplies or services during a specified contract period, with deliveries to be scheduled by placing orders with the contractor.

(1) For the information of offerors and contractors, the contracting officer shall state a realistic estimated total quantity in the solicitation and resulting contract. This estimate is not a representation to an offeror or contractor that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal. The contracting officer may obtain the estimate from records of previous requirements and consumption, or by other means, and should base the estimate on the most current information available.

(2) The contract shall state, if feasible, the maximum limit of the contractor's obligation to deliver and the Government's obligation to order. The contract may also specify maximum or minimum quantities that the Government may order under each individual order and the maximum that it may order during a specified period of time.

(b) *Application.* A requirements contract may be used when the Government anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated Government activities will need during a definite period. Generally, a requirements contract is appropriate for items or services that are commercial products or commercial-type products (see 11.001). Funds are obligated by each delivery order, not by the contract itself.

(c) *Government property furnished for repair.* When a requirements contract is used to acquire work (e.g., repair, modification, or overhaul) on existing items of Government property, the

contracting officer shall specify in the Schedule that failure of the Government to furnish such items in the amounts or quantities described in the Schedule as "estimated" or "maximum" will not entitle the contractor to any equitable adjustment in price under the Government Property clause of the contract.

16.504 Indefinite-quantity contracts.

(a) *Description.* An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of specific supplies or services to be furnished during a fixed period, with deliveries to be scheduled by placing orders with the contractor.

(1) The contract shall require the Government to order and the contractor to furnish at least a stated minimum quantity of supplies or services and, if and as ordered, the contractor to furnish any additional quantities, not to exceed a stated maximum. The contracting officer may obtain the basis for the maximum from records of previous requirements and consumption, or by other means, but the maximum quantity should be realistic and based on the most current information available.

(2) To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that the Government is fairly certain to order.

(3) The contract may also specify maximum or minimum quantities that the Government may order under each delivery order and the maximum that it may order during a specific period of time.

(b) *Application.* An indefinite-quantity contract may be used when (1) the Government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that will be required during the contract period and (2) it is inadvisable for the Government to commit itself for more than a minimum quantity. An indefinite-quantity contract should be used only for items or services that are commercial products or commercial-type products (see 11.001) and when a recurring need is anticipated. Funds for other than the stated minimum quantity are obligated by each delivery order, not by the contract itself.

16.505 Contract clauses.

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

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

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

(d) (1) The contracting officer shall insert the clause at 52.216-21, Requirements, in solicitations and contracts when a requirements contract is contemplated.

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

(3) If the contract includes subsistence for both Government use and resale in the same Schedule, and similar products may be acquired on a brand-name basis, the contracting officer shall use the clause with its Alternate II (but see subparagraph (5) below).

(4) If the contract involves a partial small business or labor surplus area set-aside, the contracting officer shall use the clause with its Alternate III (but see subparagraph (5) below).

(5) If the contract (i) includes subsistence for both Government use and resale in the same Schedule and similar products may be acquired on a brand-name basis and (ii) involves a partial small business or labor surplus area set-aside, the contracting officer shall use the clause with its Alternate IV.

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

16.506 Ordering.

(a) The contracting officer shall include in the Schedule of indefinite-delivery contracts the names of the activity or activities authorized to issue orders under indefinite-delivery contracts.

(b) If appropriate, authorization for placing oral orders may be included in the contract Schedule; *provided*, that procedures have been established for obligating funds and that oral orders are confirmed in writing.

(c) Orders may be placed by written telecommunication, if provided for in the contract Schedule.

(d) Orders placed under indefinite-delivery contracts shall contain the following information:

(1) Date of order.

(2) Contract number and order number.

(3) Item number and description, quantity, and unit price.

(4) Delivery or performance date.

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

(6) Packaging, packing, and shipping instructions, if any.

(7) Accounting and appropriation data.

(8) Any other pertinent information.

SUBPART 16.6—TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS

16.601 Time-and-materials contracts.

(a) *Description.* A time-and-materials contract provides for acquiring supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit and (2) materials at cost, including, if appropriate, material handling costs as part of material costs.

(b) *Application.* A time-and-materials contract may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

(1) *Government surveillance.* A time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used.

(2) *Material handling costs.* When included as part of material costs, material handling costs shall include only costs clearly excluded from the labor-hour rate. Material handling costs may include all appropriate indirect costs allocated to direct materials in accordance with the contractor's usual accounting procedures consistent with Part 31.

(3) *Optional method of pricing material.* When the nature of the work to be performed requires the contractor to furnish material that it regularly sells to the general public in the normal course of its business, the contract may provide for charging material on a basis other than at cost if—

(i) The total estimated contract price does not exceed $25,000 or the estimated price of material so charged does not exceed 20 percent of the estimated contract price;

(ii) The material to be so charged is identified in the contract;

(iii) No element of profit on material so charged is included as profit in the fixed hourly labor rates; and

(iv) The contract provides (A) that the price to be paid for such material shall be based on an established catalog or list price in effect when material is furnished, less all applicable discounts to the Government, and (B) that in no event shall the price exceed the contractor's sales price to its most-favored customer for the same item in like quantity, or the current market price, whichever is lower.

(c) *Limitations.* A time-and-materials contract may be used (1) only after the contracting officer executes a determination and findings that no other contract type is suitable and (2) only if the contract includes a ceiling price that the contractor exceeds at its own risk. The contracting officer shall document the contract file to justify the reasons for and amount of any subsequent change in the ceiling price.

16.602 Labor-hour contracts.

Description. A labor-hour contract is a variation of the time-and-materials contract, differing only in that materials are not supplied by the contractor. See 16.601(b) and 16.601(c) for application and limitations, respectively.

16.603 Letter contracts.

16.603-1 Description.

A letter contract is a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services.

16.603-2 Application.

(a) A letter contract may be used when (1) the Government's interests demand that the contractor be given a binding commitment so that work can start immediately and (2) negotiating a definitive contract is not possible in sufficient time to meet the requirement. However, a letter contract should be as complete and definite as feasible under the circumstances.

(b) When a letter contract award is based on price competition, the contracting officer shall include an overall price ceiling in the letter contract.

(c) Each letter contract shall, as required by the clause at 52.216-25, Contract Definitization, contain a negotiated definitization schedule including (1) dates for submission of the contractor's price proposal, required cost or pricing data, and, if required, make-or-buy and subcontracting plans, (2) a date for the start of negotiations, and (3) a target date for definitization, which shall be the earliest practicable date for definitization. The schedule will provide for definitization of the contract within 180 days after the date of the letter contract or before completion of 40 percent of the work to be performed, whichever occurs first. However, the contracting officer may, in extreme cases and according to agency procedures, authorize an additional period. If, after exhausting all reasonable efforts, the contracting officer and the contractor cannot negotiate a definitive contract because of failure to reach agreement as to price or fee, the clause at 52.216-25 requires the contractor to proceed with the work and provides that the contracting officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with Subpart 15.8 and Part 31, subject to appeal as provided in the Disputes clause.

(d) The maximum liability of the Government inserted in the clause at 52.216-24, Limitation of Government Liability, shall be the estimated amount necessary to cover the contractor's requirements for funds before definitization. However, it shall not exceed 50 percent of the estimated cost of the definitive contract unless approved in advance by the official that authorized the letter contract.

(e) The contracting officer shall assign a priority rating to the letter contract if it is appropriate under 12.304.

16.603-3 Limitations.

A letter contract may be used only after the head of the contracting activity or a designee executes a determination and findings that no other contract is suitable. Letter contracts shall not—

(a) Commit the Government to a definitive contract in excess of the funds available at the time the letter contract is executed;

(b) Be entered into without competition when competition is practicable; or

(c) Be amended to satisfy a new requirement unless that requirement is inseparable from the existing letter contract. Any such amendment is subject to the same requirements and limitations as a new letter contract.

16.603-4 Contract clauses.

(a) The contracting officer shall include in each letter contract the clauses required by this regulation for the type of definitive contract contemplated and any additional clauses known to be appropriate for it.

(b) In addition, the contracting officer shall insert the following clauses in solicitations and contracts when a letter contract is contemplated:

(1) The clause at 52.216-23, Execution and Commencement of Work, except that this clause may be omitted from letter contracts awarded on SF 26;

(2) The clause at 52.216-24, Limitation of Government Liability, with dollar amounts completed in a manner consistent with 16.603-2(d); and

(3) The clause at 52.216-25, Contract Definitization, with its paragraph (b) completed in a manner consistent with 16.603-2(c). If the letter contract is being awarded on the basis of price competition, the contracting officer shall use the clause with its Alternate I.

(c) The contracting officer shall also insert the clause at 52.216-26, Payments of Allowable Costs Before Definitization, in solicitations and contracts if a cost-reimbursement definitive contract is contemplated, unless the acquisition involves conversion, alteration, or repair of ships.

SUBPART 16.7—AGREEMENTS

16.701 Scope.

This subpart prescribes policies and procedures for establishing and using basic agreements and basic ordering agreements. (See Subpart 13.2 for blanket purchase agreements (BPA's) and see 35.015(b) for additional coverage of basic agreements with educational institutions and nonprofit organizations.)

16.702 Basic agreements.

(a) *Description.* A basic agreement is a written instrument of understanding, negotiated between an agency or contracting activity and a contractor, that (1) contains contract clauses applying to future contracts between the parties during its term and (2) contemplates separate future contracts that will incorporate by reference or attachment the required and applicable clauses agreed upon in the basic agreement. A basic agreement is not a contract.

(b) *Application.* A basic agreement should be used when a substantial number of separate contracts may be awarded to a contractor during a particular period and significant recurring negotiating problems have been experienced with the contractor. Basic agreements may be used with negotiated fixed-price or cost-reimbursement contracts.

(1) Basic agreements shall contain (i) clauses required for negotiated contracts by statute, executive order, and this regulation and (ii) other clauses prescribed in this regulation or agency

acquisition regulations that the parties agree to include in each contract as applicable.

(2) Each basic agreement shall provide for discontinuing its future applicablity upon 30 days' written notice by either party.

(3) Each basic agreement shall be reviewed annually before the anniversary of its effective date and revised as necessary to conform to the requirements of this regulation. Basic agreements may need to be revised before the annual review due to mandatory statutory requirements. A basic agreement may be changed only by modifying the agreement itself and not by a contract incorporating the agreement.

(4) Discontinuing or modifying a basic agreement shall not affect any prior contract incorporating the basic agreement.

(5) Contracting officers of one agency should obtain and use existing basic agreements of another agency to the maximum practical extent.

(c) *Limitations.* A basic agreement shall not—

(1) Cite appropriations or obligate funds;

(2) State or imply any agreement by the Government to place future contracts or orders with the contractor; or

(3) Be used in any manner to restrict competition.

(d) *Contracts incorporating basic agreements.* (1) Each contract incorporating a basic agreement shall include a scope of work and price, delivery, and other appropriate terms that apply to the particular contract. The basic agreement shall be incorporated into the contract by specific reference (including reference to each amendment) or by attachment.

(2) The contracting officer shall include clauses pertaining to subjects not covered by the basic agreement, but applicable to the contract being negotiated, in the same manner as if there were no basic agreement.

(3) If an existing contract is modified to effect new acquisition, the modification shall incorporate the most recent basic agreement, which shall apply only to work added by the modification, except that this action is not mandatory if the contract or modification includes all clauses required by statute, executive order, and this regulation as of the date of the modification. However, if it is in the Government's interest and the contractor agrees, the modification may incorporate the most recent basic agreement for application to the entire contract as of the date of the modification.

16.703 Basic ordering agreements.

(a) *Description.* A basic ordering agreement is a written instrument of understanding, negotiated between an agency, contracting activity, or contracting office and a contractor, that contains (1) terms and clauses applying to future contracts (orders) between the parties during its term, (2) a description, as specific as practicable, of supplies or services to be provided, and (3) methods for pricing, issuing, and delivering future orders under the basic ordering agreement. A basic ordering agreement is not a contract.

(b) *Application.* A basic ordering agreement may be used to expedite contracting for uncertain requirements for supplies or services when specific items, quantities, and prices are not known at the time the agreement is executed, but a substantial number of requirements for the type of supplies or services covered by the agreement are anticipated to be purchased from the contractor. Under proper circumstances, the use of these procedures can result in economies in ordering parts for equipment support by reducing administrative lead-time, inventory investment, and inventory obsolescence due to design changes.

(c) *Limitations.* A basic ordering agreement shall not state or imply any agreement by the Government to place future contracts or orders with the contractor or be used in any manner to restrict competition.

(1) Each basic ordering agreement shall—

(i) Describe the method for determining prices to be paid to the contractor for the supplies or services;

(ii) Include delivery terms and conditions or specify how they will be determined;

(iii) List one or more Government activities authorized to issue orders under the agreement;

(iv) Specify the point at which each order becomes a binding contract (e.g., issuance of the order, acceptance of the order in a specified manner, or failure to reject the order within a specified number of days);

(v) Provide that failure to reach agreement on price for any order issued before its price is established (see paragraph (d)(3) below) is a dispute under the Disputes clause included in the basic ordering agreement; and

(vi) If fast payment procedures will apply to orders, include the special data required by 13.303(b).

(2) If a basic ordering agreement is to be restricted to acquiring specific supplies or services available from only one source, the contracting officer, before issuing the basic ordering agreement, shall—

(i) Sign, and obtain any required approvals of, a determination and findings that competition is impracticable for all orders that may be issued;

(ii) Synopsize the prospective basic ordering agreement; and

(iii) If a contract administration office is authorized to issue orders (see 42.202(c)), provide to the administrative contracting officer evidence of the synopsis and a copy of the determination and findings and appropriate approvals.

(3) Each basic ordering agreement shall be reviewed annually before the anniversary of its effective date and revised as necessary to conform to the requirements of this regulation. Basic ordering agreements may need to be revised before the annual review due to mandatory statutory requirements. A basic ordering agreement shall be changed only by modifying the agreement itself and not by individual orders issued under it. Modifying a basic ordering agreement shall not retroactively affect orders previously issued under it.

(d) *Orders.* A contracting officer representing any Government activity listed in a basic ordering agreement may issue orders for required supplies or services covered by that agreement.

(1) Before issuing an order under a basic ordering agreement, the contracting officer shall—

(i) Obtain competition or determine that it is impracticable to obtain competition;

(ii) If the order is being placed after competition, ensure that use of the basic ordering agreement is not prejudicial to other offerors; and

(iii) Obtain any applicable reviews or approvals, sign or obtain any required determination and findings, and comply with other requirements, as if the order were a contract awarded independently of a basic ordering agreement.

(2) Contracting officers shall—

(i) Issue orders under basic ordering agreements on Optional Form (OF) 347, Order for Supplies or Services, or on any other appropriate contractual instrument;

(ii) Incorporate by reference the provisions of the basic ordering agreement; and

(iii) Cite the applicable negotiation authority in each order.

(3) The contracting officer shall neither make any final commitment nor authorize the contractor to begin work

on an order under a basic ordering agreement until prices have been established, unless the order establishes a ceiling price limiting the Government's obligation and either—

(i) The basic ordering agreement provides adequate procedures for timely pricing of the order early in its performance period; or

(ii) The need for the supplies or services is compelling and unusually urgent (i.e., when the Government would be seriously injured, financially or otherwise, if the requirement is not met sooner than would be possible if prices were established before the work began). The contracting officer shall proceed with pricing as soon as practical. In no event shall an entire order be priced retroactively.

PART 17—SPECIAL CONTRACTING METHODS

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

17.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services through special contracting methods, including—

(a) Multi-year contracting;

(b) Options; and

(c) Leader company contracting.

SUBPART 17.1—MULTIYEAR CONTRACTING

17.101 Definitions.

"Advance acquisition," as used in this subpart, means an exception to the full funding policy which allows acquisition of long leadtime items (advanced long lead acquisition) or economic order quantities (EOQ) of items (advance EOQ acquisition) in a fiscal year in advance of that in which the related end item is to be acquired. Advance acquisitions may include materials, parts, and components as well as costs associated with the further processing of those materials, parts, and components.

"Annual funding," as used in this subpart, means the current Congressional practice of limiting authorizations and appropriations to 1 fiscal year at a time. The term should not be confused with 2-year or 3-year funds which permit the Executive Branch more than 1 year to obligate the funds.

"Cancellation," as used in this subpart, means the cancellation of the total requirements of all remaining program years. Cancellation results when the contracting officer (a) notifies the contractor of nonavailability of funds for contract performance for any subsequent program year, or (b) fails to notify the contractor that funds are available for performance of the succeeding program year requirement.

"Cancellation ceiling," as used in this subpart, means the maximum amount that the Government will pay the contractor which the contractor would have recovered as a part of the unit price, had the contract been completed. The amount which is actually paid to the contractor upon settlement for unrecovered costs (which can only be equal to or less than the ceiling) is referred to as the cancellation charge. This ceiling generally includes only nonrecurring costs.

"Multiyear acquisition," as used in this subpart, means contracting, to some degree, for more than the current year requirement. Examples include multiyear contracts and advance EOQ acquisition. Generally, advance long lead acquisitions in support of a single year's requirement would not be considered in a multiyear acquisition.

"Multiyear contracts," as used in this subpart, means contracts covering more than 1-year's but not in excess of 5-year's requirements, unless otherwise authorized by statute. Total contract quantities and annual quantities are planned for a particular level and type of funding as displayed in a current 5-year development plan. Each program year is annually budgeted and funded and, at the time of award, funds need only to have been appropriated for the first year. The contractor is protected against loss resulting from cancellation by contract provisions which allow reimbursement of costs included in the cancellation ceiling.

"Multiyear funding," as used in this subpart, means Congressional authorization and appropriation covering more than 1 fiscal year. The term should not be confused with 2-year or 3-year funds which cover only 1 fiscal year's requirement but permit the Executive Branch more than 1-year to obligate the funds.

"No-year funding," as used in this subpart, means Congressional funding that does not require obligation in any specific year or years.

"Nonrecurring costs," as used in this subpart, means those production costs which are generally incurred on a one time basis and include such costs as plant or equipment relocation, plant rearrangement, special tooling and special test equipment, preproduction engineering, initial spoilage and rework, and specialized work force training (see 17.103-1(d)(2)).

"Recurring costs," as used in this subpart, means production costs that vary with the quantity being produced such as labor and materials.

"Termination for convenience," as used in this subpart, means the procedure which may apply to any Government contract, including multiyear contracts. As contrasted with cancellation, termination can be effected at any time during the life of the contract (cancellation is effected between fiscal years) and can be for the total quantity or a partial quantity

(whereas cancellation must be for all subsequent fiscal years' quantities).

"Termination liability," as used in this subpart, means the maximum cost the Government would incur if a contract is terminated. In the case of a multiyear contract terminated before completion of the current fiscal year's deliveries, termination liability would include an amount for both current year termination charges and outyear cancellation charges.

"Termination liability funding," as used in this subpart, means obligating contract funds to cover the contractor's expenditures plus termination liability but not the total cost of the completed end items.

17.102 Policy.

17.102-1 Uses.

(a) Multiyear contracting may be used when no-year or multiyear funds are available or, in the case of 1-year funds, when multiyear contracting is specifically authorized by statute. (Specific statutory authority is needed for an agency to make financial commitments for amounts greater than those appropriated annually by the Congress. See 31 U.S.C. 665.)

(b) The multiyear contracting method may be used for the acquisition of services or supplies (including, but not limited to systems, subsystems, major equipment, components, parts, materials, supplies and the advance acquisition thereof, and commercial and noncommercial items).

17.102-2 General.

(a) Multiyear contracting is a special contracting method used to acquire known requirements in quantities and total cost not over planned requirements for 5 years unless otherwise authorized by statute, even though the total funds ultimately to be obligated are not available at the time of contract award. This method may be used in formally advertised or negotiated (either competitive or noncompetitive) acquisition.

(b) Under multiyear contracting, contract requirements are budgeted and financed for the program year for which they are authorized. Prices are solicited both for the current 1-year program requirement alone and for the total multiyear requirements. Award is made on whichever alternative offers the lowest unit prices to the Government. (With respect to competitive contracting, award may be based only on price or price and other factors considered.) If award is made on the multiyear basis, funds are obligated only for the first year's requirement, with succeeding years' requirements funded annually.

(c) If funds do not become available to support the succeeding years' requirements, the agency must cancel the contract. Multiyear contracts may contain a contract term allowing reimbursement of unrecovered nonrecurring costs included in prices for canceled items to protect the contractor against loss resulting from cancellation.

17.102-3 Objectives.

(a) Use of multiyear contracting is encouraged to take advantage of one or more of the following:

(1) Lower costs.

(2) Enhancement of standardization.

(3) Reduction of administrative burden in the placement and administration of contracts.

(4) Substantial continuity of production or performance, thus avoiding annual startup costs, preproduction testing costs, makeready expenses, and phaseout costs.

(5) Stabilization of contractor work forces.

(6) Avoidance of the need for establishing and "proving out" quality control techniques and procedures for a new contractor each year.

(7) Broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs.

(8) Provide incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

(b) Contracts awarded under this multiyear procedure shall be firm-fixed-price, fixed-price with economic price adjustment, or fixed-price incentive.

(c) Given the longer performance period associated with multiyear acquisition, consideration in pricing contracts should be given to the use of economic price adjustment terms, profit objectives comparable with risk, and financing arrangements which reflect contractor cash flow requirements.

(d) Multiyear contracting is a flexible contracting method applicable to a wide range of acquisitions. The requirements of this subpart and the clauses at 52.217-1, Limitation of Price and Contractor Obligations, and 52.217-2 Cancellation of Items, respectively, may be modified in the following respects:

(1) *Level unit prices.* Multiyear contract procedures provide for the amortization of certain costs over the entire contract quantity resulting in identical (level) unit prices (except when economic price adjustment provisions apply) for all items or services under the multiyear contract. When level unit pricing is not in the Government's interest, the head of a contracting activity or a designee may approve the use of variable unit pricing, provided that for competitive proposals there is a valid method of evaluation.

(2) *Cancellation provisions.* Whether, or to what extent, cancellation provisions are used in multiyear acquisitions will depend on the unique circumstances of each acquisition. The head of a contracting activity or a designee may authorize the use of modified cancellation provisions or the exclusion of cancellation provisions from the contract.

(3) *Recurring costs in cancellation ceiling.* The inclusion of recurring costs in cancellation ceilings is an exception to normal contract financing arrangements and requires approval by the agency head or a designee.

(4) *Annual and multiyear proposals.* Circumstances in which both annual and multiyear offers or only multiyear offers will be requested are prescribed in 17.103-2. Obtaining both provides reduced lead time for making an annual award in the event that the multiyear award is not in the Government's interest. Obtaining both also provides a basis for the computation of savings and other benefits. However, the preparation and evaluation of dual proposals may increase administrative costs and workloads for both offerors and the Government, especially for large or complex acquisitions. The head of a contracting activity or a designee may authorize the use of an Invitation for Bid (IFB) or a Request for Proposal (RFP) requesting only multiyear prices in a solicitation, provided it is found that such a solicitation is in the Government's interest, and that dual proposals are not necessary to meet the objectives listed in 17.102-3(a).

17.103 Procedures.

17.103-1 General.

(a) *Criteria.* Except as limited in 17.103-1(b), multiyear contracting may be used when one or more of the objectives in 17.102-3 can be met, and the following criteria are present:

(1) The use of such a contract will result in reduced total costs under the contract.

(2) The minimum need for the item to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, acquisition rate, and total quantities.

(3) There is a reasonable expectation that throughout the contemplated

contract period the department or agency will request funding for the contract at the level required to avoid contract cancellation.

(4) There is a stable design for the item to be acquired and the technical risks associated with such items are not excessive.

(5) The estimates of both the cost of the contract and the anticipated cost avoidance through the use of a multiyear contract are realistic.

(b) *Limitations.* Except as permitted by statute, agencies shall not use multiyear contracts when—

(1) Funds covering the acquisition are limited by statute for obligation during the fiscal year in which the contract is executed; or

(2) Requirements exceed a 5-year planned program.

(c) *Method of contracting.* The nature of the requirement should govern the selection of the method of contracting, since the multiyear procedure is compatible with formal advertising, including two-step formal advertising, and negotiation.

(d) *Cancellation.* (1) All program years except the first are subject to cancellation. For each program year subject to cancellation, the contracting officer shall establish a cancellation ceiling. Ceilings must exclude amounts for items included in prior program years. The contracting officer shall reduce the cancellation ceiling for each program year in direct proportion to the remaining requirements subject to cancellation. For example, consider that the total nonrecurring costs (see 15.804-6) are estimated at 10 percent of the total multiyear price, and the percentages for each of the program-year requirements for 5-years are (i) 30 in the first year, (ii) 30 in the second, (iii) 20 in the third, (iv) 10 in the fourth, and (v) 10 in the fifth. The cancellation percentages, after deducting 3 percent for the first program year, would be 7, 4, 2, and 1 percent of the total price applicable to the second, third, fourth, and fifth program years, respectively.

(2) In determining cancellation ceilings, the contracting officer must estimate reasonable preproduction or startup, labor learning, and other nonrecurring costs to be incurred by an "average" prime contractor or subcontractor, which would be applicable to, and which normally would be amortized over, the items or services to be furnished under the multiyear requirements. Nonrecurring costs include such costs, where applicable, as plant or equipment relocation or rearrangement, special tooling and special test equipment, preproduction engineering, initial rework, initial spoilage, pilot runs, allocable portions of the costs of facilities to be acquired or established for the conduct of the work, costs incurred for the assembly training and transportation of a specialized work force to and from the job site, and unrealized labor learning. They shall not include any costs of labor or materials, or other expenses (except as indicated above), which might be incurred for performance of subsequent program year requirements. The total estimate of the above costs must then be compared with the best estimate of the contract cost to arrive at a reasonable percentage or dollar figure. To perform this calculation, the contracting officer should obtain in-house engineering cost estimates identifying the detailed recurring and nonrecurring costs, and indicating labor learning implications.

(3) The contracting officer shall establish cancellation dates for each program year's requirements regarding production lead time and the date by which funding for these requirements can reasonably be established. The contracting officer shall include these dates in the schedule, as appropriate.

(e) *Cancellation ceilings.* Cancellation ceilings and dates may be revised after issuing the solicitation if necessary. In formal advertising, the contracting officer shall change the ceiling by amending the solicitation before bid opening. In two-step formal advertising, discussions conducted during the first step may indicate the need for revised ceilings and dates which may be incorporated in step two. In a negotiated acquisition, negotiations with offerors may provide information requiring a change in cancellation ceilings and dates before final negotiation and contract award.

(f) *Funding/payment of cancellation charges.* Cancellation charges need not be funded before cancellation. If cancellation occurs, the contractor is entitled to payment (see the clause at 52.217-2, Cancellation of Items).

(g) *Presolicitation or pre-bid conferences.* To ensure that all interested sources of supply are thoroughly aware of how multiyear contracting is accomplished, use of presolicitation or pre-bid conferences may be advisable.

(h) *Payment limit.* The contracting officer shall limit the Government's payment obligation to an amount available for contract performance. The contracting officer shall insert the amount for the first program year in the contract upon award and modify it for successive program years upon availability of funds.

(i) *Termination payment.* If the contract is terminated for the convenience of the Government in whole, including items subject to cancellation, the Government's obligation shall not exceed the amount specified in the Schedule as available for contract performance, plus the cancellation ceiling.

(j) *Economic price adjustment clauses.* Economic price adjustment clauses are adaptable to multiyear contracting needs. When the period of production is likely to warrant a labor and material costs contingency in the contract price, the contracting officer should normally use an economic price adjustment clause (see 16.203).

(k) *Price adjustment clause.* When contracting for services, the contracting officer—

(1) Shall add the clause at 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts), when the contract includes the clause at 52.222-41, Service Contract Act of 1965;

(2) May modify the clause at 52.222-43 in overseas contracts when laws, regulations, or international agreements require contractors to pay higher wage rates; or

(3) May use an economic price adjustment clause authorized by 16.203 when potential fluctuations require coverage, and are not included in cost contingencies provided for by the clause at 52.222-43.

17.103-2 Solicitations.

Solicitations for multiyear contracts shall reflect all the factors to be considered for evaluation, specifically including the following:

(a) The requirements, by item or service, for the—

(1) First program year; and

(2) Multiyear contract including the requirements for each program year.

(b) When previous acquisitions of the item or service have been made with competition, a provision that a price may be submitted—

(1) For the total requirements of the first program year, or for the total multiyear requirements, or both; or

(2) Only for the total multiyear requirement, and that prices on a single-year basis will not be considered when (i) competition in future acquisitions would be impracticable after award of a contract covering the first program year requirement and (ii) it is necessary to prevent a first program year "buy-in."

(c) When previous acquisitions for the item or service have been made without competition, and a first program year "buy-in" is not anticipated, include—

(1) A provision that a price must be submitted for the first program year requirements, that a price may be submitted for the total multiyear requirements, and that an offer on only the multiyear requirements will be nonresponsive; and

(2) A provision that if only one offer on the multiyear requirements is received that is both responsive and from a responsible offeror, the Government reserves the right to disregard the offer on the multiyear requirements and make an award only for the first program year requirements; or

(d) When competition after the first program year would be impracticable after award of a contract covering the first program year requirement, and it is necessary to prevent a first program year "buy-in," include—

(1) A provision that a price may be submitted only on the total multiyear requirement and that prices on a single-year basis will not be considered for the purpose of award.

(2) A provision that if only one offer on the multiyear requirements is received that is both responsive and from a responsible offeror, the Government reserves the right to cancel the solicitation and resolicit on a single-year basis by whatever procedures are then appropriate.

(e) A provision that the unit price of each item or service in the multiyear requirement shall be the same for all program years (level unit price) included. (See 16.203 for the use of an economic price adjustment clause which might effect the level unit price.)

(f) Criteria for comparing the lowest evaluated submission on the first program year's requirement against the lowest evaluated submission on the multiyear requirements (see 17.103-3(e)).

(g) Criteria for evaluation factors other than price where the acquisition is on the basis of price and other factors.

(h) A provision that if the Government determines before award that only the first program year requirements are needed, the Government may evaluate offers and make award solely on the basis of price offered on that year's requirements.

(i) A provision specifying a separate cancellation ceiling (on a percentage or dollar basis) and dates applicable to each program year subject to a cancellation (see 17.103-1(d)).

(j) A prominently placed provision directing attention to the multiyear features of the solicitation, and to—

(1) The clause at 52.217-1, Limitation of Price and Contractor Obligations, which limits the the payment obligation of the Government to the requirements of the first program year and to those requirements of succeeding program years funded by the Government (see 17.103-5);

(2) The clause at 52.217-2, Cancellation of Items, which allows the Government to cancel by a specific date or within a specific period, all remaining program years; and

(3) The cancellation ceiling set forth in the schedule.

(k) A statement that award will not be made on less than the first program year requirements.

(l) In the event the solicitation is only for supplies and delivery destinations are unknown—

(1) A definite place or places as the point to which transportation costs will be computed (but only for the purpose of evaluation); and

(2) Insert the provision at 52.247-49, Destination Unknown, which is prescribed at 47.305-5(b)(2).

(m) If Government administrative costs are to be used as a factor in evaluation (see 17.103-3(e)(2)), the dollar amount of those costs. Unless Government administrative costs incident to annual contracting and administration can be reasonably established, they shall not be used as a factor for evaluation.

(n) Where the multiyear acquisition is being computed on a basis other than price alone, the solicitation shall advise of the relative importance of the evaluation factors.

(o) When Government property is provided, it may be used on a rent-free basis. The solicitation shall then contain detailed procedures for eliminating competitive advantage (see Subpart 45.2).

17.103-3 Evaluation.

In addition to the factors in 17.103-2, the contracting officer shall comply with the following:

(a) Evaluation of offers shall involve (1) determination of the lowest overall evaluated cost to the Government for both the multiyear and the first program year acquisition, and (2) comparison of the cost of buying the total requirement under a multiyear acquisition with the cost of buying the total requirement in successive independent acquisitions.

(b) The cancellation ceiling shall not be a factor for evaluation.

(c) If Government property is provided, the contracting officer shall, for evaluation purposes, add an amount for the use of such property computed to eliminate competitive advantage to each offeror's unit price for the first program year requirement and the unit price for the multiyear requirements.

(d) When the solicitation only provides for submission of prices for the total multiyear quantity, submission of prices for the single-year quantity will be disregarded but will not render the offer nonresponsive as to any alternative multiyear submission by the offeror.

(e) To determine the lowest evaluated unit price, the contracting officer shall compare the lowest evaluated offer on the first program year alternative against the lowest evaluated offer on the multiyear alternative as follows:

(1) Multiply the evaluated unit price for each item of the lowest evaluated offer on the first program year alternative by the total number of units of that item required by the multiyear alternative.

(2) Add the total amount for all the items to the dollar amount of any administrative costs identified in the solicitation.

(3) Compare this result against the total evaluated price of the lowest offer on the multiyear alternative.

(4) Where the multiyear acquisition is being computed on a basis other than price alone, the contracting officer shall conduct the evaluation based on the evaluation factors contained in the solicitation (see 17.103-2(m)).

(5) The evaluation procedures contained in this subpart may be modified if necessary to meet the unique circumstances of a particular acquisition.

17.103-4 Award.

(a) When the acquisition is on the basis of price only, the contracting officer shall award to firms offering the lowest evaluated unit price whether that price is on a single-year or a multiyear basis.

(b) When the acquisition is on the basis of price and other factors, the contracting officer shall award to the offeror submitting the proposal most advantageous to the Government, price and other factors considered.

(c) In the case of noncompetitive acquisitions, awards shall be made only if a detailed review of the cost and technical proposals supports the objectives of 17.103-1, and significant benefits of cost savings will result from multiyear acquisitions.

(d) However, if only one responsive offer is received on the multiyear requirements from a responsible offeror, the contracting officer shall proceed as follows:

(1) If the solicitation gave the offeror the choice of submitting prices on a single-year or multiyear basis, or both,

make the award under 17.103-4(a) or 17.103-4(b).

(2) If the solicitation required the submission of prices on the first program year requirements (see 17.103-2(c)(1)), make award to the lowest evaluated offeror on the single-year basis, even though the multiyear price submission may represent the lowest evaluated price submission. However, if the multiyear price offers distinct advantages to the Government, a multiyear award may be made with the advance approval of the head of the contracting activity.

(3) If the solicitation restricted the submission of prices to the multiyear basis only, cancel it and issue a new solicitation. However, if the multiyear price offers distinct advantages to the Government, a multiyear award may be made with the advance approval of the head of the contracting activity.

(e) If the contract is awarded for multiyear requirements, the Schedule shall state that the award was made under "multiyear contracting."

17.104 Related areas.

17.104-1 Set-asides.

(a) Total small business or labor surplus area set-asides and multiyear contracting are compatible and may be used together.

(b) Partial set-asides for small business or labor surplus area concerns generally are not compatible with multiyear contracting when high startup costs are involved because of the potential duplication of costs by the set-aside and non-set-aside contractors. However—

(1) Even when high startup costs are involved, partial set-asides combined with the multiyear procedure may be appropriate if the criteria for partial set-asides are met under Part 19 and it is likely that the broader competition will offset any duplication of startup costs; and

(2) Partial set-asides are compatible with multiyear contracting when the multiyear procedure is based on cost savings from anticipated production over longer periods of time. (Partial labor surplus area set-asides are only authorized for DOD activities at this time.)

(c) When considering combining multiyear contracting and set-asides, the contracting officer shall request the advice of the activity's small business specialist and the SBA representative, if one is assigned to the activity, and permit them to review the facts and make recommendations.

17.104-2 Multiyear subcontracts.

(a) The benefits and advantages of multiyear prime contracts may frequently be increased by multiyear subcontracts under the prime contracts. While prime contractors should be encouraged to employ multiyear subcontracts, the choice of the appropriate subcontract types remains with the prime contractor who should employ multiyear subcontracts only when in its judgment—

(1) The subcontract item or service is of stable design and specification;

(2) The quantity required is reasonably firm and continuing;

(3) Effective competition may be enhanced; and

(4) Multiyear subcontracts can reasonably be expected to result in reduced prices.

(b) Multiyear subcontracts may be particularly desirable under a sole source, multiyear prime contract since effective competition at the subcontract level may be enhanced and the attendant cost reductions realized by the prime contractor and the Government.

17.104-3 Options.

Benefits may accrue by providing for options with a multiyear contract. In that event, contracting officers must follow both the requirements of Subpart 17.2 and the following:

(a) Option prices should not include (1) charges for plant and equipment already amortized, or (2) other nonrecurring charges which were included in the basic contract price. Accordingly, solicitations should require offerors to submit prices for option quantities which do not include such charges.

(b) Contracting officers should also consider including a term allowing the Government the option, upon payment of the unamortized portion of the cost of the plant or equipment, to take title to them.

17.104-4 Multiyear contracting using modified requirements contracts.

(a) *Description of procedure.* Multiyear acquisition of supplies and/or services may be accomplished using a requirements contract, modified from the type discussed in 16.503 as described below. This type of contract will only be used when anticipated annual requirements, expressed as the Best Estimated Quantity (BEQ), can be projected with reasonable certainty. Under this method, a fixed-price contract is awarded for specified supplies and/or services up to a designated maximum quantity with orders placed on an as-required basis during the multiyear period. Contracts awarded only on the first program year requirements will not include provision for cancellation charges. The modified requirements contract differs from the contract discussed in 16.503 in the following respects:

(1) Contract quantities anticipated to be acquired are set forth in the contract as the BEQ.

(2) Nonrecurring costs are to be amortized on the BEQ.

(3) The contractor is entitled to reimbursement for preproduction and other nonrecurring costs in accordance with the contract schedule cancellation ceiling in the event that the Government orders lesser quantities than the aggregate BEQ, or cancels program year requirements by cancellation notice.

(4) Quantities in excess of the aggregate BEQ and up to the maximum quantity set forth in the schedule will be priced exclusive of the nonrecurring costs amortizing on the BEQ.

(b) *Solicitation procedures.* Solicitation procedures shall be in conformance with those contained in 17.103-2 except the term "requirements" as used in 17.103-2 will be deemed to mean BEQ. The solicitation shall include the following:

(1) A BEQ and a maximum quantity for each item for both the first program year and for each subsequent program year. The maximum quantity for individual program years is not separately priced.

(2) A line item, essentially as follows, to apply to quantities exceeding the aggregate multiyear BEQ:

"The price established for this line item is applicable to all units ordered in excess of the aggregate BEQ of... and up to the total multiyear contract maximum quantity ..."

(3) Applicable solicitation schedule notes, essentially as follows:

(i) "NOTE 1: Offeror will submit unit price for the single year requirement, which shall apply to all quantities up to the single year maximum in the event that a 1-year requirements contract is awarded only for the single-year requirement. If a contract is awarded only on the first program year requirements, such a contract will not provide for any cancellation charges."

(ii) "NOTE 2: Offeror will submit a single unit price, inclusive of nonrecurring costs, to be entered on the schedule as the BEQ price for each program year, applicable to quantities within and up to the aggregate BEQ, under multiyear procedures."

(iii) "NOTE 3: Offerors will also submit a single unit price, exclusive of

nonrecurring costs amortized over the BEQ, applicable only to quantities ordered in excess of the aggregate BEQ and up to the total multiyear contract maximum quantity."

(4) A statement that quantities ordered in excess of the program year BEQ but which do not exceed the aggregate BEQ will be priced inclusive of nonrecurring costs.

(5) A statement that evaluation will be on the basis of the lowest unit price offered for the first program year BEQ against the lowest unit price offered for the aggregate BEQ.

(6) A statement setting forth a single cancellation ceiling, applicable only in the event of contract award on the multiyear basis.

(7) A notification that the amount of cancellation charges payable shall be determined on the basis of the ratio between the total quantity ordered at the time of cancellation and the aggregate contract BEQ.

(8) A date of specific time period for Government notification to the contractor as to the availability or nonavailability of funds and any anticipated significant changes in the BEQ for the succeeding program year.

(9) A statement that in the event the contract is awarded for more than one program year, the contract will include the clause at 52.217-2, Cancellation of Items, with its Alternate I.

17.105 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the following clauses in solicitations and contracts when a multiyear contract or a multiyear modified-requirements contract is contemplated:

(1) The clause at 52.217-1, Limitations of Price and Contractor Obligations.

(2) The clause at 52.217-2, Cancellation of Items. If a multiyear modified requirements contract is awarded for more than one program year, the contracting officer shall use the clause with its Alternate I.

(b) For purposes of determining the provisions and clauses applicable to solicitations and contracts under the procedure in 17.104-4 above, prescriptions pertaining to requirements contracts are applicable (see 16.505(a), 16.505(b), and 16.505(d)).

(c) Provisions and clauses prescribed elsewhere in the FAR shall also be used when the conditions specified in their prescriptions are applicable.

SUBPART 17.2—OPTIONS

17.200 Scope of subpart.

This subpart prescribes policies and procedures for the use of option solicitation provisions and contract clauses. It does not apply to contracts for (a) services involving the construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property; (b) architect-engineer services; (c) research and development services; (d) automatic data processing (ADP) equipment systems; and (e) telecommunications equipment and services. However, it does not preclude the use of options in those contracts.

17.201 Definition.

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

17.202 Use of options.

(a) Subject to the limitations of paragraphs (b) and (c) below, the contracting officer may include options in contracts when it is in the Government's interest.

(b) Inclusion of an option is normally not in the Government's interest when, in the judgment of the contracting officer, the foreseeable requirements involve—

(1) Minimum economic quantities (i.e., quantities large enough to permit the recovery of startup costs and the production of the required supplies at a reasonable price); and

(2) Delivery requirements far enough into the future to permit competitive acquisition, production, and delivery.

(c) The contracting officer shall not employ options if—

(1) The supplies or services are readily available on the open market;

(2) The contractor will incur undue risks; e.g., the price or availability of necessary materials or labor is not reasonably foreseeable;

(3) An indefinite quantity or requirements contract is appropriate (except that the contracting officer may use options for extending the term of such contracts);

(4) Market prices for the supplies or services involved are likely to change substantially; or

(5) The option represents known firm requirements for which funds are available unless (i) the basic quantity is a learning or testing quantity and (ii) competition for the option is impracticable once the initial contract is awarded.

(d) In recognition of (1) the Government's need in certain service contracts for continuity of operations and (2) the potential cost of disrupted support, options may be included in service contracts if there is an anticipated need for a similar service beyond the first contract period.

17.203 Solicitations.

(a) Solicitations shall include appropriate option provisions and clauses when resulting contracts will provide for the exercise of options (see 17.208).

(b) Solicitations containing option provisions shall state the basis of evaluation, either exclusive or inclusive of the option and, when appropriate, shall inform offerors that it is anticipated that the Government may exercise the option at time of award.

(c) Solicitations normally should allow option quantities to be offered without limitation as to price, and there shall be no limitation as to price if the option quantity is to be considered in the evaluation for award (see 17.206).

(d) Solicitations that allow the offer of options at unit prices which differ from the unit prices for the basic requirement shall state that offerors may offer varying prices for options, depending on the quantities actually ordered and the dates when ordered.

(e) If it is anticipated that the Government may exercise an option at the time of award and if the condition specified in paragraph (d) above applies, solicitations shall specify the price at which the Government will evaluate the option (highest option price offered or option price for specified requirements).

(f) Solicitations may, in unusual circumstances, require that options be offered at prices no higher than those for the initial requirement; e.g., when (1) the option cannot be evaluated under 17.206, or (2) future competition for the option is impracticable.

(g) Solicitations that require the offering of an option at prices no higher than those for the initial requirement shall—

(1) Specify that the Government will accept an offer containing an option price higher than the base price only if the acceptance does not prejudice any other offeror; and

(2) Limit option quantities for additional supplies to not more than 50 percent of the initial quantity of the same contract line item. In unusual circumstances, an authorized person at a level above the contracting officer may approve a greater percentage of quantity.

17.204 Contracts.

(a) The contract shall specify limits on the purchase of additional supplies or services, or the overall duration of the

term of the contract, including any extension.

(b) The contract shall state the period within which the option may be exercised.

(c) The period shall be set so as to provide the contractor adequate lead time to ensure continuous production.

(d) The period may extend beyond the contract completion date for service contracts. This is necessary for situations when exercise of the option would result in the obligation of funds that are not available in the fiscal year in which the contract would otherwise be completed.

(e) The total of the basic and option periods shall not exceed 5 years in the case of services, and the total of the basic and option quantities shall not exceed the requirement for 5 years in the case of supplies, unless otherwise authorized by statute.

(f) Contracts may express options for increased quantities of supplies or services in terms of (1) percentage of specific line items, (2) increase in specific line items, or (3) additional numbered line items identified as the option.

(g) Contracts may express extensions of the term of the contract as an amended completion date or as additional time for performance; e.g., days, weeks, or months.

17.205 Documentation.

(a) The contracting officer shall justify in writing the quantities or the term under option, the notification period for exercising the option, and any limitation on option price under 17.203(g); and shall include the justification document in the contract file.

(b) Written determinations and findings that are required for negotiated contracts shall specify both the basic requirement and the increase permitted by the option.

17.206 Evaluation.

(a) The contracting officer may consider the option quantity in the award evaluation for a firm-fixed-price contract or a fixed-price contract with economic price adjustment (see 17.208(c)(1)); *provided*, that an authorized person at a level above the contracting officer determines, before the solicitation is issued, that—

(1) There is a known requirement that exceeds the basic quantity to be awarded but (i) the basic quantity is a learning or testing requirement, or (ii) due to the unavailability of funds, the agency cannot exercise the option at the time of award; *provided*, that in this latter case there is reasonable certainty that funds will be available thereafter to permit exercise of the option; and

(2) Competition for the option quantity is impracticable once the initial contract is awarded. This determination shall reflect factors such as substantial startup or phase-in costs, superior technical ability resulting from performance of the initial contract, and long preproduction leadtime for a new producer.

(b) The contracting officer may consider the option quantity in the award evaluation for fixed-price incentive contracts (see 17.208(c)(2)) if—

(1) The determination in paragraph (a) above was made before issuance of the solicitation; and

(2) The solicitation (i) specifies an incentive arrangement and (ii) specifies that the agency will base the ceiling price and target profit for the basic and option quantities on stated percentages of the offeror's target cost. These percentages shall be specified in the solicitation and shall apply to all proposals.

17.207 Exercise of options.

(a) When exercising an option, the contracting officer shall provide written notice to the contractor within the time period specified in the contract.

(b) When the contract provides for economic price adjustment and the contractor requests a revision of the price, the contracting officer shall determine the effect of the adjustment on prices under the option before the option is exercised.

(c) The contracting officer may exercise options only after determining that—

(1) Funds are available;

(2) The requirement covered by the option fulfills an existing Government need; and

(3) The exercise of the option is the most advantageous method of fulfilling the Government's need, price and other factors (see paragraphs (d) and (e) below) considered.

(d) The contracting officer, after considering price and other factors, shall make the determination on the basis of one of the following:

(1) A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option. If it is anticipated that the best price available is the option price or that this is the more advantageous offer, the contracting officer should not use this method of testing the market.

(2) An informal analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the more advantageous offer.

(3) The time between the award of the contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable or the more advantageous offer. The contracting officer shall take into consideration such factors as market stability and comparison of the time since award with the usual duration of contracts for such supplies or services.

(e) The determination of other factors under (c)(3) of this section should take into account the Government's need for continuity of operations and potential costs of disrupting operations.

(f) Before exercising an option, the contracting officer shall determine that such action is in accordance with the terms of the option and the requirements of this section. The written determination shall be included in the contract file.

(g) The contract modification or other written document which notifies the contractor of the exercise of the option shall cite the option clause as authority. The negotiation authorities under 41 U.S.C. 252(c) or 10 U.S.C. 2304(a) are not applicable and shall not be cited.

17.208 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert a provision substantially the same as the provision at 52.217-3, Evaluation Exclusive of Options, in solicitations when the solicitation includes an option clause and does not include one of the provisions prescribed in paragraph (b) or (c) below.

(b) The contracting officer shall insert a provision substantially the same as the provision at 52.217-4, Evaluation of Options Exercised at Time of Contract Award, in solicitations when the solicitation includes an option clause and an option may be exercised at the time of contract award.

(c) (1) The contracting officer shall insert a provision substantially the same as the provision at 52.217-5, Evaluation of Options, in solicitations when (i) the solicitation contains an option clause; (ii) an option is not to be exercised at the time of contract award; (iii) a firm-fixed-price contract, a fixed-price contract with economic price adjustment, or other type of contract approved under agency procedures is contemplated; and (iv) a determination has been made as specified in 17.206(a).

(2) If all conditions in (c)(1) above apply, except that a fixed-price incentive contract is contemplated and the conditions in 17.206(b) apply, the contracting officer shall use a provision substantially the same as the provision

at 52.217-5, Evaluation of Options, with its Alternate I.

(d) The contracting officer shall insert a clause substantially the same as the clause at 52.217-6, Option for Increased Quantity, in solicitations and contracts, other than those for services, when the inclusion of an option is appropriate (see 17.200 and 17.202) and the option quantity is expressed as a percentage of the basic contract quantity or as an additional quantity of a specific line item.

(e) The contracting officer shall insert a clause substantially the same as the clause at 52.217-7, Option for Increased Quantity—Separately Priced Line Item, in solicitations and contracts, other than those for services, when the inclusion of an option is appropriate (see 17.200 and 17.202) and the option quantity is identified as a separately priced line item having the same nomenclature as a corresponding basic contract line item.

(f) The contracting officer shall insert a clause substantially the same as the clause at 52.217-8, Option to Extend Services, in solicitations and contracts for services when the inclusion of an option is appropriate (see 17.200 and 17.202), unless the conditions specified in paragraph (g) below apply.

(g) The contracting officer shall insert a clause substantially the same as the clause at 52.217-9, Option to Extend the Term of the Contract—Services, in solicitations and contracts for services when the inclusion of an option is appropriate (see 17.200 and 17.202) and it is necessary to include in the contract a requirement that the Government shall give the contractor a preliminary written notice of its intent to extend the contract, a stipulation that an extension of the contract includes an extension of the option, and/or a specified limitation on the total duration of the contract.

SUBPART 17.3—[RESERVED]

SUBPART 17.4—LEADER COMPANY CONTRACTING

17.401 General.

Leader company contracting is an extraordinary acquisition technique that is limited to special circumstances and utilized only when its use is in accordance with agency procedures. A developer or sole producer of a product or system is designated under this acquisition technique to be the leader company, and to furnish assistance and know-how under an approved contract to one or more designated follower companies, so they can become a source of supply. The objectives of this technique are one or more of the following:

(a) Reduce delivery time.

(b) Achieve geographic dispersion of suppliers.

(c) Maximize the use of scarce tooling or special equipment.

(d) Achieve economies in production.

(e) Ensure uniformity and reliability in equipment, compatibility or standardization of components, and interchangeability of parts.

(f) Eliminate problems in the use of proprietary data that cannot be resolved by more satisfactory solutions.

(g) Facilitate the transition from development to production and to subsequent competitive acquisition of end items or major components.

17.402 Limitations.

(a) Leader company contracting is to be used only when—

(1) The leader company has the necessary production know-how and is able to furnish required assistance to the follower(s);

(2) No other source can meet the Government's requirements without the assistance of a leader company;

(3) The assistance required of the leader company is limited to that which is essential to enable the follower(s) to produce the items; and

(4) Its use is authorized in accordance with agency procedures.

(b) When leader company contracting is used, the Government shall reserve the right to approve subcontracts between the leader company and the follower(s).

17.403 Procedures.

(a) The contracting officer may award a prime contract to a—

(1) Leader company, obligating it to subcontract a designated portion of the required end items to a specified follower company and to assist it to produce the required end items;

(2) Leader company, for the required assistance to a follower company, and a prime contract to the follower for production of the items; or

(3) Follower company, obligating it to subcontract with a designated leader company for the required assistance.

(b) The contracting officer shall ensure that any contract awarded under this arrangement contains a firm agreement regarding disclosure, if any, of contractor trade secrets, technical designs or concepts, and specific data, or software, of a proprietary nature.

SUBPART 17.5—INTERAGENCY ACQUISITIONS UNDER THE ECONOMY ACT

17.500 Scope of subpart.

This subpart prescribes policies and procedures applicable to interagency acquisitions under the Economy Act (31 U.S.C. 686). Policies and procedures for acquisitions from required sources of supplies are prescribed in Part 8.

17.501 Definition.

"Interagency acquisition" means a procedure by which an agency needing supplies or services (the requesting agency) obtains them from another agency (the servicing agency).

17.502 General.

Under the Economy Act, an agency may place orders with any other agency for supplies or services that the servicing agency may be in a position or equipped to supply, render, or obtain by contract if it is determined by the head of the requesting agency, or designee, that it is in the Government's interest to do so.

17.503 Determination requirements.

(a) The determination prescribed in 17.502 shall include a finding that—

(1) Legal authority for the acquisition otherwise exists; and

(2) The action does not conflict with any other agency's authority or responsibility; e.g., that of the Administrator of General Services under the Federal Property and Administrative Services Act (see 40 U.S.C. 481, 486, and 41 CFR 101-25.2).

(b) If the acquisition involves the use of a commercial or industrial activity operated by the servicing agency, the determination shall also include a finding that the acquisition conforms to the requirements of Subpart 7.3, Contractor Versus Government Performance.

17.504 Ordering procedures.

(a) When placing an order for supplies or services from another Government agency, the contracting officer shall first obtain the determination required in 17.502.

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

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

(2) Delivery requirements;

(3) A funds citation;

(4) A payment provision (see 17.505); and

(5) Acquisition authority as may be appropriate (see 17.504(d)).

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

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

(1) If a determination and findings (D&F) is required by law or regulation (e.g., to justify the use of negotiation), the servicing agency shall execute and issue the D&F. The requesting agency shall furnish the servicing agency any information needed to make the D&F.

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

(3) The servicing agency is responsible for compliance with all other legal or regulatory requirements applicable to the contract, including the requirement that there be adequate statutory authority for the contractual action.

17.505 Payment.

(a) Under the Economy Act—

(1) The servicing agency may request the requesting agency, in writing, for advance payment by check for all or part of the estimated cost of furnishing the supplies or services; or

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

(b) If advance payment is made, adjustments on the basis of actual costs shall be made as agreed by the agencies.

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

SUBPART 17.6—MANAGEMENT AND OPERATING CONTRACTS

17.600 Scope of subpart.

This subpart prescribes policies and procedures for management and operating contracts for the Department of Energy and any other agency having requisite statutory authority.

17.601 Definition.

"Management and operating contract" means an agreement under which the Government contracts for the operation, maintenance, or support, on its behalf, of a Government-owned or -controlled research, development, special production, or testing establishment wholly or principally devoted to one or more major programs of the contracting Federal agency.

17.602 Policy.

(a) Heads of agencies, with requisite statutory authority, may determine in writing to authorize contracting officers to enter into or renew any management and operating contract in accordance with the agency's statutory authority and the agency's regulations governing such contracts. This authority shall not be delegated. Every contract so authorized shall show its authorization upon its face.

(b) Agencies may authorize management and operating contracts only in a manner consistent with the guidance of this subpart and only if they are consistent with the situations described in 17.604.

(c) Within 2 years of the effective date of this regulation, agencies shall review their current contractual arrangements in the light of the guidance of this subpart, in order to (1) identify, modify as necessary, and authorize management and operating contracts and (2) modify as necessary or terminate contracts not so identified and authorized, except that any contract with less than 4 years remaining as of the effective date of this regulation need not be terminated, nor need it be identified, modified, or authorized unless it is renewed or its terms are substantially renegotiated.

17.603 Limitations.

(a) Management and operating contracts shall not be authorized for—

(1) Functions involving the direction, supervision, or control of Government personnel, except for supervision incidental to training;

(2) Functions involving the exercise of police or regulatory powers in the name of the Government, other than guard or plant protection services;

(3) Functions of determining basic Government policies;

(4) Day-to-day staff or management functions of the agency or of any of its elements; or

(5) Functions that can more properly be accomplished in accordance with Subpart 45.3, Providing Government Property to Contractors.

(b) Since issuance of an authorization under 17.602(a) is deemed sufficient proof of compliance with paragraph (a) immediately above, nothing in paragraph (a) immediately above shall affect the validity or legality of such an authorization.

17.604 Identifying management and operating contracts.

A management and operating contract is characterized both by its purpose (see 17.601) and by the special relationship it creates between Government and contractor. The following criteria can generally be applied in identifying management and operating contracts:

(a) Government-owned or -controlled facilities must be utilized; for instance, (1) in the interest of national defense or mobilization readiness, (2) to perform the agency's mission adequately, or (3) because private enterprise is unable or unwilling to use its own facilities for the work.

(b) Because of the nature of the work, or because it is to be performed in Government facilities, the Government must maintain a special, close relationship with the contractor and the contractor's personnel in various important areas (e.g., safety, security, cost control, site conditions).

(c) The conduct of the work is wholly or at least substantially separate from the contractor's other business, if any.

(d) The work is closely related to the agency's mission and is of a long-term or continuing nature, and there is a need (1) to ensure its continuity and (2) for special protection covering the orderly transition of personnel and work in the event of a change in contractors.

17.605 Award, renewal, and extension.

(a) Effective work performance under management and operating contracts usually involves high levels of expertise and continuity of operations and personnel. Because of program requirements and the unusual (sometimes unique) nature of the work performed under management and operating contracts, the Government is often limited in its ability to effect competition or to replace a contractor. Therefore contracting officers should take extraordinary steps before award to assure themselves that the prospective contractor's technical and managerial capacity are sufficient, that organizational conflicts of interest are adequately covered, and that the contract will grant the Government broad and continuing rights to involve itself, if necessary, in technical and managerial decisionmaking concerning performance.

(b) The contracting officer shall review each management and operating contract, following agency procedures, at appropriate intervals and at least once every 5 years. The review should

determine whether meaningful improvement in performance or cost might reasonably be achieved. Any extension or renewal of an operating and management contract must be authorized at a level within the agency no lower than the level at which the original contract was authorized in accordance with 17.602(a).

(c) Replacement of an incumbent contractor is usually based largely upon expectation of meaningful improvement in performance or cost. Therefore, when reviewing contractor performance, contracting officers should consider—

(1) The incumbent contractor's overall performance, including, specifically, technical, administrative, and cost performance;

(2) The potential impact of a change in contractors on program needs, including safety, national defense, and mobilization considerations; and

(3) Whether it is likely that qualified offerors will compete for the contract.

PART 18—[RESERVED]

SUBCHAPTER D—Socioeconomic Programs

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

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. 2301 et seq., the Federal Property and Administrative Services Act (41 U.S.C. 252), 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 concerns;

(4) The certificate of competency program;

(5) The subcontracting assistance program;

(6) The "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; and

(7) The use of women-owned small business concerns.

(b) This part applies only inside the United States, its territories and possessions, Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

SUBPART 19.1—TERMS AND SIZE STANDARDS

19.101 Explanation of terms.

"Affiliates." For the purpose of this part, business concerns are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other or (b) 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 inside the United States.

"Annual receipts" means the gross income (less returns and allowances, sales of fixed assets, and interaffiliate transactions) of a concern (and its domestic and foreign affiliates) from sales of products and services, interest, rents, fees, commissions, and/or from whatever other source derived for its most recently completed fiscal year (whether on a cash, accrual, completed contracts, percentage of completion, or other acceptable accounting basis). If a concern has been in business less than a year, its annual receipts for the purpose of a size standard based on 1 year's receipts shall be computed by determining its average weekly receipts for the period in which it has been in business and multiplying such figure by 52. If a concern has been in business less than 3 years, its average annual receipts for the purpose of a size standard based on 3 years' receipts shall be computed by determining its average weekly receipts for the period in which it has been in business, and multiplying such figure by 52. If a concern has acquired an affiliate during the applicable accounting period, it is necessary in computing the applicant's annual receipts to include the affiliate's receipts during the entire applicable accounting period, rather than only its receipts during the period in which it has been an affiliate. The receipts of a former affiliate are not included even if such a concern had been an affiliate during a portion of the applicable accounting period.

"Asian-Indian Americans" means United States citizens whose origins are in India, Pakistan, or Bangladesh.

"Asian-Pacific Americans" means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands, the Northern Mariana Islands, Laos, Cambodia, or Taiwan.

"Base maintenance" means furnishing at an installation within the several States, Commonwealth of Puerto Rico, Virgin Islands, the Trust Territory of the Pacific Islands, or the District of Columbia, three or more services which may include but are not limited to such maintenance activities as janitorial and custodial services, protective guard services, commissary services, base housing maintenance, fire prevention services, safety engineering services, messenger services, grounds maintenance and landscaping services, and air-conditioning and refrigeration maintenance. However, whenever the contracting officer determines before issuing bids that the estimated value of one of the foregoing services constitutes more than 50 percent of the estimated value of the entire contract, the contract shall not be classified as base maintenance but in the industry in which such service is classified.

"Certificate of competency" means the certificate issued by the Small Business Administration (SBA) stating that the holder is responsible (with respect to all elements of responsibility, including but not limited to capability, competency, capacity, credit, integrity, perseverance, and tenacity) for the purpose of receiving and performing a specific Government contract.

"Concern," as used in this part, means any business entity located inside the United States that is organized for profit (even if it is owned by a nonprofit entity), pays U.S. taxes, and/or uses American products, material, and/or labor, etc. A "concern" may be an individual, a partnership, a corporation, a joint venture, an association, or a cooperative. (See also "affiliates," above.)

"Determination of eligibility," as used in this part, means the written determination issued by the SBA or the Department of Labor certifying that the holder is a manufacturer or regular dealer under the Walsh-Healey Public Contracts Act (see 22.608-2(f)(2)).

"Economically disadvantaged individuals" means socially disadvantaged individuals whose ability to compete in the free enterprise system is impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not socially disadvantaged. Individuals who certify that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans) are to be considered socially and economically disadvantaged.

"Industry," as used in this part, means all concerns primarily engaged in similar lines of activity, as listed and described in the Standard Industrial Classification (SIC) Manual.

"Native Americans" means American Indians, Eskimos, Aleuts, and native Hawaiians.

"Not dominant in the field of operation," as used in this part, means not exercising a controlling or major influence in an industry. A controlling or major influence can be derived from factors such as business volume, number of employees, financial resources, competitiveness, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

"Set-aside for small business" means the reserving of an acquisition exclusively for participation by small business concerns. A set-aside may be open to all small businesses or, except for the Department of Defense, restricted to small businesses located in labor surplus areas. A set-aside of a single acquisition or a class of acquisitions may be total or partial.

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121 (see 19.102).

"Small business restricted advertising" means a special method of negotiated acquisition using formal advertising procedures not restricting solicitation, bidding, and contract award to small business concerns.

"Small business subcontractor" means any concern that—

(a) Qualifies as a small business under 13 CFR 121 when bidding on a subcontract that will exceed $10,000;

(b) Employs, with its affiliates, not more than 500 people, when bidding on a subcontract for $10,000 or less; or

(c) Is a nonmanufacturer and employs not more than 500 people.

"Small disadvantaged business concern" means a small business concern that (a) is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals and (b) has its management and daily business controlled by one or more such individuals.

"Socially disadvantaged individuals" means individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their qualities as individuals.

19.102 Size standards.

(a) The SBA establishes small business size standards on an industry-by-industry basis. These size standards are also set forth in SBA's regulations at 13 CFR 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 Standard Industrial Classification (SIC) Manual, 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) If there is no size standard in this subpart or in 13 CFR 121 for the industry, field of operation, or activity in which a concern is engaged, the concern is a small business if, including its affiliates, it is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and for manufacturing concerns has no more than 500 employees and for concerns offering services its average annual receipts for its preceding 3 fiscal years do not exceed $2 million.

(g) In subsections 19.102-1 through 19.102-7, "number of employees" means the average number of people employed (full or part time, temporary, or other) by a concern and its affiliates during the last complete pay period in the 3rd month of each calendar quarter based on the preceding 4 calendar quarters. If a concern has been in business less than 12 months, "number of employees" means the average employment during each of the pay periods it has been in business. If a concern acquired an affiliate during the applicable accounting period, include the affiliate's employees during the entire accounting period, regardless of when the affiliation took place. If a concern lost an affiliate during the applicable accounting period, do not include the former affiliates' employees. If the concern in question has been determined to be eligible for SBA financial assistance under Section 7(b)(5) of the Small Business Act, see 13 CFR 121.3-2(t) for further guidance on determining its number of employees for size standard purposes.

19.102-1 Size standards for construction and special trades.

(a) *Construction.* A concern is small if its average annual receipts for its preceding 3 fiscal years did not exceed $12 million. However, if 75 percent or more of the work (in terms of dollar value) called for by the contract is classified in one of the industries, subindustries, or classes of products listed in this paragraph, the concern is small if its average annual receipts for its preceding 3 fiscal years did not exceed the size standard for that industry, subindustry, or class of products. (See Division C, "Contract Construction," of the SIC Manual.)

Classification Code	Industry, Subindustry, or Class of Products	Size Standard*
	MAJOR GROUP 17—CONSTRUCTION—SPECIAL TRADE CONTRACTORS	
1711 -	Plumbing, heating (except electric), and air-conditioning	$5
1721 -	Painting, paperhanging, and decorating	5
1731 -	Electrical work	5
1741 -	Masonry, stone setting, and other stonework	5
1742 -	Plastering, drywall, acoustical and insulation work	5
1743 -	Terrazzo, tile, marble, and mosaic work	5
1751 -	Carpentering and flooring	5
1752 -	Floor laying and other floorwork, not elsewhere classified	5
1761 -	Roofing and sheet metal work	5
1771 -	Concrete work	5
1781 -	Water well drilling	5
1791 -	Structural steel erection	5
1793 -	Glass and glazing work	5
1794 -	Excavating and foundation work	5
1795 -	Wrecking and demolition work	5
1796 -	Installation or erection of building equipment, not elsewhere classified	5
1799 -	Special trade contractors, not elsewhere classified	5

* (Average Annual Receipts)(Millions)

(b) *Dredging.* A concern is small if (1) its average annual receipts for its preceding 3 fiscal years did not exceed $9.5 million, and (2) at least 40 percent of the yardage in the contract's plans and specifications is dredged with equipment owned by the concern or obtained from another small business dredging concern.

19.102-2 Size standards for manufacturing industries.

(a) *Canned and preserved food.* A concern is small if it has no more than 500 employees exclusive of agricultural labor, which is defined in section (k) of the Federal Unemployment Tax Act, 26 U.S.C. 3306(k).

(b) *Pneumatic tires for passenger cars, motorcycles, trucks, buses, and off-the-road vehicles within Classification Codes 30111 and 30112. (This paragraph does not apply to acquisitions for repairing and/or retreading pneumatic aircraft tires, which are considered to be within Code 3011).* A concern is small if, during the preceding calendar year—

(1) More than 50 percent of the worldwide manufacturing value of its pneumatic tires was attributable to tires manufactured in the United States;

(2) Its worldwide manufacturing value was less than 5 percent of the value of all pneumatic tires manufactured in the United States; and

(3) Its principal products manufactured, produced, or sold worldwide constitute less than 10 percent of the total value of such products manufactured, produced, or sold in the United States.

(c) *Passenger cars (classified in SIC Code 37171).* A concern is small if, during the preceding calendar year—

(1) More than 50 percent of the worldwide manufacturing value of its passenger cars was attributable to passenger cars manufactured in the United States;

(2) Its worldwide manufacturing value was less than 5 percent of the value of all passenger cars manufactured in the United States; and

(3) Its principal products manufactured, produced, or sold worldwide constitute less than 10 percent of the value of such products manufactured, produced, or sold in the United States.

(d) *Rebuilding on a factory basis or equivalent (not limited to original equipment manufacturers).* For contracts to restore machinery or equipment to a condition that is as serviceable and as like new as possible (exclusive of ordinary or minor repairs and preservation operations), a concern is small if it meets the small business size standard applicable to the original manufacturer.

(e) *Fluid milk (classified in SIC Code 2026).* A concern is small if it has no more than 500 employees, exclusive of employees who deliver milk to homes.

(f) *Other manufacturing industries.* A concern is small if its number of employees (see 19.102(g)) does not exceed the size standard for its industry, as follows:

Classification Code	Industry	Size Standard (Number of Employees)
	MAJOR GROUP 20—FOOD AND KINDRED PRODUCTS	
2032	Canned specialties	1000
2043	Cereal breakfast foods	1000
2046	Wet corn milling	750
2052	Cookies and crackers	750
2062	Cane sugar refining	750
2063	Beet sugar	750
2076	Vegetable oil mills, except corn, cottonseed and soybean	1000
2079	Shortening, table oils, margarine and other edible fats and oils, not elsewhere classified	750
2085	Distilled, rectified, and blended liquors	750
	MAJOR GROUP 21—TOBACCO MANUFACTURERS	
2111	Cigarettes	1000
	MAJOR GROUP 22—TEXTILE MILL PRODUCTS	
2211	Broad-woven fabric mills, cotton	1000
2261	Finishers of broad-woven fabrics of cotton	1000
2271	Woven carpets and rugs	750
2295	Fabrics, not rubberized	1000
2296	Tire cord and fabric	1000
	MAJOR GROUP 26—PAPER AND ALLIED PRODUCTS	
2611	Pulpmills	750
2621	Papermills, except building papermills	750
2631	Paperboard mills	750
2646	Pressed and molded pulp goods	750
2654	Sanitary food containers	750
2661	Building paper and building board mills	750
	MAJOR GROUP 28—CHEMICALS AND ALLIED PRODUCTS	
2812	Alkalies and chlorine	1000
2813	Industrial gases	1000
2816	Inorganic pigments	1000
2819	Industrial inorganic chemicals, not elsewhere classified	1000
2821	Plastics materials, synthetic resins, and nonvulcanizable elastomers	750
2822	Synthetic rubber (vulcanizable elastomers)	1000
2823	Cellulosic manmade fibers	1000
2824	Synthetic organic fibers, except cellulosic	1000
2833	Medicinal chemicals and botanical products	750
2834	Pharmaceutical preparations	750
2841	Soap and other detergents, except specialty cleaners	750
2865	Cyclic (coal tar) crudes, and cyclic intermediates, dyes, and organic pigment (lakes and toners)	750
2869	Industrial organic chemicals, not elsewhere classified	1000
2873	Nitrogenous fertilizers	1000
2892	Explosives	750
	MAJOR GROUP 29—PETROLEUM REFINING AND RELATED INDUSTRIES	
2911	Refined petroleum products	See 19.102-7 and 13 CFR 121.3-8(g)
2952	Asphalt felts and coatings	750
	MAJOR GROUP 30—RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS	
3011	Tires and innertubes	1000
30111	Passenger car and motorcycle pneumatic tires (castings).	See 19.102-2(b) and 13 CFR 121.3-8(b)(4) and (5)
30112	Truck and bus (and off-the road) pneumatic tires.	See 19.102-2(b) and 13 CFR 121.3-8(b)(4) and (5)
3021	Rubber and plastics footwear	1000
3031	Reclaimed rubber	750
	MAJOR GROUP 32—STONE, CLAY, GLASS, AND CONCRETE PRODUCTS	
3211	Flat glass	1000
3221	Glass containers	750
3229	Pressed and blown glass and glassware, not elsewhere classified	750
3241	Cement, hydraulic	750
3261	Vitreous china plumbing fixtures and china and earthenware fittings and bathroom accessories	750
3275	Gypsum products	1000
3292	Asbestos products	750
3296	Mineral wool	750
3297	Nonclay refractories	750
	MAJOR GROUP 33—PRIMARY METAL INDUSTRIES	
3312	Blast furnaces (including coke ovens), steel works, and rolling mills	1000
3313	Electrometallurgical products	750
3315	Steel wire drawing and steel nails and spikes	1000
3316	Cold-rolled sheet, strip and bars	1000
3317	Steel pipe and tubes	1000
3331	Primary smelting and refining of copper	1000
3332	Primary smelting and refining of lead	1000
3333	Primary smelting and refining of zinc	750
3334	Primary production of aluminum	1000
3339	Primary smelting and refining of nonferrous metals, not elsewhere classified	750
3351	Rolling, drawing, and extruding of copper	750
3353	Aluminum sheet, plate, and foil	750
3354	Aluminum extruded products	750
3355	Aluminum rolling and drawing, not elsewhere classified	750
3356	Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum	750
3357	Drawing and insulating of nonferrous wire	1000
3398	Metal heat treating	750
3399	Primary metal products, not elsewhere classified	750
	MAJOR GROUP 34—FABRICATED METAL PRODUCTS, EXCEPT MACHINERY AND TRANSPORTATION EQUIPMENT	
3411	Metal cans	1000
3431	Enameled iron and metal sanitary ware	750
3482	Small arms ammunition	1000
3483	Ammunition, except for small arms, not elsewhere classified	1500
3484	Small arms	1000
	MAJOR GROUP 35—MACHINERY, EXCEPT ELECTRICAL	
3511	Steam, gas, and hydraulic turbines and turbine-generator set units	1000
3519	Internal combustion engines, not elsewhere classified	1000
3531	Construction machinery and equipment	750
3537	Industrial trucks, tractors, trailers and stackers	750
3562	Ball and roller bearings	750
3572	Typewriters	1000
3573	Electronic computing equipment	1000
3574	Calculating and accounting machines, except electronic computing equipment	1000
3585	Air conditioning and warm air heating equipment and commercial and industrial refrigeration equipment	750
	MAJOR GROUP 36—ELECTRICAL AND ELECTRONIC MACHINERY, EQUIPMENT, AND SUPPLIES	
3612	Power, distribution, and specialty transformers	750
3613	Switchgear and switchboard apparatus	750
3621	Motors and generators	1000
3622	Industrial controls	750
3624	Carbon and graphite products	750
3631	Household cooking equipment	750
3632	Household refrigerators and home and farm freezers	1000
3633	Household laundry equipment	1000
3634	Electric housewares and fans	750
3635	Household vacuum cleaners	750
3636	Sewing machines	750
3641	Electric lamps	1000
3651	Radio and television receiving sets, except communication types	750
3652	Phonograph records and prerecorded magnetic tapes	750
3661	Telephone and telegraph apparatus	1000
3662	Radio and television transmitting, signaling, and detection equipment, and apparatus (includes missile control systems)	750
3671	Radio and television receiving type electron tubes, except cathode ray	1000
3672	Cathode ray television picture tubes	750
3673	Transmitting, industrial, and special purpose electron tubes	750
3692	Primary batteries, dry and wet	1000
3694	Electrical equipment for internal combustion engines	750
	MAJOR GROUP 37—TRANSPORTATION EQUIPMENT	
3711	Motor vehicles and passenger car bodies	1000
37111	Passenger cars (knocked down or assembled).	See 19.102-2(c) and 13 CFR 121.3-8(b)(5)

Classification Code	Industry	Size Standard (Number of Employees)
3721	Aircraft (includes maintenance, but excludes contracts solely for preventive maintenance (see 14 CFR 1.1))	1500 (See Footnote 1.)
3724	Aircraft engines and engine parts (includes guided missile engines and engine parts) (includes maintenance, but excludes contracts solely for preventive maintenance (see 14 CFR 1.1))	1000 (See Footnote 1)
3728	Aircraft parts and auxiliary equipment, not elsewhere classified	1000
3731	Shipbuilding and repairing	1000
3743	Railroad equipment	1000
3761	Guided missiles and space vehicles	1000
3764	Guided missiles and space vehicle propulsion units and propulsion unit parts (includes guided missile engines and engine parts)	1000
3769	Guided missile and space vehicle parts and auxiliary equipment, not elsewhere classified	1000
3795	Tanks and tank components	1000

Footnote 1. "Maintenance," for the purpose of the small business size standard (13 CFR 121.3-16, Schedule B, Major Group 37), means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance. "Preventive maintenance" means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations.

Classification Code	Industry	Size Standard (Number of Employees)
	MAJOR GROUP 39—MISCELLANEOUS MANUFACTURING INDUSTRIES	
3996	Linoleum, asphalted-felt-base, and other hard surface floor coverings, not elsewhere classified	750

19.102-3 Size standards for nonmanufacturing industries (except construction or services).

A concern offering to furnish a product it did not manufacture is small if—

(a) It has no more than 500 employees; and

(b) It is offering to furnish products of a small business manufacturer or producer that were manufactured or produced in the United States, except that under a small business-small purchase set-aside a concern may furnish any domestically produced or manufactured product.

19.102-4 Size standards for research, development, and/or testing industries.

(a) A concern is small if it is bidding on a contract for research and/or development that requires delivery of a manufactured product and (1) it qualifies as a small business manufacturer within the meaning of 19.102-2 (see 13 CFR 121.3-8(b)) or (2) it qualifies as a small business nonmanufacturer within the meaning of 19.102-3 (see 13 CFR 121.3-8(c)).

(b) A concern bidding on a contract for testing or for research and/or development that does not require delivery of a manufactured product is small if it has no more than 500 employees.

19.102-5 Size standards for service industries.

(a) A concern offering to perform services (including, but not limited to, services listed and described in Division I, Services, of the SIC Manual) not listed in this subpart is small if its average annual receipts for its preceding 3 fiscal years did not exceed $2 million.

(b) For the following services, a concern is small if its average annual receipts for its preceding 3 fiscal years did not exceed the size standard for the specific service.

Service	Size Standard*
Engineering (other than marine engineering)	$7.5
Motion picture production or services	$8
Janitorial and custodial	$4.5
Base maintenance	$7.5
Marine cargo handling	$7.5
Naval architectural and marine engineering	$9
Food services	$5.5
Laundry (including linen supply, diaper services, and industrial laundering)	$4
Cleaning and dyeing (including rug cleaning)	$1.5
Flight training	$7
Computer programming	$4
Motorcar rental and leasing or truck rental	$7
Data processing	$4
Computer maintenance	$7
Helicopters or fixed-wing aircraft	$3.5
Refuse collection, with or without disposal	$3.5
Protective services	$4.5
Tire recapping (See Footnote 2.)	$4

* (Average Annual Receipts)(Millions)

Footnote 2. This standard applies only to contracts requiring tire retreading and repair (SIC 7534), and not to contracts for the repairing and/or retreading of pneumatic aircraft tires, which is considered for size standard purposes to be manufacturing within the meaning of SIC Code 3011. (See 13 CFR 121.3-8(e)(12).)

19.102-6 Size standards for transportation industries.

A concern offering to provide passenger or freight transportation not classified elsewhere in this subpart is small if—

(a) It has no more than 500 employees;

(b) It is bidding on air transportation and has no more than 1,500 employees;

(c) It is offering to provide local and/or long distance trucking, warehousing and/or packing and crating, and/or freight-forwarding, and its average annual receipts do not exceed $7 million; or

(d) It is primarily engaged in providing offshore marine services and its annual receipts do not exceed $10 million. Offshore marine services, which are furnished to concerns engaged in offshore oil and/or natural gas exploration, include drilling production or marine research, and services such as passenger and freight transportation, rig towing, anchor handling, and related logistical services, to and from the work site or at sea (13 CFR 121.3-2(u)).

19.102-7 Size standards for refined petroleum products industries.

(a) A concern offering to furnish a refined petroleum product other than paving mixtures and blocks (SIC Code 2951), asphalt felts and coatings (SIC Code 2952), lubricating oils and grease (SIC Code 2992), or products of petroleum and coal not elsewhere classified (SIC Code 2999), is small if—

(1) (i) It has no more than 1,500 employees;

(ii) Its capacity is not more than 50,000 barrels per day of crude oil or bona fide feedstock from facilities that are owned, leased, under an exchange agreement (except on a refined-product-for-refined-product basis), or under a throughput or other processing agreement with the same effect as though the facilities were leased; and

(iii) At least 90 percent of the product delivered will be refined by the offeror, from either crude oil or bona fide feedstocks, using its own employees and facilities that it owns or obtains under a bona fide lease; or

(2) It has no more than 500 employees and is furnishing a product that has been refined by a concern that qualifies as a small business under (a)(1) above.

(b) A petroleum refining concern that meets the requirements of subdivisions (a)(1)(i) and (ii) above may furnish the product of a refinery that is not small if—

(1) It obtains the product under a bona fide exchange agreement with the refiner of the product to be delivered to the Government. The agreement must (i) be in effect on the date of the offer, (ii) require exchanges in a stated ratio on a refined-petroleum-product-for-a-refined-petroleum-product basis, (iii) preclude a monetary settlement, and (iv) require that the products exchanged for the products to be delivered to the Government meet the requirements of subdivision (a)(1)(iii) above;

(2) The exchange of products is completed within 90 days after the Government contract delivery date; and

(3) Delivery to the Government is made in the same Petroleum Administration for Defense (PAD) District (under Schedule C of 13 CFR 121) as that in which the small refinery is located.

SUBPART 19.2—POLICIES

19.201 General policy.

(a) It is the policy of the Government to place a fair proportion of its acquisitions with small business concerns and small disadvantaged business concerns. Such concerns shall 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) Heads of contracting activities are responsible for effectively implementing the Small Business and Small Disadvantaged Business Utilization Programs within their activities, including achieving program goals. They are to ensure that contracting and technical personnel maintain knowledge of small and small disadvantaged business program requirements and take all reasonable action to increase small business participation in their activities' contracting processes.

(c) 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 and 13 CFR 125.4(g)(7)). 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;

(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 and 15 of the Small Business Act;

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

(6) 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 and 15 of the Small Business Act.

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

(d) Small and Disadvantaged Business Utilization Specialists shall be appointed and act in accord with agency regulations.

19.202 Specific policies.

In order to further the policy in 19.201(a), contracting officers shall comply with the specific policies listed below.

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).

19.202-2 Locating small business sources.

The contracting officer shall, to the extent practicable, encourage maximum participation by small business concerns, small disadvantaged business concerns, and women-owned small business concerns in acquisitions by taking the following actions:

(a) Include on mailing lists all established and potential small business sources, including those located in labor surplus areas, if the concerns have submitted acceptable applications or appear from other representations to be qualified small business concerns.

(b) 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 agency SBA procurement center representative, or if there is none, the SBA.

(c) Publicize solicitations and contract awards in the "Commerce Business Daily" (see Subparts 5.2 and 5.3).

19.202-3 Equal low bids.

In the event of equal low bids, 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 shall encourage maximum response to solicitations by small business, small disadvantaged business concerns, 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) Send solicitations to (1) all small business concerns on the solicitation mailing list, or (2) a pro rata number of small business concerns when less than a complete list is used.

(d) 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 shall 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, small disadvantaged business concern, or women-owned small business (see the provisions at 52.219-1, Small Business Concern Representation, 52.219-2, Small Disadvantaged Business Concern Representation, and 52.219-3, Women-Owned Small Business Representation).

(b) Accurately measure the extent of participation by small business concerns, small disadvantaged business concerns, and women-owned small

businesses in Government acquisitions in terms of the total value of contracts placed with small business concerns during each fiscal year, and report data to the SBA at the end of each fiscal year (see Subpart 4.6).

SUBPART 19.3—DETERMINATION OF STATUS AS A SMALL BUSINESS CONCERN

19.301 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 written self certification. 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.

19.302 Protesting a small business representation.

(a) Any offeror or other interested party may protest the small business representation of an offeror in a specific offer.

(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) below).

(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, shall promptly forward the protest to the SBA Regional 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 121.3-5.

(1) To be timely, a protest by any concern or other interested party must be received by the contracting officer (see (i) and (ii) below) by the close of business of the 5th business day after bid opening (in formally advertised acquisitions) or receipt of the special notification from the contracting officer that identifies the apparently successful offeror (in negotiated acquisitions) (see 15.1001(b)(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 day after the oral protest.

(ii) A protest may be made in writing if it is delivered 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.

(e) Upon receiving a protest, the SBA will—

(1) Notify the contracting officer and the protestant 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 offeror 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 offeror 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 offeror's interests.

(g) (1) Within 10 business days after receiving a protest, the challenged offeror's response, and other pertinent information, the SBA will determine the size status of the challenged concern and notify the contracting officer, the protestant, and the challenged offeror of its decision by certified mail, return receipt requested.

(2) The SBA Regional Administrator will determine the small business status of the questioned bidder or offeror and notify the contracting officer and the bidder or offeror 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) below, 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 contracting action. The contracting officer shall forward the protest to the SBA (see 19.302(c)(1)) with a notation that the concern is not being considered for award, and shall notify the protestant of this action.

(i) An appeal from an SBA size determination may be filed by (1) any concern or other interested party whose protest of the small business representation of another concern has been denied by an SBA Regional Administrator, (2) any concern or other interested party that has been adversely affected by a Regional Administrator's decision, or (3) the SBA Associate Administrator for the SBA program involved. SBA's regulations on appeals are contained in 13 CFR 121.3-6.

(j) A protest which is not timely, even though received before award, shall be forwarded to the Small Business Administration regional office (see 19.302(c)(1) above), with a notation on it that the protest is not timely. The

protestant 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 Small Business Administration regional office with a notation that award has been made. The protestant shall be notified that the award has been made and that the protest has been forwarded to SBA for its consideration in future actions.

19.303 Determining product or service classifications.

(a) The contracting officer shall determine the appropriate product or service classification and related small business size standard and include them in solicitations, except when small purchase procedures are used.

(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 provided below.

(1) If the solicitation period is longer than 30 days, the appeal must be filed not less than 10 business days before the bid opening or proposal submission date. If the solicitation period is shorter than 30 days, the appeal must be filed not less than 5 business days before the bid opening or proposal submission date.

(2) The appeal shall be in writing and shall be addressed to the Chairperson, Size Appeals Board, Small Business Administration, Washington, D.C. 20416. No particular form is prescribed for the appeal. However, the appellant shall submit an original and one legible copy, and to avoid time-consuming correspondence, it should include—

(i) The character and date of the determination being appealed;

(ii) The number and date of the solicitation, and the name and address of the contracting officer;

(iii) The reasons why the contracting officer's determination is alleged to be erroneous;

(iv) Documentary evidence to support the allegation; and

(v) The action sought by the appellant.

(3) The SBA Size Appeals Board will promptly notify the contracting officer of its receipt of a valid appeal and, if possible, will inform the contracting officer of its ruling on the appeal before the end of the solicitation period. The SBA decision, if received before the date offers are due, shall be considered final and the solicitation shall be amended to (i) reflect the decision and (ii) change the date offers are due, if appropriate. SBA rulings received after the due date shall not apply to the pending acquisition, but shall apply to future acquisitions of the product or service.

19.304 Solicitation provisions.

(a) The contracting officer shall insert the provision at 52.219-1, Small Business Concern Representation, in solicitations when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(b) The contracting officer shall insert the provision at 52.219-2, Small Disadvantaged Business Concern Representation, in solicitations (other than those for small purchases), when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(c) The contracting officer shall insert the provision at 52.219-3, Women-Owned Small Business Representation, in solicitations (other than those for small purchases), when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

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 and small disadvantaged 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) 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 agency 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 agency.

(b) Upon their request and subject to applicable acquisition and security regulations, contracting officers shall give SBA procurement center representatives 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 and small disadvantaged business sources, and (iii) breakout of components for competitive acquisitions.

(2) Recommending concerns for inclusion on solicitation mailing lists or on a list of concerns to be solicited in a specific acquisition.

(3) 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.

(4) Conducting periodic reviews of the contracting activity to which assigned to ascertain whether it is complying with the small business policies in this regulation.

(5) Sponsoring and participating in conferences and training designed to increase small business participation in the contracting activities of the office.

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.

(b) The determination to make a set-aside may be unilateral or joint. A unilateral determination is one which is made by the contracting officer. A joint determination is one which is recommended by the Small Business Administration (SBA) procurement center representative 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 and disadvantaged business utilization program and documenting why a set-aside is inappropriate when the acquisition is not set aside. If the acquisition is set aside 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. In automated contracting systems, all proposed acquisitions which are not small business-small purchase set-asides will be considered for small business set-asides in accordance with 19.502-2(a). If necessary, the screening for set-asides will be accomplished before entering such requirements into the system.

(d) At the request of an SBA procurement center representative, the contracting officer shall make available for review at the contracting office (to the extent of the SBA representative's security clearance) all proposed acquisitions in excess of $10,000 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) (1) Consistent with the requirements of Pub. L. 95-507, a special category of set-asides, identified as small business-small purchase set-asides, has been established for acquisitions of supplies or services that have an anticipated dollar value of $10,000 or less and are subject to small purchase procedures (see 13.105 and 19.508).

(2) A small nonmanufacturer responding to a small business-small purchase set-aside may furnish any domestically produced or manufactured product.

(g) Once a product or service has been acquired successfully by a contracting office on the basis of a small business set-aside, all future requirements of that office for that particular product or service not subject to simplified small purchase procedures shall, if required by agency regulations, be acquired on the basis of a repetitive set-aside. This procedure will be followed unless the contracting officer determines that there is not a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns and (2) at least two responsible reasonable prices. Withdrawal of a repetitive set-aside will be in accordance with 19.506.

(h) If a proposed small business set-aside is estimated to exceed $1,000,000 in value and a bond is required, the contracting officer shall, to the extent practicable, divide requirements so as to allow more than one concern to perform the work.

(i) All solicitations involving set-asides must specify the applicable small business size standard and product classification (see 19.303).

19.502 Setting aside acquisitions.

19.502-1 Requirements for setting aside acquisitions.

Using the order of precedence in 19.504, the contracting officer shall set aside an individual acquisition or class of acquisitions when it is determined to be in the interest of (a) maintaining or mobilizing the Nation's full productive capacity, (b) war or national defense programs, or (c) assuring that a fair proportion of Government contracts is placed with small business concerns, and when the circumstances described in 19.502-2 or 19.502-3(a) exist.

19.502-2 Total set-asides.

The entire amount of an individual acquisition or class of acquisitions, including contracts for architect-engineer services, research, development, test and evaluation, maintenance repair, and construction except small business-small purchase set-asides, shall be set aside for exclusive small business participation if the contracting officer determines that there is a reasonable expectation that (a) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns and (b) awards will be made at reasonable prices. Total 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 the 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 business the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances, and schedules.

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 reasonable price;

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

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

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

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

(2) (i) After all awards have been made on the non-set-aside portion, the contracting officer shall negotiate with eligible concerns on the set-aside portion, as provided in the solicitation, and make award. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non-set-aside portion. Negotations shall be conducted with small business concerns in the order of priority as indicated in the solicitation (but see (ii) below). 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 protion 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 and partial small business set-asides may be conducted by using conventional negotiation or a special method of contracting known as "Small Business Restricted Advertising." Whenever possible, the latter method shall be used. The use of either method constitutes a negotiated acquisition, and requires that the appropriate statutory authority for negotiation be cited in solicitation and contract documents (see Subpart 15.2).

(b) Small Business Restricted Advertising shall be conducted following the procedures for formal advertising prescribed in Part 14, except that solicitation, bidding, and award(s) shall be restricted to small business concerns. Offers received from concerns that do not qualify as small business concerns shall be considered nonresponsive and shall be rejected.

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.

(b) The item is on an established planning list under the Industrial Readiness Planning Program. However, a total set-aside shall not be made when the list contains a large business Planned Emergency Producer of the item(s) who has conveyed a desire to supply some or all of the required items.

(c) The item is on a Qualified Products List. However, a total set-aside shall not be made if the list contains the products of large business unless none of the large businesses desires to participate in the acquisition.

(d) A period of less than 30 days is available for receipt of offers.

(e) The contract is classified.

(f) Small business concerns are already receiving a fair proportion of the agency's contracts for supplies and services.

(g) A class set-aside of the item or service has been made by another contracting activity.

(h) A "brand name or equal" product description will be used in the solicitation.

19.503 Setting aside a class of acquisitions.

(a) A class of acquisitions of selected products or services, or a portion of the acquisitions, may be set aside for exclusive participation by small business concerns if individual acquisitions in the class will meet the criteria in 19.502-1, 19.502-2, or 19.502-3(a). The determination to make a class set-aside shall not depend on the existence of a current acquisition if future acquisitions can be clearly foreseen.

(b) The determination to set aside a class of acquisitions may be either unilateral or joint.

(c) Each class set-aside determination shall be in writing and must—

(1) Specifically identify the product(s) and service(s) it covers;

(2) Provide that the set-aside does not apply to any acquisition accomplished using small purchase procedures;

(3) Provide that the set-aside applies only to the (named) contracting office(s) making the determination; and

(4) Provide that the set-aside does not apply to any individual acquisition if the requirement is not severable into two or more economic production runs or reasonable lots, in the case of a partial class set-aside.

(d) The contracting officer shall review each individual acquisition arising under a class set-aside to identify any changes in the magnitude of requirements, specifications, delivery requirements, or competitive market conditions that have occurred since the initial approval of the class set-aside. If there are any changes of such a material nature as to result in probable payment of an unreasonable price by the Government or in a change in the capability of small business concerns to satisfy the requirements, the contracting officer may withdraw or modify (see 19.506(a)) the unilateral or joint set-aside by giving written notice to the SBA procurement center representative (if one is assigned), stating the reasons.

19.504 Set-aside program order of precedence.

(a) In carrying out small business set-aside programs, contracting officers of agencies other than the Department of Defense (DOD) shall award contracts and encourage placement of subcontracts in the following order of precedence (see 15 U.S.C. 644(e) and (f) and Pub. L. 96-302):

(1) A total set-aside for small business concerns located in labor surplus areas.

(2) A total set-aside for small business concerns.

(3) A partial set-aside for small business concerns located in labor surplus areas.

(4) A partial set-aside for small business concerns.

(5) Total labor surplus area set-aside for concerns that are not small businesses.

(b) Set-aside priorities of DOD are different from the above and are set forth in the DOD FAR Supplement.

19.505 Rejecting set-aside recommendations.

(a) If the contracting officer rejects a recommendation of the SBA procurement center representative, written notice shall be furnished to the SBA procurement center representative within 5 business days.

(b) The SBA procurement center representative may appeal the contracting officer's rejection to the head of the contracting activity (or designee) within 2 business days after receiving the notice. The head of the contracting activity (or designee) shall render a decision in writing, and provide it to the SBA representative within 7 business days. Pending issuing the decision to the SBA procurement center representative, the contracting officer shall suspend action on the acquisition.

(c) If the head of the contracting activity agrees that the contracting officer's rejection was appropriate, the SBA procurement center representative may—

(1) Within 1 business day, request the contracting officer to suspend action on the acquisition until the SBA Administrator appeals to the agency head (see paragraph (f) below); and

(2) The SBA shall be allowed 15 business days after making such a written request, within which the Administrator of SBA (i) may appeal to the Secretary of the Department concerned, and (ii) shall notify the contracting officer whether the further appeal has, in fact, been taken. If notification is not received by the contracting officer within the 15-day period, it shall be deemed that the SBA request to suspend contracting action has been withdrawn and that an appeal to the Secretary was not taken.

(d) When the contracting officer has been notified within the 15-day period that the SBA has appealed to the agency head, the head of the contracting activity (or designee) shall forward justification for its decision to the agency head. The contracting officer shall suspend contract action until notification is received that the SBA appeal has been settled.

(e) The agency head shall reply to the SBA within 30 business days after receiving the appeal. The decision of the agency head shall be final.

(f) A request to suspend action on an acquisition need not be honored if the

contracting officer determines that proceeding to contract award and performance is in the public interest. The contracting officer shall include in the contract file a statement of the facts justifying the determination, and shall promptly notify the SBA representative of the determination and provide a copy of the justification.

19.506 Withdrawing or modifying set-asides.

(a) If, before award of a contract involving a set-aside for small business, the contracting officer considers that award to a small business concern would be detrimental to the public interest (e.g., because of unreasonable price), the contracting officer may withdraw the set-aside determination whether it was unilateral or joint. The contracting officer shall initiate a withdrawal of an individual set-aside by giving written notice to the agency small and disadvantaged business utilization specialist and the SBA procurement center representative, if one is assigned, stating the reasons. In a similar manner, the contracting officer may modify a unilateral or joint class set-aside to withdraw one or more individual acquisitions.

(b) If the agency small and disadvantaged business utilization representative does not agree to a withdrawal or modification, the case shall be promptly referred to the SBA representative (if one is assigned) for review. If an SBA representative is not assigned, disagreements between the agency small and disadvantaged business utilization representative and the contracting officer shall be resolved using agency procedures. However, the procedures are not applicable to automatic dissolutions of set-asides (see 19.507) or dissolution of small business-small purchase set-asides (see 13.105).

(c) The contracting officer shall prepare a written statement supporting any withdrawal or modification of a set-aside and include it in the contract file.

19.507 Automatic dissolution of a set-aside.

(a) If a set-aside acquisition or portion of an acquisition is not awarded, the unilateral or joint determination to set the acquisition aside is automatically dissolved for the unawarded portion of the set-aside. The required supplies and/or services for which no award was made may be acquired by formal advertising or negotiation, as appropriate.

(b) Before issuing a solicitation for the items called for in a small business set-aside that was dissolved, the contracting officer shall ensure that the delivery schedule is realistic in the light of all relevant factors, including the capabilities of small business concerns.

19.508 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.219-4, Notice of Small Business-Small Purchase Set-Aside, in each written solicitation of quotations or offers to provide supplies and/or services when (1) the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia, (2) the contract amount is expected to be $10,000 or less, and (3) the acquisition is subject to small purchase procedures; unless purchase on an unrestricted basis is appropriate, as specified in 13.105(d).

(b) (This paragraph (b) does not apply to DOD.) The contracting officer shall insert the clause at 52.219-5, Notice of Total Small Business-Labor Surplus Area Set-Aside, in solicitations and contracts involving total small business-labor surplus area set-asides (see 19.504(a)(1)).

(c) The contracting officer shall insert the clause at 52.219-6, Notice of Total Small Business Set-Aside, in solicitations and contracts involving total small business set-asides (see 19.504(a)(2)).

(d) The contracting officer shall insert the clause at 52.219-7, Notice of Partial Small Business Set-Aside, in solicitations and contracts involving partial small business set-asides (see 19.504(a)(4)).

SUBPART 19.6—CERTIFICATES OF COMPETENCY AND DETERMINATIONS OF ELIGIBILITY

19.601 General.

(a) For the definition of "certificate of competency (COC)," see 19.101. The COC program empowers the Small Business Administration (SBA) to certify to Government contracting officers as to all elements of responsibility of any small business concern to receive and perform a specific Government contract. The COC program does not extend to questions concerning regulatory requirements imposed and enforced by other Federal agencies.

(b) For the definition of "determination of eligibility," see 19.101. Under this program, SBA may certify to Government contracting officers that an otherwise qualified small business concern is an eligible Government contractor under the Walsh-Healey Public Contracts Act. Requirements of the Walsh-Healey Public Contracts Act are covered in Subpart 22.6. For information regarding the contracting officer's responsibility to determine that a contractor is eligible or ineligible, see 9.104-3(a).

19.602 Procedures.

19.602-1 Referral.

(a) Upon determining and documenting that a responsive small business lacks certain elements of responsibility (including, but not limited to, competency, capability, capacity, credit, integrity, perseverance, and tenacity), the contracting officer shall—

(1) Withhold contract award (see 19.602-3); and

(2) Refer the matter to the cognizant SBA Regional Office in accordance with agency procedures, except that referral is not necessary if small purchase procedures are being used or if the small business concern—

(i) Is determined to be unqualified and ineligible because it does not meet the standard in 9.104-1(g); *provided*, that the determination is approved by the chief of the contracting office; or

(ii) Is suspended or debarred under Executive Order 11246 or Subpart 9.4.

(b) If a partial set-aside is involved, the contracting officer shall refer to the SBA the entire quantity to which the concern may be entitled, if responsible.

(c) The referral shall consist of—

(1) A notice that a small business concern has been determined to be nonresponsible, specifying the elements of responsibility the contracting officer found lacking; and

(2) A copy of the solicitation, drawings and specifications, preaward survey findings, pertinent technical and financial information, abstract of bids (if available), and any other pertinent information that supports the contracting officer's determination.

(d) For any single acquisition, the contracting officer shall make only one referral at a time regarding a determination of nonresponsibility.

19.602-2 Issuing or denying a certificate of competency (COC).

(a) Within 15 business days (or a longer period agreed to by the SBA and the contracting agency) after receiving a notice that a small business concern lacks certain elements of responsibility, the SBA will take the following actions:

(1) Inform the small business concern of the contracting officer's determination and offer it an opportunity to apply to the SBA for a certificate of competency (COC). (A concern wishing to apply for a COC should notify the SBA Regional Office for the geographical area where it is located.)

(2) Upon timely receipt of the application and required documentation, send an SBA team to visit the concern to investigate it only for the specific elements of responsibility that the agency notice specified as lacking, and to make recommendations to the SBA Regional Administrator.

(3) If the Regional Administrator plans to issue or recommend issuance of a COC, provide advance notice of the proposed action to the contracting officer together with a brief statement of the reasons for it. If the contracting officer disagrees with the proposal, resolve the disagreement as provided in 19.602-3.

(b) The SBA Regional Administrator will—

(1) Notify the concern and the contracting officer that the COC is denied;

(2) If the contract is for $500,000 or less, issue the COC; or

(3) If the contract is for more than $500,000 forward a recommendation to the SBA Central Office that a COC be issued.

(c) Upon receipt of a recommendation from the Regional Administrator to issue a COC, the SBA Central Office may—

(1) Notify the concern and the contracting officer that the COC is denied; or

(2) Send the COC to the contracting officer and advise the concern, through the Regional Office, of the action.

19.602-3 Resolving differences between the agency and the Small Business Administration.

(a) When disagreements arise about a concern's ability to perform, the contracting officer and the SBA shall make every effort to reach a resolution before the SBA takes final action on a COC. This shall be done through the complete exchange of information and in accordance with agency procedures. If agreement cannot be reached between the contracting officer and the SBA Regional Office, the contracting officer shall request that the Regional Office suspend action and refer the matter to the SBA Central Office for review.

(b) The SBA Central Office, upon receiving a referral, shall—

(1) Inform the contracting officer that it does not concur with its Regional Office; or

(2) Inform the contracting officer that it concurs with its Regional Office.

In either case, the initial notification shall be by telephone to the contracting officer, followed by written confirmation.

(c) If the agency intends to file a formal appeal, it shall notify the SBA Central Office within 10 business days (or a period acceptable to both) after receiving the Central Office's written position on the matter. The agency shall file any formal appeal within 10 business days after SBA is informed that an appeal will be taken, or within a period acceptable to both.

(d) The SBA Central Office shall make the final determination.

19.602-4 Awarding the contract.

(a) If new information causes the contracting officer to determine that the concern referred to the SBA is actually responsible to perform the contract, and award has not already been made under paragraph (c) below, the contracting officer shall reverse the determination of nonresponsibility, notify the SBA of this action, withdraw the referral, and proceed to award the contract.

(b) The contracting officer shall award the contract to the concern in question if the SBA issues a COC after receiving the referral. An SBA-certified concern shall not be required to meet any other requirements of responsibility. SBA COC's are conclusive with respect to all elements of responsibility of prospective small business contractors.

(c) The contracting officer shall proceed with the acquisition and award the contract to another appropriately selected and responsible offeror if the SBA has not issued a COC within 15 business days (or a longer period of time agreed to with the SBA) after receiving the referral.

SUBPART 19.7—SUBCONTRACTING WITH SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

19.701 Definition.

"Subcontract," as used in this subpart, means any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for supplies and/or services required for contract performance, contract modification, or subcontract.

19.702 Statutory requirements.

Any contractor receiving a contract for more than $10,000 shall agree in the contract that small business concerns and small disadvantaged business concerns shall have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance.

(a) Except as stated in paragraph (b) below, the Small Business Act imposes the following requirements regarding subcontracting with small businesses and small business subcontracting plans.

(1) In negotiated acquisitions, each solicitation of offers to perform a contract or contract modification, which individually is expected to exceed $500,000 ($1,000,000 for construction) and that has subcontracting possibilities shall require the apparently successful offeror to submit an acceptable subcontracting plan. If the apparently successful offeror fails to negotiate a subcontracting plan acceptable to the contracting officer within the time limit prescribed by the contracting officer, the offeror will be ineligible for award.

(2) In formally advertised acquisitions, each invitation for bids to perform a contract or contract modification, which individually is expected to exceed $500,000 ($1,000,000 for construction) and that has subcontracting possibilities, shall require the bidder selected for award to submit a subcontracting plan. If the selected bidder fails to submit a plan within the time limit prescribed by the contracting officer, the bidder will be ineligible for award.

(b) Subcontracting plans (see subparagraphs (a)(1) and (2) above) are not required—

(1) From small business concerns;

(2) For personal services contracts;

(3) For contracts or contract modifications that will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; or

(4) For modifications to contracts that do not contain the clause at 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (or equivalent prior DAR, FPR, or NASA clauses) e.g., contracts awarded before Pub. L. 95-507 and which are within the scope of the contract.

(c) Any contractor or subcontractor failing to comply in good faith with the requirements of the subcontracting plan is in material breach of its contract.

19.703 Eligibility requirements for participating in the program.

(a) To be eligible as a subcontractor under the program, a concern must represent itself as a small business concern or small disadvantaged business concern.

(1) To represent itself as a small business concern, a concern must meet the definition in 19.101.

(2) To represent itself as a small disadvantaged business concern, a concern must meet the definition in 19.101. Individuals who certify that they are members of named groups (Black Americans, Hispanic Americans, Native

Americans, Asian-Pacific Americans, Asian-Indian Americans) may represent themselves as socially and economically disadvantaged. Individuals who are not members of named groups may also represent themselves, and participate in the program, as socially and economically disadvantaged if they are qualified by the SBA under the procedures in 13 CFR 124.1-1(c)(3)(iii). The Office of Minority Small Business and Capital Ownership Development in the SBA has the final authority to determine the eligibility of a concern to be designated as a small disadvantaged business concern, and will answer inquiries from contractors and others regarding eligibility.

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status as either a small business concern or a small disadvantaged business concern.

19.704 Subcontracting plan requirements.

(a) Each subcontracting plan required under 19.702(a)(2) and (3) must include—

(1) Separate percentage goals for using small business concerns and small disadvantaged business concerns as subcontractors;

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

(3) A description of the efforts the offeror will make to ensure that small business concerns and small disadvantaged business concerns will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the offeror will include the clause at 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (see 19.708(b)), 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 $500,000 ($1,000,000 for construction) to adopt a plan similar to the plan required by the clause at 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan (see 19.708(c));

(5) Assurances that the offeror will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan, and (iii) submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and SF 295, Summary Subcontract Report, in accordance with the instructions on the forms.

(6) A recitation of the types of records the offeror will maintain to demonstrate procedures adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small and small disadvantaged business concerns and to award subcontracts to them.

(b) Contractors may establish, on a plant or division-wide basis, a master subcontracting plan which contains all the elements required by the clause at 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, except goals. Master plans shall be effective for a 1-year period after approval by the contracting officer; however, a master plan when incorporated in an individual plan shall apply to that contract throughout the life of the contract.

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

19.705-1 General support of the program.

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

19.705-2 Determining the need for a subcontracting plan.

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

(a) Determine whether the proposed contractual action will meet the dollar threshold in 19.702(a)(2) or (3). If the action includes options or similar provisions, include their value in determining whether the threshold is met.

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

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

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

(3) A potential contractor's long-standing contractual relationship with its suppliers.

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

(d) Due to their unique circumstances, major system acquisition programs, as well as other complex or sensitive acquisitions involving formal source selection procedures, may necessitate negotiating subcontracting plans with all firms in a competitive range in order to afford the maximum practicable opportunity for small business and small disadvantaged business concerns to participate and preserve the integrity of the competitive process. When the simultaneous negotiation of such plans is necessary, the solicitation (1) may require offerors to include proposed subcontracting plans in their initial proposals and (2) may indicate that subcontracting plans will be negotiated concurrently with cost, technical, and management proposals.

19.705-3 Preparing the solicitation.

The contracting officer shall provide the Small Business Administration's (SBA's) resident procurement center representative, if any, a reasonable period of time to review any solicitation requiring submission of a subcontracting plan and to submit advisory findings before the solicitation is issued.

19.705-4 Reviewing the subcontracting plan.

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

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

(1) Previous involvement of small business concerns as prime contractors or subcontractors in similar acquisitions;

(2) Proven methods of involving small business concerns as subcontractors in similar acquisitions; and

(3) The relative success of methods the contractor intends to use to meet the goals and requirements of the plan, as evidenced by records maintained by contractors.

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

(c) In negotiated acquisitions, the contracting officer shall determine whether the plan is acceptable based on the negotiation of each of the six elements of the plan (see 19.704). Subcontracting goals should be set at a level that the parties reasonably expect can result from the offeror expending good faith efforts to use small and small disadvantaged subcontractors to the maximum practicable extent. No goal should be negotiated upward if it is apparent that a higher goal will significantly increase the Government's cost or seriously impede the attainment of acquisition objectives. An incentive subcontracting clause (see 52.219-10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns), may be used when additional and unique contractor effort could significantly increase subcontract awards to small or small disadvantaged businesses.

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

(1) Evaluate the offeror's past performance in awarding subcontracts for the same or similar products or services to small and small disadvantaged business concerns. If information is not available on a specific type of product or service, evaluate the offeror's overall past performance.

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

(3) Evaluate subcontracting potential, considering the offeror's make-or-buy policies or programs, the nature of the products or services to be subcontracted, and the known availability of small and small disadvantaged business concerns in the geographical area where the work will be performed.

(4) Advise the offeror of available sources of information on potential small and small disadvantaged business subcontractors, as well as any specific concerns known to be potential subcontractors. If the offeror's proposed goals are questionable, the contracting officer shall emphasize that the information should be used to develop realistic and acceptable goals.

(5) Obtain advice and recommendations from the SBA procurement center representative (if any) and the agency small and disadvantaged business utilization representative.

19.705-5 Awards involving subcontracting plans.

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

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

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

(3) Notify the SBA resident procurement center representative of the opportunity to review the proposed contract (including the plan and supporting documentation). The notice shall be issued in sufficient time to provide the representative a reasonable time to review the material and submit advisory recommendations to the contracting officer. Failure of the representative to respond in a reasonable period of time shall not delay contract award.

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

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

(b) Letter contracts and similar undefinitized instruments, which would otherwise meet the requirements of 19.703(a)(2) and (3), shall contain at least a preliminary basic plan addressing the requirements of 19.705 and in such cases require the negotiation of the final plan within 90 days after award or before definitization, whichever occurs first.

19.705-6 Postaward responsibilities of the contracting officer.

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

(a) Notifying the SBA of the award by sending a copy of the award document to the Assistant Regional Administrator for Office of Procurement and Technical Assistance in the SBA region where the contract will be performed.

(b) Forwarding a copy of each plan and any associated approvals to the SBA's Central Office, 1441 L Street N.W., Washington, DC 20416, Attention: AA/PTA, if any company-wide plans were received from offerors of commercial products.

(c) Giving to the assigned SBA resident procurement center representative (if any) a copy of—

(1) Any subcontracting plan submitted in response to a formally advertised solicitation; and

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

(d) Notifying the SBA resident procurement center representative of the opportunity to review subcontracting plans in connection with contract modifications.

19.706 Responsibilities of the cognizant administrative contracting officer.

(a) The administrative contracting officer is responsible for assisting in evaluating subcontracting plans, and for monitoring, evaluating, and documenting contractor performance under the clause prescribed in 19.708(b) and any subcontracting plan included in the contract. The contract administration office shall provide the necessary information and advice to support the contracting officer, as appropriate, by furnishing—

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

(2) Information on the extent to which the contractor is meeting the plan's goals for subcontracting with eligible small and small disadvantaged business concerns;

(3) Information on whether the contractor's efforts to ensure the participation of small and small

disadvantaged business concerns are in accordance with its subcontracting plan;

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

(5) Immediate notice if, during performance, the contractor is failing to meet its commitments under the clause prescribed in 19.708(b) or the subcontracting plan.

(b) If the contractor does not comply in good faith with the subcontracting plan, the administrative contracting officer shall, upon contract completion, make appropriate recommendations that contracting officers may use for future contracts.

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

(a) Under the program, the SBA may—

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

(2) Review (within 5 working days) any solicitation that meets the dollar threshold in 19.702(a)(2) or (3) before the solicitation is issued;

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

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

(b) The SBA is not authorized to (1) prescribe the extent to which any contractor or subcontractor shall subcontract, (2) specify concerns to which subcontracts will be awarded, or (3) exercise any authority regarding the administration of individual prime contracts or subcontracts.

19.708 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, in solicitations and contracts when the contract amount is expected to be over $10,000 unless—

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

(2) The contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) The contracting officer shall, when contracting by negotiation, insert the clause at 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, in solicitations and contracts that (1) offer subcontracting possibilities, (2) are expected to exceed $500,000 ($1,000,000 for construction of any public facility), and (3) are required to include the clause at 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, unless the acquisition has been set aside for small business or is to be accomplished under the 8(a) program. When contracting by formal advertising rather than by negotiation, the contracting officer shall use the clause with its Alternate I.

(c) (1) The contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause substantially the same as the clause at 52.219-10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns, when a subcontracting plan is required (see 19.702(a)(2)), and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small and disadvantaged business concerns, and is commensurate with the efficient and economical performance of the contract; unless the conditions in (c)(3) below are applicable. The contracting officer may vary the terms of the clause as specified in (c)(2) below.

(2) Various approaches may be used in the development of small and small disadvantaged business concerns' subcontracting incentives. They can take many forms, from a fully quantified schedule of payments based on actual subcontract achievement to an award fee approach employing subjective evaluation criteria (see (c)(3) below). The incentive should not reward the contractor for results other than those that are attributable to the contractor's efforts under the incentive subcontracting program.

(3) As specified in (c)(2) above, the contracting officer may include small and small disadvantaged business subcontracting as one of the factors to be considered in determining the award-fee in a cost-plus-award-fee contract; in such cases, however, the contracting officer shall not use the clause at 52.219-10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns.

SUBPART 19.8—CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION (THE 8(a) PROGRAM)

19.801 General.

(a) Section 8(a) of the Small Business Act 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. SBA's subcontractors are referred to as "8(a) contractors."

(b) (1) 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.

(2) If the SBA and the contracting officer fail to agree, the matter may be submitted for determination to the agency head by SBA's Administrator. Notification of a proposed referral to the agency head by SBA must be received by the contracting officer within 5 business days after the SBA is formally notified of the contracting officer's decision. SBA must provide the request for determination to the agency head within 15 business days. If timely appeal or timely notice of appeal is not made, the SBA's offer to contract will be deemed to have been revoked.

19.802 Selecting concerns for the 8(a) program.

Selecting concerns for the 8(a) program is the responsibility of SBA and is based on the criteria established in 13 CFR 124.1-1(c).

19.803 Selecting acquisitions for the 8(a) program.

(a) 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.

(1) The SBA identifies acquisition opportunities needed to support the program based on the knowledge and capability of firms in the program.

(2) Agencies may also review other proposed acquisitions for the purpose of identifying requirements which may be awarded to the SBA. The agency will promptly notify SBA of any acquisitions which are available for award to SBA under Section 8(a).

(b) If the SBA and an agency determine that an agency has, or will

have, acquisitions suitable for the 8(a) concern, the SBA will request the agency's commitment to support the concern's business plan. The request will contain at least the following information:

(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 capability and capacity to perform.

(3) The firm's present production capacity and related facilities, and how any additional needed facilities will be provided in order to ensure that the firm will be fully capable of satisfying the agency's requirements.

(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).

(iii) Any other information concerning the capabilities of the proposed contractor that pertains to the requested commitment.

(c) The SBA will initiate an individual request to contract for each proposed follow-on 8(a) contract. This will permit the agency involved to verify the availability of requirements, funding, and other pertinent factors before actual negotiation of follow-on contracts. The SBA must certify its competence and responsibility to perform each individual contract.

19.804 Agency evaluation of the Small Business Administration's request for a commitment.

(a) In determining the extent to which it can honor a request for a commitment to support a business plan, the agency should evaluate—

(1) Its current and future plans to acquire the specific items or work that the SBA's contractor is seeking to provide, identified in terms of—

(i) Quantities required or the number of construction projects planned; and

(ii) Performance or delivery requirements, including required monthly production rates, when applicable;

(2) Its current and future plans to acquire items or work similar in nature and complexity to those specified in the business plan, if there are no known requirements for the specified items or work;

(3) Problems encountered in previous acquisitions of the items or work from the SBA's contractor and/or other contractors;

(4) The impact of any delay in delivery;

(5) Whether the items or work have previously been acquired using small business set-asides; and

(6) Any other pertinent information about the SBA's contractor, the items, or the work. This includes any information concerning the firm's capabilities. When necessary, the contracting agency shall make an independent review of the factors in 19.803(b)(4) and other aspects of the firm's capabilities which would ensure the satisfactory performance of the requirement being considered for commitment to the 8(a) program.

(b) After completing its evaluation, the agency shall 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. If any planned contracts are for construction or service work, the notification must also contain the following information applicable to each prospective contract:

(1) The scope of the proposed work.

(2) A detailed Government cost estimate.

(3) Plans and specifications.

(4) Any applicable wage determinations issued by the Department of Labor under the Davis-Bacon Act or the Service Contract Act.

(5) Required performance schedules.

(6) Any other pertinent and reasonably available data.

19.805 Pricing the 8(a) contract.

The contracting officer shall price the 8(a) contract in accordance with Subpart 15.8. If required by Subpart 15.8, the SBA shall obtain certified cost or pricing data from its contractor.

19.806 Estimating the current fair market price and business development expense.

19.806-1 General.

(a) The contracting officer shall estimate the current fair market price of the work to be performed by the SBA's contractor. This estimate shall be based on reasonable costs under normal competitive conditions and not on lowest possible costs.

(b) Any excess of the negotiated price of the contract over the estimated current fair market price is eligible for funding as business development expense. Business development expense may include costs of start-up, training, and similar investment or learning costs in excess of those normally incurred by established concerns engaged in the same business.

(c) If a contract is awarded that includes business development expense, that expense will be funded by the SBA.

19.806-2 Estimating the current fair market price.

(a) In estimating the current fair market price for an acquisition other than those covered in (b) below, the contracting officer shall use price or cost analysis and consider commercial prices for similar products and services, available in-house cost estimates, data (including cost or pricing data) submitted by the SBA or its contractor, and data obtained from any other Government agency.

(b) In estimating a current fair market price for a repeat purchase, the contracting officer shall consider recent award prices for the same items or work if there is comparability in quantities, conditions, terms, and performance times. The estimated price should be adjusted to reflect differences in specifications, plans, transportation costs, packaging and packing costs, and other circumstances. Price indices may be used as guides to determine the changes in labor or material costs. Comparison of commercial prices for similar items may also be used.

19.806-3 Pricing review by the Small Business Administration.

(a) The negotiated contract price, the estimated current fair market price, and the amount of any business development expense are subject to the review and concurrence of the SBA.

(b) If, during its review, the SBA requests audit assistance in determining the reasonableness of the negotiated contract price, the contracting activity shall furnish it to the extent it is available. If requested by the SBA, the contracting officer shall also make available the data used to estimate the current fair market price.

(c) When the SBA and the contracting officer agree on the estimated current fair market price of a proposed 8(a) contract, the SBA will assume responsibility for reviewing, validating,

approving, and funding any business development expense.

19.806-4 Funding business development expense.

(a) Upon completing its review, the SBA will either (1) fund the business development expense by reimbursing the contracting activity before contract award, or (2) decide not to fund the expense, in which case the contracting officer shall not award a contract unless the negotiated contract price is reduced by the amount of the expense.

(b) SBA's regulations on business development expenses are contained in 13 CFR 124.1-4.

19.807 Contract negotiation.

(a) The SBA is responsible for initiating negotiations with the agency within the time established by the agency. If the SBA does not initiate negotiations within the agreed-to time and the agency cannot allow additional time, the agency may, after notifying the SBA, proceed with the acquisition from other sources.

(b) The SBA's contractor should participate, whenever practicable, in negotiating the contract terms. When mutually agreeable, the SBA may authorize the contracting activity to negotiate directly with the SBA's contractor. Whether or not direct negotiations take place, the SBA is responsible for approving the resulting contract before award and determining whether its contractor shall be required to provide a performance bond.

19.808 Preaward considerations.

The contracting officer should request a preaward survey of the SBA's contractor whenever considered useful. A cognizant contract administration office may be requested to assist in reviewing a specific element of responsibility.

19.809 Preparing the contracts.

19.809-1 General.

(a) The contract to be awarded by the agency to the SBA shall be prepared in accordance with agency procedures and in the same detail as would be required in a contract with a business concern. The contracting officer shall use the Standard Form 26 as the award form. The appropriate negotiation authority shall be cited on the face of the document.

(b) The agency shall prepare the contract that the SBA will award to its contractor in accordance with agency procedures, as if the agency were awarding the contract directly to the SBA's contractor, except for the following:

(1) The award form shall cite "15 U.S.C. 637(a)" as the negotiation authority.

(2) Appropriate clauses shall be included, as necessary, to reflect that the contract is between the SBA and its contractor.

(3) The following items shall be inserted by the SBA when it makes the award:

(i) The SBA contract number.

(ii) The effective date.

(iii) The typed name of the SBA's contracting officer.

(iv) The signature of the SBA's contracting officer.

(v) The date signed.

(4) At the same time the items in subparagraph (3) above are completed, the SBA will obtain the signature of its contractor on the contract.

(5) If the contract is for construction work, it shall include requirements of the Miller Act with respect to performance and payment bonds (see Part 28).

19.809-2 Contract clauses.

(a) The contracting officer shall insert the clause at 52.219-11, Special 8(a) Contract Conditions, in contracts between the SBA and the agency when the acquisition is accomplished using the procedures of this subpart.

(b) The contracting officer shall insert the clause at 52.219-12, Special 8(a) Subcontract Conditions, in contracts between the SBA and its 8(a) contractor.

19.810 Contract administration.

(a) The contracting officer shall assign contract administration functions, as required, based on the location of the SBA's contractor (see DOD Directory of Contract Administration Services Components (DOD 4105.59-H).)

(b) The contract for the SBA and its contractor shall be provided to the SBA along with the one between the SBA and the agency, and shall be distributed by the SBA. Both contracts shall be executed and distributed in accordance with Part 4.

(c) To the extent consistent with the awarding agency's capability and resources, SBA contractors furnishing requirements shall be afforded production and technical assistance, including, when appropriate, identification of causes of deficiencies in their products and suggested corrective action to make such products acceptable.

SUBPART 19.9—CONTRACTING OPPORTUNITIES FOR WOMEN-OWNED SMALL BUSINESSES

19.901 Policy.

In response to the need to aid and stimulate women's business enterprise, Executive Order 12138, May 18, 1979 directs agencies to take appropriate action to facilitate, preserve, and strengthen women's business enterprise and to ensure full participation by women in the free enterprise system. Appropriate action includes the award of subcontracts under Federal prime contracts.

19.902 Contract clause.

To encourage the use of women-owned small business in subcontracting, the clauses at 52.219-13, Utilization of Women-Owned Small Businesses, shall be included in all contracts expected to exceed $10,000 except (i) contracts which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands, and (ii) contracts for services which are personal in nature.

PART 20—LABOR SURPLUS AREA CONCERNS

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

20.000 Scope of part.

This part prescribes policies and procedures for aiding labor surplus areas in the United States, its territories and possessions, the Commonwealth of

Puerto Rico, and the Trust Territory of the Pacific Islands. It implements Defense Manpower Policy No. 4B, May 23, 1980 (44 CFR 331), U.S. Department of Labor Regulations (20 CFR 654, Subpart A), and the Small Business Act (15 U.S.C. 644(d), (e), and (f)).

SUBPART 20.1—GENERAL

20.101 Definitions.

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

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

20.102 General policy.

Subject to the order of precedence in 19.504, the Government shall award appropriate contracts to eligible labor surplus area (LSA) concerns and encourage contractors to place subcontracts with LSA concerns.

20.103 Contract clause.

(a) In contracts not set aside for LSA concerns, the offeror's status as an LSA concern may affect entitlement to award in the case of tie offers or evaluation in accordance with the Buy American Act. Therefore, offerors shall be afforded an opportunity to establish status as LSA concerns.

(b) The contracting officer shall insert the clause at 52.220-1, Preference for Labor Surplus Area Concerns, in solicitations and contracts that (1) exceed the appropriate small purchase limitation in Part 13 and (2) are not set aside for LSA concerns.

20.104 Specific policies.

When a proposed contract is estimated to exceed the appropriate small purchase limitation in Part 13, the agency shall—

(a) Set aside the acquisition as provided in Subpart 20.2;

(b) Promptly disseminate available publications and information that identify LSA's to acquisition personnel;

(c) Consider Department of Labor classifications of LSA's as conclusive for each contracting action;

(d) Give LSA concerns, which are on appropriate solicitation lists, the opportunity to submit offers on any acquisition for which they are qualified, unless the acquisition is otherwise restricted (e.g., total small business set-aside);

(e) Solicit all prospective LSA concerns, when less than a complete solicitation list is used;

(f) Give preference to LSA concerns as prescribed in 14.407-6, when equal low bids are received;

(g) Encourage subcontracting with LSA concerns (see Subpart 20.3);

(h) Assist depressed industries (see 20.105);

(i) Cooperate with the Departments of Labor and Commerce, the Small Business Administration, and the Federal Emergency Management Agency (FEMA) to achieve the objectives of this Part 20; and

(j) See 25.404 regarding purchases from qualifying countries where LSA set-asides are involved.

20.105 Depressed industries.

When an entire industry is depressed, FEMA under Defense Manpower Policy No. 4B may establish appropriate measures on an industry wide, rather than on an area-wide, basis. Designations of depressed industries are made by FEMA notifications. Contracting officers shall give industries special treatment as specified in the notification. No price differentials shall be paid to carry out the policies of these notifications.

20.106 Records and reports.

Agencies shall maintain records of contracts performed in LSA's as necessary to prepare required reports (see Subpart 4.6).

SUBPART 20.2—SET-ASIDES

20.201 Set-asides for labor surplus area concerns.

20.201-1 Total set-asides.

Subject to the order of precedence in 19.504, and in accordance with any applicable agency procedure, the contracting officer shall set aside the entire amount of an individual acquisition or class of acquisitions for LSA concerns when there is a reasonable expectation that offers will be obtained from a sufficient number of responsible LSA concerns so that awards will be made at reasonable prices. Past acquisition history of the item or similar items is not the only controlling factor that agencies shall consider in determining whether a reasonable expectation exists.

20.201-2 Department of Defense set-asides.

(a) Except as noted in paragraph (b) below, this Part 20 does not apply to contracts awarded by Department of Defense (DOD) components. This exemption results from 10 U.S.C. 2392, which precludes payment by DOD of a price differential in contracts awarded for purposes of relieving economic dislocations, and from special provisions in annual Defense Appropriation Acts. Detailed implementation by DOD of Defense Manpower Policy 4B is contained in the DOD FAR Supplement and applicable agency procedures.

(b) Contracts funded by Military Construction Appropriation Acts, and any other Defense contracts that are not subject to a limitation on payment of a price differential for relieving economic dislocation are subject to 20.201-1.

20.202 Contract clause.

The contracting officer shall insert the clause at 52.220-2, Notice of Total Labor Surplus Area Set-Aside, in solicitations and contracts estimated to exceed the appropriate small purchase limitation in Part 13 that are totally set aside for LSA concerns.

20.203 Rejection of set-asides.

The contracting officer may not base the rejection of an LSA set-aside on any of the following:

(a) A large part of the previous acquisition of the required item was placed with LSA concerns.

(b) The item is on an established planning list under the Industrial Preparedness Planning Program.

(c) The item is on a Qualified Products List (see Subpart 9.2).

(d) A period of less than 30 days from the date of issuance of the solicitation is prescribed for the submission of offers.

(e) The acquisition is classified.

20.204 Award procedures.

(a) The contracting officer shall award contracts involving total LSA set-asides by conventional negotiation or by labor surplus area restricted advertising. Whenever possible, the contracting officer shall use the restricted advertising method. The use of either method constitutes a negotiated acquisition and requires that the appropriate statutory authority for negotiation be cited in solicitation and contract documents (see Subpart 15.2).

(b) Labor surplus area restricted advertising uses the procedures for formal advertising prescribed in Part 14 except that solicitation, bidding, and award are restricted to LSA concerns.

Offers received from concerns that do not qualify as LSA concerns shall be considered nonresponsive and shall be rejected.

20.205 Withdrawal of set-asides.

(a) If before contract award the contracting officer considers that a set-aside is detrimental to the public interest (e.g., because of unreasonable prices), the contracting officer shall withdraw the set-aside and, if desired, complete the acquisition by advertising or negotiation, as appropriate.

(b) The contracting officer shall include in the contract file a record of the reasons for any withdrawal of a set-aside.

20.206 Contract authority.

Contracts for set-asides made under this Part 20 shall cite the negotiation authority specified at 15.201.

SUBPART 20.3—LABOR SURPLUS AREA SUBCONTRACTING PROGRAM

20.301 General.

(a) In contracts that exceed the appropriate small purchase limitation in Part 13 but do not exceed $500,000, contractors are required to use their best efforts to subcontract with LSA concerns when such subcontracting is (1) consistent with the efficient performance of the contract and (2) at prices no higher than are obtainable elsewhere.

(b) In contracts that may exceed $500,000, contractors are required to take affirmative actions to subcontract with LSA concerns when such subcontracting is (1) consistent with efficient performance of the contract and (2) at prices no higher than are obtainable elsewhere. Contractors are also required to impose similar responsibilities on major subcontractors.

20.302 Contract clauses.

(a) The contracting officer shall insert the clause at 52.220-3, Utilization of Labor Surplus Area Concerns, in solicitations and contracts, when it is estimated that the contract will exceed the appropriate small purchase limitation in Part 13, except—

(1) Contracts with foreign contractors that, including all related subcontracts, are to be performed entirely outside the United States, its territories and possessions, Puerto Rico, and the Trust Territory of the Pacific Islands; and

(2) Contracts for services that are personal in nature.

(b) The contracting officer shall insert the clause at 52.220-4, Labor Surplus Area Subcontracting Program, in solicitations and contracts that (1) may exceed $500,000, (2) contain the clause at 52.220-3, Utilization of Labor Surplus Area Concerns, and (3) in the opinion of the contracting officer, offer substantial subcontracting possibilities. In addition, the contracting officer shall urge contractors that will receive negotiated contracts that may not exceed $500,000 but that meet the criteria in (2) and (3) above, to accept the clause at 52.220-4.

20.303 Review of subcontracting program.

(a) Agencies shall review the adequacy of the contractor's LSA subcontracting program through individual agency reviews or cross-servicing arrangements (see Subpart 42.1 Interagency Contract Administration and Audit Services).

(b) To carry out the Government's objectives, contractors and subcontractors having LSA subcontracting programs must be informed of (1) the Government's evaluation of their programs, (2) any deficiencies, and (3) any areas of outstanding achievement. The contracting officer shall document, for use in evaluating future offers, any evaluation and remarks to the contractor, including areas of suggested improvement and areas where the contractor has exceeded contractual requirements.

PART 21—[RESERVED]

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

22.000 Scope of part.

This part—

(a) Deals with general policies regarding contractor labor relations as they pertain to the acquisition process;

(b) Prescribes contracting policy and procedures for implementing pertinent labor laws; and

(c) Prescribes contract clauses with respect to each pertinent labor law.

SUBPART 22.1—BASIC LABOR POLICIES

22.101 Labor relations.

22.101-1 General.

(a) Agencies shall maintain sound relations with industry and labor to ensure (1) prompt receipt of information involving labor relations that may adversely affect the Government acquisition process and (2) that the Government obtains needed supplies and services without delay. All matters regarding labor relations shall be handled in accordance with agency procedures.

(b) Agencies shall remain impartial concerning any dispute between labor and contractor management and not undertake the conciliation, mediation, or arbitration of a labor dispute. To the extent practicable, agencies should ensure that the parties to the dispute use all available methods for resolving the dispute, including the services of the National Labor Relations Board, Federal Mediation and Conciliation Service, the National Mediation Board and other appropriate Federal, State, local, or private agencies.

(c) Agencies should, when practicable, exchange information concerning labor matters with other affected agencies to ensure a uniform Government approach concerning a particular plant or labor-management dispute.

(d) Agencies should take other actions concerning labor relations problems to the extent consistent with their acquisition responsibilities. For example, agencies should—

(1) Notify the agency responsible for conciliation, mediation, arbitration, or other related action of the existence of any labor dispute affecting or threatening to affect agency acquisition programs;

(2) Furnish to the parties to a dispute factual information pertinent to the dispute's potential or actual adverse impact on these programs, to the extent consistent with security regulations; and

(3) Seek a voluntary agreement between management and labor, notwithstanding the continuance of the dispute, to permit uninterrupted acquisition of supplies and services. This shall only be done, however, if the attempt to obtain voluntary agreement does not involve the agency in the merits of the dispute and only after consultation with the agency responsible for conciliation, mediation, arbitration, or other related action.

(e) The head of the contracting activity may designate programs or requirements for which it is necessary that contractors be required to notify the Government of actual or potential labor disputes that are delaying or threaten to delay the timely contract performance (see 22.103-5(a)).

22.101-2 Contract pricing and administration.

(a) Contractor labor policies and compensation practices, whether or not included in labor-management agreements, are not acceptable bases for allowing costs in cost-reimbursement contracts or for recognition of costs in pricing fixed-price contracts if they result in unreasonable costs to the Government. For a discussion of allowable costs resulting from labor-management agreements, see 31.205-6(c).

(b) Labor disputes may cause work stoppages that delay the performance of Government contracts. Contracting officers shall impress upon contractors that each contractor shall be held accountable for reasonably avoidable delays. Standard contract clauses dealing with default, excusable delays, etc., do not relieve contractors or subcontractors from the responsibility for delays that are within the contractors' or their subcontractors' control. A delay caused by a strike that the contractor or subcontractor could not reasonably prevent can be excused; however, it cannot be excused beyond the point at which a reasonably diligent contractor or subcontractor could have acted to end the strike by actions such as—

(1) Filing a charge with the National Labor Relations Board to permit the Board to seek injunctive relief in court.

(2) Using other available Government procedures.

(3) Using private boards or organizations to settle disputes.

(c) Strikes normally result in changing patterns of cost incurrence and therefore may have an impact on the allowability of costs for cost-reimbursement contracts or for recognition of costs in pricing fixed-price contracts. Certain costs may increase because of strikes; e.g., guard services and attorney's fees. Other costs incurred during a strike may not fluctuate (e.g., "fixed costs" such as rent and depreciation), but because of reduced production, their proportion of the unit cost of items produced increases. All costs incurred during strikes shall be carefully examined to ensure recognition of only those costs necessary for performing the contract in accordance with the Government's essential interest.

(d) If during a labor dispute, the inspectors' safety is not endangered, the normal functions of inspection at the

plant of a Government contractor shall be continued without regard to the existence of a labor dispute, strike, or picket line.

22.101-3 Reporting labor disputes.

The office administering the contract shall report, in accordance with agency procedures, any potential or actual labor disputes that may interfere with performing any contracts under its cognizance. If a contract contains the clause at 52.222-1, Notice to the Government of Labor Disputes, the contractor also must report any actual or potential dispute that may delay contract performance.

22.101-4 Removal of items from contractors' facilities affected by work stoppages.

(a) Items shall be removed from contractors' facilities affected by work stoppages in accordance with agency procedures. Agency procedures should allow for the following:

(1) Determine whether removal of items is in the Government's interest. Normally the determining factor is the critical needs of an agency program.

(2) Attempt to arrange with the contractor and the union representative involved their approval of the shipment of urgently required items.

(3) Obtain appropriate approvals from within the agency.

(4) Determine who will remove the items from the plant(s) involved.

(b) Avoid the use or appearance of force and prevent incidents that might detrimentally affect labor-management relations.

(c) When two or more agencies' requirements are or may become involved in the removal of items, the contract administration office shall ensure that the necessary coordination is accomplished.

22.102 Federal and State labor requirements.

22.102-1 Policy.

Agencies shall cooperate, and encourage contractors to cooperate, with Federal and State agencies responsible for enforcing labor requirements concerning matters such as—

(a) Safety;

(b) Health and sanitation;

(c) Maximum hours and minimum wages;

(d) Equal employment opportunity;

(e) Child and convict labor;

(f) Age discrimination;

(g) Disabled and Vietnam veteran employment; and

(h) Employment of the handicapped.

22.102-2 Administration.

(a) Agencies shall cooperate with, and encourage contractors to use to the fullest extent practicable, the United States Employment Service (USES) and its affiliated local State Employment Service offices in meeting contractors' labor requirements. These requirements may be to staff new or expanding plant facilities, including requirements for workers in all occupations and skills from local labor market areas or through the Federal-State employment clearance system.

(b) Local State employment offices are operated throughout the United States, Puerto Rico, Guam, and the Virgin Islands. In addition to providing recruitment assistance to contractors, cooperation with the local State Employment Service offices will further the national program of maintaining continuous assessment of manpower requirements and resources on a national and local basis.

22.103 Overtime.

22.103-1 Definitions.

"Normal workweek" and "normal workday," as used in this subpart, means, generally, a workweek of 40 hours and a workday of 8 hours, respectively. Outside the United States, its possessions, and Puerto Rico, a workweek longer than 40 hours or a workday longer than 8 hours shall be considered normal if (a) the workweek or workday does not exceed the norm for the area, as determined by local custom, tradition, or law; and (b) the hours worked in excess of 40 in the workweek, or 8 in the workday, are not compensated at a premium rate of pay.

"Overtime" means time worked by a contractor's employee in excess of the employee's normal workweek or workday.

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

"Shift premium" means the difference between the contractor's regular rate of pay to an employee and the higher rate paid for extra-pay-shift work.

22.103-2 Policy.

Contractors shall perform all contracts, so far as practicable, without using overtime, particularly as a regular employment practice, except when lower overall costs to the Government will result or when it is necessary to meet urgent program needs. Any approved overtime, extra-pay shifts, and multishifts should be scheduled to achieve these objectives.

22.103-3 Procedures.

(a) Solicitations normally shall not specify delivery or performance schedules that may require overtime at Government expense.

(b) In negotiating contracts, contracting officers should, consistent with the Government's needs, attempt to (1) ascertain the extent that offers are based on the payment of overtime and shift premiums and (2) negotiate contract prices or estimated costs without these premiums or obtain the requirement from other sources.

(c) When it becomes apparent during negotiations of applicable contracts (see 22.103-5(b)) that overtime will be required in contract performance, the contracting officer shall secure from the contractor a request for all overtime to be used during the life of the contract, to the extent that the overtime can be estimated with reasonable certainty. The contractor's request shall contain the information required by paragraph (b) of the clause at 52.222-2, Payment for Overtime Premiums.

22.103-4 Approvals.

(a) The contracting officer shall review the contractor's request for overtime. Approval of the use of overtime may be granted by an agency approving official after determining in writing that overtime is necessary to—

(1) Meet essential delivery or performance schedules;

(2) Make up for delays beyond the control and without the fault or negligence of the contractor; or

(3) Eliminate foreseeable extended production bottlenecks that cannot be eliminated in any other way.

(b) Approval by the designated official of use and total dollar amount of overtime is required before inclusion of an amount in paragraph (a) of the clause at 52.222-2, Payment for Overtime Premiums. This clause is to be inserted in cost-reimbursement contracts over $100,000, except for those exempted under 22.103-5(b).

(c) Contracting officer approval of payment of overtime premiums is required for time-and-materials and labor-hour contracts (see paragraph (a)(3) of the clause at 52.232-7, Payments Under Time-and-Materials and Labor-Hour Contracts).

(d) No approvals are required for paying overtime premiums under other types of contracts.

(e) Approvals by the agency approving official (see 22.103-4(a)) may be for an individual contract, project, program, plant, division, or company, as practical.

(f) During contract performance, contractor requests for overtime exceeding the amount authorized by paragraph (a) of the clause at 52.222-2, Payment for Overtime Premiums, shall be submitted as stated in paragraph (b) of the clause to the office administering the contract. That office will review the request and if it approves, send the request to the contracting officer. If the contracting officer determines that the requested overtime should be approved in whole or in part, the contracting officer shall request the approval of the agency's designated approving official and modify paragraph (a) of the clause to reflect any approval.

(g) Overtime premiums at Government expense should not be approved when the contractor is already obligated, without the right to additional compensation, to meet the required delivery date.

(h) When the use of overtime is authorized under a contract, the office administering the contract and the auditor should periodically review the use of overtime to ensure that it is allowable in accordance with the criteria in Part 31. Only overtime premiums for work in those departments, sections, etc., of the contractor's plant that have been individually evaluated and the necessity for overtime confirmed shall be considered for approval.

(i) Approvals for using overtime shall ordinarily be prospective, but, if justified by emergency circumstances, approvals may be retroactive.

22.103-5 Contract clauses.

(a) The contracting officer shall insert the clause 52.222-1, Notice to the Government of Labor Disputes, in solicitations and contracts that involve programs or requirements that have been designated under 22.101-1(e).

(b) The contracting officer shall include the clause at 52.222-2, Payment for Overtime Premiums, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract amount is expected to be over $100,000; unless (a) a cost-reimbursement contract for operation of vessels is contemplated, or (b) a cost-plus-incentive-fee contract that will provide a swing from the target fee of at least plus or minus 3 percent and a contractor's share of at least 10 percent is contemplated.

SUBPART 22.2—CONVICT LABOR

22.201 General.

The policies and procedures controlling the employment of prison inmates in the performance of Government contracts are based on the following:

(a) Public Law 89-176 (18 U.S.C. 4082(c)(2)), that empowers the Attorney General to authorize Federal prisoners to work at paid employment in the community during their terms of imprisonment under conditions that protect against both the exploitation of convict labor and unfair competition with free labor.

(b) Executive Order 11755, December 29, 1973, that states: "The development of the occupational and educational skills of prison inmates is essential to their rehabilitation and to their ability to make an effective return to free society. Meaningful employment serves to develop those skills. It is also true, however, that care must be exercised to avoid either the exploitation of convict labor or any unfair competition between convict labor and free labor in the production of goods and services." The Executive order does not prohibit the contractor, in performing the contract, from employing—

(1) Persons on parole or probation;

(2) Persons who have been pardoned or who have served their terms;

(3) Federal prisoners authorized by the Attorney General under 18 U.S.C. 4082(c)(2) to work at paid employment in the community during the term of their imprisonment, if—

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Paid employment will not (A) result in the displacement of employed workers; (B) be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality; or (C) impair existing contracts for services; and

(iv) The rates of pay and other conditions of employment will not be less than those for work of a similar nature in the locality where the work is being performed; or

(4) Nonfederal prisoners under the conditions in 22.201(b) above if the Attorney General has certified that the work-release laws or regulations of the jurisdiction involved conform to the requirements of Executive Order 11755. The Executive order provides that, after notice and opportunity for hearing, the Attorney General shall revoke the certification if it is found that the jurisdiction's work-release program is not being conducted in conformance with the order or with its intention or purpose.

22.202 Contract clause.

The contracting officer shall insert the clause at 52.222-3, Convict Labor, in solicitations and contracts when the contract is to be performed in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands; unless—

(a) The contract will be subject to the Walsh-Healey Public Contracts Act (see Subpart 22.6), which contains a separate prohibition against the employment of convict labor;

(b) The supplies or services are to be purchased from Federal Prison Industries, Inc. (see Subpart 8.6); or

(c) The acquisition involves the purchase, from any State prison, of finished supplies that may be secured in the open market or from existing stocks, as distinguished from supplies requiring special fabrication.

SUBPART 22.3—CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

22.300 Scope of subpart.

This subpart prescribes policies and procedures for applying the requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) (the Act) to contracts, other than construction contracts (for construction contracts, see Subpart 22.4), that may require or involve laborers or mechanics. In this subpart, the term "laborers or mechanics" includes apprentices, trainees, watchmen, guards, and workmen, other than seamen who perform dredging or rock excavation services in rivers or harbors.

22.301 Statutory requirement.

The Act requires that certain contracts contain a clause specifying that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than 8 hours in any calendar day or 40 hours in any workweek unless paid for all such overtime hours at not less than 1 ½ times the basic rate of pay.

22.302 Computation of overtime and liquidated damages.

When the hours worked during a single workweek by a laborer or mechanic exceed 8 per calendar day and 40 per workweek, the hours in excess of 8 per day and 40 per workweek shall be computed separately. The computation resulting in the greater number of overtime hours shall be used to calculate the overtime compensation

due the employee. If the calculation discloses underpayments, the method used to determine the underpayments shall also be used to determine liquidated damages (see 52.222-4). If both methods result in the same amount of underpayment, liquidated damages shall be computed on the number of calendar days during which work in excess of 8 hours was performed (for waiver or adjustment of liquidated damages, use the procedures relating to construction contracts in Subpart 22.4).

22.303 Administration and enforcement.

The procedures and reports required for construction contracts in Subpart 22.4 also apply to investigations of alleged violations of the Act on other than construction contracts.

22.304 Variations, tolerances, and exemptions.

The Secretary of Labor, under section 331 of the Act, upon individual initiative or at the request of any Federal agency, may provide reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of the Act (see 29 CFR 5.14(a)).

22.305 Contract clauses.

(a) The contracting officer shall insert the clause at 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation—General, in solicitations and contracts (including, for this purpose, basic ordering and blanket purchase agreements) when the contract may require or involve the employment of laborers or mechanics, helpers, apprentices, trainees, watchmen, guards, firefighters, or fireguards. However, the contracting officer shall not include the clause in solicitations and contracts if it is contemplated that the contract will be in one of the following categories:

(1) Contracts, other than construction contracts, of $2,500 or less (for construction contracts see Subpart 22.4). Indefinite quantity or requirements contracts, including basic ordering agreements and blanket purchase agreements are exempt, if it can be determined in advance that the aggregate amount of all orders estimated to be placed thereunder for 1 year after the effective date of the agreement will not exceed $10,000. A determination shall be made annually thereafter if the contract or agreement is extended, and the contract or agreement modified if necessary.

(2) Contracts for supplies, materials, or articles ordinarily available in the open market.

(3) Contracts for transportation by land, air, or water, or for the transmission of intelligence.

(4) Contracts to be performed solely within a foreign country or within a territory under United States jurisdiction other than a State, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331), American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, and Johnston Island.

(5) Contracts requiring work to be done solely in accordance with the Walsh-Healey Public Contracts Act (see Subpart 22.6).

(6) Contracts (or portions of contracts) for supplies in connection with which any required services are merely incidental to the contract and do not require substantial employment of laborers or mechanics.

(7) Any other contracts exempt under regulations of the Secretary of Labor (29 CFR 5.14).

(b) The contracting officer shall insert the clause at 52.222-5, Contract Work Hours and Safety Standards Act—Overtime Compensation—Firefighters and Fireguards, in solicitations and contracts if (1) firefighters or fireguards are to be employed and (2) the clause in paragraph (a) above is required.

SUBPART 22.4—LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

22.400 Scope of subpart.

This subpart implements the statutes for labor standards requirements for contracts over $2,000 involving construction of only public buildings and public works (see the definition of construction in 36.102). Labor relations requirements prescribed in other subparts of Part 22 may also apply. The balance of this subpart (and the related solicitation provisions and contract clauses) has been reserved, pending the development of appropriate revisions resulting from recent regulatory changes.

SUBPART 22.5—[RESERVED]

SUBPART 22.6—WALSH-HEALEY PUBLIC CONTRACTS ACT

22.601 Definitions.

"Assembly," as used in this subpart, means the piecing or bringing together of various interdependent or interrelated parts or components so as to make an operable whole or unit.

"Manufacturer," as used in this subpart, means a person that owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

"Person," as used in this subpart, includes associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

"Regular dealer," as used in this subpart, means a person that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

22.602 Statutory requirements.

Except for the exemptions at 22.604, all contracts subject to the Walsh-Healey Public Contracts Act (the Act) (41 U.S.C. 35-45) and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation (all the stock of which is beneficially owned by the United States) for the manufacture or furnishing of materials, supplies, articles, and equipment (referred to in this subpart as supplies) in any amount exceeding $10,000, shall—

(a) Be with manufacturers or regular dealers in the supplies manufactured or used in performing the contract; and

(b) Include or incorporate by reference the representation that the contractor is a manufacturer or a regular dealer of the supplies offered, and the stipulations required by the Act pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

22.603 Applicability.

The requirements in 22.602 apply to contracts (including for this purpose, indefinite-delivery contracts, basic ordering agreements, and blanket purchase agreements) and subcontracts under Section 8(a) of the Small Business Act, for the manufacture or furnishing of supplies that are to be performed within the United States, Puerto Rico, or the Virgin Islands, and which exceed or may exceed $10,000, unless exempted under 22.604.

22.604 Exemptions.

22.604-1 Statutory exemptions.

Contracts for acquisition of the following supplies are exempt from the Act:

(a) Any item in those situations where the contracting officer is authorized by the express language of a statute to purchase "in the open market" generally; or where a specific purchase is negotiated under 15.202 in circumstances where immediate delivery is required by the public exigency.

(b) Perishables, including dairy, livestock, and nursery products.

(c) Agricultural or farm products processed for first sale by the original producers.

(d) Agricultural commodities or the products thereof purchased under contract by the Secretary of Agriculture.

22.604-2 Regulatory exemptions.

(a) Contracts for the following acquisitions are fully exempt from the Act (see 41 CFR 50-201.603):

(1) Public utility services.

(2) Supplies manufactured outside the United States, Puerto Rico, or the Virgin Islands.

(3) Purchases against the account of a defaulting contractor where the stipulations of the Act were not included in the defaulted contract.

(4) Newspapers, magazines, or periodicals, contracted for with sales agents or publisher representatives, which are to be delivered by the publishers thereof.

(b) Contracts of the following type are partially exempt from the Act (see 41 CFR 50-201.604):

(1) Contracts with certain coal dealers.

(2) Certain commodity exchange contracts.

(3) Contracts with certain export merchants.

(4) Contracts with small business defense production pools, and small business research and development pools.

(5) Contracts with public utilities for the acquisition of certain uranium products.

(c) (1) Upon the request of the agency head, the Secretary of Labor may exempt specific contracts or classes of contracts from the inclusion or application of one or more of the Act's stipulations; *provided*, that the request includes a finding by the agency head stating the reasons why the conduct of Government business will be seriously impaired unless the exemption is granted.

(2) Those requests for exemption that relate solely to safety and health standards shall be transmitted to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, DC 20210. All other requests shall be transmitted to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

22.605 Rulings and interpretations of the Act.

(a) As authorized by the Act, the Secretary of Labor has issued rulings and interpretations concerning the administration of the Act (see 41 CFR 50-206). The substance of certain rulings and interpretations is as follows:

(1) If a contract for $10,000 or less is subsequently modified to exceed $10,000, the contract becomes subject to the Act for work performed after the date of the modification.

(2) If a contract for more than $10,000 is subsequently modified by mutual agreement to $10,000 or less, the contract is not subject to the Act for work performed after the date of the modification.

(3) If a contract awarded to a prime contractor contains a provision whereby the prime contractor is made an agent of the Government, the prime contractor is required to include the stipulations of the Act in contracts in excess of $10,000 awarded for and on behalf of the Government for supplies that are to be used in the construction and equipment of Government facilities.

(4) If a contract subject to the Act is awarded to a contractor operating Government-owned facilities, the stipulations of the Act affect the employees of that contractor the same as employees of contractors operating privately owned facilities.

(5) Indefinite-delivery contracts, including basic ordering agreements and blanket purchase agreements, are subject to the Act unless it can be determined in advance that the aggregate amount of all orders estimated to be placed thereunder for 1 year after the effective date of the agreement will not exceed $10,000. A determination shall be made annually thereafter if the contract or agreement is extended, and the contract or agreement modified if necessary.

(b) Reserved.

22.606 Eligibility as a manufacturer or regular dealer.

22.606-1 Manufacturer.

(a) An offeror qualifies as a manufacturer under the criteria in 41 CFR 50-206.51 and 50-206.52 if it shows before the award that it is—

(1) An established manufacturer—

(i) Of the particular supplies of the general character sought by the Government; and

(ii) That has a plant, equipment, and personnel to manufacture on the premises the items called for under the contract; or

(2) Newly entering into a manufacturing activity and has made all necessary arrangements and commitments for—

(i) Manufacturing space;

(ii) Equipment; and

(iii) Personnel to perform on its own premises the manufacturing operations required for the fulfillment of the contract.

(b) An offeror that is newly entering into a manufacturing activity must show under the criteria in 41 CFR 50-206.51(b) that the offeror—

(1) Has made written, legally binding arrangements or commitments to enter a manufacturing business. (An offeror should not be barred from receiving the award because it has not yet done any manufacturing, even if the arrangements and commitments are contingent upon the award of a Government contract);

(2) Has not been set up solely to produce on a Government contract and that its operations will not be terminated upon completion of that contract;

(3) Has established arrangements for production on a continuing basis of the particular materials, supplies, or equipment desired by the Government; and

(4) Has documentation to prove that necessary written, legally binding arrangements or commitments have been met before award.

(c) Every offeror must qualify as a manufacturer in its own rights under the criteria in 41 CFR 50-206.51(e) and (f), and must show the following:

(1) That it is currently capable of manufacturing on its premises the supplies called for under the contract or, if it is newly entering into manufacturing, that it has made written, legally binding commitments before award to enable it to produce such supplies on its premises. (The use, rent, or sharing of the manufacturing or producing establishment of another legal entity, i.e., arrangements for equipment, personnel, or space on a time-and-material or "as needed" basis, does not meet this requirement).

(2) That all evidence documenting the making of necessary prior arrangements or definite commitments is in the name of the offeror.

(d) Generally, an offeror that performs assembly operations as described in 41 CFR 50-206.52 may be considered a manufacturer, if it performs more than minimal operations, such as packaging only, upon the end item to be supplied to the Government, and it—

(1) Produces end items on its premises by assembling component parts using machines, tools, and workers, and the assembly constitutes substantial or significant fabrication or production of the end item; or

(2) Has the facilities to produce on its premises a significant portion of the required component parts needed for the end item for which the Government contracted even if it only performs assembly operations under a particular acquisition.

(e) An offeror's eligibility status as a prime contractor or a subcontractor on other contracts subject to the Act is not determinative evidence of the offeror's present eligibility as a manufacturer (see 41 CFR 50-206.51(g)).

22.606-2 Regular dealer.

(a) An offeror qualifies as a regular dealer under the criteria in 41 CFR 50-206.53 if it shows before the award that it is a regular dealer dealing in the particular supplies of the general character offered to the Government. Included in the criteria in 41 CFR 50-206.53 which an offeror must meet are the following:

(1) It has an establishment, or a leased or assigned space, in which it regularly maintains a stock of supplies in which it claims to be a dealer. If the space is in a public warehouse, it must be maintained on a continuing and not on a demand basis.

(2) The stock maintained is a true inventory from which sales are made. This requirement is not satisfied by (i) a stock of sample or display items, (ii) a stock consisting of surplus items remaining from prior orders, (iii) stock unrelated to the supplies offered, or (iv) a stock maintained primarily for the purpose of token compliance with the Act from which few, if any, sales are made.

(3) The supplies stocked are of the same general character as those to be supplied under the contract. To be of the same general character, the items to be supplied must be either identical with those in stock or be supplies for which dealers in the same line of business would be an obvious source.

(4) Sales are made regularly from stock on a recurring basis, are not only occasional, or constitute an exception to the usual operations of the business. The proportion of sales from stock that will satisfy this requirement will depend upon the character of the business.

(5) Sales are made regularly in the usual course of business to the public; i.e., to purchasers other than Federal, State, or local Government agencies. This requirement is not satisfied if the contractor merely seeks to sell to the public but has not yet made the sales. The number and amount of sales that must be made to the public will necessarily vary with the amount of total sales and the nature of the business.

(6) The business is an established and going concern. It is not sufficient to show that arrangements have been made to set up such a business.

(b) For certain specific products (lumber and timber products, machine tools, hay, grain, feed or straw, raw cotton, green coffee, petroleum, agricultural liming materials, tea, raw or unmanufactured cotton linters, certain uranium products, and used automatic data processing equipment), there are alternate qualifications for regular dealers in which the dealer need not physically maintain a stock. The requirements under the alternative qualifications are in 41 CFR 50-201.101(a)(2) and 50-201.604.

(c) Coal dealers are exempted from the regular dealer requirements if they meet the terms and conditions prescribed by the Secretary of Labor in 41 CFR 50-201.604(a). If these terms and conditions are not met, coal dealers must meet the requirements in this subsection.

22.607 Agents.

A "manufacturer" or "regular dealer" may bid, negotiate, and contract through an authorized agent if the agency is disclosed and the agent acts and contracts in the name of the principal (see Subpart 3.4 Contingent Fees).

22.608 Procedures.

22.608-1 Offeror's representation.

For each solicitation that may result in a contract subject to the Act, the contracting officer shall obtain a representation from the prospective contractor that it is a manufacturer or regular dealer of the supplies offered (see 22.610(a)).

22.608-2 Determination of eligibility.

(a) The responsibility for applying the eligibility requirements set forth in 22.606 rests in the first instance with the contracting officer.

(b) The contracting officer shall investigate and determine the eligibility of the offeror and not rely on the offeror's representation that it is a manufacturer or regular dealer in the following circumstances:

(1) The contracting officer has knowledge that raises the question of the validity of the representation.

(2) A protest has been lodged pursuant to 22.608-3.

(3) The offeror that is in line for contract award has not previously been awarded a contract subject to the Act by the individual acquisition office.

(4) A preaward investigation or survey of the offeror's operations is otherwise made to determine the technical and production capability, plant facilities and equipment, and subcontracting and labor resources of the offeror.

(c) The Department of Labor does not conduct preaward investigations nor render final determinations of eligibility until the contracting officer initially has determined whether the requirements have been met and any negative determinations involving small businesses have been confirmed by the Small Business Administration.

(d) If the offeror's representation is not accepted, the contracting officer shall make a determination as to whether all of the applicable eligibility requirements have been met by obtaining and considering all available factual evidence including—

(1) Preaward surveys;

(2) Experience of other acquisition offices;

(3) Information available from the cognizant contract administration office;

(4) Information provided directly by the offeror; and

(5) Such other factual evidence that may be necessary to determine whether all of the applicable eligibility requirements have been met, including evidence obtained through an on site survey conducted specifically for that purpose.

(e) The contracting officer shall reject (1) offers from all offerors whose representation indicates that they are not manufacturers or regular dealers of the supplies offered and (2) offers that qualify or place a reservation on the representation and stipulations to avoid full compliance with the Act.

(f) (1) If the contracting officer determines that an apparently successful offeror that is not a small business concern is ineligible, the following procedures shall apply:

(i) The offeror shall be notified in writing that—

(A) It does not meet the eligibility requirements and the specific reasons therefore; and

(B) It may protest the determination by submitting evidence concerning its eligibility to the contracting officer within 10 working days.

(ii) If, after review of the offeror's evidence, the contracting officer's position has not changed, the offeror's protest and all pertinent material shall be forwarded, in accordance with agency procedures, to the DOL.

Administrator of the Wage and Hour Division, for a final determination.

(2) If the offeror is a small business concern, the notification and protest procedures in subparagraph (1) above shall be followed except that any determination of ineligibility, whether or not the offeror protests the determination, shall be forwarded to the Administrator of the SBA and the offeror so notified in writing. The SBA shall review the determination and—

(i) If it disagrees with the contracting officer's determination, reverse the determination and forward to the contracting officer a certification of the offeror's eligibility; or

(ii) If it agrees with the contracting officer's determination, forward the case to the DOL, Administrator of the Wage and Hour Division, for final determination.

(3) If the contracting officer forwards the case to the DOL or the SBA for review of eligibility, the award should normally be held in abeyance (see 22.608-3(c)) until the contracting officer receives a final determination from the DOL or the SBA, unless the contracting officer finds that award should be made immediately (see 22.608-4).

(4) The contracting officer shall notify other offerors whose offers might become eligible for award when an award is being held in abeyance, and request them to extend their acceptance period, if necessary.

22.608-3 Protests against eligibility.

(a) When, before award (see 22.608-6 for post-award protests), another offeror challenges the eligibility of the apparently successful offeror, the contracting officer shall—

(1) Promptly notify the apparently successful offeror of the protest;

(2) Notify both the protester and the apparently successful offeror in writing that evidence concerning the matter may be submitted to the contracting officer within 10 working days;

(3) Notify offerors whose offers might become eligible for award that the award is to be held up because of a protest, and request them to extend their acceptance period, if necessary;

(4) Make a determination based on the evidence as provided in 22.608-2(b); and

(5) Notify the protester and the apparently successful offeror of the determination and the procedure to be followed if either party disagrees with the decision.

(b) If either party disagrees with the determination, the contracting officer, in accordance with agency procedures, shall forward the determination and entire record as follows and notify the parties accordingly:

(1) If the offeror is not a small business concern, to the DOL, Administrator of the Wage and Hour Division, for a final determination; or

(2) If the offeror is a small business concern, to the Administrator of the SBA.

(c) If the contracting officer forwards the case to the DOL or the SBA for review of eligibility, the award shall be held in abeyance until the contracting officer receives a final determination from the DOL or a certificate of eligibility from the SBA, unless the contracting officer finds that award should be made immediately (see 22.608-4).

22.608-4 Award pending final determination.

(a) If the contracting officer has forwarded an offeror's eligibility case for review to the DOL or the SBA under 22.608-2 or 22.608-3 award may be made immediately if the contracting officer certifies in writing, and the certification is approved as required by agency regulation, that—

(1) The items to be acquired are urgently required; or

(2) Delay of delivery or performance by failure to make the award promptly will result in substantial hardship to the Government.

(b) When award is made, the contracting officer shall document the contract file to explain the need for making the award before a determination of the offeror's eligibility by the DOL or the SBA, and give prompt written notice of the decision to award to the DOL and, as appropriate, the protester, the SBA, and other concerned parties.

22.608-5 Award.

When a contract subject to the Act is awarded, the contracting officer, in accordance with regulations or instructions issued by the Secretary of Labor and individual agency procedures, shall—

(a) Furnish to the contractor DOL Publication WH-1313, Notice to Employees Working on Government Contracts; and

(b) Prepare and transmit to the DOL four copies of Standard Form 99, Notice of Award of Contract, immediately on award of the contract.

22.608-6 Postaward.

(a) *Protests.* (1) If a protest is received after award, but before final contract completion, the contracting officer shall follow the procedures in 22.608-3.

(2) If the contract has been completed before receipt of the protest, the contracting officer shall notify the protester that no action will be taken on the protest.

(b) *Award made to ineligible offeror.* If the contracting officer discovers after an award that the offeror did not act in good faith in representing that it was a manufacturer or regular dealer of the supplies offered, the contracting officer, immediately upon discovery, may exercise the right, in accordance with 41 CFR 50-201.101(a)(3)(i)(B) to—

(1) Terminate the contract;

(2) Make open market purchases or enter into other contracts for completing the original contract; and

(3) Charge any additional cost to the original contractor.

(c) *Breach of stipulation.* In the event of a violation of a stipulation required under the Act, the contracting officer shall, in accordance with agency procedures, notify the appropriate regional office of the DOL, Wage and Hour Division (see 22.609), and furnish any information available.

22.609 Regional jurisdictions of the Department of Labor, Wage and Hour Division.

Geographic jurisdictions of the following regional offices of the DOL, Wage and Hour Division, are shown here, and are to be contacted by contracting officers in all situations required by this subpart, unless otherwise specified:

(a) The Region I office located in Boston, Massachusetts, has jurisdiction for Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut.

(b) The Region II office located in New York, New York, has jurisdiction for New York, New Jersey, Puerto Rico, and the Virgin Islands.

(c) The Region III office located in Philadelphia, Pennsylvania, has jurisdiction for Pennsylvania, Maryland, Delaware, Virginia, West Virginia, and the District of Columbia.

(d) The Region IV office located in Atlanta, Georgia, has jurisdiction for North Carolina, South Carolina, Kentucky, Tennessee, Mississippi, Alabama, Georgia, and Florida.

(e) The Region V office located in Chicago, Illinois, has jurisdiction for Ohio, Indiana, Michigan, Illinois, Wisconsin, and Minnesota.

(f) The Region VI office located in Dallas, Texas, has jurisdiction for Louisiana, Arkansas, Oklahoma, Texas, and New Mexico.

(g) The Region VII office located in Kansas City, Missouri, has jurisdiction

for Missouri, Iowa, Nebraska, and Kansas.

(h) The Region VIII office located in Denver, Colorado, has jurisdiction for North Dakota, South Dakota, Montana, Wyoming, Colorado, and Utah.

(i) The Region IX office located in San Francisco, California, has jurisdiction for California, Nevada, Hawaii, and Guam.

(j) The Region X office located in Seattle, Washington, has jurisdiction for Washington, Oregon, Idaho, and Alaska.

22.610 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.222-19, Walsh-Healey Public Contracts Act Representation, in solicitations that will result in contracts covered by the Act (see 22.603, 22.604 and 22.605).

(b) The contracting officer shall insert the clause at 52.222-20, Walsh-Healey Public Contracts Act, in solicitations and contracts covered by the Act (see 22.603, 22.604, and 22.605).

SUBPART 22.7—[RESERVED]

SUBPART 22.8—EQUAL EMPLOYMENT OPPORTUNITY

22.800 Scope of subpart.

This subpart prescribes policies and procedures pertaining to nondiscrimination in employment by Government contractors and subcontractors.

22.801 Definitions.

"Affirmative action program," as used in this subpart, means a contractor's program that complies with Department of Labor regulations to assure equal opportunity in employment to minorities and women.

"Construction work," as used in this subpart, means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

"Contracting agency," as used in this subpart, means any department, agency, establishment, or instrumentality in the Executive Branch of the Government, including any wholly owned Government corporation that enters into contracts.

"Contractor," as used in this subpart, includes the terms "prime contractor" and "subcontractor".

"Director," as used in this subpart, means the Director, Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor.

"Equal Opportunity clause," as used in this subpart, means the clause at 52.222-26, Equal Opportunity, prescribed in 22.810(e).

"EO 11246," as used in this subpart, means Parts II and IV of Executive Order 11246, September 24, 1965 (30 FR 12319), and any Executive Order amending or superseding this Order (see 22.802). This term specifically includes the Equal Opportunity clause at 52.222-26, and the rules, regulations, and orders issued pursuant to EO 11246 by the Secretary of Labor or a designee.

"Government contract," as used in this subpart, means any agreement or modification thereof between a Government contracting agency and any person for the furnishing of supplies or services, or for the use of real or personal property including lease arrangements. The term does not include (a) agreements in which the parties stand in the relationship of employer and employee and (b) contracts for the sale of real and personal property by the Government.

"Prime contractor," as used in this subpart, means any person who holds, or has held, a Government contract subject to EO 11246.

"Recruiting and training agency," as used in this subpart, means any person who refers workers to any contractor or subcontractor or provides or supervises apprenticeship or training for employment by any contractor or subcontractor.

"Site of construction," as used in this subpart, means the general physical location of any building, highway, or other change or improvement to real property that is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair; and any temporary location or facility at which a contractor, subcontractor, or other participating party meets a demand or performs a function relating to a Government contract or subcontract.

"Subcontract," as used in this subpart, means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee) (a) for the furnishing of supplies or services or for use of real or personal property, including lease arrangements, that, in whole or in part, is necessary to the performance of any one or more Government contracts or (b) under which any portion of the contractor's obligation under any one or more Government contracts is performed, undertaken, or assumed.

"Subcontractor," as used in this subpart, means any person who holds, or has held, a subcontract subject to EO 11246. The term "first-tier subcontractor" means a subcontractor holding a subcontract with a prime contractor.

"United States," as used in this subpart, means the States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and the possessions of the United States.

22.802 General.

(a) Executive Order 11246, as amended, sets forth the Equal Opportunity clause and requires that all Government contracting agencies (1) include this clause in all nonexempt Government prime contracts and subcontracts (see 22.807), and (2) act to ensure compliance with the clause and the regulations of the Secretary of Labor to promote the full realization of equal employment opportunity for all persons, regardless of race, color, religion, sex, or national origin.

(b) No contract or modification involving new acquisition shall be entered into, and no subcontract shall be approved by a contracting officer, with a person who has been found ineligible by the Director for reasons of noncompliance with the requirements of EO 11246.

(c) No contracting officer or contractor shall contract for supplies or services in a manner so as to avoid applicability of the requirements of EO 11246.

(d) Contractor disputes related to compliance with its obligation shall be handled according to the rules, regulations, and relevant orders of the Secretary of Labor (see 41 CFR 60-1.1).

22.803 Responsibilities.

(a) The Secretary of Labor is responsible for the—

(1) Administration and enforcement of prescribed parts of EO 11246; and

(2) Adoption of rules and regulations and the issuance of orders necessary to achieve the purposes of EO 11246.

(b) The Secretary of Labor has delegated authority and assigned responsibility to the Director for carrying out the responsibilities assigned to the Secretary by EO 11246, except for the issuance of rules and regulations of a general nature.

(c) The head of each agency is responsible for ensuring that the requirements of this subpart are carried out within the agency, and for cooperating with and assisting the OFCCP in fulfilling its responsibilities.

(d) In the event the applicability of EO 11246 and implementing regulations is questioned, the contracting officer shall

forward the matter through agency channels for resolution.

22.804 Affirmative action programs.

22.804-1 Nonconstruction.

Except as provided in 22.807, each nonconstruction prime contractor and each subcontractor with 50 or more employees and (a) a contract or subcontract of $50,000 or more or (b) Government bills of lading that in any 12-month period, total, or can reasonably be expected to total, $50,000 or more, is required to develop a written affirmative action program for each of its establishments within 120 days from the commencement of its first such Government contract, subcontract, or Government bill of lading.

22.804-2 Construction.

(a) Construction contractors that hold a nonexempt (see 22.807) Government construction contract are required to meet (1) the contract terms and conditions citing affirmative action requirements applicable to covered geographical areas or projects and (2) applicable requirements of 41 CFR 60-1 and 60-4.

(b) Each contracting agency shall maintain a listing of covered geographical areas that are subject to affirmative action requirements that specify goals for minorities and women in covered construction trades. Information concerning, and additions to, this listing will be provided to the principally affected contracting officers in accordance with agency procedures. Any contracting officer contemplating a construction project in excess of $10,000 within a geographic area not known to be covered by specific affirmative action goals shall request instructions on the most current information from the OFCCP regional office, or as otherwise specified in agency regulations, before issuing the solicitation.

(c) Contracting officers shall give written notice to the OFCCP regional office within 10 working days of award of a construction contract subject to these affirmative action requirements. The notification shall include the name, address, and telephone number of the contractor; employer identification number; dollar amount of the contract; estimated starting and completion dates of the contract; the contract number; and the geographical area in which the contract is to be performed. When requested by the OFCCP regional office, the contracting officer shall arrange a conference among contractor, contracting activity, and compliance personnel to discuss the contractor's compliance responsibilities.

22.805 Procedures.

(a) *Preaward clearances for contracts and subcontracts of $1 million or more (excluding construction).* (1) Except as provided in 22.805(a)(7) below, if the estimated amount of the contract, subcontract, or basic ordering agreement is expected to aggregate $1 million or more or to increase the aggregate value of an existing contract to $1 million or more, the contracting officer shall request the appropriate OFCCP regional office to determine whether a contractor is awardable before (i) award of any contract, including any indefinite delivery contract or letter contract, (ii) modification of an existing contract for new effort that would constitute a contract award, or the (iii) issuance of any basic ordering agreement.

(2) Preaward clearance for each proposed contract and for each proposed first-tier subcontract of $1 million or more shall be requested by the contracting officer directly from the OFCCP regional office(s). Verbal requests shall be confirmed in writing.

(3) When the contract work is to be performed outside the United States with employees recruited within the United States, the contracting officer shall send the request for a preaward review to the OFCCP regional office serving the area where the proposed contractor's corporate home or branch office is located in the United States, or the corporate location where personnel recruiting is handled, if different from the contractor's corporate home or branch office. If the proposed contractor has no corporate office or location within the United States, the preaward review request action should be based on the location of the recruiting and training agency in the United States.

(4) The contracting officer shall include the following information in the preaward review request:

(i) Name, address, and telephone number of the prospective contractor and of any corporate affiliate at which work is to be performed.

(ii) Name, address, and telephone number of each proposed first-tier subcontractor with a proposed subcontract estimated at $1 million or more.

(iii) Anticipated date of award.

(iv) Information as to whether the contractor and first-tier subcontractors have previously held any Government contracts or subcontracts.

(v) Place or places of contract performance and first-tier subcontracts estimated at $1 million or more, if known.

(vi) The estimated dollar amount of the contract and each first-tier subcontract, if known.

(5) The contracting officer shall allow as much time as feasible before award for the conduct of necessary reviews by OFCCP. As soon as the apparently successful contractor can be determined, the contracting officer shall process a preaward review request in accordance with agency procedures, assuring, if possible, that the preaward review request is submitted to the OFCCP regional office at least 30 calendar days before the proposed award date.

(6) In the event the Director has not made a final preaward clearance determination within 30 calendar days from submission of the clearance request, the contracting officer shall withhold award of the contract for an additional 15 calendar days, or until clearance is received, whichever occurs first. If the additional 15 calendar days expire, and the Director has not either found the contractor to be in compliance or made a final written determination declaring the contractor ineligible for reasons of noncompliance, the award may be made to the contractor in question. The contracting officer shall notify the OFCCP regional office of the award.

(7) If the procedures specified in (5) and (6) above would delay award of an urgent and critical contract beyond the time necessary to make award or beyond the time specified in the offer or extension thereof, the contracting officer shall immediately inform the OFCCP regional office of the expiration date of the offer or the required date of award and request clearance be provided before that date. If the OFCCP regional office advises that a preaward review cannot be completed by the required date, the contracting officer shall submit written justification for the award to the head of the contracting activity, who, after informing the OFCCP regional office, may then approve the award without the preaward clearance. If an award is made under this authority, the contracting officer shall immediately request a postaward review from the OFCCP regional office.

(8) If, under the provisions of (7) above, a postaward review determines the contractor to be nonawardable, the Director, may authorize the use of the enforcement procedures at 22.809 against the noncomplying contractor.

(b) *Furnishing posters.* The contracting officer shall furnish to the contractor appropriate quantities of the poster entitled "Equal Opportunity Is

The Law." These shall be obtained in accordance with agency procedures.

22.806 Inquiries.

(a) An inquiry from a contractor regarding status of its compliance with EO 11246, or rights of appeal to any of the actions in 22.809 shall be referred to the OFCCP regional office.

(b) Labor union inquiries regarding the revision of a collective bargaining agreement in order to comply with EO EO 11246, shall be referred to the Director.

22.807 Exemptions.

(a) Under the following exemptions, all or part of the requirements of EO 11246 may be excluded from a contract subject to EO 11246:

(1) *National security.* The agency head may determine that a contract is essential to the national security and that the award of the contract without complying with one or more of the requirements of this subpart is necessary to the national security. Upon making such a determination, the agency shall notify the Director in writing within 30 days.

(2) *Specific contracts.* The Director may exempt a contracting agency from requiring the inclusion of one or more of the requirements of EO 11246 in any contract if the Director deems that special circumstances in the national interest so require. Groups or categories of contracts of the same type may also be exempted if the Director finds it impracticable to act upon each request individually or if group exemptions will contribute to convenience in the administration of EO 11246.

(b) The following exemptions apply even though a contract or subcontract contains the Equal Opportunity clause:

(1) *Transactions of $10,000 or less.* The Equal Opportunity clause is required to be included in prime contracts and subcontracts by 22.802(a). Individual prime contracts or subcontracts of $10,000 or less are exempt from application of the Equal Opportunity clause, unless the aggregate value of all prime contracts or subcontracts awarded to a contractor or subcontractor in any 12-month period exceeds, or can reasonably be expected to exceed, $10,000. (Note: Government bills of lading, regardless of amount, are not exempt.)

(2) *Work outside the United States.* Contracts are exempt from the requirements of EO 11246 for work performed outside the United States by employees who were not recruited within the United States.

(3) *Contracts with State or local governments.* The requirements of EO 11246 in any contract with a State or local government (or any agency, instrumentality, or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government that does not participate in work on or under the contract.

(4) *Work on or near Indian reservations.* It shall not be a violation of EO 11246 for a contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. This applies to that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such preference shall not excuse a contractor from complying with EO 11246, rules and regulations of the Secretary of Labor, and applicable clauses in the contract.

(5) *Facilities not connected with contracts.* The Director may exempt from the requirements of EO 11246 any of a contractor's facilities that the Director finds to be in all respects separate and distinct from activities of the contractor related to performing the contract; *provided*, that the Director also finds that the exemption will not interfere with, or impede the effectiveness of, EO 11246.

(6) *Indefinite quantity contracts.* With respect to indefinite quantity contracts and subcontracts, the Equal Opportunity clause applies unless the contracting officer has reason to believe that the amount to be ordered in any year under the contract will not exceed $10,000. The applicability of the Equal Opportunity clause shall be determined by the contracting officer at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the Equal Opportunity clause shall be applied to the contract whenever the amount of a single order exceeds $10,000. Once the Equal Opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration regardless of the amounts ordered, or reasonably expected to be ordered, in any year.

(c) To request an exemption under subparagraphs (a)(1), (a)(2), or (b)(5), the contracting officer shall submit, under agency procedure, a detailed justification for omitting all, or part of, the requirements of EO 11246. Requests for exemptions under subparagraphs (a)(2) or (b)(5) above shall be submitted to the Director for approval.

(d) The Director may withdraw the exemption for a specific contract, or group of contracts, if the Director deems that such action is necessary and appropriate to achieve the purposes of EO 11246. Such withdrawal shall not apply—

(1) To contracts awarded before the withdrawal; or

(2) To any formally advertised contract (including restricted formal advertising), unless the withdrawal is made more than 10 calendar days before the bid opening date.

22.808 Complaints.

Complaints received by the contracting officer alleging violation of the requirements of EO 11246 shall be referred immediately to the OFCCP regional office. The complainant shall be advised in writing of the referral. The contractor that is the subject of a complaint shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

22.809 Enforcement.

Upon the written direction of the Director, one or more of the following actions, as well as administrative sanctions and penalties, may be exercised against contractors found to be in violation of EO 11246, the regulations of the Secretary of Labor, or the applicable contract clauses:

(a) Publication of the names of the contractor or their unions.

(b) Cancellation, termination, or suspension of the contractor's contracts or portion thereof.

(c) Debarment from future Government contracts, or extensions or modifications of existing contracts, until the contractor has established and carried out personnel and employment policies in compliance with EO 11246 and the regulations of the Secretary of Labor.

(d) Referral by the Director of any matter arising under EO 11246 to the Department of Justice or to the Equal Employment Opportunity Commission (EEOC) for the institution of appropriate civil or criminal proceedings.

22.810 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the following provisions in solicitations when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity:

(1) 52.222-21, Certification of Nonsegregated Facilities, if the amount of the contract is expected to exceed $10,000.

(2) 52.222-22, Previous Contracts and Compliance Reports.

(b) The contracting officer shall insert the provision at 52.222-23, Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity, in solicitations for construction when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the amount of the contract is expected to be in excess of $10,000.

(c) The contracting officer shall insert the provision at 52.222-24, Preaward On-Site Equal Opportunity Compliance Review, in solicitations, other than those for construction, when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the amount of the contract is expected to be for $1 million or more.

(d) The contracting officer shall insert the provision at 52.222-25, Affirmative Action Compliance, in solicitations, other than those for construction, when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity.

(e) The contracting officer shall insert the clause at 52.222-26, Equal Opportunity, in solicitations and contracts (see 22.802) unless all the terms of the clause are exempt from the requirements of EO 11246 (see 22.807(a)). If one or more, but not all, of the terms of the clause are exempt from the requirements of EO 11246, the contracting officer shall use the basic clause with its Alternate I.

(f) The contracting officer shall insert the clause at 52.222-27, Affirmative Action Compliance Requirements for Construction, in solicitations and contracts for construction that will include the clause at 52.222-26, Equal Opportunity, and the amount of the contract is expected to be in excess of $10,000.

(g) The contracting officer shall insert the clause at 52.222-28, Equal Opportunity Preaward Clearance of Subcontracts, in solicitations and contracts, when the amount of the contract is expected to be for $1 million or more and includes the clause prescribed in paragraphs (a), (c), or (e) of 44.204.

(h) The contracting officer shall insert the clause at 52.222-29, Notification of Visa Denial, in contracts that will include the clause at 52.222-26, Equal Opportunity, if the contractor is required to perform in or on behalf of a foreign country.

SUBPART 22.9—NONDISCRIMINATION BECAUSE OF AGE

22.901 Policy.

Executive Order 11141, February 12, 1964 (29 FR 2477), states that the Government policy is as follows:

(a) Contractors and subcontractors shall not, in connection with employment, advancement, or discharge of employees, or the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement.

(b) Contractors and subcontractors, or persons acting on their behalf, shall not specify in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

(c) Agencies will bring this policy to the attention of contractors. The use of contract clauses is not required.

22.902 Handling complaints.

Agencies shall bring complaints regarding a contractor's compliance with this policy to that contractor's attention (in writing, if appropriate), stating the policy, indicating that the contractor's compliance has been questioned, and requesting that the contractor take any appropriate steps that may be necessary to comply.

SUBPART 22.10—SERVICE CONTRACT ACT OF 1965

22.1000 Scope of subpart.

This subpart prescribes policies and procedures implementing the provisions of the Service Contract Act of 1965, as amended (41 U.S.C. 351-358), the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-219), and related Secretary of Labor regulations and instructions (29 CFR 4, 6, and 1925).

22.1001 Definitions.

"Act" or "Service Contract Act," as used in this subpart, means the Service Contract Act of 1965, as amended.

"Agency labor advisor" means the individual designated to advise agency officials on labor matters.

"Contractor," as used in this subpart, includes a subcontractor whose subcontract is subject to the provisions of the Act.

"Office of Government Contract Wage Standards" means the unit in the Employment Standards Administration assigned to perform functions of the Secretary of Labor under the Act.

"Service contract," as used in this subpart, means any Government contract or any subcontract of any tier thereunder, the principal purpose of which is to furnish services within the United States through the use of service employees, except as exempted under section 7 of the Act (41 U.S.C. 356; see 22.1003(b)).

"Service employee" means any person (other than a person employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR Part 541) engaged in performing work under a service contract. The term includes all such persons regardless of the actual or alleged contractual relationship between them and a contractor or subcontractor. Also see 22.1003(d) and 29 CFR 4.130 for a partial list of services covered by the Act.

"United States," as used in this subpart, includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1356), American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, and Johnston Island but does not include any other territory under U.S. jurisdiction or any U.S. base or possession within a foreign country.

"Wage and Hour Administrator" means the Administrator of the Wage and Hour Division, Employment Standards Administration, Department of Labor, or an authorized representative.

"Wage determination" means a determination of minimum wages or fringe benefits made under section 2(a) and 4(c) of the Act (41 U.S.C. 351) applicable to the employment in a given locality of one or more classes of service employees.

22.1002 Statutory requirements.

Generally, the Service Contract Act requires that—

(a) No contractor or subcontractor holding a service contract shall pay any of its employees working on the contract less than the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206);

(b) Service contracts over $2,500 contain the mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowable compensation, and equivalent Federal employee classifications and wage rates;

(c) Service contractors performing on contracts in excess of $2,500, to which

no predecessor contractor's collective bargaining agreement applies, shall pay their employees at least the wages and fringe benefits found by the Department of Labor to prevail in the locality or, in the absence of a wage determination, the minimum wage set forth in the Fair Labor Standards Act; and

(d) Successor contractors performing on contracts in excess of $2,500 must pay wages and fringe benefits at least equal to those agreed upon for substantially the same services in any bona fide collective bargaining agreement entered into by the predecessor contractor (unless such wages and fringe benefits are determined to be substantially at variance with those which prevail for services of a similar character in the locality).

22.1003 Applicability.

(a) *General.* This Subpart 22.10 applies to all Government contracts or any subcontract at any tier thereunder, the principal purpose of which is to furnish services within the United States through the use of service employees, except as exempted in paragraphs (b) and (c) immediately following. In contracts having separate and segregable requirements for supplies and services, the principal purpose test is applied to the service requirement, thereby possibly bringing it within the Act's coverage. A contract involving services to be performed entirely outside the United States (see 22.1001) is not covered by the Act (29 CFR 4.112(b)).

(b) *Statutory exemptions.* The Act does not apply to the following—

(1) Any contract for construction, alteration, or repair of public buildings or public works, including painting and decorating;

(2) Work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45);

(3) Any contract for transporting freight or personnel by vessel, aircraft, bus, truck, express, railroad, or oil or gas pipeline where published tariff rates are in effect;

(4) Any contract for furnishing services by radio, telephone, telegraph, or cable companies subject to the Communications Act of 1934;

(5) Any contract for public utility services;

(6) Any contract for direct services to a Federal agency by individuals under an employment contract; or

(7) Any contract for operating postal contract stations for the Postal Service.

(c) *Administrative exemptions.* The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of the Act (other than section 10). These may be made only in special circumstances where it has been determined that the limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of government business, and is in accord with the remedial purpose of the Act to protect prevailing labor standards (41 U.S.C. 353(b)). See 29 CFR 4.115-123 for a listing of all administrative exemptions, tolerances, variations, etc.

(d) *Some examples of contracts covered.* The following examples, while not definitive or exclusive, illustrate some of the types of services that have been found to be covered by the Act (see 29 CFR 4.103 for additional examples):

(1) Mail-hauling, motor-pool-operation, parking, taxicab, and ambulance services.

(2) Packing, crating, and storage.

(3) Custodial, janitorial, housekeeping, and guard services.

(4) Food service and lodging.

(5) Laundry, dry-cleaning, linen-supply, and clothing-repair services.

(6) Snow, trash, and garbage removal.

(7) Aerial spraying and aerial reconnaissance for fire detection.

(8) Some support services at installations, including grounds maintenance and landscaping.

(9) Certain specialized services requiring specific skills, such as drafting, stenographic reporting, or mortuary services.

(e) *Requests for determinations and exemptions.* Contracting officers shall submit requests for (1) determinations regarding the application of the Act and (2) exemptions to the Wage and Hour Administrator in accordance with agency procedures.

22.1004 Department of Labor responsibilities and regulations.

The Department of Labor is authorized and directed to enforce the provisions of the Act, make rules and regulations, issue orders, hold hearings, make decisions based on findings of fact, and take other appropriate action under the Act. The Department of Labor has issued implementing regulations on such matters as—

(a) Service contract labor-standards provisions and procedures (29 CFR 4);

(b) Equivalents of determined fringe benefits (29 CFR 4.51);

(c) Application of the Act (rulings and interpretations) (29 CFR 4.101-4.123);

(d) Safe and sanitary working conditions (29 CFR 4.186); and

(e) Rules of practice for administrative proceedings enforcing service contract labor standards (29 CFR 6).

22.1005 Clause for contracts of $2,500 or less.

The contracting officer shall insert the clause at 52.222-40, Service Contract Act of 1965—Contracts of $2,500 or Less, in solicitations and contracts when the contract amount is expected to be $2,500 or less and the Service Contract Act of 1965 is applicable. With respect to Blanket Purchase Agreements and Basic Ordering Agreements, the amount to be compared to the dollar threshold is the total dollar amount of orders reasonably anticipated to be placed in a 1-year period.

22.1006 Clauses for contracts over $2,500.

(a) The contracting officer shall insert the clause at 52.222-41, Service Contract Act of 1965, in solicitations and contracts when the contract is subject to the Service Contract Act of 1965 and is (i) for over $2,500 or (ii) for an indefinite dollar amount and the contracting officer expects the contract amount will exceed $2,500 during any 12-month period. With respect to Blanket Purchase Agreements and Basic Ordering Agreements, the amount to be compared to the dollar threshold is the total dollar amount of orders reasonably anticipated to be placed in a 1-year period.

(b) *Statement of Equivalent Federal Wage Rates.* (1) The contracting officer shall insert the clause at 52.222-42, Statement of Equivalent Federal Wage Rates, in solicitations and contracts when the contract amount is expected to be over $2,500 and the Service Contract Act of 1965 is applicable.

(2) This clause implements the requirement (41 U.S.C. 351(a)(5)) that contracts state the minimum hourly compensation (wages and fringe benefits) that would be paid or furnished the various classes of service employees involved if they were employed directly by the agency and therefore, 5 U.S.C. 5341 or 5332 applied to them. This clause is included for information purposes only.

(3) Contracting agencies shall compute equivalent Federal wage rates in accordance with the procedures set forth in FAR 22.1007(b).

(c) *Price-adjustment clauses.* (1) The contracting officer shall insert the clause at 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option

Contracts), in solicitations and contracts when the contract is expected to be a fixed-price service contract containing the clause at 52.222-41, Service Contract Act of 1965, and is a multiyear contract or is a contract with options to renew.

(2) The contracting officer shall insert the clause at 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment, in solicitations and contracts when the contract is expected to be a fixed-price service contract containing the clause at 52.222-41, Service Contract Act of 1965, and is *not* a multiyear contract or is *not* a contract with options to renew.

(3) The clauses prescribed in this paragraph 22.1006(c) cover situations in which revised minimum wage rates are applied to contracts by operation of law, or by revision of a wage determination before (i) exercise of a contract option or (ii) extension of a multiyear contract into a new program year. The clauses do not cover situations in which the economic price adjustment clauses prescribed in 16.203(d) are used. When the coverage authorized by 16.203(d) is desired, it must not conflict with, or overlap, the clauses prescribed in this paragraph 22.1006(c).

22.1007 Notice of intention to make a service contract.

(a) If a new contract, a contract extension, or the exercise of an option will exceed $2,500 and may be subject to the Act, the contracting officer shall, at least 30 days before issuing a solicitation, opening negotiations for the contract extension, or exercising the option, send a completed Standard Form 98/98a, (SF 98/98a) Notice of Intention to Make a Service Contract and Response to Notice (see 53.301-98, 53.301-98a), to the Wage and Hour Administrator, Department of Labor. A copy of the SF 98/98a will be retained in the contract file.

(b) (1) The SF 98a shall contain the following information concerning the service employees expected to be employed by the contractor and any known subcontractors in performing the contract—

(i) Classes of service employees;

(ii) The number of service employees in each class; and

(iii) The wage rate that would be paid each class if employed by the agency and subject to the wage provisions of 5 U.S.C. 5341 or 5332.

(2) Procedures for computation of these rates are as follows:

(i) Wages paid blue collar employees shall be the basic hourly rate for each class. The rate shall be Wage Board pay schedule step two for nonsupervisory service employees and step three for supervisory service employees. Determinations of applicable Wage Board rates are as follows:

(A) Where the place of performance is known, the rates applicable to that location shall be used; or

(B) Where the place of performance is not known, the rates applicable to the contracting activity's locations shall be used.

(ii) Wages paid white collar employees shall be an hourly rate for each class. The rate shall be obtained by dividing the general pay schedule step one biweekly rate by 80.

(iii) Local civilian personnel offices can assist in determining and providing grade and salary data.

(c) If the services to be furnished under the proposed contract are substantially the same as those being furnished for the same location by an incumbent contractor whose contract the proposed contract will succeed, the contracting officer shall send with the Notice of Intention a copy of any collective bargaining agreement and related documents, specifying wage rates and fringe benefits currently or prospectively payable to service employees working under the current contract. If more than one location is involved, the contracting officer shall specify which agreements apply to each location.

(d) If exceptional circumstances prevent timely filing, the Notice of Intention shall be submitted as soon as practicable with an explanation of the special circumstances delaying submission.

(e) Requests to expedite wage determinations responding to the Notice of Intention or to check the status of a particular request should be made in accordance with agency procedures.

(f) The case may arise in which (1) a successor contract is contemplated, (2) a Notice of Intention covering it has been or will be issued, and (3) the contracting officer learns, as a result of the operation of paragraph (k) of the clause at 52.222-41, Service Contract Act of 1965, or through other means, that an incumbent contractor or subcontractor is negotiating or has consummated a collective bargaining agreement covering service employees performing the ongoing contract. In this event, the contracting officer shall notify the incumbent contractor and employees' bargaining agent of the proposed contract no later than 30 days before issuing the solicitation or opening negotiations. Notification shall be by certified mail, return receipt requested, and shall give the pertinent contracting dates.

(g) Generally, a bilateral contract modification affecting the scope of the work creates a new contract for purposes of the Act. (But bilateral contract modifications not related to, or involving only insignificant changes to, the contractor's labor requirements do not create a new contract for purposes of the Act.)

(1) If the new contract resulting from the modification exceeds $2,500, before entering into it the contracting officer shall forward to the Wage and Hour Administrator a Notice of Intention in accordance with the procedures of paragraphs (a) through (d) above, but with the following exceptions to the instructions:

(i) In the "Estimated Solicitation Date" block, enter the date the wage determination is needed.

(ii) In Block 6, enter "Modification of existing contract for ..... services," filling in the blank with the type of services.

(2) If the new service contract resulting from the modification is $2,500 or less, the clause at 52.222-41, Service Contract Act of 1965, is no longer applicable, but the clause at 52.222-40, Service Contract Act of 1965—Contracts of $2,500 or Less, is applicable at the time the modification becomes effective.

(h) Extending an existing contract, under an option clause or otherwise, creates a new contract for purposes of the Act. Before extending the contract, the contracting officer shall ascertain whether or not the new contract exceeds $2,500. If it does, the contracting officer shall forward a Notice of Intention as provided in paragraphs (a) through (d) above.

(i) After initially submitting a Notice of Intention for those multiyear service contracts exceeding $2,500, the contracting officer shall resubmit the forms after one year and not less often than once every 2 years, to the Wage and Hour Administrator at least 30 days before the contract's anniversary date (see subparagraph (c)(3) of the clause at 52.222-41, Service Contract Act of 1965).

22.1008 Wage determinations and collective bargaining agreements.

22.1008-1 Before award.

The Wage and Hour Administrator will issue wage determinations in response to the Notice of Intention required under 22.1007(a), if the Act applies. The determinations or any appropriate revisions to them shall be attached to solicitations and contracts over $2,500.

(a) However, revisions superseding an initial response shall not apply—

(1) If they are received by the agency less than 10 days before the opening of bids, in the case of contracts entered into pursuant to competitive bidding procedures (Invitations to Bid), and if the contracting officer finds that there is not a reasonable time to notify bidders; or

(2) If they are issued after award of a negotiated contract, or commencement of performance of a contract option or contract extension.

(b) The contracting officer shall continue to be guided by the previously effective rates, agreement, or determinations when a collective bargaining agreement is entered into during the period of performance of an ongoing or predecessor contract and—

(1) The agency receives notice of the agreement's terms less than 10 days before bid opening, or commencement of performance of a negotiated successor contract, option, or contract extension;

(2) The contracting officer determines that there is not reasonable time to incorporate the newly bargained rates or determinations predicated upon them into the solicitation for the successor contract; and

(3) Proper and timely notices required by 22.1007(f) have been given.

22.1008-2 After award.

(a) If a solicitation or contract lacks a required wage determination because the Notice of Intention was not filed or was not filed in time, and if the contracting officer receives a determination from the Department of Labor within 30 days of the late filing or of the discovery by the Department of the failure to include a determination, the contracting officer shall exercise any and all of the power that may be needed (including, where necessary, the power to negotiate, the power to pay any necessary additional costs, and the power under any provision of the contract authorizing changes) to negotiate a bilateral modification to—

(1) Incorporate the appropriate clauses, if not previously included;

(2) Incorporate the required determination, which shall be effective as of its issuance date unless the modification specifies otherwise; and

(3) Adjust the contract price equitably to compensate for any increased cost of performance resulting from the determination.

(b) If unable to negotiate a bilateral modification incorporating the wage determination, the contracting officer shall document the contract file to show the efforts made and shall provide a copy of this documentation to the agency labor advisor.

22.1008-3 Review.

(a) Successor contractors performing on contracts over $2,500 must pay wages and fringe benefits at least equal to those agreed upon for substantially the same services in any bona fide collective bargaining agreement entered into by the incumbent or predecessor contractor (41 U.S.C. 353(c)). However, if the contracting officer believes that an incumbent or predecessor contractor's agreement was not the result of arms-length negotiations, the contracting officer shall send the agency labor advisor a full report, together with a copy of the agreement.

(b) Immediately upon receiving a wage determination *not* predicated upon a collective bargaining agreement, the contracting officer shall ascertain whether it conforms with the wages and fringe benefits prevailing for similar services in the locality. If the contracting officer has information showing that it varies substantially from the prevailing rates, the contracting officer shall immediately send the agency labor advisor a full statement of the facts.

(c) If wages, fringe benefits, or periodic increases provided for in a collective bargaining agreement vary substantially from those prevailing for similar services in the locality, the contracting officer shall immediately consider whether a request for a hearing is warranted (see 22.1011).

22.1008-4 Additional classes of service employees.

When contract performance involves classes of service employees not included in the wage determination, rates for these classes shall bear a reasonable relationship to the rates for the classes included in the determination. These rates shall be agreed upon by the parties or determined by the Wage and Hour Administrator in accordance with the procedures contained in paragraph (c) of the clause at 52.222-41 Service Contract Act of 1965.

22.1009 Notice of award.

Whenever an agency awards a service contract over $2,500, it shall furnish the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, Department of Labor, an original and one copy of Standard Form 99, Notice of Award of Contract (see 53.222(b)). The form shall be completed as follows:

(a) Items 1 through 7, 12, and 13: self-explanatory.

(b) Item 8: enter "Service Contract Act".

(c) Item 9: leave blank.

(d) Item 10: (1) enter "Major Category" and indicate beside this entry the general service area into which the contract falls, and (2) enter "Detailed Description" and, following this entry, describe in detail the services to be performed.

(e) Item 11: enter the dollar amount of the contract or the estimated dollar value with the notation "estimated". If neither is known, enter "indefinite" or "not to exceed $....." and fill in the figures.

22.1010 Notification of contractors and employees.

The contracting officer shall take the following steps to ensure that service employees are notified of minimum wages and fringe benefits:

(a) As soon as possible after contract award, inform the contractor of the labor-standards requirements of the contract relating to the Act and of the contractor's responsibilities under these requirements, unless the contractor is clearly already fully informed.

(b) At the time of award, furnish the contractor Department of Labor Publication WH-1313, Notice to Employees Working on Government Contracts, for posting at a prominent and accessible place at the worksite before contract performance begins. The publication advises employees of the compensation (wages and fringe benefits) required to be paid or furnished under the Act and satisfies the notice requirements in paragraph (f) of the clause at 52.222-41, Service Contract Act of 1965.

(c) Attach to Publication WH-1313 any applicable wage determination listing all minimum wages and fringe benefits, as specified in the contract, to be paid or furnished the classes of service employees performing the contract.

22.1011 Hearings.

(a) A hearing on the issue presented in 22.1008-3(c) may be requested by any interested party, including the contractor, a union, or the contracting agency (see 29 CFR 4.10). To obtain a hearing, the contracting officer shall submit a request through appropriate channels (ordinarily the agency labor advisor) to the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration, Department of Labor, with sufficient data to support a prima facie showing that the rates at issue vary substantially from those prevailing for similar services in the locality.

(b) Except in those situations where the Administrator determines that extraordinary circumstances exist,

requests for a hearing shall not be considered unless received as specified below:

(1) For advertised contracts, prior to 10 days before the award of the contract;

(2) For negotiated contracts and for contracts with provisions extending the initial term by option, prior to the commencement date of the contract or the follow-up option period, as the case may be.

22.1012 Withholding of contract payments.

Any violation of the stipulations embodied in the clause at 52.222-40, Service Contract Act of 1965—Contracts of $2,500 or Less, or in the clause at 52.222-41, Service Contract Act of 1965, renders the responsible contractor liable for any resulting deductions, rebates, refunds, or underpayment of compensation due employees performing the contract. The contracting officer may withhold—or upon written request of the Department of Labor from a level no lower than that of Assistant Regional Administrator, shall withhold—the amount needed to pay such underpaid employees from accrued payments due the contractor on the contract, or on any other contract with the contractor, if such other contract is not assigned under 31 U.S.C. 203 or 41 U.S.C. 15 pursuant to an assignment which prohibits set offs. The agency shall place the amount withheld in a deposit fund. On order of the Wage and Hour Administrator, any compensation the agency head or the Wage and Hour Administrator finds to be due shall be paid directly to the underpaid employees from any accrued payments withheld.

22.1013 Termination.

As provided by the Act, any contractor failure to comply with the requirements of the contract clauses related to the Act may be grounds for termination for default (see Subpart 49.4).

22.1014 Cooperation with the Department of Labor.

The contracting officer shall cooperate with Department of Labor representatives in the examination of records, interviews with service employees, and all other aspects of investigations undertaken by the Department. When asked, agencies shall furnish the Wage and Hour Administrator or a designee, any available information on contractors, subcontractors, their contracts, and the nature of the contract services. The agency shall promptly refer, in writing to the appropriate regional office of the Department, violations apparent to the agency and complaints received. In no event shall employee complaints be disclosed to the employer.

22.1015 Ineligibility of violators.

The Act provides that the Comptroller General shall distribute to all Federal agencies a list of persons or firms found to be in violation of the Act. Unless the Secretary of Labor recommends otherwise, no Government contract may be awarded to any violator so listed, or to any firm, corporation, partnership, or association in which the violator has a substantial interest, until 3 years after publication of the list containing the violator's name (41 U.S.C. 354(a)). (See Subpart 9.4, Debarment, Suspension, and Ineligibility.)

SUBPART 22.11—PROFESSIONAL EMPLOYEE COMPENSATION

22.1101 Applicability.

The Service Contract Act of 1965 was enacted to ensure that Government contractors compensate their blue-collar service workers and some white-collar service workers fairly, but it does not cover bona fide executive, administrative, or professional employees. The Office of Federal Procurement Policy issued Policy Letter No. 78-2, dated March 29, 1978, Preventing "Wage Busting" for Professionals. This subpart implements that policy letter. Its application is limited to professional employees. This Subpart 22.11 provides policies and procedures for use in negotiated service contracts (see 22.1001) exceeding $250,000 that involve meaningful numbers of professional employees.

22.1102 Definition.

"Professional employee" means any person meeting the definition of "employee employed in a bona fide...professional capacity" given in 29 CFR 541. The term embraces members of those professions having a recognized status based upon acquiring professional knowledge through prolonged study. Examples of these professions include accountancy, actuarial computation, architecture, dentistry, engineering, law, medicine, nursing, pharmacy, the sciences (such as biology, chemistry, and physics), and teaching. To be a professional employee, a person must not only be a professional but must be involved essentially in discharging professional duties.

22.1103 Policy, procedures, and solicitation provisions.

All professional employees shall be compensated fairly and properly. Accordingly, the contracting officer shall insert provisions at 52.222-45, Notice of Compensation for Professional Employees, and 52.222-46, Evaluation of Compensation for Professional Employees, in solicitations for negotiated service contracts when the contract amount is expected to exceed $250,000 and the service to be provided will require meaningful numbers of professional employees. These provisions require that offerors submit for evaluation a total compensation plan setting forth proposed salaries and fringe benefits for professional employees working on the contract. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure. Plans indicating unrealistically low professional employees compensation may be assessed adversely as one of the factors considered in making the award.

SUBPART 22.12—[RESERVED]

SUBPART 22.13—SPECIAL DISABLED AND VIETNAM ERA VETERANS

22.1300 Scope of subpart.

This subpart prescribes policies and procedures for implementing the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended (38 U.S.C. 2012) (the Act); Executive Order 11701, January 24, 1973 (38 FR 2675, January 29, 1973); and the regulations of the Secretary of Labor (41 CFR Part 60-250). In this subpart, the terms "contract" and "contractor" include "subcontract" and "subcontractor."

22.1301 Policy.

Government contractors, when entering into contracts subject to the Act, are required to list all suitable employment openings with the appropriate local employment service office and take affirmative action to employ, and advance in employment, qualified special disabled veterans and veterans of the Vietnam Era without discrimination based on their disability or veterans' status.

22.1302 Applicability.

(a) The Act applies to all contracts for supplies and services (including construction) of $10,000 or more except as waived by the Secretary of Labor.

(b) The requirements of the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans, in any contract with a State or local government (or any agency,

instrumentality, or subdivision) shall not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract.

22.1303 Waivers.

(a) The agency head, with the concurrence of the Director, Office of Federal Contract Compliance Programs (OFCCP), Department of Labor (Director), may waive any or all of the terms of the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans, for—

(1) Any contract if a waiver is deemed to be in the national interest; or

(2) Groups or categories of contracts if a waiver is in the national interest and it is—

(i) Impracticable to act on each request individually; and

(ii) Determined that the waiver will substantially contribute to convenience in administering the Act.

(b) (1) The head of a civilian agency, with the concurrence of the Director of OFCCP, or, (2) the Secretary of Defense may waive any requirement in this subpart when it is determined that the contract is essential to the national security, and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of a civilian agency shall notify the Director in writing within 30 days.

(c) The contracting officer shall submit requests for waivers in accordance with agency procedures.

(d) A waiver granted for a particular class of contracts may be withdrawn for any contract within that class whenever considered necessary by the Director to achieve the purposes of the Act. The withdrawal shall not apply to contracts awarded before the withdrawal. The withdrawal shall not apply to solicitations under any means of formal advertising unless it is made more than 10 calendar days before the date set for bid opening.

22.1304 Department of Labor notices.

The contracting officer shall furnish to the contractor appropriate notices for posting when they are prescribed by the Director.

22.1305 Collective bargaining agreements.

If performance under the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans, may necessitate a revision of a collective bargaining agreement, the contracting officer shall advise the affected labor unions that the Department of Labor (DOL) will give them appropriate opportunity to present their views. However, neither the contracting officer nor any representative of the contracting officer shall discuss with the contractor or any labor representative any aspect of the collective bargaining agreement.

22.1306 Complaint procedures.

Following agency procedures, the contracting office shall forward any complaints received about the administration of the Act to the Veteran's Employment Service of DOL, through the local Veteran's Employment Representative or designee, at the local State employment office. The Director of the Office of Federal Contract Compliance Programs of the DOL is primarily responsible for making investigations of complaints.

22.1307 Actions because of noncompliance.

The contracting officer shall take necessary action as soon as possible upon notification by the appropriate agency official to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans. These sanctions (see 41 CFR 60-250.28) may include—

(a) Withholding from payments otherwise due;

(b) Termination or suspension of the contract; or

(c) Debarment of the contractor.

22.1308 Contract clause.

(a) The contracting officer shall insert the clause at 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans, in solicitations and contracts when the contract is for $10,000 or more or is expected to amount to $10,000 or more, except when—

(1) Work is performed outside the United States by employees recruited outside the United States (for the purposes of this subpart, "United States" includes the States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands); or

(2) The agency head has waived, in accordance with 22.1303(a) or 22.1303(b) all of the terms of the clause.

(b) If the agency head waives one or more (but not all) of the terms of the clause in accordance with 22.1303(a) or 22.1303(b), use the basic clause with its Alternate I.

SUBPART 22.14—EMPLOYMENT OF THE HANDICAPPED

22.1400 Scope of subpart.

This subpart prescribes policies and procedures for implementing Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793) (the Act); Executive Order 11758, January 15, 1974; and the regulations of the Secretary of Labor (41 CFR Part 60-741). In this subpart, the terms "contract" and "contractor" include "subcontract" and "subcontractor."

22.1401 Policy.

Government contractors, when entering into contracts subject to the Act, are required to take affirmative action to employ, and advance in employment, qualified handicapped individuals without discrimination based on their physical or mental handicap.

22.1402 Applicability.

(a) Section 503 of the Act applies to all Government contracts in excess of $2,500 for supplies and services (including construction) except as waived by the Secretary of Labor. The clause at 52.222-36, Affirmative Action for Handicapped Workers, implements the Act.

(b) The requirements of the clause at 52.222-36, Affirmative Action for Handicapped Workers, in any contract with a State or local government (or any agency, instrumentality, or subdivision) shall not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract.

22.1403 Waivers.

(a) The agency head, with the concurrence of the Director, Office of Federal Contract Compliance Programs (OFCCP), (Director), may waive any or all of the terms of the clause at 52.222-36, Affirmative Action for Handicapped Workers, for—

(1) Any contract if a waiver is deemed to be in the national interest; or

(2) Groups or categories of contracts if a waiver is in the national interest and it is—

(i) Impracticable to act on each request individually; and

(ii) Determined that the waiver will substantially contribute to convenience in administering the Act.

(b) (1) The head of a civilian agency, with the concurrence of the Director of OFCCP, or, (2) the Secretary of Defense, may waive any requirement in this subpart when it is determined that the contract is essential to the national security, and that its award without

complying with such requirements is necessary to the national security. Upon making such a determination, the head of a civilian agency shall notify the Director in writing within 30 days.

(c) The contracting officer shall submit requests for waivers in accordance with agency procedures.

(d) A waiver granted for a particular class of contracts may be withdrawn for any contract within that class whenever considered necessary by the Director to achieve the purposes of the Act. The withdrawal shall not apply to contracts awarded before the withdrawal. The withdrawal shall not apply to solicitations under any means of formal advertising unless it is made more than 10 calendar days before the date set for bid opening.

22.1404 Department of Labor notices.

The contracting officer shall furnish to the contractor appropriate notices that state the contractor's obligations and the handicapped individual's rights under the Employment of the Handicapped program. The contracting officer may obtain these notices from the Department of Labor Regional Office, Office of Federal Contract Compliance Programs.

22.1405 Collective bargaining agreements.

If performance under the clause at 52.222-36, Affirmative Action For Handicapped Workers, may necessitate a revision of a collective bargaining agreement, the contracting officer shall advise the affected labor unions that the Department of Labor will give them appropriate opportunity to present their views. However, neither the contracting officer nor any representative of the contracting officer shall discuss with the contractor or any labor representative any aspect of the collective bargaining agreement.

22.1406 Complaint procedures.

Following agency procedures, the contracting office shall forward any complaints received about the administration of the Act to the OFCCP, 200 Constitution Avenue, N.W., Washington, DC 20210, or to any OFCCP regional or area office. The OFCCP shall institute investigation of each complaint and shall be responsible for developing a complete case record.

22.1407 Actions because of noncompliance.

The contracting officer shall take necessary action as soon as possible upon notification by the appropriate agency official to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222-36, Affirmative Action for Handicapped Workers. These sanctions (see 41 CFR 60-741.28) may include—

(a) Withholding from payments otherwise due;

(b) Termination or suspension of the contract; or

(c) Debarment of the contractor.

22.1408 Contract clause.

(a) The contracting officer shall insert the clause at 52.222-36, Affirmative Action for Handicapped Workers, in solicitations and contracts that exceed $2,500 or are expected to exceed $2,500, except when—

(1) Work is performed outside the United States by employees recruited outside the United States (for the purpose of this subpart, "United States," includes the States, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands); or

(2) The agency head has waived, in accordance with 22.1403(a) or 22.1403(b) all the terms of the clause.

(b) If the agency head waives one or more (but not all) of the terms of the clause in accordance with 22.1403(a) or 22.1403(b), use the basic clause with its Alternate I.

PART 23—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

23.000 Scope of part.

This part prescribes acquisition policies and procedures supporting the Government's program for protecting and improving the quality of the environment through pollution control, energy conservation, identification of hazardous material, and use of recovered materials.

SUBPART 23.1—POLLUTION CONTROL AND CLEAN AIR AND WATER

23.101 Applicability.

This subpart does not apply to small purchases or to the use of facilities outside the United States. ("United States," as used in this subpart, includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.)

23.102 Authorities.

(a) Clean Air Act (42 U.S.C. 7401 et seq.).

(b) Clean Water Act (33 U.S.C. 1251 et seq.).

(c) Executive Order 11738, September 10, 1973 (38 FR 25161, September 12, 1973).

(d) Environmental Protection Agency (EPA) regulations (40 CFR Part 15).

23.103 Policy.

(a) It is the Government's policy to improve environmental quality. Accordingly, executive agencies shall conduct their acquisition activities in a manner that will result in effective enforcement of the Clean Air Act (the "Air Act") and the Clean Water Act (the "Water Act").

(b) Except as provided in 23.104, executive agencies shall not enter into, renew, or extend contracts with firms proposing to use facilities listed by EPA (40 CFR Part 15) as violating facilities under the Air Act or the Water Act.

23.104 Exemptions.

(a) Except as provided in paragraph (b) below, contracts and subcontracts are exempt from the requirements of this subpart if they are (1) $100,000 or under or (2) for indefinite quantities and the contracting officer believes that the amount ordered in any year under the contract will not exceed $100,000.

(b) If the facility to be used is on the EPA List of Violating Facilities for a *conviction* under the Air Act or the Water Act, the exemption in paragraph (a) above does *not* apply.

(c) The agency head may exempt any contract, subcontract, or class of contracts or subcontracts for one year

when it is in the paramount interest of the United States to do so.

(1) Before granting a class exemption, the agency head shall consult with the EPA Administrator or the Administrator's designee.

(2) The agency head shall notify the EPA Administrator, or a designee, as soon as practical after granting an individual exemption. The notification shall describe the purpose of the contract and explain why the paramount interest of the United States required the exemption.

23.105 Solicitation provision and contract clause.

(a) The contracting officer shall insert the solicitation provision at 52.223-1, Clean Air and Water Certification, in solicitations containing the clause at 52.223-2, Clean Air and Water (see paragraph (b) following).

(b) The contracting officer shall insert the clause at 52.223-2, Clean Air and Water, in solicitations and contracts to which this subpart applies (see 23.101), if—

(1) The contract is expected to exceed $100,000;

(2) The contracting officer believes that orders under an indefinite quantity contract in any year will exceed $100,000; or

(3) A facility to be used has been the subject of a conviction under the applicable portion of the Air Act (42 U.S.C. 7413(c)(1)) or Water Act (33 U.S.C. 1319(c)) and is listed by EPA as a violating facility; and

(4) The acquisition is not otherwise exempt under 23.104.

23.106 Delaying award.

(a) If an otherwise successful offeror informs the contracting officer that EPA is considering listing a facility proposed for contract performance (see the provision at 52.223-1, Clean Air and Water Certification), the contracting officer shall promptly notify the EPA Administrator or a designee, in writing, that the offeror is being considered for award.

(b) After consulting with the agency involved, the EPA Administrator or a designee may request the contracting officer to delay award for up to 15 working days, beginning on the date the EPA Administrator or a designee is notified that the award is under consideration.

(c) The contracting officer then shall delay award, only for the period of time requested by the EPA (up to 15 working days), except when the delay is likely to prejudice the agency's programs or seriously disadvantage the Government. The contracting officer shall promptly notify the EPA Administrator or a designee only if a decision is made to award before the period requested expires.

23.107 Compliance responsibilities.

Primary responsibility for ensuring compliance with Federal, State, or local pollution control laws and related requirements rests with EPA and other agencies designated under the laws. If a contracting officer becomes aware of noncompliance with clean air or water standards in facilities used in performing nonexempt contracts, that contracting officer shall notify the agency head, or a designee, who shall promptly notify the EPA Administrator or a designee in writing.

SUBPART 23.2—ENERGY CONSERVATION

23.201 Authorities.

(a) Energy Policy and Conservation Act (42 U.S.C. 6361(a)(1)).

(b) Executive Order 11912, April 13, 1976 (41 FR 15825-7, April 15, 1976), as amended by Executive Order 12038, February 3, 1978 (43 FR 4957, February 7, 1978), and Executive Order 12148, July 20, 1979 (44 FR 43239, July 24, 1979).

23.202 Definitions.

"Consumer product" means any article (other than an automobile, as defined in section 501(1) of the Motor Vehicle Information and Cost Savings Act) that—

(a) Consumes energy; and

(b) Is distributed in commerce for personal use or consumption by individuals.

"Covered product" means a consumer product of one of the following types:

(a) Central air conditioners.

(b) Clothes dryers.

(c) Clothes washers.

(d) Dishwashers.

(e) Freezers.

(f) Furnaces.

(g) Home heating equipment, not including furnaces.

(h) Humidifiers and dehumidifiers.

(i) Kitchen ranges and ovens.

(j) Refrigerators and refrigerator-freezers.

(k) Room air conditioners.

(l) Television sets.

(m) Water heaters.

(n) Any other type of product that the Secretary of Energy classifies as a covered product under 42 U.S.C. 6292(b).

"Energy efficiency standard" means a performance standard that—

(a) Prescribes a minimum level of energy efficiency for a covered product, determined by test procedures prescribed under 42 U.S.C. 6293; and

(b) Includes any other requirements that the Secretary of Energy may prescribe under 42 U.S.C. 6295(c).

"Energy use and efficiency label" means a label provided by a manufacturer of a covered product under 42 U.S.C. 6296.

"Manufacture" means to manufacture, produce, assemble, or import.

"Manufacturer," as used in this part, means any business that, or person who, manufactures a consumer product.

23.203 Policy.

(a) Whenever the results would be meaningful, practical, and consistent with agency programs and needs, agencies shall apply energy conservation and efficiency criteria to acquisitions. In preparing solicitations and evaluating and selecting offers for award, agencies shall consider these criteria along with price and other relevant factors.

(b) When acquiring covered products, executive agencies shall consider energy use and efficiency labels and, as they become available, energy efficiency standards.

SUBPART 23.3—HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

23.300 Scope of subpart.

This subpart prescribes policies and procedures for acquiring deliverable items, other than ammunition and explosives, that require the furnishing of data involving hazardous materials. Agencies may prescribe special procedures for ammunition and explosives.

23.301 Definition.

"Hazardous material" is defined in Federal Standard No. 313A. (Federal Standards are sold to the public and Federal agencies through: General Services Administration (3FRI), Washington Navy Yard, Bldg. 197, Washington, DC 20407.)

23.302 General.

(a) The Occupational Safety and Health Administration (OSHA) is responsible for issuing and administering regulations that require Government activities to apprise their employees of—

(1) All hazards to which they may be exposed;

(2) Relative symptoms and appropriate emergency treatment; and

(3) Proper conditions and precautions for safe use and exposure.

(b) Contractors and their subcontractors of any tier are required to submit hazardous materials data.

Federal Standard No. 313A (Material Safety Data Sheet, Preparation and Submission of) includes criteria for identification of hazardous materials. The Standard also prescribes Department of Labor Form OSHA-20 for use with Government contracts.

(c) Contractors shall submit hazardous material identification on the following:

(1) All items in, or ordinarily cataloged under, the Federal Supply Classes listed in Table I of Appendix A of Federal Standard No. 313A.

(2) Items having hazardous characteristics in the Federal Supply Classes listed in Table II of Appendix A of Federal Standard No. 313A.

(3) Any other material designated by a Government technical representative as potentially hazardous and requiring safety controls.

23.303 Contract clause.

The contracting officer shall insert the clause at 52.223-3, Hazardous Material Identification and Material Safety Data, in solicitations and contracts when it is contemplated that the contract will require the delivery of hazardous materials as defined in Appendix A of Federal Standard No. 313A, or on the advice of the Government's technical representative that the contract will involve exposure to hazardous materials in any manner; e.g., performance of work, use, handling, manufacturing, packaging, transportation, storage, inspection, and disposal.

SUBPART 23.4—USE OF RECOVERED MATERIALS

23.401 Authority.

(a) The statutory basis for this program is the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.).

(b) The statute requires agencies responsible for drafting or reviewing specifications to ensure that Government specifications and standards (1) do not exclude the use of recovered materials, (2) do not require the item to be manufactured from virgin materials, and (3) require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item.

(c) The statute also requires the Environmental Protection Agency to prepare guidelines on the availability, sources, and potential uses of recovered materials and associated items, including solid waste management services.

23.402 Definitions.

"Recovered materials" means materials that have been collected or recovered from solid waste.

"Solid waste" means (a) any garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility; and (b) other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities. It does not include solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Clean Water Act, (33 U.S.C. 1342 et seq.), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

23.403 Policy.

The Government's policy is to acquire items composed of the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, without adversely affecting performance requirements or exposing suppliers' employees to undue hazards from the recovered materials.

23.404 Procedures.

(a) These procedures apply to all acquisitions that require minimum percentages of recovered materials, when the price of the item exceeds $10,000 or when the aggregate amount paid for items, or of functionally equivalent items, in the preceding fiscal year was $10,000 or more.

(b) The contracting officer may waive requirements for using recovered materials only after determining that the items containing recovered materials—

(1) Are not available within a reasonable period of time;

(2) Fail to meet performance standards in the specifications; or

(3) Are available only at unreasonable prices.

(c) Any determination made under 23.404(b)(2) shall be made on the basis of Bureau of Standards guidelines in any case in which the material is covered by these guidelines.

23.405 Solicitation provision.

The contracting officer shall insert the provision at 52.223-4, Recovered Material Certification, in solicitations that incorporate specifications requiring the use of recovered materials.

PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

24.000 Scope of part.

This part prescribes policies and procedures that apply requirements of the Privacy Act of 1974 (5 U.S.C. 552a) (the Act) and OMB Circular No. 108, July 9, 1975, to Government contracts and cites the Freedom of Information Act (5 U.S.C. 552, as amended.)

SUBPART 24.1—PROTECTION OF INDIVIDUAL PRIVACY

24.101 Definitions.

"Agency," as used in this subpart, means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

"Individual," as used in this subpart, means a citizen of the United States or an alien lawfully admitted for permanent residence.

"Maintain," as used in this subpart, means maintain, collect, use, or disseminate.

"Operation of a system of records," as used in this subpart, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

"Record," as used in this subpart, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

"System of records on individuals," as used in this subpart, means a group of

any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

24.102 General.

(a) The Act requires that when an agency contracts for the design, development, or operation of a system of records on individuals on behalf of the agency to accomplish an agency function the agency must apply the requirements of the Act to the contractor and its employees working on the contract.

(b) An agency officer or employee may be criminally liable for violations of the Act. When the contract provides for operation of a system of records on individuals, contractors and their employees are considered employees of the agency for purposes of the criminal penalties of the Act.

(c) If a contract specifically provides for the design, development, or operation of a system of records on individuals on behalf of an agency to accomplish an agency function, the agency must apply the requirements of the Act to the contractor and its employees working on the contract. The system of records operated under the contract is deemed to be maintained by the agency and is subject to the Act.

(d) Agencies, which within the limits of their authorities, fail to require that systems of records on individuals operated on their behalf under contracts be operated in conformance with the Act may be civilly liable to individuals injured as a consequence of any subsequent failure to maintain records in conformance with the Act.

24.103 Procedures.

(a) The contracting officer shall review requirements to determine whether the contract will involve the design, development, or operation of a system of records on individuals to accomplish an agency function.

(b) If one or more of those tasks will be required, the contracting officer shall—

(1) Ensure that the contract work statement specifically identifies the system of records on individuals and the design, development, or operation work to be performed; and

(2) Make available, in accordance with agency procedures, agency rules and regulation implementing the Act.

24.104 Contract clauses.

When the design, development, or operation of a system of records on individuals is required to accomplish an agency function, the contracting officer shall insert the following clauses in solicitations and contracts:

(a) The clause at 52.224-1, Privacy Act Notification.

(b) The clause at 52.224-2, Privacy Act.

SUBPART 24.2—FREEDOM OF INFORMATION ACT

24.201 Authority.

The Freedom of Information Act (5 U.S.C. 552, as amended) provides that information is to be made available to the public either by (a) publication in the Federal Register; (b) providing an opportunity to read and copy records at convenient locations; or (c) upon request, providing a copy of a reasonably described record.

24.202 Policy.

The Act specifies, among other things, how agencies shall make their records available upon public request, imposes strict time standards for agency responses, and exempts certain records from public disclosure. Each agency's implementation of these requirements is located in its respective title of the Code of Federal Regulations and referenced in Subpart 24.2 of its implementing acquisition regulations.

PART 25—FOREIGN ACQUISITION

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

25.000 Scope of part.

Except as provided in agency regulations, this part provides policies and procedures to implement the Buy American Act, the Balance of Payments Program, purchases under the Trade Agreements Act of 1979, and other laws and regulations that pertain to acquiring foreign supplies, services, and construction materials. This part also provides policies and procedures for the application to foreign acquisitions of international agreements, customs and duties, the clause at 52.215-1, Examination of Records by Comptroller General, and use of local currency for payment.

SUBPART 25.1—BUY AMERICAN ACT—SUPPLIES

25.100 Scope of subpart.

This subpart implements the Buy American Act (41 U.S.C. 10) and Executive Order 10582, December 17, 1954 (as amended). It applies to supply contracts and to contracts for services that involve the furnishing of supplies.

25.101 Definitions.

"Civil aircraft and related articles," as used in this subpart, means (a) all aircraft other than aircraft to be purchased for use by the Department of Defense or the U.S. Coast Guard; (b) the engines (and parts and components for incorporation into the engines) of these aircraft; (c) any other parts, components, and subassemblies for incorporation into the aircraft; and (d) any ground flight simulators, and parts and components of these simulators, for use with respect to the aircraft, whether to be used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of the aircraft, and without regard to whether the aircraft or articles receive duty-free treatment under section 601(a)(2) of the Trade Agreements Act of 1979.

"Components," as used in this subpart, means those articles, materials, and supplies incorporated directly into the end products.

"Domestic end product," as used in this subpart, means (a) an unmanufactured end product mined or produced in the United States, or (b) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. (In determining if an end product is domestic, only the end product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the end product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with 25.102(a)(3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"Domestic offer," as used in this subpart, means an offered price for a domestic end product, including transportation to destination.

"End product," as used in this subpart, means those articles, materials, and supplies to be acquired for public use under the contract.

"Foreign end product," as used in this subpart, means an end product other than a domestic end product.

"Foreign offer," as used in this subpart, means an offered price for a foreign end product, including transportation to destination and duty (whether or not a duty-free entry certificate is issued).

"Instrumentality," as used in this subpart, does not include an agency or division of the government of a country, but may be construed to include arrangements such as the European Economic Community.

"United States," as used in this subpart, means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

25.102 Policy.

(a) The Buy American Act requires that only domestic end products be acquired for public use, except articles, materials, and supplies—

(1) For use outside the United States;

(2) For which the cost would be unreasonable, as determined in accordance with 25.105;

(3) For which the agency head determines that domestic preference would be inconsistent with the public interest;

(4) That one or more agencies have determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities, of a satisfactory quality (see 25.108); or

(5) Purchased specifically for commissary resale.

(b) If the contract is estimated to exceed $1 million, the agency head, or a designee at a level no lower than the head of a contracting activity, must approve determinations made under subparagraph (a)(4) above. Officials making these determinations shall consider the feasibility of forgoing the acquisition or of acquiring a domestic substitute.

25.103 Agreements with certain foreign governments.

The Department of Defense and the National Aeronautics and Space Administration (NASA) have determined that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to their acquisitions for public use of certain supplies mined, produced, or manufactured in certain foreign countries. Detailed procedures implementing these determinations are in the Defense Acquisition Regulation and the NASA Federal Acquisition Regulation Supplement.

25.104 Acquiring civil aircraft and related articles.

(a) The U.S. Trade Representative, on February 19, 1980 (45 FR 12349, February 25, 1980), waived applying the Buy American Act to acquiring civil aircraft and related articles of countries or instrumentalities that are parties to the Agreement on Civil Aircraft. The representative acted under the authority of Section 303 of the Trade Agreements Act of 1979 (19 U.S.C. 2513). Countries and instrumentalities that are parties to the agreement (as of January 1, 1981) are Austria, Canada, the European Economic Community (Belgium, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom), Japan, Norway, Romania, Sweden, and Switzerland. The Office of the U.S. Trade Representative, Washington, D.C. 20506, can provide information on changes to the list of parties to the agreement made since January 1, 1981.

(b) For the purpose of this waiver, an article is a product of a country or instrumentality only if—

(1) It is wholly the growth, product, or manufacture of that country or instrumentality; or

(2) In the case of an article that consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(c) The waiver is subject to modification or withdrawal by the U.S. Trade Representative.

25.105 Evaluating offers.

(a) Unless the agency head determines otherwise, the offered price of a domestic end product is unreasonable when the lowest acceptable domestic offer exceeds the lowest acceptable foreign offer (see 25.101), inclusive of duty, by—

(1) More than 6 percent, if the domestic offer is from a large business that is not a labor surplus area concern; or

(2) More than 12 percent, if the domestic offer is from a small business concern or any labor surplus area concern.

(b) The evaluation in paragraph (a) above shall be applied on an item-by-item basis or to any group of items on

which award may be made as specifically provided by the solicitation.

(c) If an award of more than $250,000 would be made to a domestic concern if the 12-percent factor were applied, but not if the 6-percent factor were applied, the agency head shall decide whether award to the domestic concern would involve unreasonable cost.

25.106 Reserved.

25.107 Acquisition from or through other Government agencies.

The General Services Administration is responsible for compliance with the Buy American Act for—

(a) Foreign end products acquired for stock in GSA stores depots;

(b) Direct purchases for other agencies; and

(c) Establishing mandatory Federal Supply Schedules that do not include a domestic end product.

25.108 Excepted articles, materials, and supplies.

(a) One or more agencies have determined that the articles, materials, and supplies listed in paragraph (d) of this section are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. When required to be incorporated into an end product or construction material manufactured in the United States, these items or components are treated as domestic.

(b) Agencies may make additional determinations under 25.102(a)(4) or 25.202(a)(3) for unlisted articles, materials, and supplies. A copy of these determinations shall be submitted to the appropriate FAR Council for possible addition of items to the list.

(c) Agencies shall provide detailed information to the appropriate FAR Council if any item on the list becomes reasonably available in sufficient commercial quantities of a satisfactory quality.

(d) (1) The excepted articles, materials, and supplies are as follows:

Acetylene, black.
Agar, bulk.
Anise.
Antimony, as metal or oxide.
Asbestos, amosite, chrysotile, and crocidolite.
Bananas.
Bauxite.
Beef, corned, canned.
Beef extract.
Bephenium hydroxynapthoate.
Bismuth.
Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.
Brazil nuts, unroasted.
Cadmium, ores and flue dust.
Calcium cyanamide.
Capers.
Cashew nuts.
Castor beans and castor oil.
Chalk, English.
Chestnuts.
Chicle.
Chrome ore or chromite.
Cinchona bark.
Cobalt, in cathodes, rondelles, or other primary ore and metal forms.
Cocoa beans.
Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.
Coffee, raw or green bean.
Colchicine alkaloid, raw.
Copra.
Cork, wood or bark and waste.
Cover glass, microscope slide.
Cryolite, natural.
Dammar gum.
Diamonds, industrial, stones and abrasives.
Emetine, bulk.
Ergot, crude.
Erythrityl tetranitrate.
Fair linen, altar.
Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal.
Goat and kidskins.
Graphite, natural, crystalline, crucible grade.
Handsewing needles.
Hemp yarn.
Hog bristles for brushes.
Hyoscine, bulk.
Ipecac, root.
Iodine, crude.
Kaurigum.
Lac.
Leather, sheepskin, hair type.
Lavender oil.
Manganese.
Menthol, natural bulk.
Mica.
Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts.
Nitroguanidine (also known as picrite).
Nux vomica, crude.
Oiticica oil.
Olive oil.
Olives (green), pitted or unpitted, or stuffed, in bulk.
Opium, crude.
Oranges, mandarin, canned.
Petroleum, crude oil, unfinished oils, and finished products (see definitions of petroleum terms in subparagraph (d)(2) below).
Pine needle oil.
Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars.
Pyrethrum flowers.
Quartz crystals.
Quebracho.
Quinidine.
Quinine.
Radium salts, source and special nuclear materials.
Rosettes.
Rubber, crude and latex.
Rutile.
Santonin, crude.
Secretin.
Shellac.
Silk, raw and unmanufactured.
Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.
Spices and herbs, in bulk.
Sugars, raw.
Swords and scabbards.
Talc, block, steatite.
Tantalum
Tapioca flour and cassava.
Tartar, crude; tartaric acid and cream of tartar in bulk.
Tea in bulk.
Thread, metallic (gold).
Thyme oil.
Tin in bars, blocks, and pigs.
Triprolidine hydrochloride.
Tungsten.
Vanilla beans.
Venom, cobra.
Wax, carnauba.
Woods: logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.

(2) As used in subparagraph (1) above, petroleum terms are defined as follows:

(i) "Crude oil" means crude petroleum, as it is produced at the wellhead, and liquids (under atmospheric conditions) that have been recovered from mixtures of hydrocarbons that existed in a vaporous phase in a reservoir and that are not natural gas products.

(ii) "Finished products" means any one or more of the following petroleum oils, or a mixture or combination of these oils, to be used without further processing except blending by mechanical means:

(A) "Asphalt"—a solid or semi-solid cementitious material that (*1*) gradually liquefies when heated, (*2*) has bitumens as its predominating constituents, and (*3*) is obtained in refining crude oil.

(B) "Fuel oil"—a liquid or liquefiable petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil, such as kerosene, range oil, distillate

fuel oils, gas oil, diesel fuel, topped crude oil, or residues.

(C) "Gasoline"—a refined petroleum distillate that, by its composition, is suitable for use as a carburant in internal combustion engines.

(D) "Jet fuel"—a refined petroleum distillate used to fuel jet propulsion engines.

(E) "Liquefied gases"—hydrocarbon gases recovered from natural gas or produced from petroleum refining and kept under pressure to maintain a liquid state at ambient temperatures.

(F) "Lubricating oil"—a refined petroleum distillate or specially treated petroleum residue used to lessen friction between surfaces.

(G) "Naphtha"—a refined petroleum distillate falling within a distillation range overlapping the higher gasoline and the lower kerosenes.

(H) "Natural gas products"—liquids (under atmospheric conditions), including natural gasoline, that—

(1) Are recovered by a process of absorption, adsorption, compression, refrigeration, cycling, or a combination of these processes, from mixtures of hydrocarbons that existed in a vaporous phase in a reservoir, and

(2) When recovered and without processing in a refinery, otherwise fall within any of the definitions of products contained in subdivision (B), (C), (D), and (G) above.

(I) "Residual fuel oil"—a topped crude oil or viscous residuum that, as obtained in refining or after blending with other fuel oil, meets or is the equivalent of Military Specification Mil-F-859 for Navy Special Fuel Oil and any more viscous fuel oil, such as No. 5 or Bunker C.

(iii) "Unfinished oils" means one or more of the petroleum oils listed in subdivision (ii) above, or a mixture or combination of these oils, that are to be further processed other than by blending by mechanical means.

25.109 Solicitation provisions and contract clause.

(a) The contracting officer shall insert the provision at 52.225-1, Buy American Certificate, in solicitations for the acquisition of supplies, or for services involving the furnishing of supplies, for use within the United States, except for acquisitions made under the Trade Agreements Act of 1979, as specified in Subpart 25.4.

(b) When quotations are obtained orally (see Part 13), vendors shall be informed that only domestic end products, other than end products excepted on a blanket or individual basis (see 25.108 and Subpart 25.4), shall be acceptable, unless the price for an offered domestic end product is unreasonable (see 25.105).

(c) The contracting officer shall insert the provision at 52.225-2, Waiver of Buy American Act for Civil Aircraft and Related Articles, in solicitations for the acquisition of civil aircraft and related articles.

(d) The contracting officer shall insert the clause at 52.225-3, Buy American Act—Supplies, in solicitations and contracts for the acquisition of supplies, or for services involving the furnishing of supplies, for use within the United States, except for acquisitions made under subparagraph (a)(3) of the Trade Agreements Act of 1979, as specified in Subpart 25.4.

SUBPART 25.2—BUY AMERICAN ACT—CONSTRUCTION MATERIALS

25.200 Scope of subpart.

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

25.201 Definitions.

"Components," as used in this subpart, means those articles, materials, and supplies incorporated directly into construction materials.

"Construction," as used in this subpart, means construction, alteration, or repair of any public building or public work in the United States.

"Construction materials," as used in this subpart, means articles, materials, and supplies brought to the construction site for incorporation into the building or work.

"Domestic construction material," as used in this subpart, means (a) an unmanufactured construction material mined or produced in the United States, or (b) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. (In determining whether a construction material is domestic, only the construction material and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the construction material and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with 25.202(a)(3) are treated as domestic.

"Foreign construction material," as used in this subpart, means a construction material other than a domestic construction material.

"United States" (see 25.101).

25.202 Policy.

(a) The Buy American Act requires that only domestic construction materials be used in construction in the United States, except when—

(1) The cost would be unreasonable as determined in accordance with 25.203;

(2) The agency head determines that use of a particular domestic construction material would be impracticable; or

(3) One or more agencies have determined that the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality (see 25.108).

(b) If the cost of the materials is estimated to exceed $100,000, the agency head, or a designee at a level no lower than the head of the contracting activity, must approve determinations made under subparagraph (a)(3) above. Officials making these determinations shall consider the feasibility of forgoing the acquisition or of acquiring a domestic substitute.

(c) When it is determined for any of the reasons stated in this section that certain foreign construction materials may be used, the excepted materials shall be listed in the contract. Findings justifying the exception shall be available for public inspection.

25.203 Evaluating offers.

(a) The restrictions of the Buy American Act do not apply when the head of the concerned agency determines that using a particular domestic construction material would unreasonably increase the cost or would be impracticable.

(b) When proposed awards are submitted to the agency head for approval, each submission shall include a description of the materials, including unit and quantity, estimated costs, location of the construction project, name and address of the proposed contractor, and a detailed justification of the impracticability of using domestic materials.

25.204 Violations.

If the agency head finds that in the performance of a construction contract there has been a failure to comply with the clause at 52.225-5, Buy American Act—Construction Materials, those findings (including the name of the contractor obligated under the contract)

shall be made public. No other contract for construction shall be awarded to that contractor, its subcontractors, or suppliers with which that contractor is associated or affiliated, within a period of 3 years after the findings are made public. (For debarment procedures, see Subpart 9.4.)

25.205 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 52.225-5, Buy American Act—Construction Materials, in solicitations and contracts for construction inside the United States.

SUBPART 25.3—BALANCE OF PAYMENTS PROGRAM

25.300 Scope of subpart.

This subpart provides policies and procedures applicable to contracting for supplies, services, or construction for use outside the United States and provides for the use of excess or near-excess foreign currency. The Balance of Payments Program restrictions have been waived with respect to the acquisition in accordance with Subpart 25.4 of certain products under the Trade Agreements Act of 1979.

25.301 Definitions.

"Components" (see 25.101).

"Domestic end product" (see 25.101).

"Domestic offer" (see 25.101).

"Domestic services," as used in this subpart, means services performed in the United States. If services provided under a single contract are performed both inside and outside the United States, they shall be considered domestic if 25 percent or less of their total cost is attributable to services (including incidental supplies used in connection with these services) performed outside the United States.

"End product" (see 25.101).

"Foreign end product" (see 25.101).

"Foreign offer" (see 25.101).

"Foreign services," as used in this subpart, means services other than domestic services.

"United States" (see 25.101).

25.302 Policy.

(a) The Balance of Payments Program is an interim measure imposed to alleviate the impact of Government expenditures on the Nation's balance of international payments. The Balance of Payments Program differs from the Buy American Act in that the Buy American Act applies only to acquisitions for use inside the United States, while the Balance of Payments Program applies to acquisitions for use outside the United States.

(b) Foreign end products or services may be acquired for use outside the United States if any of the following conditions are met:

(1) The estimated cost of the product or service does not exceed the appropriate small purchase limitation in Part 13.

(2) Perishable subsistence items are required and the agency head, or a designee, determines that delivery from the United States would significantly impair their quality at the point of consumption.

(3) The agency head, or a designee, determines that a requirement can only be filled by a foreign end product or service, and that it is not feasible to forgo filling it or to provide a domestic substitute (see 25.108).

(4) The acquisition is for ice, books, utilities, communications, and other materials or services that, by their nature or as a practical matter, can only be acquired or performed in the country concerned and a U.S. Government capability does not exist.

(5) Subsistence items are required specifically for resale in overseas commissary stores.

(6) The acquisition of foreign end products or services is required by a treaty or executive agreement between governments.

(7) Petroleum supplies and their by-products as listed and defined in 25.108 are required.

(8) The end products or services are paid for with excess or near-excess foreign currencies (see 25.304).

(9) The end products or services are mined, produced, or manufactured in Panama and are required by and for the use of United States Forces in Panama.

(c) Contracts shall require use of domestic construction materials (see 25.201) for construction, repair, or maintenance of real property outside the United States, except when the cost of these materials (including transportation and handling costs) exceeds the cost of foreign construction materials by more than 50 percent. A differential greater than 50 percent may be used when specifically authorized by the agency head or a designee.

25.303 Procedures.

(a) *Solicitation of offers.* The procedures in this section apply to contracts for supplies and services when the exceptions in 25.302(b) do not apply. Solicitations shall state that information regarding articles, materials, supplies, and services excepted from these procedures is available to prospective contractors upon request. When quotations are obtained orally (see Part 13), vendors shall be informed that only domestic end products or services will be acceptable, except for those items that have been excepted or when the price for the foreign end products or services meets the evaluation criteria in paragraph (b) below.

(b) *Evaluation.* For purposes of evaluation, each foreign offer shall be adjusted by increasing it by 50 percent. If this procedure results in a tie between a foreign offer as evaluated and a domestic offer, the domestic offer shall be considered the successful offer. When this procedure results in the acquisition of foreign end products or services, the acquisition of domestic end products or services is thereby considered unreasonable in cost or inconsistent with the public interest.

25.304 Excess and near-excess foreign currencies.

(a) The United States holds currencies of the countries listed in paragraphs (e) and (f) below in amounts determined by the Secretary of the Treasury to be excess to the normal, or above the immediate (near-excess) requirements of the Government. Acquisitions of foreign end products, services, or construction paid for in excess or near-excess foreign currencies are an exception to the balance of payments restrictions in this subpart (see 25.302(b)(8)).

(b) Excess and near-excess foreign currencies shall be used whenever feasible in payment of contracts over $1 million performed wholly or partly in any of the listed countries. In some cases, award may be made to an offeror willing to accept payment, in whole or part, in excess or near-excess foreign currency, even though the offer, when compared to offers in United States dollars, is not the lowest received. Price differentials may be funded from excess or near-excess foreign currencies available without charge to agency appropriations, subject to Office of Management and Budget (OMB) Circular No. A-20, May 21, 1966.

(c) Before issuing solicitations for contracts to be performed wholly or partly in the listed countries, the contracting officer shall obtain a determination from the agency head, or a designee no lower than the head of the contracting activity, as to the feasibility of using excess or near-excess foreign currency. Agency officials shall consult with the Budget Review Division, Office of Management and Budget, and verify—

(1) The availability of excess or near-excess foreign currency;

(2) The feasibility of using that currency in payment of the contract;

(3) The price differential, if any, that will be considered acceptable; and

(4) Procedures for obtaining excess or near-excess foreign currency requirements.

(d) When use of excess or near-excess foreign currency is determined feasible, the contracting officer shall, in the solicitation—

(1) Require that offers be stated in U.S. dollars;

(2) Request that offers also be stated, in whole or in part, in excess or near-excess foreign currency; and

(3) Reserve the right to make the award to the responsive offeror (i) that is willing to accept payment, in whole or in part, in excess or near-excess foreign currency, and (ii) whose offer is most advantageous to the Government, even though the total price may be higher than offers in U.S. dollars.

(e) Currencies of Burma, Eygpt, Guinea, India, and Pakistan are excess to the Government's normal requirements.

(f) Currencies of Morocco, Poland, Tunisia, and Yugoslavia are above the Government's immediate needs (near-excess).

25.305 Solicitation provision and contract clause.

(a) *Solicitation provision.* The contracting officer shall insert the provision at 52.225-6, Balance of Payments Program Certificate, in solicitations for supplies or services for use outside the United States, unless one or more of the exceptions in 25.302(b) applies or the acquisition is made under the Trade Agreements Act of 1979 (see Subpart 25.4).

(b) *Oral quotations.* When quotations are obtained orally, vendors shall be informed that only domestic end products or services will be acceptable, except for those items that have been excepted or when the price for the foreign end products or services meets the evaluation criteria in 25.303(b).

(c) *Contract clause.* The contracting officer shall insert the clause at 52.225-7, Balance of Payments Program, in solicitations and contracts for acquiring supplies or services for use outside the United States, unless one or more of the exceptions in 25.302(b) applies or the acquisition is made under the Trade Agreements Act of 1979 (see Subpart 25.4).

SUBPART 25.4—PURCHASES UNDER THE TRADE AGREEMENTS ACT OF 1979

25.400 Scope of subpart.

This subpart provides additional policies and procedures peculiar to acquisitions subject to the Agreement on Government Procurement and the Trade Agreements Act of 1979 (19 U.S.C. 2501-2582).

25.401 Definitions.

"Designated country," as used in this subpart, means a country or instrumentality designated under the Trade Agreements Act of 1979 and listed below:

Austria	Japan
Bangladesh	Lesotho
Belgium	Luxembourg
Benin	Malawi
Bhutan	Maldives
Botswana	Mali
Burundi	Nepal
Canada	Netherlands
Cape Verde	Niger
Central African Republic	Norway
Chad	Rwanda
Comoros	Singapore
Denmark	Somalia
Federal Republic of Germany	Sweden
Finland	Switzerland
France	Western Samoa
Gambia	Sudan
Guinea	Tanzania U.R.
Haiti	Uganda
Hong Kong	United Kingdom
Ireland	Upper Volta
Italy	Yemen

"Designated country end product," as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of the designated country, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

"Eligible product," as used in this subpart, means a designated country end product.

25.402 Policy.

(a) Agencies shall evaluate offers of $169,000 or more for an eligible product without regard to the restrictions of the Buy American Act (see Subpart 25.1) or the Balance of Payments Program (See Subpart 25.3).

(b) Except when waived under section 302(b)(2) of the Trade Agreements Act, there shall be no purchases of products subject to the Act unless the products are from a designated country.

(c) No requirement for eligible products shall be divided with the intent of reducing the value of the resulting offers below $169,000.

25.403 Exceptions.

This subpart does not apply to—

(a) Offers for eligible products below $169,000;

(b) Products of countries (1) not listed in 25.401 or (2) barred by 25.402(b);

(c) Purchases under small or small disadvantaged business preference programs;

(d) Purchases of arms, ammunition, or war materials or purchases indispensable for the national security or the national defense;

(e) Construction contracts;

(f) Service contracts (except those services incidental to the purchase of eligible products; *provided*, that the value of the services is not greater than the value of the product);

(g) Research and development contracts;

(h) Purchases by the U.S. Army Corps of Engineers;

(i) Purchases of items for resale;

(j) Purchases under Subpart 8.6, Acquisition from Federal Prison Industries, Inc., and Subpart 8.7, Acquisition from the Blind and Other Severely Handicapped;

(k) Lease or rental agreements; or

(l) Purchases for agencies not listed in 25.406.

25.404 Labor surplus area set-asides.

When responsive offers are received for an eligible product, labor surplus area preference shall be accorded only to small business concerns.

25.405 Procedures.

When the proposed acquisition of an eligible product is estimated to be $169,000 or more, and it is not exempted by 25.403, the following procedures shall apply:

(a) Consistent with user needs, agencies shall allow a minimum of 30 days from the date of publication of the notice of solicitation in the Commerce Business Daily to receipt of offers.

(b) Agencies shall not impose technical requirements solely to preclude the acquisition of eligible products.

(c) Offers received in response to solicitations anticipating competitive negotiations shall be opened in the presence of an impartial witness, whose name shall be recorded in the contract file.

(d) Solicitations should specify that offers, involving eligible products from designated countries, be submitted in the English language and in U.S. dollars.

(e) Within 7 working days after a contract award of $169,000 or more for an eligible product, agencies shall give unsuccessful offerors from designated countries written notice that their offers were not accepted.

25.406 Agencies covered by the Agreement on Government Procurement.

This subpart applies only to acquisitions for agencies listed below:

ACTION
Administrative Conference of the United States
American Battle Monuments Commission
Board for International Broadcasting
Civil Aeronautics Board
Commission on Civil Rights
Commodity Futures Trading Commission
Community Services Administration
Consumer Product Safety Commission
Department of Agriculture (the Agreement on Government Procurement does not apply to acquiring agricultural products in furtherance of agricultural support programs or human feeding programs)
Department of Commerce
Department of Defense (excludes Army Corps of Engineers)
Department of Education
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior (excludes the Bureau of Reclamation)
Department of Justice
Department of Labor
Department of State
Department of the Treasury
Environmental Protection Agency
Equal Employment Opportunity Commission
Executive Office of the President
Export-Import Bank of the United States
Farm Credit Administration
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Home Loan Bank Board
Federal Maritime Commission
Federal Mediation and Conciliation Service
Federal Trade Commission
General Services Administration (excludes purchases by the Tools Commodity Center and the Region 9 Office in San Francisco, California)
Interstate Commerce Commission
Merit Systems Protection Board
National Aeronautics and Space Administration
National Credit Union Administration
National Labor Relations Board
National Mediation Board
National Science Foundation
National Transportation Safety Board
Nuclear Regulatory Commission
Office of Personnel Management
Overseas Private Investment Corporation
Panama Canal Commission
Railroad Retirement Board
Securities and Exchange Commission
Selective Service System
Smithsonian Institution
United States Arms Control and Disarmament Agency
United States International Communication Agency
United States International Development Cooperation Agency
United States International Trade Commission
Veterans Administration

25.407 Solicitation provision and contract clause.

(a) Except as provided in 25.403, the contracting officer shall insert—

(1) The provision at 52.225-8, Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate, in solicitations for supplies; and

(2) The clause at 52.225-9, Buy American Act—Trade Agreements Act—Balance of Payments Program, in solicitations and contracts for supplies.

(b) The contracting officer shall rely on the offeror's certification as submitted.

SUBPART 25.5—PAYMENT IN LOCAL FOREIGN CURRENCY

25.501 Policy.

(a) Contracts entered into and performed outside the United States with local foreign firms will be priced and paid in local currency, unless an international agreement provides for payment in U.S. dollars or the contracting officer determines the use of local currency to be inequitable or inappropriate.

(b) When the local currency increases in value in relation to the dollar, a violation of the Anti-Deficiency Act (31 U.S.C. 665) could occur. To avoid this possibility, agencies should ensure the availability of adequate dollar appropriations to purchase local currency needed to make payments against the contract.

SUBPART 25.6—CUSTOMS AND DUTIES

25.600 Scope of subpart.

This subpart provides policies and procedures for exempting from import duties certain supplies purchased under Government contracts. Regulations governing importations and duties are contained in the "Customs Regulations" issued by the U.S. Customs Service, Department of the Treasury (Chapter 1, Title 19 of the Code of Federal Regulations).

25.601 Definition.

"Customs territory of the United States," as used in this subpart, means the States, the District of Columbia, and Puerto Rico.

25.602 Policy.

United States laws impose duties on foreign supplies imported into the customs territory of the United States. Certain exemptions from these duties are available to Government agencies. Agencies shall use these exemptions whenever the anticipated savings to appropriated funds will outweigh the administrative costs associated with processing required documentation.

25.603 Procedures.

(a) *General.* Except as provided elsewhere in the Customs Regulations (see 19 CFR 10.100), all shipments of imported supplies purchased under Government contracts are subject to the usual Customs entry and examination requirements. Unless the agency obtains an exemption (see 25.604), those shipments are also subject to duty.

(b) *Formal entry and release.* (1) Upon receipt of a notice from a Government contractor or customs office of the arrival, or pending arrival, of a shipment of supplies entitled to duty-free entry, the contracting officer normally shall execute—

(i) Customs Form 7501, Consumption Entry, which shall serve as both the entry and the entry summary (see 19 CFR Parts 141-142) (two copies to be forwarded to the District Director of Customs at port of entry);

(ii) Customs Form 7501-A, Consumption Entry Permit (one copy to be forwarded to the District Director of Customs at port of entry); and

(iii) Either a duty-free entry certificate when required in accordance with 25.604 (two copies to be forwarded to the District Director of Customs at port of entry) or Customs Form 7506, Warehouse Withdrawal Conditionally Free of Duty, and Permit (two copies to be forwarded to the District Director of Customs at warehouse location).

(2) Customs forms are available from any District Director of Customs Office or United States Customs port. Data for completing customs forms shall be obtained from the contractor.

(c) *Immediate entry and release.* Imported supplies purchased under Government contracts are regarded as

shipments, the immediate delivery of which is necessary under the provisions of 19 U.S.C. 1448(b). Request for their release from Customs custody before formal entry and release shall normally be made by the contracting officer by filing Customs Form 3461, Immediate Delivery Application, with the District Director of Customs at port of entry. Forms for formal entry and release must be filed within a reasonable time thereafter. Applications for immediate delivery may be limited to particular shipments or may cover all shipments under a Government contract. They may be approved for specific or indefinite periods of time (see 19 CFR 10.101 and 19 CFR Part 142, Subpart A, for requirements).

25.604 Exempted supplies.

(a) Schedule 8 of the Tariff Schedules of the United States (19 U.S.C. 1202) lists supplies for which exemptions from duty may be obtained when imported into the customs territory of the United States under a Government contract. For certain of these supplies, the contracting agency must certify to the Commissioner of Customs that they are for the purpose stated in the Tariff Schedule (see 19 CFR 10.102-104, 10.110, 10.114-119, 10.121, and 15 CFR 301 for requirements and formats).

(b) Supplies (as opposed to equipment) for Government-operated vessels or aircraft may be withdrawn from any customs-bonded warehouse, from continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone free of duty and internal revenue tax as provided in 19 U.S.C. 1309(a). The contracting activity shall cite this authority on the appropriate customs form when making such purchases (see 19 CFR 10.59(a)).

25.605 Contract clause.

(a) The contracting officer shall insert the clause at 52.225-10, Duty-Free Entry, in solicitations and contracts over $100,000 that provide for, or anticipate furnishing to the Government, supplies to be imported into the customs territory of the United States.

(b) The clause may be used in solicitations and contracts of $100,000 or less, if such action is consistent with the policy in 25.602.

(c) If the contracting officer knows before award that the contract includes specific supplies that will be accorded duty-free entry, a list of these supplies shall be inserted in the contract Schedule. The list shall include item numbers from Schedule 8, Tariff Schedules of the United States, and a description of the supplies.

SUBPART 25.7—RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

25.701 Policy.

(a) The Government does not acquire for use outside the United States, its possessions, or Puerto Rico supplies or services from foreign countries or areas when these supplies or services could not be lawfully imported into the United States.

(b) When acceptance of supplies or services (including construction) is to take place in the United States, its possessions, or Puerto Rico, the contracting officer shall assume that all supplies not produced in the United States, its possessions, or Puerto Rico, have been lawfully imported.

25.702 Restrictions.

Except as provided in 25.703, agencies and their contractors and subcontractors shall not acquire for use outside the United States, its possessions, or Puerto Rico—

(a) Any supplies or services originating from sources within the Communist areas of North Korea, Vietnam, Cambodia, or Cuba; or

(b) Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba.

25.703 Exceptions.

(a) Supplies and services from sources restricted by 25.702 acquired for use outside the United States, its possessions, or Puerto Rico may be purchased or used only in unusual situations; for example, in an emergency or when the items (or services) are not available from another source and a substitute is not acceptable.

(b) Unless otherwise provided by agency procedures, the contracting officer may approve exceptions for small purchases. For other contracts, the agency head shall approve any exceptions. A copy of the written approval shall be furnished to the contractor.

25.704 Contract clause.

The contracting officer shall insert the clause at 52.225-11, Certain Communist Areas, in solicitations and contracts for supplies, services, or construction if acceptance is to take place outside the United States, its possessions, or Puerto Rico.

SUBPART 25.8—INTERNATIONAL AGREEMENTS AND COORDINATION

25.801 International agreements.

Treaties and agreements between the United States and foreign governments may affect contracting within foreign countries. Contracting officers should give particular attention to the provisions in those agreements that pertain to purchase procedures, contract forms and clauses, taxes, patents, technical information, facilities, and other matters related to contracting.

25.802 Procedures.

(a) When placing contracts with contractors outside the United States, for performance outside the United States, contracting officers shall—

(1) Determine the existence and applicability of any international agreements to contracts being planned or processed, and ensure compliance with these agreements; and

(2) Conduct the necessary advance acquisition planning and coordination between the appropriate United States executive agencies and foreign interests as required by these agreements.

(b) Many international agreements are compiled in the "United States Treaties and Other International Agreements" series published by the Department of State. Copies of this publication are normally available in overseas legal offices and United States diplomatic missions.

SUBPART 25.9—OMISSION OF THE EXAMINATION OF RECORDS CLAUSE

25.901 Definition.

"Foreign contractor," as used in this subpart, means a contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.

25.902 Policy.

As required by 10 U.S.C. 2313, 41 U.S.C. 254, and 15.106-1(b)(3), the contracting officer shall consider for use in negotiated contracts with foreign contractors, whenever possible, the clause at 52.215-1, Examination of Records by Comptroller General. Omission of the clause should be approved only after the contracting agency, having considered such factors as alternate sources of supply, additional cost, and time of delivery, has made all reasonable efforts to include the clause.

25.903 Conditions for omission.

(a) The contracting officer may omit the clause at 52.215-1, Examination of Records by Comptroller General, from contracts with foreign contractors—

(1) If the agency head determines, with the concurrence of the Comptroller General or a designee, that omission of the clause will serve the public interest; or

(2) If the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its books, documents, papers, or records available for examination, and the agency head determines, after taking into account the price and availability of the property or services from domestic sources, that omission of the clause best serves the public interest.

(b) When a determination under subparagraph (a)(2) above is the basis for omission of the clause at 52.215-1, Examination of Records by Comptroller General, the agency head shall forward a written report to the Congress explaining the reasons for the determination.

25.904 Determination and findings.

The determination and findings shall—

(a) Identify the contract and its purpose, and whether it is a contract with a foreign contractor or with a foreign government or agency thereof;

(b) Describe the efforts made to include the clause;

(c) State the reasons for the contractor's refusal to include the clause;

(d) Describe the price and availability of the property or services from the United States and other sources; and

(e) Determine that it will serve the interest of the United States to omit the clause.

PART 26—[RESERVED]

SUBCHAPTER E—General Contracting Requirements

PART 27—PATENTS, DATA, AND COPYRIGHTS [RESERVED]

[Editorial Note. Part 27—Patents, Data, and Copyrights, has been reserved pending resolution of comments received in response to the draft published in the **Federal Register** on May 20, 1983. Final coverage for Part 27 will be published before the FAR implementation date of April 1, 1984.]

PART 28—BONDS AND INSURANCE

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

28.000 Scope of part.

This part prescribes requirements for obtaining financial protection against damages under advertised and negotiated contracts. It covers bid guarantees, bonds, sureties, and insurance. The terms "bid" and "bidders" include "proposal" and "offerors."

28.001 Definitions.

"Attorney-in-fact," as used in this part, means an agent, independent agent, underwriter, or any other company or individual holding a power of attorney granted by a surety (see also "power of attorney").

"Bid guarantee" means a form of security assuring that the bidder (a) will not withdraw a bid within the period specified for acceptance and (b) will execute a written contract and furnish required bonds, including any necessary coinsurance or reinsurance agreements, within the time specified in the bid, unless a longer time is allowed, after receipt of the specified forms.

"Bond" means a written instrument executed by a bidder or contractor (the "principal"), and a second party (the "surety" or "sureties"), to assure fulfillment of the principal's obligations to a third party (the "obligee" or "Government"), identified in the bond. If the principal's obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligee. The types of bonds and related documents are as follows:

(a) An advance payment bond secures fulfillment of the contractor's obligations under an advance payment provision.

(b) An annual bid bond is a single bond furnished by a bidder, in lieu of separate bid bonds, which secure all bids (on other than construction contracts) requiring bonds submitted during a specific Government fiscal year.

(c) An annual performance bond is a single bond furnished by a contractor, in lieu of separate performance bonds, to secure fulfillment of the contractor's obligations under contracts (other than construction contracts) requiring bonds entered into during a specific Government fiscal year.

(d) A patent infringement bond secures fulfillment of the contractor's obligations under a patent provision.

(e) A payment bond assures payments as required by law to all persons supplying labor or material in the prosecution of the work provided for in the contract.

(f) A performance bond secures performance and fulfillment of the contractor's obligations under the contract.

"Consent of surety" means an acknowledgment by a surety that its bond given in connection with a

contract continues to apply to the contract as modified.

"Insurance," as used in this part, means a contract which provides that for a stipulated consideration, one party undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event.

"Penal sum" or "penal amount" means the amount of money specified in a bond (or a percentage of the bid price in a bid bond) as the maximum payment for which the surety is obligated.

"Power of attorney," as used in this part, means the authority given one person or corporation to act for and obligate another, as specified in the instrument creating the power; in corporate suretyship, an instrument under seal which appoints an attorney-in-fact to act in behalf of a surety company in signing bonds (see also "attorney-in-fact").

"Reinsurance" means a transaction which provides that a surety, for a consideration, agrees to indemnify another surety against loss which the latter may sustain under a bond which it has issued.

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

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

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

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

SUBPART 28.1—BONDS

28.100 Scope of subpart.

This subpart prescribes requirements and procedures for the use of bonds and all types of bid guarantees.

28.101 Bid guarantees.

28.101-1 Policy on use.

(a) The use of bid guarantees shall be required only when a performance bond or a performance and payment bond is required (see 28.102 and 28.103).

(b) All types of bid guarantees are acceptable for supply or service contracts (see annual bid bonds and annual performance bonds coverage in 28.001). Only individual bid bonds are acceptable in connection with construction contracts.

28.101-2 Amount required.

The contracting officer shall determine a bid guarantee amount that is adequate to protect the Government from loss should the successful bidder fail to execute further contractual documents and bonds as required. The bid guarantee amount shall be at least 20 percent of the bid price but shall not exceed $3 million. When the penal sum is expressed as a percentage, a maximum dollar limitation may be stated.

28.101-3 Contract clause.

(a) When a bid guarantee is required, the solicitation shall contain a statement to that effect, and provide sufficient details for bidders to determine the amount of the bid guarantee.

(b) The contracting officer shall insert the clause at 52.228-1, Bid Guarantee, in solicitations and contracts that contain a requirement for a bid guarantee. A clause substantially the same as this may be used for negotiated contracts.

28.101-4 Noncompliance with bid guarantee requirements.

Noncompliance with a solicitation requirement for a bid guarantee requires rejection of the bid, except in the following situations when the noncompliance shall be waived, unless the contracting officer determines in writing that acceptance of the bid would be detrimental to the Government's interest:

(a) Only one bid is received. In this case, the contracting officer may require the furnishing of the bid guarantee before award.

(b) The amount of the bid guarantee submitted is less than required but is equal to or greater than the difference between the bid price and the next higher acceptable bid.

(c) The amount of the bid guarantee submitted, although less than that required by the solicitation for the maximum quantity bid upon, is sufficient for a quantity for which the bidder is otherwise eligible for award. Any award to the bidder shall not exceed the quantity covered by the bid guarantee.

(d) The bid guarantee is received late, and late receipt is waived under 14.304.

(e) A bid guarantee becomes inadequate as a result of the correction of a mistake under 14.406 (but only if the bidder will increase the bid guarantee to the level required for the corrected bid).

(f) A telegraphic bid modification is received without corresponding modification of the bid guarantee, if the modification expressly refers to the previous bid and the bidder corrects any deficiency in the bid guarantee.

28.102 Performance and payment bonds for construction contracts.

28.102-1 General.

(a) The Miller Act (40 U.S.C. 270a-270f) requires performance and payment bonds for any construction contract exceeding $25,000, except that this requirement may be waived (1) by the contracting officer for as much of the work as is to be performed in a foreign country upon finding that it is impracticable for the contractor to furnish such bond, or (2) as otherwise authorized by the Miller Act or other law.

(b) The contractor shall furnish all bonds, including any necessary reinsurance agreements, before receiving a notice to proceed with the work or being allowed to start work.

28.102-2 Amount required.

(a) *Performance bonds.* (1) The penal amount of performance bonds shall be 100 percent of the original contract price, unless the contracting officer determines that a lesser amount would be adequate for the protection of the Government.

(2) The Government may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Government may secure additional protection by directing the contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) *Payment bonds.* (1) The penal amount of payment bonds shall equal—

(i) 50 percent of the contract price if the contract price is not more than $1 million;

(ii) 40 percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(iii) $2 ½ million if the contract price is more than $5 million.

(2) If the original contract price is $5 million or less, the Government may require additional protection if the contract price is increased. The penal amount of the total protection as revised shall meet the requirement of subparagraph (1) immediately above.

(3) The Government shall secure additional protection by directing the contractor to increase the penal sum of the existing bond or to obtain an additional bond.

(c) *Requirements and indefinite-quantity contracts.* (1) When determining the penal sum of bonds for requirements contracts, the contracting officer shall consider the contract price

to be the price payable for the estimated quantity.

(2) When determining the penal sum of bonds for indefinite-quantity contracts, the contracting officer shall consider the contract price to be the price payable for the specified minimum quantity. When the minimum quantity is exceeded, subparagraphs (a)(2) and (b)(2) above apply.

28.102-3 Solicitation requirements.

When performance or payment bonds are required, the solicitation shall specify—

(a) The requirement for the bond(s);

(b) The penal sum of each bond (expressed either as a fixed sum or percentage of the contract price) or penal coverage required in case of annual bonds; and

(c) The deadline for submitting acceptable bonds.

28.103 Performance and payment bonds for other than construction contracts.

28.103-1 General.

(a) Generally, agencies shall not require performance and payment bonds for other than construction contracts. However, performance and payment bonds may be used as permitted in 28.103-2 and 28.103-3.

(b) The contractor shall furnish all bonds before receiving a notice to proceed with the work.

(c) No bond shall be required after the contract has been awarded if it was not specifically required in the contract, except as may be determined necessary for a contract modification.

28.103-2 Performance bonds.

(a) Performance bonds may be required when necessary to protect the Government's interest. The following situations may warrant a performance bond:

(1) Government property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

(2) A contractor sells assets to or merges with another concern, and the Government, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

(3) Substantial progress payments are made before delivery of end items starts.

(4) Contracts are for dismantling, demolition, or removal of improvements.

(b) When a performance bond is required, the solicitation shall contain the information in 28.102-3.

(c) The Government may require additional performance bond protection when a contract price is increased.

(d) The contracting officer must determine the contractor's responsibility (see Subpart 9.1) even though a bond has been or can be obtained.

28.103-3 Payment bonds.

(a) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the Government's interest.

(b) The contracting officer shall determine the penal amount of a payment bond.

(c) When a payment bond is required, the solicitation shall contain the information in 28.102-3.

(d) When a contract price is increased, the Government may require additional bond protection in an amount adequate to protect suppliers of labor and material.

28.104 Annual performance bonds.

(a) Annual performance bonds only apply to non-construction contracts. They shall provide a gross penal sum applicable to the total amount of all covered contracts.

(b) When the penal sums obligated by contracts are approximately equal to or exceed the penal sum of the annual performance bond, an additional bond will be required to cover additional contracts.

28.105 Other types of bonds.

The head of the contracting activity may approve using other types of bonds in connection with acquiring particular supplies or services. These types include advance payment bonds and patent infringement bonds.

28.105-1 Advance payment bonds.

Advance payment bonds may be required only when the contract contains an advance payment provision and a performance bond is not furnished. The contracting officer shall determine the amount of the advance payment bond necessary to protect the Government.

28.105-2 Patent infringement bonds.

(a) Contracts providing for patent indemnity may require these bonds only if—

(1) A performance bond is not furnished; and

(2) The financial responsibility of the contractor is unknown or doubtful.

(b) The contracting officer shall determine the penal sum.

28.106 Administration.

28.106-1 Bonds and bond related forms.

The following standard forms (SF's), shown in 53.301, shall be used, except in foreign countries, when a bid bond, performance or payment bond, or an individual surety is required. The bond forms shall be used as indicated in the instruction portion of each form.

(a) SF 24, Bid Bond (see 28.101).

(b) SF 25, Performance Bond (see 28.102-1 and 28.106-3(b)).

(c) SF 25-A, Payment Bond (see 28.103-3 and 28.106-3(b)).

(d) SF 25-B, Continuation Sheet (for SF's 24, 25, and 25-A).

(e) SF 28, Affidavit of Individual Surety (see 28.202-2(a)).

(f) SF 34, Annual Bid Bond (see 28.001).

(g) SF 35, Annual Performance Bond (see 28.104).

(h) SF 273, Reinsurance Agreement for a Miller Act Performance Bond (see 28.202-1(a)(4)).

(i) SF 274, Reinsurance Agreement for a Miller Act Payment Bond (see 28.202-1(a)(4)).

(j) SF 275, Reinsurance Agreement in Favor of the United States (see 28.202-1(a)(4)).

(k) SF 1414, Consent of Surety (see 28.106-5).

(l) SF 1415, Consent of Surety and Increase of Penalty (see 28.106-3).

(m) SF 1416, Payment Bond for Other Than Construction Contracts (see 28.103-3).

28.106-2 Substitution of surety bonds.

(a) A new surety bond covering all or part of the obligations on a bond previously approved may be substituted for the original bond if approved by the head of the contracting activity.

(b) When a new surety bond is approved, the contracting officer shall notify the principal and surety of the original bond of the effective date of the new bond.

28.106-3 Additional bond.

(a) When additional bond coverage is required and is furnished in whole or in part by the original surety or sureties, agencies shall use Standard Form 1415, Consent of Surety and Increase of Penalty.

(b) When additional coverage is furnished in whole or in part by a new surety, agencies shall use Standard Form 25, Performance Bond or Standard Form 25-A, Payment Bond.

28.106-4 Contract clause.

The contracting officer shall insert the clause at 52.228-2, Additional Bond

Security, in solicitations and contracts when bonds are required.

28.106-5 Consent of surety.

(a) When any contract is modified, the contracting officer shall obtain the consent of surety if—

(1) An additional bond is obtained from other than the original surety;

(2) No additional bond is required and—

(i) The modification is for new work beyond the scope of the original contract; or

(ii) The modification does not change the contract scope but changes the contract price (upward or downward) by more than 25 percent or $50,000; or

(3) Consent of surety is required for a novation agreement (See Subpart 42.12).

(b) Agencies shall use Standard Form 1414, Consent of Surety, for all types of contracts.

28.106-6 Furnishing information.

(a) The surety on the bond, upon its written request, may be furnished information on the progress of the work, payments, and the estimated percentage of completion, concerning the contract for which the bond was furnished.

(b) When a payment bond has been provided, the contracting officer shall, upon request, furnish the name and address of the surety or sureties to any subcontractor or supplier who has furnished or been requested to furnish labor or material for the contract. In addition, general information concerning the work progress, payments, and the estimated percentage of completion may be furnished to persons who have provided labor or materials and have not been paid.

28.106-7 Withholding contract payments.

(a) During contract performance, agencies shall not withhold payments due contractors or assignees because subcontractors or suppliers have not been paid.

(b) If, after completion of the contract work, the Government receives written notice from the surety regarding the contractor's failure to meet its obligation to its subcontractors or suppliers, the contracting officer shall withhold final payment. However, the surety must agree to hold the Government harmless from any liability resulting from withholding the final payment. The contracting officer will authorize final payment upon agreement between the contractor and surety or upon a judicial determination of the rights of the parties.

(c) For any withholding incident to the labor standards provisions of the contract, see Part 22.

SUBPART 28.2—SURETIES

28.200 Scope of subpart.

This subpart prescribes procedures for the use of sureties to protect the Government from financial losses.

28.201 Requirements for sureties.

(a) Agencies shall obtain adequate security for bonds (including coinsurance and reinsurance agreements) required or used with a contract for supplies or services (including construction). Acceptable forms of security include (1) corporate or individual sureties or (2) any of the types of security authorized in lieu of sureties by 28.203.

(b) Solicitations shall not preclude offerors from using the types of surety or security permitted by this subpart, unless prohibited by law or regulation.

28.202 Acceptable sureties.

28.202-1 Corporate sureties.

(a) (1) Corporate sureties offered for bonds furnished with contracts performed in the United States, its possessions, or Puerto Rico must appear on the list contained in the Department of the Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies."

(2) The penal amount of the bond should not exceed the surety's underwriting limit stated in the Department of the Treasury circular. If the penal amount exceeds the underwriting limit, the bond will be acceptable only if (i) the amount which exceeds the specified limit is coinsured or reinsured and (ii) the amount of coinsurance or reinsurance does not exceed the underwriting limit of each coinsurer or reinsurer.

(3) Coinsurance or reinsurance agreements shall conform to the Department of the Treasury regulations in 31 CFR 223.10 and 223.11. When reinsurance is contemplated, the contracting office generally shall require reinsurance agreements to be executed and submitted with the bonds before making a final determination on the bonds.

(4) When specified in the solicitation, the contracting officer may accept a bond from the direct writing company in satisfaction of the total bond requirement of the contract. This is permissible until necessary reinsurance agreements are executed, even though the total bond requirement may exceed the insurer's underwriting limitation. The contractor shall execute and submit necessary reinsurance agreements to the contracting officer within the time specified on the bid form, which may not exceed 45 calendar days after the execution of the bond. The contractor shall use Standard Form 273, Reinsurance Agreement for a Miller Act Performance Bond, and Standard Form 274, Reinsurance Agreement for a Miller Act Payment Bond, when reinsurance is furnished with Miller Act bonds. Standard Form 275, Reinsurance Agreement in Favor of the United States, is used when reinsurance is furnished with bonds for other purposes.

(b) For contracts performed in a foreign country, sureties not appearing on Treasury Department Circular 570 are acceptable if the contracting officer determines that it is impracticable for the contractor to use Treasury listed sureties.

(c) The Department of the Treasury issues supplements to Circular 570, notifying all Federal agencies of (1) new approved corporate surety companies and (2) the termination of the authority of any specific corporate surety to qualify as a surety on Federal bonds. Upon receipt of notification of termination of a company's authority to qualify as a surety on Federal bonds, the contracting officer shall review the outstanding contracts and take action necessary to protect the Government, including, where appropriate, securing new bonds with acceptable sureties in lieu of outstanding bonds with the named company.

(d) The Department of the Treasury Circular 570 is obtainable from the U.S. Treasury Department, Bureau of Government Financial Operations, Audit Staff, Washington, DC 20226.

28.202-2 Individual sureties.

(a) Individual sureties are acceptable for all types of bonds except position schedule bonds. The contracting officer shall determine the acceptability of individuals proposed as sureties. At least two individual sureties must execute the bond and the net worth of each individual must equal or exceed penal amount of the bond. Contracting officers shall consider the number and amounts of other bonds upon which a proposed individual surety is bound, and the status of the contracts for which such bonds were furnished, in determining the acceptability of the individual surety. (See the instructions on the reverse of Standard Form 28, Affidavit of Individual Surety, 53.301-28.)

(b) Each individual surety shall execute Standard Form 28. The information provided is helpful in determining the net worth of proposed individual sureties.

(c) To ascertain the continuing acceptability of individual sureties, the official executing the Certificate of Sufficiency is required to execute further certificates, as contemplated by Instruction 5 on Standard Form 28, as often as the agency considers it appropriate. Agencies may require further certificates indicating additional assets or a new surety to assure protection of the Government's interest.

28.203 Options in lieu of sureties.

The contractor may deposit any of the types of security listed in this section instead of furnishing corporate or individual sureties on performance and payment bonds. When any of those types of security are deposited, a statement shall be incorporated in the bond form pledging the security. The contractor shall execute the bond forms as the principal. Agencies shall establish safeguards to protect against loss of the security and shall return the security or its equivalent to the contractor when the bond obligation has ceased.

28.203-1 United States bonds or notes.

Any person required to furnish a bond to the Government has the option, instead of furnishing a surety or sureties on the bond, of depositing certain United States bonds or notes in an amount equal at their par value to the penal sum of the bond (the Act of February 24, 1919 (6 U.S.C. 15) and Treasury Department Circular No. 154 dated February 6, 1935 (31 CFR Part 225)). In addition, a duly executed power of attorney and agreement authorizing the collection or sale of such United States bonds or notes in the event of default of the principal on the bond shall accompany the deposited bonds or notes. The contracting officer may (a) turn securities over to the finance or other authorized agency official, or (b) deposit them with the Treasurer of the United States, a Federal Reserve Bank (or branch with requisite facilities), or other depository designated for that purpose by the Secretary of the Treasury, under procedures prescribed by the agency concerned and Treasury Department Circular No. 154 (exception: The contracting officer shall deposit all bonds and notes received in the District of Columbia with the Treasurer of the United States).

28.203-2 Certified or cashier's checks, bank drafts, money orders, or currency.

Any person required to furnish a bond has an option to furnish a certified or cashier's check, bank draft, Post Office money order, or currency, in an amount equal to the penal sum of the bond, instead of furnishing surety or sureties on the bonds. Those furnishing checks, drafts, or money orders shall draw them to the order of the appropriate Federal agency.

SUBPART 28.3—INSURANCE

28.301 Policy.

Contractors shall be required to carry insurance under the following circumstances:

(a) (1) The Government requires any contractor subject to Cost Accounting Standard (CAS) 416 (4 CFR 416) to obtain insurance, by purchase or self-coverage, for the perils to which the contractor is exposed, except when (i) the Government, by providing in the contract in accordance with law, agrees to indemnify the contractor under specified circumstances or (ii) the contract specifically relieves the contractor of liability for loss of or damage to Government property.

(2) The Government reserves the right to disapprove the purchase of any insurance coverage not in the Government's interest.

(3) Allowability of the insurance program's cost shall be determined in accordance with the criteria in 31.205-19.

(b) Contractors, whether or not their contracts are subject to CAS 416, are required by law and this regulation to provide insurance for certain types of perils (e.g., workers' compensation). Insurance is mandatory also when commingling of property, type of operation, circumstances of ownership, or condition of the contract make it necessary for the protection of the Government. The minimum amounts of insurance required by this regulation (see 28.307-2) may be reduced when a contract is to be performed outside the United states, its possessions, and Puerto Rico. When more than one agency is involved, the agency responsible for review and approval of a contractor's insurance program shall coordinate with other interested agencies before acting on significant insurance matters.

28.302 Notice of cancellation or change.

When the Government requires the contractor to provide insurance coverage, the policies shall contain an endorsement that any cancellation or material change in the coverage adversely affecting the Government's interest shall not be effective unless the insurer or the contractor gives written notice of cancellation or change as required by the contracting officer. When the coverage is provided by self-insurance, the contractor shall not change or decrease the coverage without the administrative contracting officer's prior approval (see 28.308(c)).

28.303 Insurance against loss of or damage to Government property.

When the Government requires or approves insurance to cover loss of or damage to Government property (see 45.103, Responsibility and liability for Government property), it may be provided by specific insurance policies or by inclusion of the risks in the contractor's existing policies. The policies shall disclose the Government's interest in the property.

28.304 Risk-pooling arrangements.

Agencies may establish risk-pooling arrangements. These arrangements are designed to use the services of the insurance industry for safety engineering and the handling of claims at minimum cost to the Government. The agency responsible shall appoint a single manager or point of contact for each arrangement.

28.305 Overseas workers' compensation and war-hazard insurance.

(a) "Public-work contract," as used in this subpart, means any contract for a fixed improvement or for any other project, fixed or not, for the public use of the United States or its allies, involving construction, alteration, removal, or repair, including projects or operations under service contracts and projects in connection with the national defense or with war activities, dredging, harbor improvements, dams, roadways, and housing, as well as preparatory and ancillary work in connection therewith at the site or on the project.

(b) The Defense Base Act (42 U.S.C. 1651 et seq.) extends the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901) to various classes of employees working outside the United States, including those engaged in performing—

(1) Public-work contracts; or

(2) Contracts approved or financed under the Foreign Assistance Act of 1961 (Pub. L. 87-195) other than (i) contracts approved or financed by the Development Loan Fund (unless the Secretary of Labor, acting upon the recommendation of a department or agency, determines that such contracts should be covered) or (ii) contracts exclusively for materials or supplies.

(c) When the Defense Base Act applies (see 42 U.S.C. 1651 et seq.) to these employees, the benefits of the Longshoremen's and Harbor Workers' Compensation Act are extended through operation of the War Hazards Compensation Act (42 U.S.C. 1701 et seq.) to protect the employees against

the risk of war hazards (injury, death, capture, or detention). When, by means of an insurance policy or a self-insurance program, the contractor provides the workers' compensation coverage required by the Defense Base Act, the contractor's employees automatically receive war-hazard risk protection.

(d) When the agency head recommends a waiver to the Secretary of Labor, the Secretary may waive the applicability of the Defense Base Act to any contract, subcontract, work location, or classification of employees.

(e) If the Defense Base Act is waived for some or all of the contractor's employees, the benefits of the War Hazards Compensation Act are automatically waived with respect to those employees for whom the Defense Base Act is waived. For those employees, the contractor shall provide workers' compensation coverage against the risk of work injury or death and assume liability toward the employees and their beneficiaries for war-hazard injury, death, capture, or detention. The contract shall provide either that the costs of this liability or the reasonable costs of insurance against this liability shall be allowed as a cost under the contract.

28.306 Insurance under fixed-price contracts.

(a) *General.* Although the Government is not ordinarily concerned with the contractor's insurance coverage if the contract is a fixed-price contract, in special circumstances agencies may specify insurance requirements under fixed-price contracts. Examples of such circumstances include the following:

(1) The contractor is—or has a separate operation—engaged principally in Government work.

(2) Government property is involved.

(3) The work is to be performed on a Government installation.

(4) The Government elects to assume risks for which the contractor ordinarily obtains commercial insurance.

(b) *Work on a Government installation.* (1) When the clause at 52.228-5, Insurance—Work on a Government Installation, is required to be included in a fixed-price contract by 28.310, the coverage specified in 28.307 is the minimum insurance required and shall be included in the contract Schedule or elsewhere in the contract. The contracting officer may require additional coverage and higher limits.

(2) When the clause at 52.228-5, Insurance—Work on a Government Installation, is not required by 28.310 but is included because the contracting officer considers it to be in the Government's interest to do so, any of the types of insurance specified in 28.307 may be omitted or the limits may be lowered, if appropriate.

28.307 Insurance under cost-reimbursement contracts.

Cost-reimbursement contracts (and subcontracts, if the terms of the prime contract are extended to the subcontract) ordinarily require the types of insurance listed in 28.307-2, with the minimum amounts of liability indicated. (See 28.308 for self-insurance.)

28.307-1 Group insurance plans.

(a) *Prior approval requirement.* Under cost-reimbursement contracts, before buying insurance under a group insurance plan, the contractor must submit the plan for approval, in accordance with agency regulations. Any change in benefits provided under an approved plan that can reasonably be expected to increase significantly the cost to the Government requires similar approval.

(b) *Premium refunds or credits.* The plan shall provide for the Government to share in any premium refunds or credits paid or otherwise allowed to the contractor. In determining the extent of the Government's share in any premium refunds or credits, any special reserves and other refunds to which the contractor may be entitled in the future shall be taken into account.

28.307-2 Liability.

(a) *Workers' compensation and employer's liability.* Contractors are required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least $100,000 shall be required, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers. (See 28.305(c) for treatment of contracts subject to the Defense Base Act.)

(b) *General liability.* (1) The contracting officer shall require bodily injury liability insurance coverage written on the comprehensive form of policy of at least $500,000 per occurrence.

(2) Property damage liability insurance shall be required only in special circumstances as determined by the agency.

(c) *Automobile liability.* The contracting officer shall require automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least $200,000 per person and $500,000 per occurrence for bodily injury and $20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) *Aircraft public and passenger liability.* When aircraft are used in connection with performing the contract, the contracting officer shall require aircraft public and passenger liability insurance. Coverage shall be at least $200,000 per person and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.

(e) *Vessel liability.* When contract performance involves use of vessels, the contracting officer shall require, as determined by the agency, vessel collision liability and protection and indemnity liability insurance.

28.308 Self-insurance.

(a) When it is anticipated that 50 percent or more of the self-insurance costs to be incurred at a segment (see 30.102) of a contractor's business will be allocable to negotiated Government contracts, and the self-insurance costs at the segment for the contractor's fiscal year are expected to be $200,000 or more, the contractor shall submit, in writing, information on its proposed self-insurance program to the administrative contracting officer and obtain that official's approval of the program. The submission shall be by segment or segments of the contractor's business to which the program applies and shall include—

(1) A complete description of the program, including any resolution of the board of directors authorizing and adopting coverage, including types of risks, limits of coverage, assignments of safety and loss control, and legal service responsibilities;

(2) If available, the corporate insurance manual and organization chart detailing fiscal responsibilities for insurance;

(3) The terms regarding insurance coverage for any Government property;

(4) The contractor's latest financial statements;

(5) Any self-insurance feasibility studies or insurance market surveys reporting comparative alternatives;

(6) Loss history, premiums history, and industry ratios;

(7) A formula for establishing reserves, including percentage variations between losses paid and losses reserved;

(8) Claims administration policy, practices, and procedures;

(9) The method of calculating the projected average loss; and

(10) A disclosure of all captive insurance company and re-insurance agreements, including methods of computing cost.

(b) Programs of self-insurance covering a contractor's insurable risks, including the deductible portion of purchased insurance, may be approved when examination of a program indicates that its application is in the Government's interest. Agencies shall not approve a program of self-insurance for workers' compensation in a jurisdiction where workers' compensation does not completely cover the employer's liability to employees, unless the contractor—

(1) Maintains an approved program of self-insurance for any employer's liability not so covered; or

(2) Shows that the combined cost to the Government of self-insurance for workers' compensation and commercial insurance for employer's liability will not exceed the cost of covering both kinds of risk by commercial insurance.

(c) Once the administrative contracting officer has approved a program, the contractor must submit to that official for approval any major proposed changes to the program. Any program approval may be withdrawn if a contracting officer finds that either (1) any part of a program does not comply with the requirements of this subpart and/or the criteria at 31.205-19 or (2) conditions or situations existing at the time of approval that were a basis for original approval of the program have changed to the extent that a program change is necessary.

(d) To qualify for a self-insurance program, a contractor must demonstrate ability to sustain the potential losses involved. In making the determination, the contracting officer shall consider the following factors:

(1) The soundness of the contractor's financial condition, including available lines of credit.

(2) The geographic dispersion of assets, so that the potential of a single loss depleting all the assets is unlikely.

(3) The history of previous losses, including frequency of occurrence and the financial impact of each loss.

(4) The type and magnitude of risk, such as minor coverage for the deductible portion of purchased insurance or major coverage for hazardous risks.

(5) The contractor's compliance with Federal and State laws and regulations.

(e) Agencies shall not approve a program of self-insurance for catastrophic risks (e.g., see 50.403, Special procedures for unusually hazardous or nuclear risks). Should performance of Government contracts create the risk of catastrophic losses, the Government may, to the extent authorized by law, agree to indemnify the contractor or recognize an appropriate share of premiums for purchased insurance, or both.

(f) Self-insurance programs to protect a contractor against the costs of correcting its own defects in materials or workmanship shall not be approved. For these purposes, normal rework estimates and warranty costs will not be considered self-insurance.

28.309 Contract clauses for workers' compensation insurance.

(a) The contracting officer shall insert the clause at 52.228-3, Workers' Compensation Insurance (Defense Base Act), in solicitations and contracts when the Defense Base Act applies (see 28.305) and—

(1) The contract will be a public-work contract performed outside the United States; or

(2) The contract will be approved or financed under the Foreign Assistance Act of 1961 (Pub. L. 87-195) and is not excluded by 28.305(b)(2).

(b) The contracting officer shall insert the clause at 52.228-4, Workers' Compensation and War-Hazard Insurance Overseas, in solicitations and contracts when the contract will be a public-work contract performed outside the United States and the Secretary of Labor waives the applicability of the Defense Base Act (see 28.305(d)).

28.310 Contract clause for work on a Government installation.

(a) The contracting officer shall insert the clause at 52.228-5, Insurance—Work on a Government Installation, in solicitations and contracts when a fixed-price contract is contemplated, the contract amount is expected to be over the appropriate small purchase limitation in Part 13, and the contract will require work on a Government installation, unless—

(1) Only a small amount of work is required on the Government installation (e.g., a few brief visits per month); or

(2) All work on the Government installation is to be performed outside the United States, its possessions, and Puerto Rico.

(b) The contracting officer may insert the clause at 52.228-5 in solicitations and contracts described in (a)(1) and (2) above if it is in the Government's interest to do so.

28.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

28.311-1 Solicitation provision.

The contracting officer shall insert the provision at 52.228-6, Insurance—Immunity from Tort Liability, in solicitations for research and development when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause at 52.228-7, Insurance—Liability to Third Persons.

28.311-2 Contract clause.

The contracting officer shall insert the clause at 52.228-7, Insurance—Liability to Third Persons, in solicitations and contracts, other than those for construction contracts and those for architect-engineer services, when a cost-reimbursment contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause. If the solicitation includes the provision at 52.228-6, Insurance—Immunity from Tort Liability, and the successful offeror represents in the offer that the offeror is *partially* immune from tort liability as a State agency or as a charitable institution, the contracting officer shall use the clause with its Alternate I. If the solicitation includes the provision at 52.228-6, Insurance—Immunity from Tort Liability, and the successful offeror represents in the offer that the offeror is *totally* immune from tort liability as a State agency or as a charitable institution, the contracting officer shall use the clause with its Alternate II.

28.312 Contract clause for insurance of leased motor vehicles.

The contracting officer shall insert the clause at 52.228-8, Liability and Insurance—Leased Motor Vehicles, in solicitations and contracts for the

leasing of motor vehicles (see Subpart 8.11).

28.313 Contract clauses for insurance of transportation or transportation-related services.

(a) The contracting officer shall insert the clause at 52.228-9, Cargo Insurance, in solicitations and contracts for transportation or for transportation-related services, except when freight is shipped under rates subject to released or declared value.

(b) The contracting officer shall insert a clause substantially the same as that at 52.228-10, Vehicular and General Public Liability Insurance, in solicitations and contracts for transportation or for transportation-related services when the contracting officer determines that vehicular liability or general public liability insurance required by law is not sufficient.

PART 29—TAXES

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

29.000 Scope of part.

This part prescribes policies and procedures for (a) using tax clauses in contracts (including foreign contracts), (b) asserting immunity or exemption from taxes, and (c) obtaining tax refunds. It explains Federal, State, and local taxes on certain supplies and services acquired by executive agencies and the applicability of such taxes to the Federal Government. It is for the general information of Government personnel and does not present the full scope of the tax laws and regulations.

SUBPART 29.1—GENERAL

29.101 Resolving tax problems.

(a) Contract tax problems are essentially legal in nature and vary widely. Specific tax questions must be resolved by reference to the applicable contract terms and to the pertinent tax laws and regulations. Therefore, when tax questions arise, contracting officers should request assistance from the agency-designated legal counsel.

(b) To keep treatment within an agency consistent, contracting officers or other authorized personnel shall consult the agency-designated counsel before negotiating with any taxing authority for the purpose of (1) determining whether or not a tax is valid or applicable or (2) obtaining exemption from, or refund of, a tax.

(c) When the constitutional immunity of the Government from State or local taxation may reasonably be at issue, contractors should be discouraged from negotiating independently with taxing authorities if the contract involved is either (1) a cost-reimbursement contract or (2) a fixed-price contract containing a tax escalation clause.

(d) Before purchasing goods or services from a foreign source, the contracting officer should consult the agency-designated counsel (1) for information on foreign tax treaties and agreements in force and on the implementation of any foreign-tax-relief programs and (2) to resolve any other tax questions affecting the prospective contract.

SUBPART 29.2—FEDERAL EXCISE TAXES

29.201 General.

(a) Federal excise taxes are levied on the sale or use of particular supplies or services. Subtitle D of the Internal Revenue Code of 1954, Miscellaneous Excise Taxes, 26 U.S.C. 4041 et seq., and its implementing regulations, 26 CFR 40 through 299, cover miscellaneous federal excise tax requirements. Questions arising in this area should be directed to the agency-designated counsel. The most common excise taxes are—

(1) Manufacturers' excise taxes imposed on certain motor-vehicle articles, tires and inner tubes, gasoline, lubricating oils, coal, fishing equipment, firearms, shells, and cartridges sold by manufacturers, producers, or importers; and

(2) Special-fuels excise taxes imposed at the retail level on diesel fuel and special motor fuels.

(b) Sometimes the law exempts the Federal Government from these taxes. Contracting officers should solicit prices on a tax-exclusive basis when it is known that the Government is exempt from these taxes and the exemption is at least $100, and on a tax-inclusive basis when no exemption exists or the exemption is less than $100.

(c) Executive agencies shall take maximum advantage of available Federal excise tax exemptions, especially when the exemption is $100 or more. In addition, refunds amounting to $100 or more shall be claimed.

29.202 General exemptions.

No Federal manufacturers' or special-fuels excise taxes are imposed in many contracting situations as, for example, when the supplies are for any of the following:

(a) The exclusive use of any State or political subdivision, including the District of Columbia (26 U.S.C. 4041 and 4221).

(b) Shipment to a United States possession or Puerto Rico, or for export. Shipment or export must occur within 6 months of the time title passes to the Government. When the exemption is claimed, the words "for export or shipment to a possession" must appear on the contract or purchase document, and the contracting officer must furnish the seller proof of export (see 26 CFR 48.4041-12).

(c) Further manufacture, or resale for further manufacture (this exemption does not include tires and inner tubes) (26 U.S.C. 4221).

(d) Use as fuel supplies, ships or sea stores, or legitimate equipment on vessels of war, including (1) aircraft owned by the United States and constituting a part of the armed forces and (2) guided missiles and pilotless aircraft owned or chartered by the United States. When this exemption is to be claimed, the purchase should be made on a tax-exclusive basis. The contracting officer shall furnish the seller an exemption certificate for Supplies for Vessels of War (an example is given in 26 CFR 48.4041-9(c); the IRS will accept one certificate covering all orders under a single contract for a specified period of up to 12 calendar quarters). (26 U.S.C. 4041 and 4221)

(e) A nonprofit educational organization (26 U.S.C. 4041 and 4221).

(f) Emergency vehicles (26 U.S.C. 4064(a) and 4064(b)(1)(c)).

SUBPART 29.3—STATE AND LOCAL TAXES

29.300 Scope of subpart.

This subpart prescribes the policies and procedures regarding the exemption or immunity of Federal Government purchases and property from State and local taxation.

29.301 Definition.

"State and local taxes" means taxes levied by the States, the District of Columbia, Puerto Rico, possessions of the United States, or their political subdivisions.

29.302 Application of State and local taxes to the Government.

(a) Generally, purchases and leases made by the Federal Government are immune from State and local taxation. Whether any specific purchase or lease is immune, however, is a legal question requiring advice and assistance of the agency-designated counsel.

(b) When it is economically feasible to do so, executive agencies shall take maximum advantage of all exemptions from State and local taxation that may be available. If appropriate, the contracting officer shall provide a Standard Form 1094, U.S. Tax Exemption Certificate (see Part 53), or other evidence listed in 29.305(a) to establish that the purchase is being made by the Government.

29.303 Application of State and local taxes to Government contractors and subcontractors.

(a) Prime contractors and subcontractors shall not normally be designated as agents of the Government for the purpose of claiming immunity from State or local sales or use taxes. Before any activity contends that a contractor is an agent of the Government, the matter shall be referred to the agency head for review. The referral shall include all pertinent data on which the contention is based, together with a thorough analysis of all relevant legal precedents.

(b) When purchases are not made by the Government itself, but by a prime contractor or by a subcontractor under a prime contract, the right to an exemption of the transaction from a sales or use tax may not rest on the Government's immunity from direct taxation by States and localities. It may rest instead on provisions of the particular State or local law involved, or, in some cases, the transaction may not in fact be expressly exempt from the tax. The Government's interest shall be protected by using the procedures in 29.101.

(c) Frequently, property (including property acquired under the progress payments clause of fixed-price contracts or the Government property clause of cost-reimbursement contracts) owned by the Government is in the possession of a contractor or subcontractor. Situations may arise in which States or localities assert the right to tax Government property directly or to tax the contractor's or subcontractor's possession of, interest in, or use of that property. In such cases, the contracting officer shall seek review and advice from the agency-designated counsel on the appropriate course of action.

29.304 Matters requiring special consideration.

The imposition of State and local taxes may result in special contract considerations including the following:

(a) With coordination of the agency-designated counsel, a contract may (1) state that the contract price includes or excludes a specified tax or (2) require that the contractor take certain actions with regard to payment, nonpayment, refund, protest, or other treatment of a specified tax. Such special treatment may be appropriate when there is doubt as to the applicability or allocability of the tax, or when the applicability of the tax is being litigated.

(b) The applicability of State and local taxes to purchases by the Federal Government may depend on the place and terms of delivery. When the contract price will be substantial, alternative places and terms of delivery should be considered in light of possible tax consequences.

(c) Indefinite-delivery contracts for equipment rental may require the contractor to furnish equipment in any of the States. Since leased equipment remains the contractor's property, States and local governments impose a wide variety of property, use, or other taxes on equipment leased to the Government. The amount of these taxes can vary considerably from jurisdiction to jurisdiction. See 29.401-1 for the prescription of the contract clause to be included in contracts when delivery points are not known at time of contracting.

(d) The North Carolina State and local sales and use tax.

(1) The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure erected, altered, or repaired for such counties and incorporated cities and towns in North Carolina. In United States v. Clayton, 250 F. Supp. 827 (1965), it was held that the United States is entitled to the benefit of the refund, but must follow the refund procedure of the Act and the regulations to recover what it is due.

(2) The Act provides that, to receive the refund, claimants must file, within 6 months after the claimant's fiscal year closes, a written request substantiated by such records, receipts, and information as the Commissioner of Revenue may require. No refund will be made on an application not filed within the time allowed and in such manner as the Commissioner may require. The requirements of the Commissioner are set forth in regulations that provide that, to substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must secure from the contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or use taxes paid. In the event the contractor makes several purchases from the same vendor, the certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the sales and use taxes paid. The statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of sales or use tax paid by the contractor. Similar certified statements by subcontractors must be obtained by the general contractor and furnished to the claimant. Any local sales or use taxes included in the contractor's statement must be shown separately from the State sales or use taxes.

(3) The clause prescribed at 29.401-2 requires contractors to submit to contracting officers by November 30 of each year a certified statement disclosing North Carolina State and local sales and use taxes paid during the 12-month period that ended the preceding September 30. The contracting officer shall ensure that contractors comply with this requirement and shall obtain the annual refund to which the Government may be entitled. The application for refund must be filed each year before March 31 and in the manner and form required by the Commissioner of Revenue. Copies of the form may be obtained from the State of North Carolina Department of Revenue, Raleigh, North Carolina 27602.

29.305 State and local tax exemptions.

(a) *Evidence of exemption.* Evidence needed to establish exemption from State or local taxes depends on the grounds for the exemption claimed, the parties to the transaction, and the requirements of the taxing jurisdiction. Such evidence may include the following:

(1) A copy of the contract or relevant portion.

(2) Copies of purchase orders, shipping documents, credit-card-imprinted sales slips, paid or acknowledged invoices, or similar documents that identify an agency or instrumentality of the United States as the buyer.

(3) A U.S. Tax Exemption Certificate (SF 1094).

(4) A State or local form indicating that the supplies or services are for the exclusive use of the United States.

(5) Any other State or locally required document for establishing general or specific exemption.

(6) Shipping documents indicating that shipments are in interstate or foreign commerce.

(b) *Furnishing proof of exemption.* If a reasonable basis to sustain a claimed exemption exists, the seller will be furnished evidence of exemption, as follows:

(1) Under a contract containing the clause at 52.229-3, Federal, State, and Local Taxes, or at 52.229-4, Federal, State, and Local Taxes (Noncompetitive Contract), in accordance with the terms of those clauses.

(2) Under a cost-reimbursement contract, if requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer.

(3) Under a contract or purchase order that contains no tax provision, if (i) requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer, and (ii) the contractor either certifies that the contract price does not include the tax or, if the transaction or property is tax exempt, consents to a reduction in the contract price.

SUBPART 29.4—CONTRACT CLAUSES

29.401 Domestic contracts.

29.401-1 Indefinite-delivery contracts for leased equipment.

The contracting officer shall insert the clause at 52.229-1, State and Local Taxes, in solicitations and contracts for leased equipment when a fixed-price indefinite-delivery contract is contemplated, the contract will be performed wholly or partly within the United States, its possessions, or Puerto Rico, and the place or places of delivery are not known at the time of contracting.

29.401-2 Construction contracts performed in North Carolina.

The contracting officer shall insert the clause at 52.229-2, North Carolina State and Local Sales and Use Tax, in solicitations and contracts for construction to be performed in North Carolina. If the requirement is for vessel repair to be performed in North Carolina, the clause shall be used with its Alternate I.

29.401-3 Advertised and certain negotiated contracts.

The contracting officer shall insert the clause at 52.229-3, Federal, State, and Local Taxes, in solicitations and contracts if the contract is to be performed wholly or partly within the United States, its possessions, or Puerto Rico when—

(a) Contracting by formal advertising, unless the requirement is for construction and the contract amount is expected to be less than the applicable small purchase limitation in Part 13; or

(b) Contracting by negotiation, if a fixed-price contract is contemplated and the contract amount is expected to be over the applicable small purchase limitation in Part 13, unless the clause at 52.229-4, Federal, State, and Local Taxes (Noncompetitive Contract), is included in the contract.

29.401-4 Noncompetitive negotiated contracts.

The contracting officer shall insert the clause at 52.229-4, Federal, State, and Local Taxes (Noncompetitive Contract), in fixed-price noncompetitive negotiated contracts over the applicable small purchase limitation in Part 13 to be performed wholly or partly within the United States, its possessions, or Puerto Rico when satisfied (a) that the contract price does not include contingencies for State and local taxes and (b) that, unless the clause is used, the contract price will include such contingencies. When the clause at 52.229-4 is included in a contract, the contracting officer shall ensure that the contract does *not* include the clause at 52.229-3, Federal, State, and Local Taxes.

29.401-5 Contracts performed in U.S. possessions or Puerto Rico.

The contracting officer shall insert the clause at 52.229-5, Taxes—Contracts Performed in U.S. Possessions or Puerto Rico, in solicitations and contracts that include the clause at 52.229-3, Federal, State, and Local Taxes, or 52.229-4, Federal, State, and Local Taxes (Noncompetitive Contract).

29.402 Foreign contracts.

29.402-1 Foreign fixed-price contracts.

(a) The contracting officer shall insert the clause at 52.229-6, Taxes—Foreign Fixed-Price Contracts, in solicitations and contracts when a fixed-price contract is contemplated and the contract is to be performed wholly or partly in a foreign country, unless it is contemplated that the contract will be with a foreign government.

(b) The contracting officer shall insert the clause at 52.229-7, Taxes—Fixed-Price Contracts With Foreign Governments, in solicitations and contracts when a fixed-price contract with a foreign government is contemplated.

29.402-2 Foreign cost-reimbursement contracts.

(a) The contracting officer shall insert the clause at 52.229-8, Taxes—Foreign Cost-Reimbursement Contracts, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract is to be performed wholly or partly in a foreign country, unless it is contemplated that the contract will be with a foreign government.

(b) The contracting officer shall insert the clause at 52.229-9, Taxes—Cost-Reimbursement Contracts with Foreign Governments, in solicitations and contracts when a cost-reimbursement contract with a foreign government is contemplated.

PART 30—COST ACCOUNTING STANDARDS

Sec.

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

30.000 Scope of part.

This part describes policies and procedures for applying the Cost Accounting Standards Board (CASB) standards and regulations (4 CFR 331 et seq.) to negotiated national defense contracts and subcontracts. This part also prescribes policies and procedures for applying those standards and regulations which the Administrator of General Services Administration, as a matter of policy, has directed to be applied to certain nondefense contracts. This part does not apply to formally advertised contracts or to any contract with a small business concern (see 30.301(b) for other exemptions).

SUBPART 30.1—GENERAL

30.101 Cost Accounting Standards.

(a) Pub. L. 91-379 (50 U.S.C. App. 2168) requires certain national defense contractors and subcontractors to comply with Cost Accounting Standards (CAS) published by the Cost Accounting Standards Board (CASB) and to disclose in writing and follow consistently their cost accounting practices.

(b) The obligation to comply with the CAS is extended to certain nondefense contracts as a matter of policy. Submission or revision of a Disclosure Statement is not required for any nondefense contract. However, if a Disclosure Statement has been submitted in connection with a CAS-covered defense contract, the contractor must also comply with such disclosed practices under nondefense CAS-covered contracts (see subparagraph (a)(1) of the clause at 52.230-3, Cost Accounting Standards). Further differences in application between national defense and nondefense contracts are explained in the appropriate sections throughout this part.

30.102 Definitions.

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

"CAS-covered contract" means any negotiated contract or subcontract in which a CAS clause is required to be included.

"Currently performing," as used in this part, means that a contractor has been awarded a contract but has not yet received notification of final acceptance of all supplies, services, and data deliverable under the contract (including options).

"National defense," as used in this part, means any program for military and atomic energy production or construction, military assistance to any foreign nation, stockpiling, space, or directly related activity.

"Net awards," as used in this part, means the total obligated value of negotiated national defense prime contract and subcontract awards received during the reporting period minus cancellations, terminations, and other related credit transactions.

"Segment" means one of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, in most cases identified with responsibility for profit and/or producing a product or service. The term includes Government-owned contractor-operated facilities and joint ventures and subsidiaries (domestic and foreign) in which the organization has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the organization has less than a majority ownership, but over which it exercises control.

"Small business," as used in this part, means any concern, firm, person, corporation, partnership, cooperative, or other business enterprise which, under 15 U.S.C. 637(b)(6) and the rules and regulations of the Small Business Administration in Part 121 of Title 13 of the Code of Federal Regulations, is determined to be a small business concern for the purpose of Government contracting.

30.103 Cost Accounting Standards Board (CASB) publication.

Copies of the CASB standards and regulations may be obtained by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, to request:

Publication Y3.C82:6ST2/976
Cost Accounting Standards Board Standards, Rules, and Regulations (RCASB)(File Code 1S)
$15.00 Domestic; $18.75 Foreign

Orders should include the requestor's name and number of copies ordered as well as all of the information above and a check or money order made payable to the Superintendent of Documents. The subscription includes the basic manual and any changes issued for an indefinite period until a complete revision is issued.

SUBPART 30.2—DISCLOSURE REQUIREMENTS

30.201 Disclosure Statement submission.

30.201-1 General requirements.

(a) A Disclosure Statement is a written description of a contractor's cost accounting practices and procedures in a format prescribed by the Cost Accounting Standards Board (CASB). The submission of a new or revised Disclosure Statement is not required for any nondefense contract or from any small business concern.

(b) Completed Disclosure Statements are required in the following circumstances:

(1) Any business unit that is selected to receive a CAS-covered negotiated national defense contract or subcontract of $10 million or more shall submit a Disclosure Statement before award.

(2) Any company which, together with its segments, received net awards of negotiated national defense prime contracts and subcontracts subject to CAS totaling more than $10 million in its most recent cost accounting period must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the contractor is not required to file until the end of 90 days.

(c) When a Disclosure Statement is required, a separate Disclosure Statement must be submitted for each segment whose costs included in the total price of any CAS-covered contract or subcontract exceed $100,000, unless the contract or subcontract is of the type or value exempted by 30.301. If the cost accounting practices are identical for more than one segment, then only one Disclosure Statement, clearly identifying each such segment, need be submitted. A Disclosure Statement will also be required for each corporate or group office whose costs of any amount are allocated to one or more segments performing CAS-covered contracts.

(d) Each corporate or other home office that allocates costs to one or more disclosing segments performing CAS-covered contracts must submit a Part VII of the Disclosure Statement.

(e) Foreign contractors and subcontractors who are required to submit a Disclosure Statement may, in

lieu of filing a Form No. CASB-DS-1, make disclosure by using a disclosure form prescribed by an agency of its Government, provided that the CASB determines that the information disclosed by that means will satisfy the objectives of Pub. L. 91-379. The use of alternative forms have been approved for the contractors of the following countries:

(1) Canada.

(2) Federal Republic of Germany.

30.201-2 Impracticality of submission.

The agency head may determine that it is impractical to secure the Disclosure Statement, although submission is required, and authorize contract award without obtaining the Statement. This authority may not be delegated.

30.201-3 Amendments and revisions.

(a) Contractors and subcontractors are responsible for maintaining accurate Disclosure Statements and complying with disclosed practices. Amendments and revisions to Disclosure Statements may be submitted at any time and may be proposed by either the contractor or the Government. Resubmission of complete, updated Disclosure Statements is discouraged except when extensive changes require it to assist the review process.

(b) Should the obligation to maintain the Disclosure Statement cease because the contractor no longer meets the financial thresholds, the contractor shall still be required to follow the disclosed practices for those contracts awarded during a period in which the contractor was obligated to submit a Disclosure Statement.

30.201-4 Privileged and confidential information.

If the offeror or contractor notifies the contracting officer that the Disclosure Statement contains trade secrets and commercial or financial information, which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside the Government.

30.201-5 Filing Disclosure Statements.

(a) Disclosure must be on Form Number CASB-DS-1. Forms may be obtained from the cognizant administrative contracting officer (ACO).

(b) Offerors are required to file Disclosure Statements as follows:

(1) Original and one copy with the cognizant ACO.

(2) One copy with the cognizant contract auditor.

(c) Amendments and revisions shall be submitted to the currently cognizant ACO and auditor.

30.202 Reviews.

30.202-1 Responsibilities.

(a) The contracting officer is responsible for determining when a proposed contract may require CAS coverage and for including the appropriate notice in the solicitation. The contracting officer must then ensure that the offeror has made the required solicitation certifications and that required Disclosure Statements are submitted.

(b) The contracting officer shall not award a CAS-covered contract until the ACO has made a written determination that a required Disclosure Statement is adequate unless, in order to protect the Government's interest, the contracting officer waives the requirement for an adequacy determination before award. In this event, a determination of adequacy shall be required as soon as possible after the award.

(c) The cognizant auditor is responsible for conducting reviews of Disclosure Statements for adequacy and compliance.

(d) The cognizant ACO is responsible for determinations of adequacy and compliance of the Disclosure Statement.

30.202-2 Procedures.

(a) *Adequacy determination.* The contract auditor shall conduct an initial review of a Disclosure Statement to ascertain whether it is current, accurate, and complete and shall report the results to the cognizant ACO, who shall determine whether or not it adequately describes the offeror's cost accounting practices. If the ACO identifies any areas of inadequacy, the ACO shall request a revised Disclosure Statement. If the Disclosure Statement is adequate, the ACO shall notify the offeror in writing, with copies to the auditor and contracting officer. The notice of adequacy shall state that a disclosed practice shall not, by virtue of such disclosure, be considered an approved practice for pricing proposals or accumulating and reporting contract performance cost data. Generally, the ACO shall furnish the contractor notification of adequacy or inadequacy within 30 days after the Disclosure Statement has been received by the ACO.

(b) *Compliance determination.* After the notification of adequacy, the auditor shall conduct a detailed compliance review to determine whether or not the disclosed practices comply with Part 31 and the CAS and shall advise the ACO of the results. The ACO shall take action regarding noncompliance with CAS under FAR 30.402-2. The ACO may require a revised Disclosure Statement and adjustment of the prime contract price or cost allowance. Noncompliance with Part 31 shall be processed separately in accordance with normal administrative practices.

30.203 Subcontractor Disclosure Statements.

(a) The contractor or higher tier subcontractor is responsible for administering the CAS requirements contained in subcontracts.

(b) If the subcontractor has previously furnished a Disclosure Statement to an ACO, the subcontractor may satisfy the submission requirement by identifying to the contractor or higher tier subcontractor the ACO to whom it was submitted.

(c) (1) If the subcontractor considers the Disclosure Statement (or other similar information) privileged or confidential, the subcontractor may submit it directly to the ACO and auditor cognizant of the subcontractor, notifying the contractor or higher tier subcontractor. A preaward determination of adequacy is not required in such cases. Instead, the ACO cognizant of the subcontractor shall (i) notify the auditor that the adequacy review will be performed during the postaward compliance review and, upon completion, (ii) notify the subcontractor, the contractor or higher tier subcontractor, and the cognizant ACO's of the findings.

(2) Even though a Disclosure Statement is not required, a subcontractor may (i) claim that CAS-related reviews by contractors or higher tier subcontractors would reveal proprietary data or jeopardize the subcontractor's competitive position and (ii) request that the Government perform the required reviews.

(d) When the Government requires price adjustment or determinations of adequacy, inadequacy, or noncompliance, the ACO cognizant of the subcontractor shall make such recommendations to the ACO cognizant of the prime contractor or next higher tier subcontractor. These recommendations shall be the basis of negotiations and execution of a supplemental agreement between the subcontractor and the next higher tier subcontractor or prime contractor, as applicable. ACO's cognizant of higher tier subcontractors or prime contractors shall not reverse the determination of the ACO cognizant of the subcontractor.

(e) Postaward submission of the subcontractor's Disclosure Statement (see 30.201-2) must be approved by the ACO having cognizance of the prime contractor. Before authorizing

postaward submission, the ACO shall coordinate with the ACO cognizant of the subcontractor to ensure that this action will not have an adverse impact on other contracts and subcontracts subject to the CAS requirements and with the contracting officer to obtain the information needed to make the required written determination.

(f) Any determination that it is impractical to secure a subcontractor's Disclosure Statement must be made in accordance with 30.201-3.

SUBPART 30.3—CAS CONTRACT REQUIREMENTS

30.301 CAS applicability.

(a) This section describes the rules for determining whether a proposed contract or subcontract is exempt from CAS. Negotiated contracts not exempt in accordance with 30.301(b) shall be subject to CAS. A CAS-covered contract may be subject to either full or modified coverage. The rules for determining whether full or modified coverage applies are in 30.302.

(b) The following categories of contracts and subcontracts are exempt from all CAS requirements:

(1) Formally advertised contracts.

(2) Negotiated contracts and subcontracts not in excess of $100,000.

(3) Contracts and subcontracts with small businesses.

(4) Contracts and subcontracts with foreign governments or their agents or instrumentalities or, insofar as the requirements of CAS *other than* CAS 401 and 402 are concerned, any contract or subcontract awarded to a foreign concern.

(5) Contracts and subcontracts in which the price is set by law or regulation.

(6) Contracts and subcontracts when the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public (see 15.804-3(c)). A prospective contractor requesting exemption from CAS on this basis must provide supporting justification in accordance with 15.804-3(e). When the contracting officer determines that the justification is adequate, this exemption from CAS shall be used even though the award is made on the basis of adequate price competition.

(7) Contracts and subcontracts of $500,000 or less if the business unit is not currently performing any national defense CAS-covered contracts.

(8) Nondefense contracts awarded based on adequate price competition (see 15.804-3(c)).

(9) Nondefense contracts and subcontracts awarded to business units that are not currently performing any CAS-covered national defense contracts.

(10) Contracts and subcontracts with educational institutions other than those to be performed by federally funded research and development centers (FFRDC's) operated by such institutions.

(11) Contracts awarded to labor surplus area concerns pursuant to a labor surplus area set-aside (see Part 20).

(12) Contracts and subcontracts awarded to a United Kingdom contractor for performance substantially in the United Kingdom, provided that the contractor has filed with the United Kingdom Ministry of Defence, for retention by the Ministry, a completed Disclosure Statement (Form CASB-DB-1) which shall adequately describe its cost accounting practices. Whenever that contractor is already required to follow U.K. Government Accounting Conventions, the disclosed practices shall be in accord with the requirements of those conventions. (See 30.303-2(d)).

(13) Subcontracts under the NATO PHM Ship program to be performed outside the United States by a foreign concern.

(14) Contracts and subcontracts to be executed and performed entirely outside the United States, its territories, and possessions.

(15) Firm-fixed-price contracts and subcontracts awarded without submission of any cost data; *provided*, that the failure to submit such data is not attributable to a waiver of the requirement for certified cost or pricing data.

30.302 Types of CAS coverage.

(a) *Full coverage.* Full coverage requires that the business unit comply with all of the CAS in effect on the date of the contract award and with any CAS that become applicable because of later award of a national defense CAS-covered contract. However, the award of a new nondefense CAS-covered contract shall not trigger application of new CAS having effective dates later than the award date of the last national defense CAS-covered contract. Full coverage applies to contractor business units that—

(1) Receive a single national defense CAS-covered contract award of $10 million or more;

(2) Received $10 million or more in national defense CAS-covered contract awards during its preceding cost accounting period; or

(3) Received less than $10 million in national defense CAS-covered contract awards during its preceding cost accounting period but such awards were 10 percent or more of total sales.

(b) *Modified coverage.* (1) Modified CAS coverage requires only that the contractor comply with Standard 401, Consistency in Estimating, Accumulating, and Reporting Costs, and Standard 402, Consistency in Allocating Costs Incurred for the Same Purpose. Modified, rather than full, CAS coverage may be applied to a covered contract of less than $10 million awarded to a business unit that received less than $10 million in national defense CAS-covered contracts in the immediately preceding cost accounting period if the sum of such awards was less than 10 percent of the business unit's total sales during that period.

(2) If any one contract is awarded with modified CAS coverage, all CAS-covered contracts awarded to that business unit during that cost accounting period must also have modified coverage with the following exception: if the business unit receives a single national defense contract award of $10 million or more, that contract must be subject to full CAS coverage. Thereafter, any covered contract awarded in the same cost accounting period must also be subject to full CAS coverage.

(3) A contract awarded with modified CAS coverage shall remain subject to such coverage throughout its life regardless of changes in the business unit's CAS status during subsequent cost accounting periods.

(c) *Nondefense contracts.* Nondefense contracts subject to CAS shall have the same type of CAS coverage as the most recently awarded national defense contract currently being performed by the same business unit.

(d) *Subcontracts.* Subcontract awards subject to CAS require the same type of CAS coverage as would prime contracts awarded to the same business unit.

(e) *Foreign concerns.* Contracts with foreign concerns subject to CAS shall only be subject to modified coverage, but see 31.301(b)(2).

30.303 Solicitation provisions and contract clauses.

30.303-1 Solicitation provisions.

(a) *Cost Accounting Standards Notices and Certification (National Defense).* The contracting officer shall insert the provision at 52.230-1, Cost Accounting Standards Notices and Certification (National Defense), in solicitations for proposed national defense contracts subject to CAS as specified in 30.301. The provision allows offerors to—

(1) Certify their Disclosure Statement status;

(2) Claim exemption from CAS if they are not currently performing any CAS-covered contracts and the proposal will result in an award of $500,000 or less.

(3) Claim exemption from full CAS coverage and elect modified CAS coverage when appropriate; and

(4) Certify whether award of the contemplated contract would require a change to existing cost accounting practices.

(b) *Cost Accounting Standards Notices and Certification (Nondefense).* The contracting officer shall insert the provision at 52.230-2, Cost Accounting Standards Notices and Certification (Nondefense), in solicitations for proposed nondefense contracts that do not meet the criteria for CAS exemption in 30.301. The provision allows offerors to claim exemption from CAS if they are not currently performing any CAS-covered national defense contracts or to certify what type of CAS coverage applies to them.

30.303-2 Contract clauses.

(a) *Cost Accounting Accounting Standards.* (1) The contracting officer shall insert the clause at 52.230-3, Cost Accounting Standards, in negotiated contracts, unless the contract is exempted (see 30.301), the contract is subject to modified coverage (see 30.302), or the clause prescribed in paragraph (d) below is used.

(2) The clause at 52.230-3 requires the contractor to disclose actual cost accounting practices (applicable to national defense contracts only) and to follow these practices consistently.

(b) *Administration of Cost Accounting Standards.* (1) The contracting officer shall insert the clause at 52.230-4, Administration of Cost Accounting Standards, in contracts containing either the clause prescribed in paragraph (a) above, or the clause prescribed in paragraph (c) below.

(2) The clause at 52.230-3, Cost Accounting Standards, specifies rules for administering CAS requirements and procedures to be followed in cases of failure to comply.

(c) *Disclosure and Consistency of Cost Accounting Practices.* (1) The contracting officer shall insert the clause at 52.230-5, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over $100,000 but less that $10 million and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 30.302), unless the clause prescribed in paragraph (d) below is used.

(2) The clause at 52.230-5 requires the contractor to comply with CAS 401 and 402, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently disclosed and established cost accounting practices.

(d) *Consistency in Cost Accounting Practices.* The contracting officer shall insert the clause at 52.230-6, Consistency in Cost Accounting Practices, in negotiated defense contracts that are exempt from CAS requirements solely on the basis of the fact that the contract is to be awarded to a United Kingdom contractor and is to be performed substantially in the United Kingdom (see 30.301(b)(12)).

30.304 Waiver.

(a) In some instances, contractors or subcontractors may refuse to accept all or part of the requirements of the CAS clauses (52.230-3, Cost Accounting Standards, and 52.230-5, Disclosure and Consistency of Cost Accounting Standards). If the contracting officer determines that it is impractical to obtain the materials, supplies, or services from any other source, the contracting officer shall prepare a request for waiver describing the proposed contract or subcontract and containing—

(1) An unequivocal statement that the proposed contractor or subcontractor refuses to accept a contract containing all or a specified part of a CAS clause and the specific reason for that refusal;

(2) A statement as to whether the proposed contractor or subcontractor has accepted any prime contract or subcontract containing a CAS clause;

(3) The amount of the proposed award and the sum of all awards by the agency requesting the waiver to the proposed contractor or subcontractor in each of the preceding three years;

(4) A statement that no other source is available to satisfy the agency's needs on a timely basis;

(5) A statement of alternative methods considered for fulfilling the need and the agency's reasons for rejecting them;

(6) A statement of steps being taken by the agency to establish other sources of supply for future contracts for the products or services for which a waiver is being requested; and

(7) Any other information that may be useful in evaluating the request.

(b) (1) For national defense contracts, 4 CFR 331.30(c) provides that only the CASB has authority to waive all or any part of the CAS clauses. For these contracts, the request for waiver shall be forwarded through channels for review to the Deputy Under Secretary of Defense, Research and Engineering (Acquisition Policy) or, outside the Department of Defense, the official in the equivalent position. This review authority shall not be delegated except as provided in subparagraph (2) below.

(2) For purchases of substantially the same product or service from the same contractor for which a waiver was previously granted by the CASB, review authority may be delegated by the Secretary of Defense to the Secretaries of the Military Departments and the Director, Defense Logistics Agency, and by the heads of other agencies to officials in equivalent positions.

(c) For nondefense contracts, the agency head or designee may waive CASB requirements. Agencies shall ensure consistent treatment of—

(1) Waivers within the agency; and

(2) Contractors performing under both defense and nondefense contracts.

SUBPART 30.4—CAS ADMINISTRATION

30.401 Responsibility.

(a) The cognizant ACO shall perform CAS administration for all contracts in a business unit notwithstanding retention of other administration functions by the contracting officer.

(b) Within 30 days of the award of any new contract or subcontract subject to CAS, the contracting officer, contractor, or subcontractor making the award shall request the cognizant ACO to perform administration for CAS matters (see Subpart 42.2).

30.402 Changes to disclosed or established cost accounting practices.

Adjustments to contracts for CAS noncompliance, new standards, or voluntary changes are required only if the amounts involved are material. The ACO has the right to forgo action to adjust contracts if the amount involved is not considered material; however, in the case of noncompliance issues, the ACO shall inform the contractor that (a) the Government reserves the right and is required to make appropriate contract adjustments if, in the future, the ACO determines that the cost impact has become material and (b) the contractor is not excused from the obligation to comply with the applicable Standard or rules and regulations involved. In determining materiality, the ACO shall use the criteria in 4 CFR 331.71(a).

30.402-1 Equitable adjustment for new standards.

(a) The clause at 52.230-1, Cost Accounting Standards Notices and Certification (National Defense), requires offerors to state whether or not the award of the contemplated contract

would require a change to established cost accounting practices affecting existing contracts and subcontracts. The contracting officer shall ensure that the contractor's response to the notice is made known to the cognizant ACO.

(b) Contracts and subcontracts containing the clause at 52.230-3, Cost Accounting Standards, may require equitable adjustments to comply with new CAS. Such adjustments are limited to contracts and subcontracts awarded before the effective date of each new standard. A new standard becomes applicable prospectively to these contracts and subcontracts when a new national defense contract or subcontract containing the clause at 52.230-3, Cost Accounting Standards, is awarded on or after the effective date of the new standard.

(c) Contracting officers shall encourage contractors to submit to the cognizant ACO any change in accounting practice in anticipation of complying with a new standard as soon as practical after the new standard has been finally promulgated by the CASB.

(d) Upon receipt of information from the contractor indicating that an accounting change is required to comply with a new standard, the cognizant ACO shall review the proposed change concurrently for adequacy and compliance. If the review indicates that the change is both adequate and in compliance (see 30.202-2), the contractor shall be notified and requested to submit a cost impact proposal in sufficient detail to determine the impact on each CAS-covered contract and subcontract. The proposal shall identify each additional standard and all contracts and subcontracts containing the CAS clause and having an award date before the effective date of that standard. The proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each affected contract and subcontract containing the clause at 52.230-3, Cost Accounting Standards, and shall be in the form and manner specified by the cognizant contracting officer.

(e) The cognizant ACO shall promptly analyze the proposal with the assistance of the auditor, determine the impact, and negotiate the contract price adjustments on behalf of all Government agencies. The ACO shall invite contracting offices to participate in negotiations of adjustments when the price of any of their contracts may be increased or decreased by $10,000 or more. At the conclusion of negotiations, the ACO shall—

(1) Execute supplemental agreements to contracts of the ACO's own agency (and, if additional funds are required, request them from the appropriate contracting officer);

(2) Prepare a negotiation memorandum and send copies to cognizant auditors and contracting officers of other agencies having prime contracts affected by the negotiation (those agencies shall execute supplemental agreements in the amounts negotiated); and

(3) Furnish copies of the memorandum indicating the effect on costs to the ACO of the next higher tier subcontractor or prime contractor, as appropriate, if a subcontract is to be adjusted. This memorandum shall be the basis for negotiation between the subcontractor and the next higher tier subcontractor or prime contractor and for execution of a supplemental agreement to the subcontract.

(f) If the contractor does not submit a proposal in the form and time specified (see paragraph 4(b) of the clause at 52.230-4, Administration of Cost Accounting Standards) or if the parties fail to agree concerning the cost impact, the cognizant ACO, with the assistance of the auditor, shall estimate the cost impact on contracts and subcontracts containing the clause at 52.230-3, Cost Accounting Standards. The ACO shall request the contractor to agree to the cost or price adjustment. The ACO may withhold an amount not to exceed 10 percent of each subsequent payment request related to the contractor's CAS-covered prime contracts, which contain the appropriate withholding provisions, until the proposal has been furnished by the contractor. The contractor shall also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, action may be taken in accordance with the clause at 52.233-1, Disputes. If the ACO issues a unilateral determination under the Disputes clause, the ACO shall consider appropriate action to protect the Government's interests under Subpart 32.6.

30.402-2 Noncompliance with CAS requirements.

(a) Within 15 days of the receipt of a report of alleged noncompliance from the auditor, the cognizant ACO shall make an initial finding of compliance or noncompliance and advise the auditor.

(b) If an initial finding of noncompliance is made, the ACO shall immediately notify the contractor in writing of the exact nature of the noncompliance and allow 30 days within which to agree or to submit reasons why the existing practices are considered to be in compliance.

(c) If the contractor agrees with the initial finding of noncompliance—

(1) The contractor shall be required to correct the noncompliance and submit a complete description of any accounting change and the general dollar magnitude of the change on all CAS-covered contracts and subcontracts;

(2) The cognizant ACO shall review the accounting change for adequacy and compliance concurrently (if the change is both adequate and in compliance, the ACO shall notify the contractor and request a cost impact proposal);

(3) The cost impact proposal must identify all contracts and subcontracts containing the clause at 52.230-3, Cost Accounting Standards, or the clause at 52.230-5, Disclosure and Consistency of Cost Accounting Practices, and shall be in sufficient detail to permit evaluation and negotiation of the cost impact on each separate CAS-covered contract and subcontract from the date of failure to comply until the noncompliance is corrected; and

(4) The ACO shall then follow the procedures in 30.402-1(e).

(d) If the contractor disagrees with the initial noncompliance finding, the cognizant ACO shall review the reasons why the contractor considers the existing practices to be in compliance and make a determination of compliance or noncompliance.

(1) If the ACO makes a determination of compliance, the ACO shall notify the contractor and send a copy to the auditor.

(2) If the ACO makes a determination of noncompliance, or if the contractor fails to furnish the cost impact proposal, the ACO, with the assistance of the auditor, shall determine the cost impact of the noncompliance on contracts and subcontracts containing CAS clauses. The ACO may withhold an amount not to exceed 10 percent of each subsequent payment request related to the contractor's CAS-covered prime contracts, which contain the appropriate provisions, until the proposal has been furnished by the contractor.

(3) If the ACO determines that the noncompliance results in material increased costs to the Government, the ACO shall notify the contractor and request agreement as to the cost or price adjustment, together with any applicable interest. The contractor shall also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, action may be taken in accordance with the clause at 52.233-1, Disputes. If the ACO issues a unilateral determination under the Disputes clause, the ACO shall consider appropriate action to

protect the Government's interests under Subpart 32.6.

(4) If the ACO's estimate indicates there is no material increase in costs as a result of the noncompliance and the contractor refuses to take corrective action, the ACO shall notify the contractor in writing that the contractor is in noncompliance, that corrective action should be taken, and that if such noncompliance subsequently results in materially increased costs to the Government, the provisions of the clause at 52.230-3, Cost Accounting Standards, and/or the clause at 52.230-5, Disclosure and Consistency of Cost Accounting Practices, will be enforced.

30.402-3 Voluntary changes.

(a) The contract price may be adjusted for voluntary changes to a contractor's Disclosure Statement or cost accounting practices. The contractor must first notify the cognizant ACO by submission, not less than 60 days (or such other date as may be mutually agreed to) before proposed implementation, of a description of the accounting change and the general dollar magnitude of the change (including the sum of all increases and the sum of all decreases) for all CAS-covered contracts and subcontracts.

(b) The cognizant ACO shall review the accounting change concurrently for adequacy and compliance (see 30.202-2). If the change meets both tests, the ACO shall so notify the contractor and request that the contractor submit a cost impact proposal identifying all contracts and subcontracts containing the clause at 52.230-3, Cost Accounting Standards, and the clause at 52.230-5, Disclosure and Consistency of Cost Accounting Practices. The cost impact proposal shall be in sufficient detail to allow evaluation and negotiation of the cost impact upon each affected CAS-covered contract and subcontract.

(c) With the assistance of the auditor, the ACO shall promptly analyze the cost impact proposal to determine whether or not the proposed change will result in increased costs being paid by the Government. The ACO shall consider all of the contractor's affected CAS-covered contracts and subcontracts, but any cost changes to higher-tier subcontracts or contracts of other contractors over and above the cost of the subcontract adjustment shall not be considered. Increased costs resulting from a voluntary change may be allowed only if the ACO determines that the change is desirable and not detrimental to the Government. The ACO shall then follow the procedures in 30.402-1(e).

(d) If the contractor fails to submit a cost impact proposal in the form and time specified or if the parties fail to agree concerning the cost impact, the cognizant ACO, with the assistance of the auditor, shall estimate the cost impact on contracts and subcontracts containing a CAS clause and shall then request the contractor to agree to the cost or price adjustment. The ACO may withhold an amount not to exceed 10 percent of each subsequent payment request related to the contractor's CAS-covered prime contracts, which contain the appropriate withholding provisions, until the proposal has been furnished by the contractor. The contractor shall also be advised that, in the event no agreement on the cost or price adjustment is reached within 20 days, action may be taken in accordance with the clause at 52.233-1, Disputes. If the ACO issues a unilateral determination under the Disputes clause, the ACO shall consider appropriate action to protect the Government's interests under Subpart 32.6.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

Sec.

SUBPART 31.4—[RESERVED]

SUBPART 31.5—[RESERVED]

SUBPART 31.6—CONTRACTS WITH STATE, LOCAL, AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS

31.601 Purpose.
31.602 General.
31.603 Requirements.

SUBPART 31.7—CONTRACTS WITH NONPROFIT ORGANIZATIONS

31.701 Purpose.
31.702 General.
31.703 Requirements.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

31.000 Scope of part.

This part contains cost principles and procedures for (a) the pricing of contracts, subcontracts, and modifications to contracts and subcontracts whenever cost analysis is performed (see 15.805-3) and (b) the determination, negotiation, or allowance of costs when required by a contract clause.

31.001 Definitions.

"Accrued benefit cost method" means an actuarial cost method under which units of benefit are assigned to each cost accounting period and are valued as they accrue; i.e., based on the services performed by each employee in the period involved. The measure of normal cost under this method for each cost accounting period is the present value of the units of benefit deemed to be credited to employees for service in that period. The measure of the actuarial liability at a plan's inception date is the present value of the units of benefit credited to employees for service prior to that date. (This method is also known as the unit credit cost method.)

"Accumulating costs" means collecting cost data in an organized manner, such as through a system of accounts.

"Actual cash value" means the cost of replacing damaged property with other property of like kind and quality in the physical condition of the property immediately before the damage.

"Actual costs," as used in this part (other than Subpart 31.6), means amounts determined on the basis of costs incurred, as distinguished from forecasted costs. Actual costs include standard costs properly adjusted for applicable variances.

"Actuarial assumption" means a prediction of future conditions affecting pension costs; e.g., mortality rate, employee turnover, compensation levels, pension fund earnings, and changes in values of pension funds assets.

"Actuarial cost method" means a technique which uses actuarial assumptions to measure the present value of future pension benefits and pension fund administrative expenses, and which assigns the cost of such benefits and expenses to cost accounting periods.

"Actuarial gain and loss" means the effect on pension cost resulting from differences between actuarial assumptions and actual experience.

"Actuarial liability" means pension cost attributable, under the actuarial cost method in use, to years before the date of a particular actuarial valuation. As of such date, the actuarial liability represents the excess of the present value of the future benefits and administrative expenses over the present value of future contributions, for the normal cost for all plan participants and beneficiaries. The excess of the actuarial liability over the value of the assets of a pension plan is the unfunded actuarial liability.

"Actuarial valuation" means the determination, as of a specified date, of the normal cost, actuarial liability, value of the assets of a pension fund, and other relevant values for the pension plan.

"Allocate" means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

"Automatic data processing equipment (ADPE)," as used in this part means:

(a) Digital and analog computer components and systems, irrespective of type of use, size, capacity, or price;

(b) All peripheral, auxiliary, and accessorial equipment used in support of digital and/or analog computers, either cable connected, or "self standing," and whether selected or acquired with the computers or separately;

(c) Punched card machines (PCM) and systems used in conjunction with or independently of digital or analog computers; and

(d) Digital and analog terminal and conversion equipment that is acquired solely or primarily for use with a system which employs a computer or punched card machines.

"Business unit" means any segment of an organization, or an entire business organization which is not divided into segments.

"Compensated personal absence" means any absence from work for reasons such as illness, vacation, holidays, jury duty, military training, or personal activities for which an employer pays compensation directly to an employee in accordance with a plan or custom of the employer.

"Cost input" means the cost, except general and administrative (G&A) expenses, which for contract costing purposes is allocable to the production of goods and services during a cost accounting period.

"Cost objective," as used in this part (other than Subpart 31.6), means a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

"Cost of capital committed to facilities" means an imputed cost determined by applying a cost of money rate to facilities capital.

"Deferred compensation" means an award made by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of the receipt of compensation by the employee. This definition shall not include the amount of year end accruals for salaries, wages, or bonuses that are to be paid within a reasonable period of time after the end of a cost accounting period.

"Defined-benefit pension plan" means a pension plan in which the benefits to be paid, or the basis for determining such benefits, are established in advance and the contributions are intended to provide the stated benefits.

"Defined-contribution pension plan" means a pension plan in which the contributions to be made are established in advance and the benefits are determined thereby.

"Directly associated cost" means any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the other cost not been incurred.

"Estimating costs" means the process of forecasting a future result in terms of cost, based upon information available at the time.

"Expressly unallowable cost" means a particular item or type of cost which, under the express provisions of an applicable law, regulation, or contract, is specifically named and stated to be unallowable.

"Facilities capital" means the net book value of tangible capital assets and of those intangible capital assets that are subject to amortization.

"Final cost objective," as used in this part (other than Subparts 31.3 and 31.6), means a cost objective that has allocated to it both direct and indirect

costs and, in the contractor's accumulation system, is one of the final accumulation points.

"Fiscal year" as used in this part, means the accounting period for which annual financial statements are regularly prepared, generally a period of 12 months, 52 weeks, or 53 weeks.

"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.

"Home office" means an office responsible for directing or managing two or more, but not necessarily all, segments of an organization. It typically establishes policy for, and provides guidance to, the segments in their operations. It usually performs management, supervisory, or administrative functions, and may also perform service functions in support of the operations of the various segments. An organization which has intermediate levels, such as groups, may have several home offices which report to a common home office. An intermediate organization may be both a segment and a home office.

"Immediate-gain actuarial cost method" means any of the several actuarial cost methods under which actuarial gains and losses are included as part of the unfunded actuarial liability of the pension plan, rather than as part of the normal cost of the plan.

"Independent research and development (IR&D) cost" means the cost of effort which is neither sponsored by a grant, nor required in performing a contract, and which falls within any of the following four areas: (a) basic research, (b) applied research, (c) development, and (d) systems and other concept formulation studies.

"Indirect cost pools," as used in this part (other than Subparts 31.3 and 31.6), means groupings of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

"Insurance administration expenses" means the contractor's costs of administering an insurance program; e.g., the costs of operating an insurance or risk-management department, processing claims, actuarial fees, and service fees paid to insurance companies, trustees, or technical consultants.

"Intangible capital asset" means an asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefits it yields.

"Labor cost at standard" means a preestablished measure of the labor element of cost, computed by multiplying labor-rate standard by labor-time standard.

"Labor-rate standard" means a preestablished measure, expressed in monetary terms, of the price of labor.

"Labor-time standard" means a preestablished measure, expressed in temporal terms, of the quantity of labor.

"Material cost at standard" means a preestablished measure of the material elements of cost, computed by multiplying material-price standard by material-quantity standard.

"Material-price standard" means a preestablished measure, expressed in monetary terms, of the price of material.

"Material-quantity standard" means a preestablished measure, expressed in physical terms, of the quantity of material.

"Moving average cost" means an inventory costing method under which an average unit cost is computed after each acquisition by adding the cost of the newly acquired units to the cost of the units of inventory on hand and dividing this figure by the new total number of units.

"Normal cost" means the annual cost attributable, under the actuarial cost method in use, to years subsequent to a particular valuation date.

"Original complement of low cost equipment" means a group of items acquired for the initial outfitting of a tangible capital asset or an operational unit, or a new addition to either. The items in the group individually cost less than the minimum amount established by the contractor for capitalization for the classes of assets acquired but in the aggregate they represent a material investment. The group, as a complement, is expected to be held for continued service beyond the current period. Initial outfitting of the unit is completed when the unit is ready and available for normal operations.

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

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

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

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

"Profit center," as used in this part (other than Subparts 31.3 and 31.6), means the smallest organizationally independent segment of a company charged by management with profit and loss responsibilities.

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

"Projected benefit cost method" means any of the several actuarial cost methods which distribute the estimated total cost of all the employees' prospective benefits over a period of years, usually their working careers.

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

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

"Segment" means one of two or more divisons, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service. The term includes Government-owned contractor-operated (GOCO) facilities, and joint ventures and

subsidiaries (domestic and foreign) in which the organization has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the organization has less than a majority of ownership, but over which it exercises control.

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

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

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

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

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

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

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

"Unallowable cost" means any cost which, 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.

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

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

SUBPART 31.1—APPLICABILITY

31.100 Scope of subpart.

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

31.101 Objectives.

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

31.102 Fixed-price contracts.

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

31.103 Contracts with commercial organizations.

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

(a) The cost principles and procedures in Subpart 31.2 and agency supplements shall be used in pricing negotiated supply, service, experimental, developmental, and research contracts and contract modifications with commercial organizations whenever cost analysis is performed as required by 15.805-3.

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

(1) Determining reimbursable costs under (i) cost-reimbursement contracts and cost-reimbursement subcontracts under these contracts performed by commercial organizations and (ii) the cost-reimbursement portion of time-and-materials contracts except when material is priced on a basis other than at cost (see 16.601(b)(3));

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

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

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

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

(6) Pricing changes and other contract modifications.

31.104 Contracts with educational institutions.

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

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

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

(2) Negotiating indirect cost rates; and

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

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

31.105 Construction and architect-engineer contracts.

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

(b) Except as otherwise provided in (d) below, the cost principles and procedures in Subpart 31.2 shall be used in the pricing of contracts and contract modifications in this category if cost analysis is performed as required by 15.805-3.

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

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

(2) Negotiating indirect cost rates;

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

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

(5) Pricing changes and other contract modifications.

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

(1) Because of widely varying factors such as the nature, size, duration, and location of the construction project, advance agreements as set forth in 31.109, for such items as home office overhead, partners' compensation, employment of consultants, and equipment usage costs, are particularly important in construction and architect-engineer contracts. When appropriate they serve to express the parties' understanding and avoid possible subsequent disputes or disallowances.

(2) "Construction equipment," as used in this section, means equipment (including marine equipment) in sound workable condition, either owned or controlled by the contractor or the subcontractor at any tier, or obtained from a commercial rental source, and furnished for use under Government contracts.

(i) Allowable ownership and operating costs shall be determined as follows:

(A) Actual cost data shall be used when such data can be determined for both ownership and operating costs for each piece of equipment, or groups of similar serial or series equipment, from the contractor's accounting records. When such costs cannot be so determined, the contracting agency may specify the use of a schedule of predetermined rates to determine ownership and operating costs of construction equipment (see subdivision (B) and (C) below).

(B) Predetermined schedules of construction equipment use rates (e.g., the Construction Equipment Ownership and Operating Expense Schedule, published by the U.S. Army Corps of Engineers) provide average ownership and operating rates for construction equipment. The allowance for ownership costs should include the cost of depreciation and may include facilities capital cost of money. The allowance for operating costs may include costs for such items as fuel, filters, oil, and grease; servicing, repairs, and maintenance; and tire wear and repair. Costs of labor, mobilization, demobilization, overhead, and profit are generally not reflected in schedules, and separate consideration may be necessary.

(C) When a schedule of predetermined use rates for construction equipment is used to determine direct costs, all costs of equipment that are included in the cost allowances provided by the schedule shall be identified and eliminated from the contractor's other direct and indirect costs charged to the contract. If the contractor's accounting system provides for site or home office overhead allocations, all costs which are included in the equipment allowances may need to be included in any cost input base before computing the contractor's overhead rate. In periods of suspension of work pursuant to a contract clause, the allowance for equipment ownership shall not exceed an amount for standby cost as determined by the schedule or contract provision.

(ii) Reasonable costs of renting construction equipment are allowable (but see paragraph (C) below).

(A) Costs, such as maintenance and minor or running repairs incident to operating such rented equipment, that are not included in the rental rate are allowable.

(B) Costs incident to major repair and overhaul of rental equipment are unallowable.

(C) The allowability of charges for construction equipment rented from any division, subsidiary, or organization under common control, will be determined in accordance with 31.205-36(b)(3).

(3) Costs incurred at the job site incident to performing the work, such as the cost of superintendence, timekeeping and clerical work, engineering, utility costs, supplies, material handling, restoration and cleanup, etc., are allowable as direct or indirect costs, provided the accounting practice used is in accordance with the contractor's established and consistently followed cost accounting practices for all work.

(4) Rental and any other costs, less any applicable credits incurred in acquiring the temporary use of land, structures, and facilities are allowable. Costs, less any applicable credits, incurred in constructing or fabricating structures and facilities of a temporary nature are allowable.

31.106 Facilities contracts.

31.106-1 Applicable cost principles.

The cost principles and procedures applicable to the evaluation and determination of costs under facilities contracts (as defined in 45.301), and subcontracts thereunder, will be governed by the type of entity to which a facilities contract is awarded. Except as otherwise provided in 31.106-2 below, Subpart 31.2 applies to facilities contracts awarded to commercial organizations; Subpart 31.3 applies to facilities contracts awarded to educational institutions; and 31.105 applies to facilities contracts awarded to construction contractors. Whichever cost principles are appropriate will be used in the pricing of facilities contracts and contract modifications if cost analysis is performed as required by 15.805-3. In addition, the contracting officer shall incorporate the cost principles and procedures appropriate in the circumstances (e.g., Subpart 31.2; Subpart 31.3; or 31.105) by reference in facilities contracts as the basis for—

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

(b) Negotiating indirect cost rates; and

(c) Determining costs of terminated contracts when the contractor elects to "voucher out" costs (see Subpart 49.3), and for settlement by determination (see 49.109-7).

31.106-2 Exceptions to general rules on allowability and allocability.

(a) A contractor's established accounting system and procedures are normally directed to the equitable

allocation of costs to the types of products which the contractor produces or services rendered in the course of normal operating activities. The acquisition of, or work on, facilities for the Government normally does not involve the manufacturing processes, plant departmental operations, cost patterns of work, administrative and managerial control, or clerical effort usual to production of the contractor's normal products or services.

(b) Advance agreements (see 31.109) should be made between the contractor and the contracting officer as to indirect cost items to be applied to the facilities acquisition. A contractor's normal accounting practice for allocating indirect costs to the acquisition of contractor facilities may range from charging all these costs to this acquisition to not charging any. When necessary to produce an equitable result, the contractor's usual method of allocating indirect cost shall be varied, and appropriate adjustment shall be made to the pools of indirect cost and the bases of their distribution.

(c) The purchase of completed facilities (or services in connection with the facilities) from outside sources does not involve the contractor's direct labor or indirect plant maintenance personnel. Accordingly, indirect manufacturing and plant overhead costs, which are primarily incurred or generated by reason of direct labor or maintenance labor operations, are not allocable to the acquisition of such facilities.

(d) Contracts providing for the installation of new facilities or the rehabilitation of existing facilities may involve the use of the contractor's plant maintenance labor, as distinguished from direct labor engaged in the production of the company's normal products. In such instances, only those types of indirect manufacturing and plant operating costs that are related to or incurred by reason of the expenditures of the classes of labor used for the performance of the facilities work may be allocated to the facilities contract. Thus, a facilities contract which involves the use of plant maintenance labor only would not be subject to an allocation of such cost items as direct productive labor supervision, depreciation, and maintenance expense applicable to productive machinery and equipment, or raw material and finished goods storage costs.

(e) Where a facilities contract calls for the construction, production, or rehabilitation of equipment or other items that are involved in the regular course of the contractor's business by the use of the contractor's direct labor and manufacturing processes, the indirect costs normally allocated to all that work may be allocated to the facilities contract.

31.106-3 Contractor's commercial products.

If facilities constituting the contractor's usual commercial products (or only minor modifications thereof) are acquired by the Government under the contract, the Government shall not pay any amount in excess of the contractor's most favored customer price or the price of other suppliers for like quantities of the same or substantially the same items, whichever is lower.

31.107 Contracts with State and local governments.

(a) Subpart 31.6 provides principles and standards for determining costs applicable to contracts with State and local governments. They provide the basis for a uniform approach to the problem of determining costs and to promote efficiency and better relationships between State and local and Federal Government entities. They apply to all programs that involve contracts with State and local governments, except contracts with—

(1) Publicly financed educational institutions subject to Subpart 31.3; or

(2) Publicly owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Government agencies.

(b) The Office of Management and Budget will approve any other exceptions in particular cases when adequate justification is presented.

31.108 Contracts with nonprofit organizations.

Subpart 31.7 provides principles and standards for determining costs applicable to contracts with nonprofit organizations other than educational institutions, State and local governments, and those nonprofit organizations exempted under OMB Circular No. A-122.

31.109 Advance agreements.

(a) The extent of allowability of the costs covered in this part applies broadly to many accounting systems in varying contract situations. Thus, the reasonableness and allocability of certain costs may be difficult to determine, particularly for firms or their divisions that may not be under effective competitive restraints. To avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, contracting officers and contractors should seek advance agreement on the treatment of special or unusual costs. However, an advance agreement is not an absolute requirement and the absence of an advance agreement on any cost will not, in itself, affect the reasonableness or allocability of that cost.

(b) Advance agreements may be negotiated either before or during a contract but should be negotiated before incurrence of the costs involved. The agreements must be in writing, executed by both contracting parties, and incorporated into applicable current and future contracts. An advance agreement shall contain a statement of its applicability and duration.

(c) The contracting officer is not authorized by this 31.109 to agree to a treatment of costs inconsistent with this part. For example, an advance agreement may not provide that, notwithstanding 31.205-20, interest is allowable.

(d) Advance agreements may be negotiated with a particular contractor for a single contract, a group of contracts, or all the contracts of a contracting office, an agency, or several agencies.

(e) The cognizant administrative contracting officer (ACO), or other contracting officer established in Part 42, shall negotiate advance agreements except that an advance agreement affecting only one contract, or class of contracts from a single contracting office, shall be negotiated by a contracting officer in the contracting office, or an ACO when delegated by the contracting officer. When the negotiation authority is delegated, the ACO shall coordinate the proposed agreement with the contracting officer before executing the advance agreement.

(f) Before negotiating an advance agreement, the Government negotiator shall—

(1) Determine if other contracting offices inside the agency or in other agencies have a significant unliquidated dollar balance in contracts with the same contractor;

(2) Inform any such office or agency of the matters under consideration for negotiation; and

(3) As appropriate, invite the office or agency and the cognizant audit agency to participate in prenegotiation discussions and/or in the subsequent negotiations.

(g) Upon completion of the negotiation, the sponsor shall prepare and distribute to other interested agencies and offices, including the audit agency, copies of the executed agreement and a memorandum providing the information specified in

15.808, Price negotiation memorandum, as applicable.

(h) Examples of costs for which advance agreements may be particularly important are—

(1) Compensation for personal services, including but not limited to allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost of living differential;

(2) Use charges for fully depreciated assets;

(3) Deferred maintenance costs;

(4) Precontract costs;

(5) Independent research and development and bid and proposal costs;

(6) Royalties and other costs for use of patents;

(7) Selling and distribution costs;

(8) Travel and relocation costs, as related to special or mass personnel movements;

(9) Costs of idle facilities and idle capacity;

(10) Costs of automatic data processing equipment;

(11) Severance pay to employees on support service contracts;

(12) Plant reconversion;

(13) Professional services (e.g., legal, accounting, and engineering);

(14) General and administrative costs (e.g., corporate, division, or branch allocations) attributable to the general management, supervision, and conduct of the contractor's business as a whole. These costs are particularly significant in construction, job-site, architect-engineer, facilities, and Government-owned contractor operated (GOCO) plant contracts (see 31.203(f)); and

(15) Costs of construction plant and equipment (see 31.105(d)).

SUBPART 31.2—CONTRACTS WITH COMMERCIAL ORGANIZATIONS

31.201 General.

31.201-1 Composition of total cost.

The total cost of a contract is the sum of the allowable direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits, plus any allocable cost of money pursuant to 31.205-10. In ascertaining what constitutes a cost, any generally accepted method of determining or estimating costs that is equitable and is consistently applied may be used, including standard costs properly adjusted for applicable variances. See 31.201-2(b) and (c) for Cost Accounting Standards (CAS) requirements.

31.201-2 Determining allowability.

(a) The factors to be considered in determining whether a cost is allowable include the following:

(1) Reasonableness.

(2) Allocability.

(3) Standards promulgated by the CAS Board, if applicable; otherwise, generally accepted accounting principles and practices appropriate to the particular circumstances.

(4) Terms of the contract.

(5) Any limitations set forth in this subpart.

(b) Certain cost principles in this subpart incorporate the measurement, assignment, and allocability rules of selected CAS and limit the allowability of costs to the amounts determined using the criteria in those selected standards. Only those CAS or portions of standards specifically made applicable by the cost principles in this subpart are mandatory unless the contract is CAS-covered (see Part 30). Business units that are not otherwise subject to these standards under a CAS clause are subject to the selected standards only for the purpose of determining allowability of costs on Government contracts. Including the selected standards in the cost principles does not subject the business unit to any other CAS rules and regulations. The applicability of the CAS rules and regulations is determined by the CAS clause, if any, in the contract and the requirements of the standards themselves.

(c) When contractor accounting practices are inconsistent with this Subpart 31.2, costs resulting from such inconsistent practices shall not be allowed in excess of the amount that would have resulted from using practices consistent with this subpart.

31.201-3 Determining reasonableness.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. Reasonableness of specific costs must be examined with particular care in connection with firms or their separate divisions that may not be subject to effective competitive restraints. What is reasonable depends upon a variety of considerations and circumstances involving both the nature and amount of the cost in question. In determining the reasonableness of a specific cost, the contracting officer shall consider—

(a) Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance;

(b) The restraints or requirements imposed by such factors as generally accepted sound business practices, arm's-length bargaining, Federal and State laws and regulations, and contract terms and specifications;

(c) The action that a prudent business person, considering responsibilities to the owners of the business, employees, customers, the Government, and the public at large, would take under the circumstances; and

(d) Any significant deviations from the established practices of the contractor that may unjustifiably increase the contract costs.

31.201-4 Determining allocability.

A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it—

(a) Is incurred specifically for the contract;

(b) Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or

(c) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

31.201-5 Credits.

The applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost and received by or accruing to the contractor shall be credited to the Government either as a cost reduction or by cash refund.

31.201-6 Accounting for unallowable costs.

(a) Costs that are expressly unallowable or mutually agreed to be unallowable, including mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, or proposal applicable to a Government contract. A directly associated cost is any cost which is generated solely as a result of incurring another cost, and which would not have been incurred had the other cost not been incurred. When an unallowable cost is incurred, its directly associated costs are also unallowable.

(b) Costs which specifically become designated as unallowable or as unallowable directly associated costs of unallowable costs as a result of a written decision furnished by a contracting officer shall be identified if included in or used in computing any billing, claim, or proposal applicable to a Government contract. This identification requirement applies also to any costs incurred for the same

purpose under like circumstances as the costs specifically identified as unallowable under either this paragraph or paragraph (a) above.

(c) The detail and depth of records required as backup support for proposals, billings, or claims shall be that which is adequate to establish and maintain visibility of identified unallowable costs, including directly associated costs. Unallowable costs involved in determining rates used for standard costs, or for indirect cost proposals or billing, need be identified only at the time rates are proposed, established, revised, or adjusted. These requirements may be satisfied by any form of cost identification which is adequate for purposes of contract cost determination and verification.

(d) If a directly associated cost is included in a cost pool which is allocated over a base that includes the unallowable cost with which it is associated, the directly associated cost shall remain in the cost pool. Since the unallowable costs will attract their allocable share of costs from the cost pool, no further action is required to assure disallowance of the directly associated costs. In all other cases, the directly associated costs, if material in amount, must be purged from the cost pool as unallowable costs.

(e) (1) In determining the materiality of a directly associated cost, consideraton should be given to the significance of (i) the actual dollar amount, (ii) the cumulative effect of all directly associated costs in a cost pool, or (iii) the ultimate effect on the cost of Government contracts.

(2) Salary expenses of employees who participate in activities that generate unallowable costs shall be treated as directly associated costs to the extent of the time spent on the proscribed activity, provided the costs are material in accordance with subparagraph (e)(1) above (except when such salary expenses are, themselves, unallowable). The time spent in proscribed activities should be compared to total time spent on company activities to determine if the costs are material. Time spent by employees outside the normal working hours should not be considered except when it is evident that an employee engages so frequently in company activities during periods outside normal working hours as to indicate that such activities are a part of the employee's regular duties.

(3) When a selected item of cost under 31.205 provides that directly associated costs be unallowable, it is intended that such directly associated costs be unallowable only if determined to be material in amount in accordance with the criteria provided in subparagraphs (e)(1) and (e)(2) above, except in those situations where allowance of any of the directly associated costs involved would be considered to be contrary to public policy.

31.201-7 Construction and architect-engineer contracts.

Specific principles and procedures for evaluating and determining costs in connection with contracts and subcontracts for construction, and architect-engineer contracts related to construction projects, are in 31.105. The applicability of these principles and procedures is set forth in 31.000 and 31.100.

31.202 Direct costs.

(a) A direct cost is any cost that can be identified specifically with a particular final cost objective. No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose in like circumstances have been included in any indirect cost pool to be allocated to that or any other final cost objective. Costs identified specifically with the contract are direct costs of the contract and are to be charged directly to the contract. All costs specifically identified with other final cost objectives of the contractor are direct costs of those cost objectives and are not to be charged to the contract directly or indirectly.

(b) For reasons of practicality, any direct cost of minor dollar amount may be treated as an indirect cost if the accounting treatment—

(1) Is consistently applied to all final cost objectives; and

(2) Produces substantially the same results as treating the cost as a direct cost.

31.203 Indirect costs.

(a) An indirect cost is any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or an intermediate cost objective. It is not subject to treatment as a direct cost. After direct costs have been determined and charged directly to the contract or other work, indirect costs are those remaining to be allocated to the several cost objectives. An indirect cost shall not be allocated to a final cost objective if other costs incurred for the same purpose in like circumstances have been included as a direct cost of that or any other final cost objective.

(b) Indirect costs shall be accumulated by logical cost groupings with due consideration of the reasons for incurring such costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the several cost objectives. Commonly, manufacturing overhead, selling expenses, and general and administrative (G&A) expenses are separately grouped. Similarly, the particular case may require subdivision of these groupings, e.g., building occupancy costs might be separable from those of personnel administration within the manufacturing overhead group. This necessitates selecting a distribution base common to all cost objectives to which the grouping is to be allocated. The base should be selected so as to permit allocation of the grouping on the basis of the benefits accruing to the several cost objectives. When substantially the same results can be achieved through less precise methods, the number and composition of cost groupings should be governed by practical considerations and should not unduly complicate the allocation.

(c) Once an appropriate base for distributing indirect costs has been accepted, it shall not be fragmented by removing individual elements. All items properly includable in an indirect cost base should bear a pro rata share of indirect costs irrespective of their acceptance as Government contract costs. For example, when a cost input base is used for the distribution of G&A costs, all items that would properly be part of the cost input base, whether allowable or unallowable, shall be included in the base and bear their pro rata share of G&A costs.

(d) The contractor's method of allocating indirect costs shall be in accordance with standards promulgated by the CAS Board, if applicable to the contract; otherwise, the method shall be in accordance with generally accepted accounting principles which are consistently applied. The method may require examination when—

(1) Substantial differences occur between the cost patterns of work under the contract and the contractor's other work;

(2) Significant changes occur in the nature of the business, the extent of subcontracting, fixed-asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances; or

(3) Indirect cost groupings developed for a contractor's primary location are applied to offsite locations. Separate cost groupings for costs allocable to offsite locations may be necessary to permit equitable distribution of costs on the basis of the benefits accruing to the several cost objectives.

(e) A base period for allocating indirect costs is the cost accounting period during which such costs are incurred and accumulated for distribution to work performed in that period. The criteria and guidance in CAS 406 for selecting the cost accounting periods to be used in allocating indirect costs are incorporated herein for application to contracts subject to full CAS coverage. For contracts subject to modified CAS coverage and for non-CAS-covered contracts, the base period for allocating indirect costs will normally be the contractor's fiscal year. But a shorter period may be appropriate (1) for contracts in which performance involves only a minor portion of the fiscal year or (2) when it is general practice in the industry to use a shorter period. When a contract is performed over an extended period, as many base periods shall be used as are required to represent the period of contract performance.

(f) Special care should be exercised in applying the principles of paragraphs (b), (c), and (d) above when Government-owned contractor-operated (GOCO) plants are involved. The distribution of corporate, division, or branch office G&A expenses to such plants operating with little or no dependence on corporate administrative activities may require more precise cost groupings, detailed accounts screening, and carefully developed distribution bases.

31.204 Application of principles and procedures.

(a) Costs shall be allowed to the extent they are reasonable, allocable, and determined to be allowable under 31.201, 31.202, 31.203, and 31.205. These criteria apply to all of the selected items that follow, even if particular guidance is provided for certain items for emphasis or clarity.

(b) Costs incurred as reimbursements or payments to a subcontractor under a cost-reimbursement, fixed-price incentive, or price redeterminable type subcontract of any tier above the first firm-fixed-price subcontract or fixed-price subcontract with economic price adjustment provisions are allowable to the extent that allowance is consistent with the appropriate subpart of this Part 31 applicable to the subcontract involved. Costs incurred as payments under firm-fixed-price subcontracts or fixed-price subcontracts with economic price adjustment provisions or modifications thereto, when cost analysis was performed under 15.805-3, shall be allowable only to the extent that the price was negotiated in accordance with 31.102.

(c) Section 31.205 does not cover every element of cost. Failure to include any item of cost does not imply that it is either allowable or unallowable. The determination of allowability shall be based on the principles and standards in this subpart and the treatment of similar or related selected items.

31.205 Selected costs.

31.205-1 Advertising costs.

(a) "Advertising costs" means the costs of advertising and directly associated costs, regardless of the medium employed, when the advertiser has control over the form and content of what will appear, the media in which it will appear, and when it will appear. Advertising media includes conventions, exhibits, free goods, samples, magazines, newspapers, trade papers, direct mail, dealer cards, window displays, outdoor advertising, and radio and television programs.

(b) The only advertising costs allowable are those that arise from requirements of Government contracts and that are for—

(1) Recruiting personnel required for performing contractual obligations, when considered in conjunction with all other recruitment costs (but see 31.205-34);

(2) Acquiring scarce items for contract performance; or

(3) Disposing of scrap or surplus materials acquired for contract performance.

Costs of this nature, if incurred for more than one defense contract or both defense work and other work of the contractor, are allowable to the extent that the principles in 31.201-3, 31.201-4, and 31.203 are observed.

(c) Advertising costs other than those specified in paragraph (b) above are unallowable. Unallowable advertising costs include those related to sales promotion which involve direct payment for using time or space to promote the sale of products, either directly by stimulating interest in a product or product line, or indirectly by disseminating messages calling favorable attention to the advertiser for purposes of enhancing the overall company image to sell the company's products.

31.205-2 Automatic data processing equipment leasing costs.

(a) This subsection applies to all contractor-leased automatic data processing equipment (ADPE), as defined in 31.001 (except as components of an end item to be delivered to the Government), acquired under operating leases, as defined in Statement of Financial Accounting Standard No. 13 (FAS-13), Accounting for Leases, issued by the Financial Accounting Standards Board. Compliance with 31.205-11(m) requires that ADPE acquired by means of capital leases, as defined in FAS-13, shall be treated as purchased assets; i.e., be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges or over the leased life as amortization charges as appropriate. Allowability of costs related to contractor-owned ADPE is governed by other requirements of this subpart.

(b) (1) If the contractor leases ADPE but cannot demonstrate, on the basis of facts existent at the time of the decision to lease or continue leasing and documented in accordance with paragraph (d) below, that leasing will result in less cost to the Government over the anticipated useful life (see paragraph (c) below), then rental costs are allowable only up to the amount that would be allowed had the contractor purchased the ADPE.

(2) The costs of leasing ADPE are allowable only to the extent that the contractor can annually demonstrate in accordance with paragraph (d) below (whether or not the term of lease is renewed or otherwise extended) that these costs meet the following criteria:

(i) The costs are reasonable and necessary for the conduct of the contractor's business in light of factors such as the contractor's requirements for ADPE, costs of comparable facilities, the various types of leases available, and the terms of the rental agreement.

(ii) The costs do not give rise to a material equity in the facilities (such as an option to renew or purchase at a bargain rental or price other than that normally given to industry at large) but represent charges only for the current use of the equipment, including incidental service costs such as maintenance, insurance, and applicable taxes.

(iii) The contracting officer's approval was obtained for the leasing arrangement (see subparagraph (d)(3) below) when the total cost of leasing—

(A) The ADPE is to be allocated to one or more Government contracts which require negotiating or determining costs, or

(B) ADPE in a single plant, division, or cost center exceeds $500,000 a year and 50 percent or more of the total leasing cost is to be allocated to one or more Government contracts which require negotiating or determining costs.

(3) Rental costs under a sale and leaseback arrangement are allowable only up to the amount that would have

been allowed had the contractor retained title to the ADPE.

(4) Allowable rental costs of ADPE leased from any division, subsidiary, or organization under a common control are limited to the cost of ownership (excluding interest or other costs unallowable under this Subpart 31.2 and including the cost of money (see 31.205-10)). When there is an established practice of leasing the same or similar equipment to unaffiliated lessees, rental costs shall be allowed in accordance with subparagraphs (b)(1) and (2) above, except that the purchase price and costs of ownership shall be determined under 31.205-26(e).

(c) (1) An estimate of the anticipated useful life of the ADPE may represent the application life (utility in a given function), technological life (utility before becoming obsolete in whole or in part), or physical life (utility before wearing out) depending upon the facts and circumstances and the particular facilities involved. Each case must be evaluated individually. In estimating anticipated useful life, the contractor may use the application life if it can be demonstrated that the ADPE has utility only in a given function and the duration of the function can be determined. Technological life may be used if the contractor can demonstrate that existing ADPE must be replaced because of—

(i) Specific program objectives or contract requirements that cannot be accomplished with the existing ADPE;

(ii) Cost reductions that will produce identifiable savings in production or overhead costs;

(iii) Increase in workload volume that cannot be accomplished efficiently by modifying or augmenting existing ADPE; or

(iv) Consistent pattern of capacity operation (2 ½-3 shifts) on existing ADPE.

(2) Technological advances will not justify replacing existing ADPE before the end of its physical life if it will be able to satisfy future requirements or demands.

(3) In estimating the least cost to the Government for useful life, the cumulative costs that would be allowed if the contractor owned the ADPE should be compared with cumulative costs that would be allowed under any of the various types of leasing arrangements available. For the purpose of this comparison, the costs of ADPE exclude interest or other unallowable costs pursuant to this Subpart 31.2; they include but are not limited to the costs of operation, maintenance, insurance, depreciation, facilities capital cost of money, rental, and the cost of machine services, as applicable.

(d) (1) Except as provided in subparagraph (3) below, the contractor's justification, under paragraph (b) above, of the leasing decisions shall consist of the following supporting data, prepared before acquisition:

(i) Analysis of use of existing ADPE.

(ii) Application of the criteria in paragraph (b) above.

(iii) Specific objectives or requirements, generally in the form of a data system study and specification.

(iv) Solicitation of proposals, based on the data system specification, from qualified sources.

(v) Proposals received in response to the solicitation and reasons for selecting the equipment chosen and for the decision to lease.

(2) Except as provided in subparagraph (3) below, the contractor's annual justification, under subparagraph (b)(2) above, of the decision to retain or change existing ADPE capability and the need to continue leasing shall consist of current data as specified in subdivisions (d)(1)(i) through (iii) above.

(3) If the contractor's prospective ADPE lease cost meets the threshold in 31.205-2(b)(2)(iii) above, the contractor shall furnish data supporting the initial decision to lease (see subparagraph (b)(1) above). If the total cost of leasing ADPE in a single plant, division, or cost center exceeds $500,000 per year and 50 percent or more of the total leasing cost is allocated to Government contracts which require negotiating or determining costs, the contractor shall furnish data supporting the annual justification for retaining or changing existing ADPE capability and the need to continue leasing shall also be furnished (see subparagraph (b)(2) above).

31.205-3 Bad debts.

Bad debts, including actual or estimated losses arising from uncollectible accounts receivable due from customers and other claims, and any directly associated costs such as collection costs, and legal costs are unallowable.

31.205-4 Bonding costs.

(a) Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the contractor. They arise also in instances where the contractor requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

(b) Costs of bonding required pursuant to the terms of the contract are allowable.

(c) Costs of bonding required by the contractor in the general conduct of its business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

31.205-5 Civil defense costs.

(a) Civil defense costs are those incurred in planning for, and protecting life and property against, the possible effects of enemy attack. Costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire fighting training and equipment, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the contractor's premises pursuant to suggestions or requirements of civil defense authorities are allowable when allocated to all work of the contractor.

(b) Costs of capital assets acquired for civil defense purposes are allowable through depreciation (see 31.205-11).

(c) Contributions to local civil defense funds and projects are unallowable.

31.205-6 Compensation for personal services.

(a) *General.* Compensation for personal services includes all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor during the period of contract performance (except as otherwise provided for severance pay costs in paragraph (g) below and for pension costs in paragraph (j) below). It includes, but is not limited to, salaries; wages; directors' and executive committee members' fees; bonuses (including stock bonuses); incentive awards; employee stock options, stock appreciation rights, and stock ownership plans; employee insurance; fringe benefits; contributions to pension, annuity, and management employee incentive compensation plans; and allowances for off-site pay, incentive pay, location allowances, hardship pay, severance pay, and cost of living differential. Compensation for personal services is allowable subject to the following general criteria and additional requirements contained in other parts of this cost principle:

(1) Compensation for personal services must be for work performed by the employee in the current year and must not represent a retroactive adjustment of prior years' salaries or wages (but see 31.205-6(g), (h), (j), (k), and (m) below).

(2) The compensation in total must be reasonable for the work performed; however, specific restrictions on individual compensation elements must be observed where they are prescribed.

(3) The compensation must be based upon and conform to the terms and conditions of the contractor's established compensation plan or practice followed so consistently as to imply, in effect, an agreement to make the payment.

(4) No presumption of allowability will exist where the contractor introduces major revisions of existing compensation plans or new plans and the contractor—

(i) Has not notified the cognizant ACO of the changes either before their implementation or within a reasonable period after their implementation, and

(ii) Has not provided the Government, either before implementation or within a reasonable period after it, an opportunity to review the allowability of the changes.

(5) Costs that are unallowable under other paragraphs of this Subpart 31.2 shall not be allowable under this subsection 31.205-6 solely on the basis that they constitute compensation for personal services. (See 31.205-34(c.))

(b) *Reasonableness.* Compensation for personal services will be considered reasonable if the total compensation conforms generally to compensation paid by other firms of the same size, in the same industry, or in the same geographic area for similar services or work performed. This does not preclude the Government from challenging the reasonableness of an individual element of compensation where costs are excessive in comparison with compensation paid by other firms of the same size, same industry, or in the same geographic area for similar services. In administering this principle, it is recognized that not every compensation case need be subjected in detail to the above tests. The tests need be applied only when a general review reveals amounts or types of compensation that appear unreasonable or unjustified. In questionable cases, the contractor has responsibility to support the reasonableness of the compensation in relation to the effort performed. Compensation costs under certain conditions give rise to the need for special consideration. Among such conditions are the following:

(1) Compensation to (i) owners of closely held corporations, partners, sole proprietors, or members of their immediate families, or (ii) persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise. Determination should be made that salaries are reasonable for the personal services rendered rather than being a distribution of profits. Compensation in lieu of salary for services rendered by partners and sole proprietors will be allowed to the extent that it is reasonable and does not constitute a distribution of profits. For closely held corporations, compensation costs covered by this subparagraph shall not be recognized in amounts exceeding those costs that are deductible as compensation under the Internal Revenue Code and regulations under it.

(2) Any change in a contractor's compensation policy that results in a substantial increase in the contractor's level of compensation, particularly when it was concurrent with an increase in the ratio of Government contracts to other business, or any change in the treatment of allowability of specific types of compensation due to changes in Government policy. No presumption of reasonableness will exist where major revisions of existing compensation plans or new plans are introduced by the contractor; and the contractor—

(i) Has not notified the cognizant ACO of the change either before their implementation or within a reasonable period after their implementation; and

(ii) Has not provided the Government, either before implementation or within a reasonable period after it, an opportunity to review the reasonableness of the changes.

(3) The contractor's business is such that its compensation levels are not subject to the restraints that normally occur in the conduct of competitive business.

(4) The contractor incurs costs for compensation in excess of the amounts which are deductible under the Internal Revenue Code and regulations issued under it.

(c) *Labor-management agreements.* Nothwithstanding any other requirements of this subsection 31.205-6, costs of compensation are not allowable to the extent that they result from provisions of labor-management agreements that, as applied to work in performing Government contracts, are determined to be unreasonable because they are either unwarranted by the character and circumstances of the work or discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (e.g., work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (e.g., work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in employee compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances. Disallowance of costs will not be made under this paragraph (c) unless—

(1) The contractor has been permitted an opportunity to justify the costs; and

(2) Due consideration has been given to whether unusual conditions pertain to Government contract work, imposing burdens, hardships, or hazards on the contractor's employees, for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel.

(d) *Salaries and wages.* Salaries and wages for current services include gross compensation paid to employees in the form of cash, stock (see subparagraph (f)(2) below regarding valuation), products, or services, and are allowable.

(e) *Domestic and foreign differential pay.* (1) When personal services are performed in a foreign country, compensation may also include a differential that may properly consider all expenses associated with foreign employment such as housing, cost of living adjustments, transportation, bonuses, additional Federal, State, local or foreign income taxes resulting from foreign assignment, and other related expenses.

(2) Although the additional taxes in subparagraph (1) above may be considered in establishing foreign overseas differential, any increased compensation calculated directly on the basis of an employee's specific increase in income taxes is unallowable. Differential allowances for additional Federal, State, or local income taxes resulting from domestic assignments are unallowable.

(f) *Bonuses and incentive compensation.* (1) Incentive compensation for management employees, cash bonuses, suggestion awards, safety awards, and incentive compensation based on production, cost reduction, or efficient performance are allowable provided the awards are paid or accrued under an agreement entered into in good faith between the contractor and the employees before the services are rendered or pursuant to an established plan or policy followed by the contractor so consistently as to imply, in effect, an agreement to make such payment and the basis for the award is supported.

(2) When the costs of bonuses and incentive compensation are paid in the stock of the contractor or of an affiliate, the following additional restrictions apply:

(i) Valuation placed on the stock shall be the fair market value on the measurement date (i.e., the first date the number of shares awarded is known) determined upon the most objective basis available; and

(ii) Accruals for the cost of stock before issuing the stock to the employees shall be subject to adjustment according to the possibilities that the employees will not receive the stock and that their interest in the accruals will be forfeited.

(3) When the bonus and incentive compensation payments are deferred, the costs are subject to the requirements of subparagraph (f)(1) above and of paragraph (k) below.

(g) *Severance pay.* (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages by contractors to workers whose employment is being involuntarily terminated. Payments for early retirement incentive plans are covered in subparagraph (j)(6) below.

(2) Severance pay to be allowable must meet the general allowability criteria in subdivision (g)(2)(i) below, and, depending upon whether the severance is normal or abnormal, criteria in subdivision (g)(2)(ii) for normal severance pay or subdivision (g)(2)(iii) for abnormal severance pay also apply.

(i) Severance pay is allowable only to the extent that, in each case, it is required by (A) law, (B) employer-employee agreement, (C) established policy that constitutes, in effect, an implied agreement on the contractor's part, or (D) circumstances of the particular employment. Payments made in the event of employment with a replacement contractor where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment, or continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor are not severance pay and are unallowable. Severance payments, or amounts paid in lieu thereof, are not allowable when paid to employees in addition to early or normal retirement payments.

(ii) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant, or where the contractor provides for accrual of pay for normal severances, that method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period and if amounts accrued are allocated to all work performed in the contractor's plant.

(iii) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis.

(h) *Backpay.* (1) *Backpay resulting from violations of Federal labor laws or the Civil Rights Act of 1964.* Backpay may result from a negotiated settlement, order, or court decree that resolves a violation of Federal labor laws or the Civil Rights Act of 1964. Such backpay falls into two categories: one requiring the contractor to pay employees additional compensation for work performed for which they were underpaid, and the other resulting from other violations, such as when the employee was improperly discharged, discriminated against, or other circumstances for which the backpay was not additional compensation for work performed. Backpay resulting from underpaid work is compensation for the work performed and is allowable. All other backpay resulting from violation of Federal labor laws or the Civil Rights Act of 1964 is unallowable.

(2) *Other backpay.* Backpay may also result from payments to union employees (union and non-union) for the difference in their past and current wage rates for working without a contract or labor agreement during labor management negotiations. Such backpay is allowable. Backpay to nonunion employees based upon results of union agreement negotiations is allowable only if (i) a formal agreement or understanding exists between management and the employees concerning these payments, or (ii) an established policy or practice exists and is followed by the contractor so consistently as to imply, in effect, an agreement to make such payment.

(i) *Stock options, stock appreciation rights, and phantom stock plans.* (1) The cost of stock options awarded to employees to purchase stock of the contractor or of an affiliate will be treated as deferred compensation and must comply with the requirements of paragraph (k) below and with the allowability criteria contained in subparagraph (i)(2) below. The allowable cost of stock appreciation rights, whether offered separately or combined with stock options, will be determined in the same manner as stock options.

(2) The allowable costs of stock options and stock appreciation rights will be limited to the difference between the option price or stock-appreciation-right price and the market price of the stock on the measurement date (i.e., the first date on which both the number of shares and the option or stock-appreciation-right price are known). Accordingly, when the option or stock-appreciation-right price is equal to or greater than the market price on the measurement date, then no costs are allowed for contract costing purposes.

(3) In phantom-stock-type plans, contractors assign or attribute contingent shares of stock to employees as if the employees own the stock, even though the employees neither purchase the stock nor receive title to it. Under these plans, an employee's account may be increased by the equivalent of dividends issued and any appreciation in the market price of the stock over the price of the stock on the measurement date (i.e., the first date the number of shares awarded is known). Such increases in employee accounts for dividend equivalents and market price appreciation are unallowable.

(j) *Pension costs.* (1) A pension plan is a deferred compensation plan that is established and maintained by one or more employers to provide systematically for paying benefits to plan participants after their retirement, provided that the benefits are paid for life or are payable for life at the option of the employee. Additional benefits such as permanent and total disability and death payments and survivorship payments to beneficiaries of deceased employees may be treated as pension costs, provided the benefits are an integral part of the pension plan and meet all the criteria pertaining to pension costs.

(2) Pension plans are normally segregated into two types of plans: defined benefit or defined contribution pension plans. The cost of all defined benefit pension plans shall be measured, allocated, and accounted for in compliance with the provisions of CAS 412, Composition and Measurement of Pension Costs, and CAS 413, Adjustment and Allocation of Pension Cost. The costs of all defined contribution pension plans shall be measured, allocated, and accounted for in accordance with the provisions of CAS 412. Pension costs are allowable subject to the referenced standards and the cost limitations and exclusions set

forth below in this subparagraph and in subparagraphs (j)(3), (4), (5), (6), and (7) below.

(i) To be allowable in the current year, pension costs must be funded by the time set for filing the Federal income tax return or any extension thereof. Pension costs assigned to the current year, but not funded by the tax return time, shall not be allowable in any subsequent year.

(ii) Pension payments must be reasonable in amount and be paid pursuant to (A) an agreement entered into in good faith between the contractor and employees before the work or services are performed and (B) the terms and conditions of the established plan. The cost of changes in pension plans which are discriminatory to the Government or are not intended to be applied consistently for all employees under similar circumstances in the future are not allowable.

(iii) Except as provided for early retirement benefits in subparagraph (j)(6) below, one-time-only pension supplements not available to all participants of the basic plan are not allowable as pension costs unless the supplemental benefits represent a separate pension plan and the benefits are payable for life at the option of the employee.

(iv) Increases in payments to previously retired plan participants covering cost-of-living adjustments are allowable if paid in accordance with a policy or practice consistently followed.

(3) *Defined benefit pension plans.* This subparagraph covers pension plans in which the benefits to be paid or the basis for determining such benefits are established in advance and the contributions are intended to provide the stated benefits. The cost limitations and exclusions pertaining to defined benefit plans are as follows:

(i) Normal costs of pension plans not funded in the year incurred, and all other components of pension costs (see CAS 412.40(a)(1)) assignable to the current accounting period but not funded during it, shall not be allowable in subsequent years (except that a payment made to a fund by the time set for filing the Federal income tax return or any extension thereof is considered to have been made during such taxable year). However, any part of a pension cost that is computed for a cost accounting period that is deferred pursuant to a waiver granted under the provisions of the Employee's Retirement Income Security Act of 1974 (ERISA) (see CAS 412.50(c)(3)), will be allowable in those future accounting periods in which the funding does occur. The allowability of these deferred contributions will be limited to the amounts that would have been allowed had the funding occurred in the year the costs would have been assigned except for the waiver.

(ii) Any amount paid or funded before the time it becomes assignable and allowable shall be applied to future years, in order of time, as if actually paid and deductible in those years. The interest earned on such premature funding, based on the valuation rate of return, may be excluded from future years' computations of pension costs in accordance with CAS 412.50(a)(7).

(iii) Increased pension costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable. If a composite rate is used for allocating pension costs between the segments of a company and if, because of differences in the timing of the funding by the segments, an inequity exists, allowable pension costs for each segment will be limited to that particular segment's calculation of pension costs as provided for in CAS 413.50(c)(5). Determination of unallowable costs shall be made in accordance with the actuarial method used in calculating pension costs.

(iv) Allowability of the cost of indemnifying the Pension Benefit Guaranty Corporation (PBGC) under ERISA Section 4062 or 4064 arising from terminating an employee deferred compensation plan will be considered on a case-by-case basis; provided that if insurance was required by the PBGC under ERISA Section 4023, it was so obtained and the indemnification payment is not recoverable under the insurance. Consideration under the foregoing circumstances will be primarily for the purpose of appraising the extent to which the indemnification payment is allocable to Government work. If a beneficial or other equitable relationship exists, the Government will participate, despite the requirements of 31.205-19(a)(3) and (b), in the indemnification payment to the extent of its fair share.

(4) *Defined contribution pension plans.* This subparagraph covers those pension plans in which the contributions to be made are established in advance and the level of benefits is determined by the contributions made. It also covers profit sharing, savings plans, and other such plans provided the plans fall within the definition of a pension plan in subparagraph (j)(1) above.

(i) The pension cost assignable to a cost accounting period is the net contribution required to be made for that period after taking into account dividends and other credits, where applicable. However, any portion of pension cost computed for a cost accounting period that is deferred pursuant to a waiver granted under the provisions of ERISA (see CAS 412.50(c)(3)) will be allowable in those future accounting periods when the funding does occur. The allowability of these deferred contributions will be limited to the amounts that would have been allowed had the funding been made in the year the costs would have been assigned except for the waiver.

(ii) Any amount paid or funded to the trust before the time it becomes assignable and allowable shall be applied to future years, in order of time, as if actually paid and deductible in such years.

(iii) The provisions of subdivision (j)(3)(iv) above concerning payments to PBGC apply to defined contribution plans.

(5) *Pension plans using pay-as-you-go methods.* A pension plan using pay-as-you-go methods is a plan in which the contractor recognizes pension cost only when benefits are paid to retired employees or their beneficiaries. Regardless of whether the payment of pension benefits contribution can or cannot be compelled, allowable costs for these types of plans shall not exceed an amount computed as follows:

(i) Compute, by using an actuarial cost method, the plan's actuarial liability for benefits earned by plan participants. This entire liability is always unfunded for a pay-as-you-go plan.

(ii) Compute a level amount which, including an interest equivalent, would amortize the unfunded actuarial liability over a period of no less than 10 or more than 40 years from the inception of the liability.

(iii) Compute, by using an actuarial cost method, a normal cost for the period.

(iv) The sum of (ii) and (iii) above represents the amount of pension costs assignable to the current period. This amount, however, is limited to the amount paid in the year.

(v) For purposes of determining contract cost where a pay-as-you-go plan is initiated as either a supplemental plan or an additional but separate plan to a basic funded plan, the plans will be treated as one plan; e.g., the actuarial cost method, past service amortization period, etc., of the basic plan will be used on the supplemental or additional pay-as-you-go plan in determining the proper costs assignable to the current period. Any costs in excess of those determined by using the actuarial cost method and assumptions of the basic plan are unallowable. However, where assumption for salary progressions,

mortality rates of the participants, and so forth are significantly different, the assumptions used for the basic and supplemental plan may be different.

(vi) The requirements of subdivisions (j)(3)(i) through (iv) above are also applicable to pay-as-you-go plans.

(6) *Early retirement incentive plans.* An early retirement incentive plan is a plan under which employees receive a bonus or incentive, over and above the requirement of the basic pension plan, to retire early. These plans normally are not applicable to all participants of the basic plan and do not represent life income settlements, and as such would not qualify as pension costs. However, for contract costing purposes, early retirement incentive payments are allowable subject to the pension cost criteria contained in subdivisions (j)(3)(i) through (iv) provided—

(i) The costs are accounted for and allocated in accordance with the contractor's system of accounting for pension costs (see subdivision (j)(5)(v) above for supplemental pension benefits);

(ii) The payments are made in accordance with the terms and conditions of the contractor's plan;

(iii) The plan is applied only to active employees. The cost of extending the plan to employees who retired or were terminated before the adoption of the plan is unallowable; and

(iv) The total of the incentive payments to any employee may not exceed the amount of the employee's annual salary for the previous fiscal year before the employee's retirement.

(7) *Employee stock ownership plans (ESOP)* (i) An ESOP is an individual stock bonus plan designed specifically to invest in the stock of the employer corporation. The contractor's contributions to an Employee Stock Ownership Trust (ESOT) may be in the form of cash, stock, or property. Costs of ESOP's are allowable subject to the following conditions:

(A) Contributions by the contractor in any one year may not exceed 15 percent (25 percent when a money purchase plan is included) of salaries and wages of employees participating in the plan in any particular year.

(B) The contribution rate (ratio of contribution to salaries and wages of participating employees) may not exceed the last approved contribution rate except when approved by the contracting officer based upon justification provided by the contractor. When no contribution was made in the previous year for an existing ESOP, or when a new ESOP is first established, and the contractor proposes to make a contribution in the current year, the contribution rate shall be subject to the contracting officer's approval.

(C) When a plan or agreement exists wherein the liability for the contribution can be compelled for a specific year, the expense associated with that liability is assignable only to that period. Any portion of the contribution not funded by the time set for filing of the Federal income tax return for that year or any extension thereof shall not be allowable in subsequent years.

(D) When a plan or agreement exists wherein the liability for the contribution cannot be compelled, the amount contributed for any year is assignable to that year provided the amount is funded by the time set for filing of the Federal income tax return for that year.

(E) When the contribution is in the form of stock, the value of the stock contribution shall be limited to the fair market value of the stock on the date that title is effectively transferred to the trust. Cash contributions shall be allowable only when the contractor furnishes evidence satisfactory to the contracting officer demonstrating that stock purchases by the ESOT are or will be at a fair market price; e.g., makes arrangements with the trust permitting the contracting officer to examine purchases of stock by the trust to determine that prices paid are at fair market value. When excessive prices are paid, the amount of the excess will be credited to the same indirect cost pools that were charged for the ESOP contributions in the year in which the stock purchase occurs. However, when the trust purchases the stock with borrowed funds which will be repaid over a period of years by cash contributions from the contractor to the trust, the excess price over fair market value shall be credited to the indirect cost pools pro rata over the period of years during which the contractor contributes the cash used by the trust to repay the loan. When the fair market value of unissued stock or stock of a closely held corporation is not readily determinable, the valuation will be made on a case-by-case basis taking into consideration the guidelines for valuation used by the IRS.

(ii) Amounts contributed to an ESOP arising from either (A) an additional investment tax credit (see 1975 Tax Reduction Act—TRASOP's); or (B) a payroll-based tax credit (see Economic Recovery Tax Act of 1981) are unallowable.

(iii) The requirements of subdivision (j)(3)(ii) above are applicable to Employee Stock Ownership Plans.

(k) *Deferred compensation.* (1) Deferred compensation is an award given by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of receipt of compensation by the employee. Deferred compensation does not include the amount of year-end accruals for salaries, wages, or bonuses that are paid within a reasonable period of time after the end of a cost accounting period. Subject to 31.205-6(a), deferred awards are allowable when they are based on current or future services. Awards made in periods subsequent to the period when the work being remunerated was performed are not allowable.

(2) The costs of deferred awards shall be measured, allocated, and accounted for in compliance with the provisions of CAS 415, Accounting for the Cost of Deferred Compensation.

(3) Deferred compensation payments to employees under awards made before the effective date of CAS 415 are allowable to the extent they would have been allowable under prior acquisition regulations.

(l) Reserved.

(m) *Fringe benefits.* Fringe benefits are allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries. The cost of fringe benefits, including, but not limited to, the cost of vacations, sick leave, holidays, military leave, employee insurance, and supplemental unemployment benefit plans, is allowable if reasonable. The costs of fringe benefits are allowable to the extent that they are required by law, employer-employee agreement, or as an established policy of the contractor.

31.205-7 Contingencies.

(a) "Contingency," as used in this subpart, means a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at the present time.

(b) Costs for contingencies are generally unallowable for historical costing purposes because such costing deals with costs incurred and recorded on the contractor's books. However, in some cases, as for example, terminations, a contingency factor may be recognized when it is applicable to a past period to give recognition to minor unsettled factors in the interest of expediting settlement.

(c) In connection with estimates of future costs, contingencies fall into two categories:

(1) Those that may arise from presently known and existing conditions, the effects of which are

foreseeable within reasonable limits of accuracy; e.g., anticipated costs of rejects and defective work. Contingencies of this category are to be included in the estimates of future costs so as to provide the best estimate of performance cost.

(2) Those that may arise from presently known or unknown conditions, the effect of which cannot be measured so precisely as to provide equitable results to the contractor and to the Government; e.g., results of pending litigation. Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately (including the basis upon which the contingency is computed) to facilitate the negotiation of appropriate contractual coverage. (See, for example, 31.205-6(g), 31.205-19, and 31.205-24.)

31.205-8 Contributions and donations.

Contributions and donations are unallowable.

31.205-9 Reserved.

31.205-10 Cost of money.

(a) *Facilities capital cost of money.*

(1) *General* (i) Facilities capital cost of money (cost of capital committed to facilities) is an imputed cost determined by applying a cost-of-money rate to facilities capital employed in contract performance. A cost-of-money rate is uniformly imputed to all contractors (see subdivision (ii) below). Capital employed is determined without regard to whether its source is equity or borrowed capital. The resulting cost of money is not a form of interest on borrowings (see 31.205-20).

(ii) CAS 414, Cost of Money as an Element of the Cost of Facilities Capital, establishes criteria for measuring and allocating, as an element of contract cost, the cost of capital committed to facilities. Cost-of-money factors are developed on Form CASB-CMF, broken down by overhead pool at the business unit, using (A) business-unit facilities capital data, (B) overhead allocation base data, and (C) the cost-of-money rate, which is based on interest rates specified by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2).

(2) *Allowability.* Whether or not the contract is otherwise subject to CAS, facilities capital cost of money is allowable if—

(i) The contractor's capital investment is measured, allocated to contracts, and costed in accordance with CAS 414;

(ii) The contractor maintains adequate records to demonstrate compliance with this standard; and

(iii) The estimated facilities capital cost of money is specifically identified or proposed in cost proposals relating to the contract under which this cost is to be claimed.

(3) *Accounting.* The facilities capital cost of money need not be entered on the contractor's books of account. However, the contractor shall (i) make a memorandum entry of the cost and (ii) maintain, in a manner that permits audit and verification, all relevant schedules, cost data, and other data necessary to support the entry fully.

(4) *Payment.* Facilities capital cost of money that is (i) allowable under subparagraph (2) above and (ii) calculated, allocated, and documented in accordance with this cost principle shall be an "incurred cost" for reimbursement purposes under applicable cost-reimbursement contracts and for progress payment purposes under fixed-price contracts.

(b) *Cost of money as an element of the cost of capital assets under construction.*

(1) *General* (i) Cost of money as an element of the cost of capital assets under construction is an imputed cost determined by applying a cost-of-money rate to the investment in tangible and intangible capital assets while they are being constructed, fabricated, or developed for a contractor's own use. Capital employed is determined without regard to whether its source is equity or borrowed capital. The resulting cost of money is not a form of interest on borrowing (see 31.205-20).

(ii) CAS 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction, establishes criteria for measuring and allocating, as an element of contract cost, the cost of capital committed to capital assets under construction, fabrication, or development.

(2) *Allowability* (i) Whether or not the contact is otherwise subject to CAS, and except as specified in subdivision (ii) below, the cost of money for capital assets under construction, fabrication, or development is allowable if—

(A) The cost of money is calculated, allocated to contracts, and costed in accordance with CAS 417;

(B) The contractor maintains adequate records to demonstrate compliance with this standard; and

(C) The cost of money for tangible capital assets if included in the capitalized cost that provides the basis for allowable depreciation costs, or, in the case of intangible capital assets, the cost of money is included in the cost of those assets for which amortization costs are allowable.

(ii) Actual interest cost in lieu of the calculated imputed cost of money for capital assets under construction, fabrication, or development is unallowable.

(3) *Accounting.* The cost of money for capital assets under construction need not be entered on the contractor's books of account. However, the contractor shall (i) make a memorandum entry of the cost and (ii) maintain, in a manner that permits audit and verification, all relevant schedules, cost data, and other data necessary to support the entry fully.

(4) *Payment.* The cost of money for capital assets under construction that is allowable under subparagraph (2) above of this cost principle shall be an "incurred cost" for reimbursement purposes under applicable cost-reimbursement contracts and for progress payment purposes under fixed-price contracts.

31.205-11 Depreciation.

(a) Depreciation is a charge to current operations which 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.

(b) Contractors having contracts subject to CAS 409, Depreciation of Tangible Capital Assets, must adhere to the requirement of that standard for all fully CAS-covered contracts and may elect to adopt the standard for all other contracts. All requirements of CAS 409 are applicable if the election is made, and its requirements supersede any conflicting requirements of this cost principle. Once electing to adopt CAS 409 for all contracts, contractors must continue to follow it until notification of final acceptance of all deliverable items on all open negotiated Government contracts. Paragraphs (c) through (e) below apply to contracts to which CAS 409 is not applied.

(c) Normal depreciation on a contractor's plant, equipment, and other capital facilities is an allowable contract cost, if the contractor is able to demonstrate that it is reasonable and allocable (but see paragrpah (i) below).

(d) Depreciation shall be considered reasonable if the contractor follows policies and procedures that are—

(1) Consistent with those followed in the same cost center for business other than Government;

(2) Reflected in the contractor's books of accounts and financial statements; and

(3) Both used and acceptable for Federal income tax purposes.

(e) When the depreciation reflected on a contractor's books of accounts and financial statements differs from that used and acceptable for Federal income tax purposes, reimbursement shall be based on the asset cost amortized over the estimated useful life of the property using depreciation methods (straight line, sum of the years' digits, etc.) acceptable for income tax purposes. Allowable depreciation shall not exceed the amounts used for book and statement purposes and shall be determined in a manner consistent with the depreciation policies and procedures followed in the same cost center on non-Government business.

(f) Depreciation for reimbursement purposes in the case of tax-exempt organizations shall be determined on the basis described in paragraph (e) immediately above.

(g) Special considerations are required for assets acquired before the effective date of this cost principle if, on that date, the undepreciated balance of these assets resulting from depreciation policies and procedures used previously for Government contracts and subcontracts is different from the undepreciated balance on the books and financial statements. The undepreciated balance for contract cost purposes shall be depreciated over the remaining life using the methods and lives followed for book purposes. The aggregate depreciation of any asset allowable after the effective date of this 31.205-11 shall not exceed the cost basis of the asset less any depreciation allowed or allowable under prior acquisition regulations.

(h) Depreciation should usually be allocated to the contract and other work as an indirect cost. The amount of depreciation allowed in any accounting period may, consistent with the basic objectives in paragraph (a) above, vary with volume of production or use of multishift operations.

(i) In the case of emergency facilities covered by certificates of necessity, a contractor may elect to use normal depreciation without requesting a determination of "true depreciation," or may elect to use either normal or "true depreciation" after a determination of "true depreciation" has been made by an Emergency Facilities Depreciation Board (EFDB). The method elected must be followed consistently thoughout the life of the emergency facility. When an election is made to use normal depreciation, the criteria in paragraphs (c), (d), (e), and (f) above shall apply for both the emergency period and the post-emergency period. When an election is made to use "true depreciation", the amount allowable as depreciation—

(1) With respect to the emergency period (five years), shall be computed in accordance with the determination of the EFDB and allocated rateably over the full five year emergency period; *provided* no other allowance is made which would duplicate the factors, such as extraordinary obsolescence, covered by the Board's determination; and

(2) After the end of the emergency period, shall be computed by distributing the remaining undepreciated portion of the cost of the emergency facility over the balance of its useful life provided the remaining undepreciated portion of such cost shall not include any amount of unrecovered "true depreciation."

(j) No depreciation, rental, or use charge shall be allowed on property acquired at no cost from the Government by the contractor or by any division, subsidiary, or affiliate of the contractor under common control.

(k) The depreciation on any item which meets the criteria for allowance at a "price" under 31.205-26(e) may be based on that price, provided the same policies and procedures are used for costing all business of the using division, subsidiary, or organization under common control.

(l) No depreciation or rental shall be allowed on property fully depreciated by the contractor or by any division, subsidiary, or affiliate of the contractor under common control. However, a reasonable charge for using fully depreciated property may be agreed upon and allowed (but see 31.109(h)(2)). In determining the charge, consideration shall be given to cost, total estimated useful life at the time of negotiations, effect of any increased maintenance charges or decreased efficiency due to age, and the amount of depreciation previously charged to Government contracts or subcontracts.

(m) CAS 404, Capitalization of Tangible Assets, applies to assets acquired by a "capital lease" as defined in Statement of Financial Accounting Standard No. 13 (FAS-13), Accounting for Leases, issued by the Financial Accounting Standards Board (FASB). Compliance with CAS 404 and FAS-13 requires that such leased assets (capital leases) be treated as purchased assets; i.e., be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges, or over the leased life as amortization charges as appropriate. Assets whose leases are classified as capital leases under FAS-13 are subject to the requirements of 31.205-11 while assets acquired under leases classified as operating leases are subject to the requirements on rental costs in 31.205-36. The standards of financial accounting and reporting prescribed by FAS-13 are incorporated into this principle and shall govern its application, except as provided in subparagraphs (1), (2), and (3) below.

(1) Rental costs under a sale and leaseback arrangement shall be allowable up to the amount that would have been allowed had the contractor retained title to the property.

(2) Capital leases, as defined in FAS-13, for all real and personal property, between any related parties are subject to the requirements of this subparagraph 31.205-11(m). If it is determined that the terms of the lease have been significantly affected by the fact that the lessee and lessor are related, depreciation charges shall not be allowed in excess of those which would have occurred if the lease contained terms consistent with those found in a lease between unrelated parties.

(3) Assets acquired under leases that the contractor must capitalize under FAS-13 shall not be treated as purchased assets for contract purposes if the leases are covered by 31.205-36(b)(4).

31.205-12 Economic planning costs.

(a) This category includes costs of generalized long-range management planning that is concerned with the future overall development of the contractor's business and that may take into account the eventual possibility of economic dislocations or fundamental alterations in those markets in which the contractor currently does business. Economic planning costs do not include organization or reorganization costs covered by 31.205-27.

(b) Economic planning costs are allowable as indirect costs to be properly allocated.

(c) Research and development and engineering costs designed to lead to new products for sale to the general public are not allowable under this principle.

31.205-13 Employee morale, health, welfare, food service, and dormitory costs and credits.

(a) Aggregate costs incurred on activities designed to improve working conditions, employer-employee relations, employee morale, and

employee performance (less income generated by these activities) are allowable, except as limited by paragraph (b) immediately below, and to the extent that the net amount is reasonable. Some examples are house publications, health clinics, recreation, employee counseling services, and food and dormitory services, which include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities.

(b) Losses from operating food and dormitory services may be included as costs only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which would not accomplish the above objective are not allowable. A loss may be allowed, however, to the extent the contractor can demonstrate that unusual circumstances exist (e.g., (i) where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available or (ii) where it is necessary to operate a facility at a lower volume than the facility could economically support) such that, even with efficient management, operating the services on a break-even basis would require charging inordinately high prices or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Cost of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(c) When the contractor has an arrangement authorizing an employee association to provide or operate a service, such as vending machines in the contractor's plant, and retain the profits, such profits shall be treated in the same manner as if the contractor were providing the service (but see paragraph (d) immediately below).

(d) Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, may be included as costs incurrred under paragraph (a) above only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

31.205-14 Entertainment costs.

Costs of amusement, diversion, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable (but see 31.205-13 and 31.205-43).

31.205-15 Fines and penalties.

Costs of fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State, or local laws and regulations are unallowable except when incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

31.205-16 Gains and losses on disposition of depreciable property or other capital assets.

(a) Gains and losses from the sale, retirement, or other disposition (but see 31.205-19) of depreciable property shall be included in the year in which they occur as credits or charges to the cost grouping(s) in which the depreciation or amortization applicable to those assets was included (but see paragraph (d) below).

(b) Gains and losses on disposition of tangible capital assets, incuding those acquired under capital leases (see 31.205-11(m), shall be considered as adjustments of depreciation costs previously recognized. The gain or loss for each asset disposed of is the difference between the net amount realized, including insurance proceeds from involuntary conversions, and its undepreciated balance. The gain recognized for contract costing purposes shall be limited to the difference between the acquisition cost (or for assets acquired under a capital lease, the value at which the leased asset is capitalized) of the asset and its undepreciated balance (except see subdivisions (c)(2)(i) or (ii) below).

(c) Special considerations apply to an involuntary conversion which occurs when a contractor's property is destroyed by events over which the owner has no control, such as fire, windstorm, flood, accident, theft, etc., and an insurance award is recovered. The following govern involuntary conversions:

(1) When there is a cash award and the converted asset is not replaced, gain or loss shall be recognized in the period of disposition. The gain recognized for contract costing purposes shall be limited to the difference between the acquisition cost of the asset and its undepreciated balance.

(2) When the converted asset is replaced, the contractor shall either—

(i) Adjust the depreciable basis of the new asset by the amount of the total realized gain or loss; or

(ii) Recognize the gain or loss in the period of disposition, in which case the Government shall participate to the same extent as outlined in subparagraph (c)(1) above.

(d) Gains and losses on the disposition of depreciable property shall not be recognized as a separate charge or credit when—

(1) Gains and losses are processed through the depreciation reserve account and reflected in the depreciation allowable under 31.205-11; or

(2) The property is exchanged as part of the purchase price of a similar item, and the gain or loss is taken into consideration in the depreciation cost basis of the new item.

(e) Gains and losses arising from mass or extraordinary sales, retirements, or other disposition shall be considered on a case-by-case basis.

(f) Gains and losses of any nature arising from the sale or exchange of capital assets other than depreciable property shall be excluded in computing contract costs.

31.205-17 Idle facilities and idle capacity costs.

(a) "Costs of idle facilities or idle capacity," as used in this subsection, means costs such as maintenance, repair, housing, rent, and other related costs; e.g., property taxes, insurance, and depreciation.

"Facilities," as used in this subsection, means plant or any portion thereof (including land integral to the operation), equipment, individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the contractor.

"Idle capacity," as used in this subsection, means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 percent operating time on a one-shift basis, less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. A multiple-shift basis may be used in the calculation instead of a one-shift basis if it can be shown that this amount of usage could normally be expected for the type of facility involved.

"Idle facilities," as used in this subsection, means completely unused facilities that are excess to the contractor's current needs.

(b) The costs of idle facilities are unallowable unless the facilities—

(1) Are necessary to meet fluctuations in workload; or

(2) Were necessary when acquired and are now idle because of changes in requirements, production economies, reorganization, termination, or other causes which could not have been reasonably foreseen. (Costs of idle facilities are allowable for a reasonable period, ordinarily not to exceed 1 year, depending upon the initiative taken to use, lease, or dispose of the idle facilities (but see 31.205-42)).

(c) Costs of idle capacity are costs of doing business and are a factor in the normal fluctuations of usage or overhead rates from period to period. Such costs are allowable provided the capacity is necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire plant or among a group of assets having substantially the same function may be idle facilities.

(d) Any costs to be paid directly by the Government for idle facilities or idle capacity reserved for defense mobilization production shall be the subject of a separate agreement.

31.205-18 Independent research and development and bid and proposal costs.

(a) *Definitions.*

"Applied research," as used in this subsection, means that effort which (1) normally follows basic research, but may not be severable from the related basic research, (2) attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques, and (3) attempts to advance the state of the art. Applied research does not include efforts whose principal aim is design, development, or test of specific items or services to be considered for sale; these efforts are within the definition of the term "development," defined below.

"Basic research," as used in this subsection, means that research which is directed toward increase of knowledge in science. The primary aim of basic research is a fuller knowledge or understanding of the subject under study, rather than any practical application thereof.

"Bid and proposal (B&P) costs," as used in this subdivision, means the costs incurred in preparing, submitting, and supporting bids and proposals (whether or not solicited) on potential Government or non-Government contracts. The term does not include the costs of effort sponsored by a grant or cooperative agreement or required in contract performance.

"Company," as used in this subsection, means all divisions, subsidiaries, and affiliates of the contractor under common control.

"Development," as used in this subsection, means the systematic use, under whatever name, of scientific and technical knowledge in the design, development, test, or evaluation of a potential new product or service (or of an improvement in an existing product or service) for the purpose of meeting specific performance requirements or objectives. Development includes the functions of design engineering, prototyping, and engineering testing. Development excludes: (1) subcontracted technical effort which is for the sole purpose of developing an additional source for an existing product, or (2) development effort for manufacturing or production materials, systems, processes, methods, equipment, tools, and techniques not intended for sale.

"Independent research and development (IR&D)" means a contractor's IR&D cost that is not sponsored by, or required in performance of, a contract or grant and that consists of projects falling within the four following areas: (1) basic research, (2) applied research, (3) development, and (4) systems and other concept formulation studies. IR&D effort shall not include technical effort expended in developing and preparing technical data specifically to support submitting a bid or proposal.

"Systems and other concept formulation studies," as used in this subsection, means analyses and study efforts either related to specific IR&D efforts or directed toward identifying desirable new systems, equipments or components, or modifications and improvements to existing systems, equipments, or components.

(b) *Composition and allocation of costs.* The requirements of CAS 420, Accounting for Independent Research and Development Costs and Bid and Proposal Costs, are incorporated in their entirety and shall apply as follows—

(1) *Fully-CAS-covered contracts.* Contracts that are fully-CAS-covered shall be subject to all requirements of CAS 420.

(2) *Modified-CAS-covered and non-CAS-covered contracts.* Contracts that are not CAS-covered or that contain terms or conditions requiring modified CAS coverage shall be subject to all requirements of CAS 420 *except* 4 CFR 420.50(e)(2) and 4 CFR 420.50(f)(2), which are not then applicable. However, non-CAS covered or modified CAS-covered contracts awarded at a time the contractor has CAS-covered contracts requiring compliance with CAS 420, shall be subject to all the requirements of CAS 420. When the requirements of 4 CFR 420.50(e)(2) and 4 CFR 420.50(f)(2) are not applicable, the following apply:

(i) IR&D and B&P costs shall be allocated to final cost objectives on the same basis of allocation used for the G&A expense grouping of the profit center (see 31.001) in which the costs are incurred. However, when IR&D and B&P costs clearly benefit other profit centers or benefit the entire company, those costs shall be allocated through the G&A of the other profit centers or through the corporate G&A, as appropriate.

(ii) If allocations of IR&D or B&P through the G&A base do not provide equitable cost allocation, the contracting officer may approve use of a different base.

(c) *Allowability.* Except as provided in paragraph (d) below, costs for IR&D and B&P are allowable only in accordance with the following:

(1) *Companies required to negotiate advance agreements.*

(i) Any company that received payments for IR&D and B&P costs in a fiscal year, either as a prime contractor or subcontractor, exceeding $4 million from Government agencies, is required to negotiate with the Government an advance agreement which establishes a ceiling for allowability of IR&D and B&P costs for the following fiscal year. This agreement is binding on all Government agencies, unless prohibited by statute. The requirements of Section 203 of Pub. L. 91-441 necessitate that the Department of Defense (DOD) be the lead negotiating agency when the contractor has received more than $4 million in payments for IR&D and B&P from DOD. Computation of IR&D and B&P costs to determine whether the threshold criterion was reached shall include only recoverable IR&D and B&P costs allocated during the company's previous fiscal year to prime contracts and subcontracts for which the submission and certification of cost or pricing data were required. (Also see paragraph (b) above and 15.804.) The computation shall include full burdening pursuant to CAS 420.

(ii) When a company meets the criterion in (i) above, required advance agreements may be negotiated at the corporate level and/or with those profit centers that contract directly with the Government and that in the preceding year allocated recoverable IR&D and B&P costs exceeding $500,000, including burdening, to contracts and

subcontracts for which the submission and certification of cost or pricing data were required (also see paragraph (b) above and 15.804). When ceilings are negotiated for separate profit centers of the company, the allowability of IR&D and B&P costs for any center that in its previous fiscal year did not reach the $500,000 threshold may be determined in accordance with subparagraph (c)(2) below.

(iii) Ceilings are the maximum dollar amounts of total IR&D and B&P costs that will be allowable for allocation over the appropriate base for that part of the company's operation covered by an advance agreement.

(iv) No IR&D and B&P cost shall be allowable if a company fails to initiate negotiation of a required advance agreement before the end of the fiscal year for which the agreement is required.

(v) When negotiations are held with a company meeting the $4 million criterion or with separate profit centers (when negotiations are held at that level under (ii) above), and if no advance agreement is reached, payment for IR&D and B&P costs shall be reduced below that which the company or profit center would have otherwise received. The amount of such reduced payment shall not exceed 75 percent of the amount which, in the opinion of the contracting officer, the company or profit center would be entitled to receive under an advance agreement. Written notification of the contracting officer's determination of a reduced amount shall be provided the contractor. In the event that an advance agreement is not reached before the end of the contractor's fiscal year for which the agreement is to apply, negotiations shall immediately be terminated, and the contracting officer shall furnish a determination of the reduced amount.

(vi) Contractors may appeal decisions of the contracting officer to reduce payment. The appeal shall be filed with the contracting officer within 30 days of receipt of the contracting officer's determination. (Also see Subpart 42.10.)

(2) *Companies not required to negotiate advance agreements.* Ceilings for allowable IR&D and B&P costs for companies not required to negotiate advance agreements in accordance with subparagraph (c)(1) above shall be established by a formula, either on a company-wide basis or by profit centers, computed as follows:

(i) Determine the ratio of IR&D/B&P costs to total sales (or other base acceptable to the contracting officer) for each of the preceding three years and average the two highest of these ratios; this average is the IR&D/B&P historical ratio;

(ii) Compute the average annual IR&D/B&P costs (hereafter called average), using the two highest of the preceding three years;

(iii) IR&D/B&P costs for the center for the current year which are not in excess of the product of the center's actual total sales (or other accepted base) for the current year and the IR&D/B&P historical ratio computed under (i) above (hereafter called product) shall be considered allowable only to the extent the product does not exceed 120 percent of the average. If the product is less than 80 percent of the average, costs up to 80 percent of the average shall be allowable.

(iv) However, at the discretion of the contracting officer, an advance agreement may be negotiated when the contractor can demonstrate that the formula would produce a clearly inequitable cost recovery.

(d) *Deferred IR&D and B&P costs.* (1) IR&D costs that were incurred in previous accounting periods are unallowable, except when a contractor has developed a specific product at its own risk in anticipation of recovering the development costs in the sale price of the product provided that—

(i) The total amount of IR&D costs applicable to the product can be identified;

(ii) The proration of such costs to sales of the product is reasonable;

(iii) The contractor had no Government business during the time that the costs were incurred or did not allocate IR&D costs to Government contracts except to prorate the cost of developing a specific product to the sales of that product; and

(iv) No costs of current IR&D programs are allocated to Government work except to prorate the costs of developing a specific product to the sales of that product.

(2) When deferred costs are recognized, the contract (except firm-fixed-price and fixed-price with economic price adjustment) will include a specific provision setting forth the amount of deferred IR&D costs that are allocable to the contract. The negotiation memorandum will state the circumstances pertaining to the case and the reason for accepting the deferred costs.

31.205-19 Insurance and indemnification.

(a) Insurance by purchase or by self-insuring includes coverage the contractor is required to carry, or to have approved, under the terms of the contract and any other coverage the contractor maintains in connection with the general conduct of its business. Any contractor desiring to establish a program of self-insurance applicable to contracts that are not subject to CAS 416, Accounting for Insurance Costs, shall comply with the self-insurance requirements of that standard as well as with Part 28 of this Regulation. However, approval of a contractor's insurance program in accordance with Part 28 does not constitute a determination as to the allowability of the program's cost. The amount of insurance costs which may be allowed is subject to the cost limitations and exclusions in the following subparagraphs.

(1) Costs of insurance required or approved, and maintained by the contractor pursuant to the contract, are allowable.

(2) Costs of insurance maintained by the contractor in connection with the general conduct of its business are allowable, subject to the following limitations:

(i) Types and extent of coverage shall follow sound business practice, and the rates and premiums must be reasonable.

(ii) Costs allowed for business interruption or other similar insurance must be limited to exclude coverage of profit.

(iii) The cost of property insurance premiums for insurance coverage in excess of the acquisition cost of the insured assets is allowable only when the contractor has a formal written policy assuring that in the event the insured property is involuntarily converted, the new asset shall be valued at the book value of the replaced asset plus or minus adjustments for differences between insurance proceeds and actual replacement cost. If the contractor does not have such a formal written policy, the cost of premiums for insurance coverage in excess of the acquisition cost of the insured asset is unallowable.

(iv) Costs of insurance for the risk of loss of or damage to Government property are allowable only to the extent that the contractor is liable for such loss or damage and such insurance does not cover loss or damage that results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers or other equivalent representatives.

(v) Contractors operating under a program of self-insurance must obtain approval of the program when required by 28.308(a).

(vi) Costs of insurance on the lives of officers, partners, or proprietors are allowable only to the extent that the insurance represents additional compensation (see 31.205-6).

(3) Actual losses are unallowable unless expressly provided for in the contract, except—

(i) Losses incurred under the nominal deductible provisions of purchased insurance, in keeping with sound business practice, are allowable for contracts not subject to CAS 416 and when the contractor did not establish a self-insurance program. Such contracts are not subject to the self-insurance requirements of CAS 416. For contracts subject to CAS 416, and for those made subject to the self-insurance requirements of that Standard as a result of the contractor's having established a self-insurance program (see paragraph (a) above), actual losses may be used as a basis for charges under a self-insurance program when the actual amount of losses will not differ significantly from the projected average losses for the accounting period (see 4 CFR 416.50(a)(2)(ii)).

(ii) Minor losses, such as spoilage, breakage, and disappearance of small hand tools that occur in the ordinary course of doing business and that are not covered by insurance are allowable.

(4) The cost of insurance to protect the contractor against the costs of correcting its own defects in materials or workmanship is unallowable. However, insurance costs to cover fortuitous or casualty losses resulting from defects in materials or workmanship are allowable as a normal business expense.

(b) If purchased insurance is available, the charge for any self-insurance coverage plus insurance administration expenses shall not exceed the cost of comparable purchased insurance plus associated insurance administration expenses.

(c) Insurance provided by captive insurers (insurers owned by or under the control of the contractor) is considered self-insurance, and charges for it must comply with the self-insurance provisions of CAS 416. However, if the captive insurer also sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive market forces, the insurance will be considered purchased insurance.

(d) The allowability of premiums for insurance purchased from fronting insurance companies (insurance companies not related to the contractor but who reinsure with a captive insurer of the contractor) shall not exceed the amount (plus reasonable fronting company charges for services rendered) which the contractor would have been allowed had it insured directly with the captive insurer.

(e) Self-insurance charges for risks of catastrophic losses are not allowable (see 28.308(e)).

(f) The Government is obligated to indemnify the contractor only to the extent authorized by law, as expressly provided for in the contract, except as provided in paragraph (d) above.

(g) Late premium payment charges related to employee deferred compensation plan insurance incurred pursuant to Section 4007 (29 U.S.C. 1307) or Section 4023 (29 U.S.C. 1323) of the Employee Retirement Income Security Act of 1974 are unallowable.

31.205-20 Interest and other financial costs.

Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and professional fees paid in connection with preparing prospectuses, costs of preparing and issuing stock rights, and directly associated costs are unallowable except for interest assessed by State or local taxing authorities under the conditions specified in 31.205-41 (but see 31.205-28).

31.205-21 Labor relations costs.

Costs incurred in maintaining satisfactory relations between the contractor and its employees, including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable.

31.205-22 Lobbying costs.

(a) Lobbying is defined as any activity or communication that is intended or designed (1) to directly influence members of the U.S. Congress or State and local legislatures, their staffs, or the staffs of committees of these bodies to favor or oppose pending, proposed, or existing legislation, appropriations, or other official actions of these bodies, their members, or their committees, or (2) to engage in any campaign to directly encourage others to do so. Except as provided in paragraph (c) below, lobbying includes, but is not limited to, appearances before any legislative committee or subcommittee and written or oral communications, including face-to-face discussions or conferences, telephone conversations, paid advertisements, and the sending of telegrams or letters.

(b) The costs of lobbying, including the applicable portion of the salaries and fees of those individuals engaged in lobbying efforts on behalf of a contractor, whether or not the individuals are registered as lobbyists under any applicable law, are unallowable.

(c) Legislative liaison activities, such as attendance at committee hearings and gathering information regarding pending legislation, are not lobbying and are allowable. In addition, written or oral communications, appearances before legislative committees and subcommittees, and meetings with legislative representatives are allowable legislative liaison activities when such efforts are undertaken in conjunction with a legislative public hearing or meeting in response to a public notice, or a specific invitation or request from a legislative source, and the notice, invitation, or request is documented. However, for the costs to be allowable, the contractor shall maintain and make available to the Government records and documentation sufficient to identify the costs and clearly establish the nature and purpose of the legislative liaison activity to which the costs relate.

31.205-23 Losses on other contracts.

An excess of costs over income under any other contract (including the contractor's contributed portion under cost-sharing contracts) is unallowable.

31.205-24 Maintenance and repair costs.

(a) Costs necessary for the upkeep of property (including Government property, unless otherwise provided for) that neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows (but see 31.205-11):

(1) Normal maintenance and repair costs are allowable.

(2) Extraordinary maintenance and repair costs are allowable, provided those costs are allocated to the applicable periods for purposes of determining contract costs (but see 31.109).

(b) Expenditures for plant and equipment, including rehabilitation which should be capitalized and subject to depreciation, according to generally accepted accounting principles as applied under the contractor's established policy or, when applicable, according to CAS 404, Capitalization of Tangible Assets, are allowable only on a depreciation basis.

31.205-25 Manufacturing and production engineering costs.

(a) The costs of manufacturing and production engineering effort as described in (1) through (4) below are all allowable:

(1) Developing and deploying new or improved materials, systems, processes,

methods, equipment, tools and techniques that are or are expected to be used in producing products or services;

(2) Developing and deploying pilot production lines;

(3) Improving current production functions, such as plant layout, production scheduling and control, methods and job analysis, equipment capabilities and capacities, inspection techniques, and tooling analysis (including tooling design and application improvements); and

(4) Material and manufacturing producibility analysis for production suitability and to optimize manufacturing processes, methods, and techniques.

(b) This cost principle does not cover:

(1) Basic and applied research effort (as defined in 31.205-18(a)) related to new technology, materials, systems, processes, methods, equipment, tools and techniques. Such technical effort is governed by 31.205-18, Independent research and development costs; and

(2) Development effort for manufacturing or production materials, systems, processes, methods, equipment, tools and techniques that are intended for sale is also governed by 31.205-18.

(c) Where manufacturing or production development costs are capitalized or required to be capitalized under the contractor's capitalization policies, allowable cost will be determined in accordance with the requirements of 31.205-11, Depreciation.

31.205-26 Material costs.

(a) Material costs include the costs of such items as raw materials, parts, subassemblies, components, and manufacturing supplies, whether purchased or manufactured by the contractor, and may include such collateral items as inbound transportation and intransit insurance. In computing material costs, consideration shall be given to reasonable overruns, spoilage, or defective work (unless otherwise provided in any contract provision relating to inspecting and correcting defective work). These costs are allowable, subject to the requirements of paragraphs (b) through (e) below.

(b) Costs of material shall be adjusted for income and other credits, including available trade discounts, refunds, rebates, allowances, and cash discounts, and credits for scrap, salvage, and material returned to vendors. Such income and other credits shall either be credited directly to the cost of the material or be allocated as a credit to indirect costs. When the contractor can demonstrate that failure to take cash discounts was reasonable, lost discounts need not be credited.

(c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs; *provided*, such adjustments relate to the period of contract performance.

(d) When materials are purchased specifically for and are identifiable solely with performance under a contract, the actual purchase cost of those materials should be charged to the contract. If material is issued from stores, any generally recognized method of pricing such material is acceptable if that method is consistently applied and the results are equitable. When estimates of future material costs are required, current market price or anticipated acquisition cost may be used, but the basis of pricing must be disclosed.

(e) Allowance for all materials, supplies, and services that are sold or transferred between any divisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart. However, allowance may be at a price when it is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control, and when the price—

(1) Is or is based on an "established catalog or market price of commercial items sold in substantial quantities to the general public" in accordance with 15.804; or

(2) Is the result of "adequate price competition" in accordance with 15.804 and is the price at which an award was made to the affiliated organization after obtaining quotations on an equal basis from such organization and one or more outside sources that produce the item or its equivalent in significant quantity.

(3) Provided, that in either subparagraph (1) or (2) above—

(i) The price is not in excess of the transferor's current sales price to its most favored customer (including any division, subsidiary or affiliate of the contractor under a common control) for a like quantity under comparable conditions; and

(ii) The contracting officer has not determined the price to be unreasonable.

(f) The price determined in accordance with subparagraph (e)(1) above should be adjusted to reflect the quantities being acquired and may be adjusted to reflect actual cost of any modifications necessary because of contract requirements.

31.205-27 Organization costs.

(a) Except as provided in paragraph (b) below, expenditures in connection with (1) planning or executing the organization or reorganization of the corporate structure of a business, including mergers and acquisitions, or (2) raising capital (net worth plus long-term liabilities), are unallowable. Such expenditures include but are not limited to incorporation fees and costs of attorneys, accountants, brokers, promoters and organizers, management consultants and investment counsellors, whether or not employees of the contractor. Unallowable "reorganization" costs include the cost of any change in the contractor's financial structure, excluding administrative costs of short-term borrowings for working capital, resulting in alterations in the rights and interests of security holders, whether or not additional capital is raised.

(b) The cost of activities primarily intended to provide compensation will not be considered organizational costs subject to this subsection, but will be governed by 31.205-6. These activities include acquiring stock for (1) executive bonuses, (2) employee savings plans, and (3) employee stock ownership plans.

31.205-28 Other business expenses.

The following types of recurring costs are allowable when allocated on an equitable basis:

(a) Registry and transfer charges resulting from changes in ownership of securities issued by the contractor.

(b) Cost of shareholders' meetings.

(c) Normal proxy solicitations.

(d) Preparing and publishing reports to shareholders.

(e) Preparing and submitting required reports and forms to taxing and other regulatory bodies.

(f) Incidental costs of directors' and committee meetings.

(g) Other similar costs.

31.205-29 Plant protection costs.

Costs of items such as (a) wages, uniforms, and equipment of personnel engaged in plant protection, (b) depreciation on plant protection capital assets, and (c) necessary expenses to comply with military requirements, are allowable.

31.205-30 Patent costs.

(a) The following patent costs are allowable to the extent that they are incurred as requirements of a Government contract (but see 31.205-33):

(1) Costs of preparing invention disclosures, reports, and other documents.

(2) Costs for searching the art to the extent necessary to make the invention disclosures.

(3) Other costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is to be conveyed to the Government.

(b) General counseling services relating to patent matters, such as advice on patent laws, regulations, clauses, and employee agreements, are allowable (but see 31.205-33).

(c) Other than those for general counseling services, patent costs not required by the contract are unallowable. (See also 31.205-37.)

31.205-31 Plant reconversion costs.

Plant reconversion costs are those incurred in restoring or rehabilitating the contractor's facilities to approximately the same condition existing immediately before the start of the Government contract, fair wear and tear excepted. Reconversion costs are unallowable except for the cost of removing Government property and the restoration or rehabilitation costs caused by such removal. However, in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon before costs are incurred. Care should be exercised to avoid duplication through allowance as contingencies, additional profit or fee, or in other contracts.

31.205-32 Precontract costs.

Precontract costs are those incurred before the effective date of the contract directly pursuant to the negotiation and in anticipation of the contract award when such incurrence is necessary to comply with the proposed contract delivery schedule. Such costs are allowable to the extent that they would have been allowable if incurred after the date of the contract (see 31.109.)

31.205-33 Professional and consultant service costs.

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the contractor are allowable subject to paragraphs (b), (c), (d), and (e) below when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government (but see 31.205-30).

(b) In determining the allowability of costs (including retainer fees) in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors, among others, should be considered:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the contractor's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to the award of Government contracts.

(4) The impact of Government contracts on the contractor's business.

(5) Whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly when the services rendered are not of a continuing nature and have little relationship to work under Government contracts.

(6) Whether the service can be performed more economically by employment rather than by contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fee charged, especially on non-government contracts.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service; estimate of time required; rate of compensation; termination provisions).

(c) Retainer fees to be allowable must be supported by evidence that—

(1) The services covered by the retainer agreement are necessary and customary;

(2) The level of past services justifies the amount of the retainer fees (if no services were rendered, fees are not automatically unallowable); and

(3) The retainer fee is reasonable in comparison with maintaining an in-house capability to perform the covered services, when factors such as cost and level of expertise are considered.

(d) Costs of legal, accounting, and consulting services and directly associated costs incurred in connection with organization and reorganization (also see 31.205-27), defense of antitrust suits, or the prosecution of claims against the Government are unallowable. Such costs incurred in connection with patent infringement litigation are unallowable unless otherwise provided for in the contract.

(e) Except for retainers, fees for services rendered shall be allowable only when supported by evidence of the nature and scope of the service furnished. (Also see 31.205-38(c).)

31.205-34 Recruitment costs.

(a) Subject to paragraphs (b) and (c) below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, the following costs are allowable:

(1) Costs of help-wanted advertising.

(2) Costs of operating an employment office needed to secure and maintain an adequate labor force.

(3) Costs of operating an aptitude and educational testing program.

(4) Travel costs of employees engaged in recruiting personnel.

(5) Travel costs of applicants for interviews.

(6) Costs for employment agencies, not in excess of standard commercial rates.

(b) Help-wanted advertising costs are unallowable if the advertising—

(1) Is for personnel other than those required to perform obligations under a Government contract;

(2) Does not describe specific positions or classes of positions;

(3) Is excessive relative to the number and importance of the positions or to the industry practices;

(4) Includes material that is not relevant for recruitment purposes, such as extensive illustrations or descriptions of the company's products or capabilities;

(5) Is designed to "pirate" personnel from another Government contractor; or

(6) Includes color (in publications).

(c) Excessive compensation costs offered to prospective employees to "pirate" them from another Government contractor are unallowable. Such excessive costs may include salaries, fringe benefits, or special emoluments which are in excess of standard industry practices or the contractor's customary compensation practices.

31.205-35 Relocation costs.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. The following types of costs are allowable as noted, subject to paragraphs (c) and (d) below:

(1) Cost of travel of the employee and members of the immediate family (see 31.205-46) and transportation of the household and personal effects to the new location.

(2) Cost of finding a new home, such as advance trips by employees and spouses to locate living quarters, and temporary lodging during the transition periods not exceeding separate cumulative totals of 60 days for

employees and 45 days for spouses and dependents, including advance trip time.

(3) Closing costs (i.e., brokerage fees, legal fees, appraisal fees, points, finance charges, etc.) incident to the disposition of actual residence owned by the employee when notified of transfer, except that these costs when added to the costs described in subparagraph (a)(4) below shall not exceed 14 percent of the sales price of the property sold.

(4) Continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing up expenses), utilities, taxes, property insurance, mortgage interest, after settlement date or lease date of new permanent residence, except that these costs when added to the costs described in subparagraph (a)(3) above, shall not exceed 14 percent of the sales price of the property sold.

(5) Other necessary and reasonable expenses normally incident to relocation, such as disconnecting and connecting household appliances; automobile registration; driver's license and use taxes; cutting and fitting rugs, draperies, and curtains; forfeited utility fees and deposits; and purchase of insurance against damage to or loss of personal property while in transit.

(6) Costs incident to acquiring a home in a new location, except that (i) these costs will not be allowable for existing employees or newly recruited employees who, before the relocation, were not homeowners and (ii) the total costs shall not exceed 5 percent of the purchase price of the new home.

(7) Mortgage interest differential payments, except that these costs are not allowable for existing or newly recruited employees who, before the relocation, were not homeowners and the total payments are limited to an amount determined as follows:

(i) The difference between the mortgage interest rates of the old and new residences times the current balance of the old mortgage times 3 years.

(ii) When mortgage differential payments are made on a lump sum basis and the employee leaves or is transferred again in less than 3 years, the amount initially recognized shall be proportionately adjusted to reflect payments only for the actual time of the relocation.

(8) Rental differential payments covering situations where relocated employees retain ownership of a vacated home in the old location and rent at the new location. The rented quarters at the new location must be comparable to those vacated, and the allowable differential payments may not exceed the actual rental costs for the new home, less the fair market rent for the vacated home times 3 years.

(9) Cost of canceling an unexpired lease.

(b) The costs described in paragraph (a) above must also meet the following criteria to be considered allowable:

(1) The move must be for the benefit of the employer.

(2) Reimbursement must be in accordance with an established policy or practice that is consistenly followed by the employer and is designed to motivate employees to relocate promptly and economically.

(3) The costs must not otherwise be unallowable under Subpart 31.2.

(4) Amounts to be reimbursed shall not exceed the employee's actual expenses, except that for miscellaneous costs of the type discussed in subparagraph (a)(5) above; a flat amount, not to exceed $1,000, may be allowed in lieu of actual costs.

(c) The following types of costs are not allowable:

(1) Loss on sale of a home.

(2) Costs incident to acquiring a home in a new location as follows:

(i) Real estate brokers fees and commissions.

(ii) Cost of litigation.

(iii) Real and personal property insurance against damage or loss of property.

(iv) Mortgage life insurance.

(v) Owner's title policy insurance when such insurance was not previously carried by the employee on the old residence (however, cost of a mortgage title policy is allowable).

(vi) Property taxes and operating or maintenance costs.

(3) Continuing mortgage principal payments on residence being sold.

(4) Payments for employee income or FICA (social security) taxes incident to reimbursed relocation costs.

(5) Payments for job counseling and placement assistance to employee spouses and dependents who were not employees of the contractor at the old location.

(6) Costs incident to furnishing equity or nonequity loans to employees or making arrangements with lenders for employees to obtain lower-than-market rate mortgage loans.

(d) If relocation costs for an employee have been allowed either as an allocable indirect or direct cost, and the employee resigns within 12 months for reasons within the employee's control, the contractor shall refund or credit the relocation costs to the Government.

(e) Subject to the requirements of paragraphs (a) through (d) above, the costs of family movements and of personnel movements of a special or mass nature are allowable. The cost, however, should be assigned on the basis of work (contracts) or time period benefited.

31.205-36 Rental costs.

(a) This subsection is applicable to the cost of renting or leasing real or personal property, except ADPE (see 31.205-2), acquired under "operating leases" as defined in Statement of Financial Accounting Standards No. 13 (FAS-13), Accounting for Leases. Compliance with 31.205-11(l) requires that assets acquired by means of capital leases, as defined in FAS-13, shall be treated as purchased assets; i.e., be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges, or over the lease term as amortization charges, as appropriate (but see subparagraph (b)(4) below).

(b) The following costs are allowable:

(1) Rental costs under operating leases, to the extent that the rates are reasonable at the time of the lease decision, after consideration of (i) rental costs of comparable property, if any; (ii) market conditions in the area; (iii) the type, life expectancy, condition, and value of the property leased; (iv) alternatives available; and (v) other provisions of the agreement.

(2) Rental costs under a sale and leaseback arrangement only up to the amount the contractor would be allowed if the contractor retained title.

(3) Charges in the nature of rent for property between any divisions, subsidiaries, or organization under common control, to the extent that they do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, facilities capital cost of money, and maintenance (excluding interest or other unallowable costs pursuant to Part 31), provided that no part of such costs shall duplicate any other allowed cost. Rental cost of personal property leased from any division, subsidiary, or affiliate of the contractor under common control, that has an established practice of leasing the same or similar property to unaffiliated lessees shall be allowed in accordance with subparagraph (b)(1) above.

(4) Rental costs under leases entered into before March 1, 1970 for the remaining term of the lease (excluding options not exercised before March 1, 1970) to the extent they would have been allowable under Defense Acquisition Regulation (Formerly ASPR) 15-205.34 or Federal Procurement

Regulations section 1-15.205-34 in effect 1 January 1969.

(c) The allowability of rental costs under unexpired leases in connection with terminations is treated in 31.205-42(e).

31.205-37 Royalties and other costs for use of patents.

(a) Royalties on a patent or amortization of the cost of purchasing a patent or patent rights necessary for the proper performance of the contract and applicable to contract products or processes are allowable unless—

(1) The Government has a license or the right to a free use of the patent;

(2) The patent has been adjudicated to be invalid, or has been administratively determined to be invalid;

(3) The patent is considered to be unenforceable; or

(4) The patent is expired.

(b) Care should be exercised in determining reasonableness when the royalties may have been arrived at as a result of less-than-arm's-length bargaining; e.g., royalties—

(1) Paid to persons, including corporations, affiliated with the contractor;

(2) Paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government contract would be awarded; or

(3) Paid under an agreement entered into after the contract award.

(c) In any case involving a patent formerly owned by the contractor, the royalty amount allowed should not exceed the cost which would have been allowed had the contractor retained title.

(d) See 31.109 regarding advance agreements.

31.205-38 Selling costs.

(a) Selling costs arise in the marketing of the contractor's products and include costs of sales promotions, negotiation, liaison between Government representatives and contractor's personnel, and related activities.

(b) Selling costs are allowable to the extent that they are reasonable and are allocable to Government business (but see 31.109 and 31.205-1). Allocability of selling costs shall be determined in the light of reasonable benefit to the Government arising from such activities as technical, consulting, demonstration, and other services which are for purposes such as application or adaptation of the contractor's products to Government use for its own requirements. Selling costs incurred in connection with potential and actual Foreign Military Sales as defined by the Arms Export Control Act, or foreign sales of military products shall not be allocable to U.S. Government contracts for U.S. Government requirements.

(c) Notwithstanding paragraph (b) above, sellers' or agents' compensation, fees, commissions, percentages, retainer, or brokerage fees, whether or not contingent upon the award of contracts, are allowable only when paid to bona fide employees or established commercial or selling agencies maintained by the contractor for the purpose of securing business (see subsection 3.408-2).

31.205-39 Service and warranty costs.

Service and warranty costs include those arising from fulfillment of any contractual obligation of a contractor to provide services such as installation, training, correcting defects in the products, replacing defective parts, and making refunds in the case of inadequate performance. When not inconsistent with the terms of the contract, such service and warranty costs are allowable. However, care should be exercised to avoid duplication of the allowance as an element of both estimated product cost and risk.

31.205-40 Special tooling and special test equipment costs.

(a) The terms "special tooling" and "special test equipment" are defined in 45.101.

(b) The cost of special tooling and special test equipment used in performing one or more Government contracts is allowable and shall be allocated to the specific Government contract or contracts for which acquired, except that the cost of (1) items acquired by the contractor before the effective date of the contract (or replacement of such items), whether or not altered or adapted for use in performing the contract, and (2) items which the contract schedule specifically excludes, shall be allowable only as depreciation or amortization.

(c) When items are disqualified as special tooling or special test equipment because with relatively minor expense they can be made suitable for general purpose use and have a value as such commensurate with their value as special tooling or special test equipment, the cost of adapting the items for use under the contract and the cost of returning them to their prior configuration are allowable.

31.205-41 Taxes.

(a) The following types of costs are allowable:

(1) Federal, State, and local taxes (see Part 29), except as otherwise provided in paragraph (b) below that are required to be and are paid or accrued in accordance with generally accepted accounting principles. Fines and penalties are not considered taxes.

(2) Taxes otherwise allowable under subparagraph (a)(1) above, but upon which a claim of illegality or erroneous assessment exists; provided the contractor, before paying such taxes—

(i) Promptly requests instructions from the contracting officer concerning such taxes; and

(ii) Takes all action directed by the contracting officer arising out of subparagraph (2)(i) above or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment, to (A) determine the legality of the assessment or (B) secure a refund of such taxes.

(3) Pursuant to subparagraph (a) (2) above, the reasonable costs of any action taken by the contractor at the direction or with the concurrence of the contracting officer. Interest or penalties incurred by the contractor for non-payment of any tax at the direction of the contracting officer or by reason of the failure of the contracting officer to ensure timely direction after a prompt request.

(b) The following types of costs are not allowable:

(1) Federal income and excess profits taxes.

(2) Taxes in connection with financing, refinancing, refunding operations, or reorganizations (see 31.205-20 and 31.205-27).

(3) Taxes from which exemptions are available to the contractor directly, or available to the contractor based on an exemption afforded the Government, except when the contracting officer determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government. When partial exemption from a tax is attributable to Government contract activity, taxes charged to such work in excess of that amount resulting from application of the preferential treatment are unallowable. These provisions intend that tax preference attributable to Government contract activity be realized by the Government. The term "exemption" means freedom from taxation in whole or in part and includes a tax abatement or reduction resulting from mode of assessment, method of calculation, or otherwise.

(4) Special assessments on land that represent capital improvements.

(5) Taxes (including excises) on real or personal property, or on the value,

use, possession or sale thereof, which is used solely in connection with work other than on Government contracts (see paragraph (c) below).

(6) Taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans pursuant to Section 4971 or Section 4975 of the Internal Revenue Code of 1954, as amended.

(7) Income tax accruals designed to account for the tax effects of differences between taxable income and pretax income as reflected by the books of account and financial statements.

(c) Taxes on property (see subparagraph (b)(5) above) used solely in connection with either non-Government or Government work should be considered directly applicable to the respective category of work unless the amounts involved are insignificant or comparable results would otherwise be obtained; e.g., taxes on contractor-owned work-in-process which is used solely in connection with non-Government work should be allocated to such work; taxes on contractor-owned work-in-process inventory (and Government-owned work-in-process inventory when taxed) used solely in connection with Government work should be charged to such work. The cost of taxes incurred on property used in both Government and non-Government work shall be apportioned to all such work based upon the use of such property on the respective final cost objectives.

(d) Any taxes, interest, or penalties that were allowed as contract costs and are refunded to the contractor shall be credited or paid to the Government in the manner it directs. However, any interest actually paid or credited to a contractor incident to a refund of tax, interest, or penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the contractor had been reimbursed by the Government for the taxes, interest, or penalties.

31.205-42 Termination costs.

Contract terminations generally give rise to the incurrence of costs or the need for special treatment of costs that would not have arisen had the contract not been terminated. The following cost principles peculiar to termination situations are to be used in conjunction with the other cost principles in Subpart 31.2:

(a) *Common items.* The costs of items reasonably usable on the contractor's other work shall not be allowable unless the contractor submits evidence that the items could not be retained at cost without sustaining a loss. The contracting officer should consider the contractor's plans and orders for current and planned production when determining if items can reasonably be used on other work of the contractor. Contemporaneous purchases of common items by the contractor shall be regarded as evidence that such items are reasonably usable on the contractor's other work. Any acceptance of common items as allocable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) *Costs continuing after termination.* Despite all reasonable efforts by the contractor, costs which cannot be discontinued immediately after the effective date of termination are generally allowable. However, any costs continuing after the effective date of the termination due to the negligent or willful failure of the contractor to discontinue the costs shall be unallowable.

(c) *Initial costs.* Initial costs (see 15.804-6(f)), including starting load and preparatory costs, are allowable as follows:

(1) Starting load costs not fully absorbed because of termination are nonrecurring labor, material, and related overhead costs incurred in the early part of production and result from factors such as—

(i) Excessive spoilage due to inexperienced labor;

(ii) Idle time and subnormal production due to testing and changing production methods;

(iii) Training; and

(iv) Lack of familiarity or experience with the product, materials, or manufacturing processes.

(2) Preparatory costs incurred in preparing to perform the terminated contract include such costs as those incurred for initial plant rearrangement and alterations, management and personnel organization, and production planning. They do not include special machinery and equipment and starting load costs.

(3) When initial costs are included in the settlement proposal as a direct charge, such costs shall not also be included in overhead. Initial costs attributable to only one contract shall not be allocated to other contracts.

(4) If initial costs are claimed and have not been segregated on the contractor's books, they shall be segregated for settlement purposes from cost reports and schedules reflecting that high unit cost incurred during the early stages of the contract.

(5) If the settlement proposal is on the inventory basis, initial costs should normally be allocated on the basis of total end items called for by the contract immediately before termination; however, if the contract includes end items of a diverse nature, some other equitable basis may be used, such as machine or labor hours.

(d) *Loss of useful value.* Loss of useful value of special tooling, and special machinery and equipment is generally allowable, provided—

(1) The special tooling, or special machinery and equipment is not reasonably capable of use in the other work of the contractor;

(2) The Government's interest is protected by transfer of title or by other means deemed appropriate by the contracting officer; and

(3) The loss of useful value for any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other Government contracts for which the special tooling, or special machinery and equipment was acquired.

(e) *Rental under unexpired leases.* Rental costs under unexpired leases, less the residual value of such leases, are generally allowable when shown to have been reasonably necessary for the performance of the terminated contract, if—

(1) The amount of rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and

(2) The contractor makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

(f) *Alterations of leased property.* The cost of alterations and reasonable restorations required by the lease may be allowed when the alterations were necessary for performing the contract.

(g) *Settlement expenses.* (1) Settlement expenses, including the following, are generally allowable:

(i) Accounting, legal, clerical, and similar costs reasonably necessary for—

(A) The preparation and presentation, including supporting data, of settlement claims to the contracting officer; and

(B) The termination and settlement of subcontracts.

(ii) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the contract.

(iii) Indirect costs related to salary and wages incurred as settlement expenses in (i) and (ii); normally, such indirect costs shall be limited to payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs.

(2) If settlement expenses are significant, a cost account or work order shall be established to separately identify and accumulate them.

(h) *Subcontractor claims.* Subcontractor claims, including the allocable portion of the claims common to the contract and to other work of the contractor, are generally allowable. An appropriate share of the contractor's indirect expense may be allocated to the amount of settlements with subcontractors; provided, that the amount allocated is reasonably proportionate to the relative benefits received and is otherwise consistent with 31.201-4 and 31.203(c). The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

31.205-43 Trade, business, technical and professional activity costs.

The following types of costs are allowable:

(a) Memberships in trade, business, technical, and professional organizations.

(b) Subscriptions to trade, business, professional, or other technical periodicals.

(c) Meetings and conferences, including meals, transportation, rental of meeting facilities and other incidental costs when the primary purposes of the incurrence of the costs is the dissemination of technical information or stimulation of production.

31.205-44 Training and educational costs.

(a) *Allowable costs.* Training and educational costs, including training materials and textbooks, are allowable to the extent indicated below.

(b) *Vocational training.* Costs of preparing and maintaining a non-college level program of instruction, including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees are allowable. These costs include (1) salaries or wages of trainees (excluding overtime compensation), (2) salaries of the director of training and staff when the training program is conducted by the contractor, and/or (3) tuition and fees when the training is in an institution not operated by the contractor.

(c) *Part-time college level education.* Allowable costs of part-time college education at an undergraduate or postgraduate level, including that provided at the contractor's own facilities, are limited to—

(1) Fees and tuition charged by the educational institution, or, instead of tuition, instructors' salaries and the related share of indirect cost of the educational institution, to the extent that the sum thereof is not in excess of the tuition that would have been paid to the participating educational institution;

(2) Salaries and related costs of instructors who are employees of the contractor; and

(3) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of classes or attendance at classes after regular working hours. In unusual cases, the period may be extended (see paragraph (h) below).

(d) *Full-time education.* Costs of tuition, fees (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the contractor's own facilities, at a postgraduate but not undergraduate college level, are allowable only when the course or degree pursued is related to the field in which the employee is working or may reasonably be expected to work and are limited to a total period not to exceed one school year for each employee so trained. In unusual cases the period may be extended.

(e) *Specialized programs.* Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of managers or to prepare employees for such positions are allowable. Such costs include enrollment fees and related charges and employees' salaries, subsistence, and travel. Costs allowable under this subparagraph do not include costs for courses that are part of a degree-oriented curriculum, which are only allowable pursuant to paragraphs (c) and (d) above.

(f) *Other expenses.* Maintenance expense and normal depreciation or fair rental on facilities owned or leased by the contractor for training purposes are allowable to the extent prescribed in 31.205-11, 31.205-24, and 31.205-36.

(g) *Grants.* Grants to educatinoal or training institutions, including the donation of facilities or other properties, scholarships, and fellowships are considered contributions and are unallowable.

(h) *Advance agreements.* Training and education costs in excess of (1) 156 hours per year per employee for part-time college-level training or (2) one academic year for full-time postgraduate studies may be allowed to the extent set forth in an advance agreement negotiated under 31.109. To be considered for an advance agreement, the contractor must demonstrate that the costs are consistently incurred under an established engineering or scientific training and education program and that the course or degree pursued is related to the field in which employees are now working or may reasonably be expected to work.

(i) *Training or education costs for other than bona-fide employees.* Costs of tuition fees, textbooks, and simliar or related benefits provided for other than bona-fide employees are unallowable, except that the costs incurred for educating employee dependents (primary and secondary level studies) when the employee is working in a foreign country where public education is not available and where suitable private education is inordinately expensive may be included in overseas differential.

(j) *Employee dependent education plans.* Generally, costs for college plans for bona-fide employee dependents are unallowable.

31.205-45 Transportation costs.

Allowable transportation costs include freight, express, cartage, and postage charges relating to goods purchased, in process, or delivered. When these costs can be identified with the items involved, they may be directly costed as transportation costs or added to the cost of such items. When identification with the materials received cannot be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the contractor follows a consistent and equitable procedure. Outbound freight, if reimbursable under the terms of the contract, shall be treated as a direct cost.

31.205-46 Travel costs.

(a) Costs for transportation, lodging, subsistence, and incidental expenses incurred by contractor personnel in official company business are allowable subject to paragraphs (b) through (f) below. These costs may be based upon (1) actual cost incurred, (2) per diem or mileage, or (3) a combination of (1) and (2) provided the method used does not result in an unreasonable charge.

(b) Travel costs incurred in the normal course of overall administration of the business are allowable and shall be treated as indirect costs.

(c) Travel costs directly attributable to specific contract performance are

allowable and may be charged to the contract under 31.202.

(d) The difference in cost between first-class air accommodations and less-than-first-class air accommodations is unallowable except when less than first-class accommodations are not reasonably available to meet necessary mission requirements (such as when less-than-first-class accommodations would require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, or would offer accommodations not reasonably adequate for the physical or medical needs of the traveler).

(e) Costs of travel via contractor-owned, -leased, and -chartered aircraft are subject to the following:

(1) "Cost of contractor-owned, -leased, and -chartered aircraft," as used in this paragraph, includes the cost of lease, charter, operation (including personnel), maintenance, depreciation, insurance, and other related costs. This cost is allowable, if reasonable, to the extent that the contractor can demonstrate that the use of the aircraft is necessary for the conduct of its business and that the increase in cost, if any, in comparison with alternative means of transportation is commensurate with the advantages gained.

(2) Some of the factors to consider in determining the necessity for such aircraft are whether—

(i) Scheduled commercial airlines or other suitable less costly travel facilities are available at reasonable times, with reasonable frequency and serving the required destinations conveniently;

(ii) It is likely that critical or emergency situations might arise that could not be accommodated as effectively by scheduled commercial airline or other suitable less costly travel facilities;

(iii) The increased flexibility in scheduling would result in time savings and more effective use of key personnel;

(iv) National or industrial security demands privacy for key personnel who must work enroute; and

(v) The contract requires flight testing of equipment.

(3) When the need for contractor-owned, -leased, or -chartered aircraft has been demonstrated, additional factors such as the following shall be considered in determining the reasonableness of costs:

(i) The number, type and size of aircraft needed (involved in this determination are matters such as the number and physical aspects of locations to which flights are required, distances of these locations, number of passengers to be carried, and frequency of flights).

(ii) The appropriateness of the method of acquisition, i.e., purchase, lease, or charter.

(iii) Whether, when the contractor has more than one type or size of aircraft, that available aircraft best suited to the requirements of each individual trip was used.

(4) Where the need for contractor-owned, -leased, or -chartered aircraft has been demonstrated, optimum use of such aircraft, rather than scheduled commercial service, should be made where a cost advantage will result to the Government.

31.205-47 Defense of fraud proceedings.

(a) *Definitions.* "Costs," as used in this subsection, include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it; the salaries and wages of employees, officers, and directors; and any of the foregoing costs incurred before commencing the formal judicial or administrative proceedings which bear a direct relationship to the proceedings.

"Fraud," as used in this subsection, means (1) acts of fraud or corruption or attempts to defaud the Government or to corrupt its agents, (2) acts which constitute a cause for debarment or suspension under 9.406-2(a) and 9.407-2(a) and (3) acts which violate the False Claims Act, 31 U.S.C., sections 3729-3731, or the Anti-Kickback Act, 41 U.S.C., sections 51 and 54.

(b) Costs incurred in connection with defense of any (1) criminal or civil investigation, grand jury proceeding or prosecution, (2) civil litigation, or (3) suspension, debarment or other administrative proceedings, or any combination of the foregoing, brought by the Government against a contractor, its agent or employee, are unallowable when the charges, which are the subject of the investigation, proceedings, or prosecution, involve fraud on the part of the contractor, its agent or employee, as defined below, and result in conviction (including conviction entered on a plea of nolo contendere), judgment against the contractor, its agent or employees, or decision to debar or suspend, or are resolved by consent or compromise.

(c) In circumstances where the charges of fraud are resolved by consent or compromise, the parties may agree as to the extent of allowability of such costs as a part of such resolution.

(d) Costs which may be unallowable under 31.205-47 shall be differentiated and accounted for by the contractor so as to be separately identifiable. During the pendency of any proceeding or investigation covered by paragraph (b) above, the contracting officer should generally withhold payment of such costs. However, the contracting officer may in appropriate circumstances provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement by the contractor to repay all unallowable costs, plus interest, if a conviction or judgment is rendered against it.

31.205-48 Deferred research and development costs.

"Research and development," as used in this subsection, means the type of technical effort which is described in 31.205-18 but which is sponsored by, or required in performance of, a contract or grant. Research and development costs (including amounts capitalized) that were incurred before the award of a particular contract are unallowable except when allowable as precontract costs. In addition, when costs are incurred in excess of either the price of a contract or amount of a grant for research and development effort, such excess may not be allocated as a cost to any other Government contract.

SUBPART 31.3—CONTRACTS WITH EDUCATIONAL INSTITUTIONS

31.301 Purpose.

This subpart provides the principles for determining the cost of research and development, training, and other work performed by educational institutions under contracts with the Government.

31.302 General.

Office of Management and Budget (OMB) Circular No. A-21, Cost Principles for Educational Institutions, revised, provides principles for determining the costs applicable to research and development, training, and other work performed by educational institutions under contracts with the Government.

31.303 Requirements.

(a) Contracts that refer to this Subpart 31.3 for determining allowable costs under contracts with educational institutions shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-21 in effect on the date of the contract.

(b) Agencies are not expected to place additional restrictions on individual items of cost.

SUBPART 31.4—[RESERVED]

SUBPART 31.5—[RESERVED]

SUBPART 31.6—CONTRACTS WITH STATE, LOCAL, AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS

31.601 Purpose.

This subpart provides the principles for determining allowable cost of contracts and subcontracts with State, local, and federally recognized Indian tribal governments.

31.602 General.

Office of Management and Budget (OMB) Circular No. A-87, Cost Principles for State and Local Governments, Revised, sets forth the principles for determining the allowable costs of contracts and subcontracts with State, local, and federally recognized Indian tribal governments. These principles are for cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in financing a particular contract.

31.603 Requirements.

(a) Contracts that refer to this Subpart 31.6 for determining allowable costs under contracts with State, local and Indian tribal governments shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-87 which is in effect on the date of the contract.

(b) Agencies are not expected to place additional restrictions on individual items of cost.

SUBPART 31.7—CONTRACTS WITH NONPROFIT ORGANIZATIONS

31.701 Purpose.

This subpart provides the principles for determining the cost applicable to work performed by nonprofit organizations under contracts with the Government. A nonprofit organization, for purpose of identification, is defined as a business entity organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings inure to the benefit of any private shareholder or individual, of which no substantial part of the activities is carrying on propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from federal income taxation under section 501 of the Internal Revenue Code.

31.702 General.

Office of Management and Budget (OMB) Circular No. A-122, Cost Principles for Nonprofit Organizations, sets forth principles for determining the costs applicable to work performed by nonprofit organizations under contracts (also applies to grants and other agreements) with the Government.

31.703 Requirements.

(a) Contracts which refer to this Subpart 31.7 for determining allowable costs shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-122 in effect on the date of the contract.

(b) Agencies are not expected to place additional restrictions on individual items of cost.

PART 32—CONTRACT FINANCING

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

32.000 Scope of part.

This part prescribes policies and procedures for contract financing and other payment matters. This includes—

(a) Payment methods, including partial payments and progress payments based on percentage or stage of completion;

(b) Loans guarantees, advance payments, and progress payments based on costs;

(c) Administration of debts to the Government arising out of contracts;

(d) Contract funding, including the use of contract clauses limiting costs or funds;

(e) Assignment of claims to aid in private financing; and

(f) Selected payment clauses.

SUBPART 32.1—GENERAL

32.100 Scope of subpart.

This subpart provides policies and procedures applicable to the general subject of contract financing and payment.

32.101 Authority.

The basic authority for the contract financing described in this part is contained in section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255), section 2307 of the Armed Services Procurement Act (10 U.S.C. 2307), and Title III of the Defense Production Act of 1950 (50 U.S.C. App. 2091).

32.102 Description of contract financing methods.

(a) Advance payments are advances of money by the Government to a prime contractor before, in anticipation of, and for the purpose of complete performance under one or more contracts. They are expected to be liquidated from payments due to the contractor incident to performance of the contracts. Since they are not measured by performance, they differ from partial, progress, or other payments based on the performance or partial performance of a contract. Advance payments may be made to prime contractors for the purpose of making subadvances to subcontractors.

(b) Progress payments based on costs are made on the basis of costs incurred by the contractor as work progresses under the contract. This form of contract financing does not include—

(1) Payments based on the percentage or stage of completion accomplished;

(2) Payments for partial deliveries accepted by the Government; or

(3) Partial payments for a contract termination proposal.

(c) Loan guarantees are made by Federal Reserve banks, on behalf of designated guaranteeing agencies, to enable contractors to obtain financing from private sources under contracts for the acquisition of supplies or services for the national defense.

(d) Partial payments for accepted supplies and services that are only a part of the contract requirements are authorized under section 305 of the Federal Property and Administrative Services Act (41 U.S.C. 255). Although partial payments are generally treated as a method of payment and not as a method of contract financing, using partial payments can assist contractors to participate in Government contracts without, or with minimal, contract financing. When appropriate, agencies shall use this payment method.

(e) (1) Progress payments based on a percentage or stage of completion are authorized by the statutes cited in 32.101.

(2) This type of progress payment may be used as a payment method under agency procedures.

32.103 Reserved.

32.104 Providing contract financing.

(a) Prudent contract financing can be a useful working tool in Government acquisition by expediting the performance of essential contracts. Government financing shall be provided only to the extent actually needed for prompt and efficient performance, considering the availability of private financing. Contract financing shall be administered so as to aid, not impede, the acquisition. At the same time, the contracting officer shall avoid any undue risk of monetary loss to the Government through the financing. The contractor's use of the contract financing provided and the contractor's financial status shall be monitored.

(b) If the contractor is a small business concern, the contracting officer shall give special attention to meeting the contractor's contract financing need. However, a contractor's receipt of a certificate of competency from the Small Business Administration has no bearing on the contractor's need for or entitlement to contract financing.

32.105 Uses of contract financing.

(a) Contract financing methods covered in this part are intended to be self-liquidating through contract performance. Consequently, agencies shall only use the methods for financing of contractor working capital, not for the expansion of contractor-owned facilities or the acquisition of fixed assets. However, under loan guarantees, exceptions may be made for—

(1) Facilities expansion of a minor or incidental nature, if a relatively small part of the guaranteed loan is used for the expansion and the contractor's repayment would not be delayed or impaired; or

(2) Other instances of facilities expansion for which contract financing is appropriate under agency procedures.

(b) The limitations in this section do not apply to contracts under which facilities are being acquired for Government ownership.

32.106 Order of preference.

The contracting officer shall consider the following order of preference when a contractor requests contract financing, unless an exception would be in the Government's interest in a specific case:

(a) Private financing without Government guarantee. It is not intended, however, that the contractor be required to obtain private financing

(1) at unreasonable terms, or (2) from other agencies.

(b) Progress payments based on costs at customary rates (see 32.501-1).

(c) Loan guarantees.

(d) Progress payments based on costs with unusual terms (see 32.501).

(e) Advance payments (see exceptions in 32.402(b)).

32.107 Need for contract financing not a deterrent.

(a) If the contractor or offeror meets the standards prescribed for responsible prospective contractors at 9.104, the contracting officer shall not treat the contractor's need for contract financing as a handicap for a contract award; e.g., as a responsibility factor or evaluation criterion.

(b) The contractor should not be disqualified from contract financing solely because the contractor failed to indicate a need for contract financing before the contract was awarded.

32.108 Financial consultation.

Each contracting office should have available and use the services of contract financing personnel competent to evaluate credit and financial problems. In resolving any questions concerning (a) the financial capability of an offeror or contractor to perform a contract or (b) what form of contract financing is appropriate in a given case, the contracting officer should consult the appropriate contract financing office.

32.109 Termination financing.

To encourage contractors to invest their own funds in performance despite the susceptibility of the contract to termination for the convenience of the Government, the contract financing procedures under this part may be applied to the financing of terminations either in connection with or independently of financing for contract performance (see 49.112-1).

32.110 Contract performance in foreign countries.

(a) In applying the coverage of Part 32 to a contract performed partly or completely in a foreign country, the contracting officer shall give due consideration to the sovereignty, laws, and procedures of the country concerned and shall obtain legal advice as necessary. The legal advice may indicate a need for additional protective arrangements within the foreign jurisdiction or for deviations from the contract clauses prescribed in this part.

(b) The contracting officer shall act as necessary to comply with applicable foreign laws, while providing the most effective protection of the Government's interest.

32.111 Contract clauses.

(a) The contracting officer shall insert the following clauses, appropriately modified with respect to payment due dates, in accordance with agency regulations—

(1) The clause at 52.232-1, Payments, in solicitations and contracts when a fixed-price supply contract, a fixed-price service contract, or a contract for nonregulated communication services is contemplated;

(2) The clause at 52.232-2, Payment under Fixed-Price Research and Development Contracts, in solicitations and contracts when a fixed-price research and development contract is contemplated;

(3) The clause at 52.232-3, Payments under Personal Services Contracts, in solicitations and contracts for personal services;

(4) The clause at 52.232-4, Payments under Transportation Contracts and Transportation-Related Services Contracts, in solicitations and contracts for transportation or transportation-related services;

(5) The clause at 52.232-5, Payments under Fixed-Price Construction Contracts, in solicitations and contracts for construction when a fixed-price contract is contemplated; and

(6) The clause at 52.232-6, Payments under Communication Service Contracts with Common Carriers, in solicitations and contracts for regulated communication services by common carriers.

(b) The contracting officer shall insert the clause at 52.232-7, Payments under Time-and-Materials and Labor-Hour Contracts, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated. If (i) the nature of the work to be performed requires the contractor to furnish material that is regularly sold to the general public in the normal course of business by the contractor and (ii) the price is under the limitations prescribed in 16.601(b)(3), the contracting officer shall use the clause with its Alternate I.

(c) The contracting officer shall insert the following clauses, appropriately modified with respect to payment due dates in accordance with agency regulations:

(1) The clause at 52.232-8, Discounts for Prompt Payments, in solicitations and contracts when a fixed-price supply contract or fixed-price service contract is contemplated.

(2) A clause, substantially the same as the clause at 52.232-9, Limitation on Withholding of Payments, in solicitations and contracts when a supply contract, research and development contract, service contract, time-and-materials contract, or labor-hour contract is contemplated that includes two or more terms authorizing the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed.

(d) The contracting officer shall insert the following clauses, appropriately modified with respect to payments due dates in accordance with agency regulations:

(1) The clause at 52.232-10, Payments under Fixed-Price Architect-Engineer Contracts, in fixed-price architect-engineer contracts.

(2) The clause at 52.232-11, Extras, in solicitations and contracts when a fixed-price supply contract, fixed-price service contract, or a transportation contract is contemplated.

SUBPART 32.2—[RESERVED]

SUBPART 32.3—LOAN GUARANTEES FOR DEFENSE PRODUCTION

32.300 Scope of subpart.

This subpart prescribes policies and procedures for designated agencies' guarantees of loans made by private financial institutions to borrowers performing contracts related to national defense (see 30.102).

32.301 Definitions.

"Borrower," as used in this subpart, means a contractor, subcontractor (at any tier), or other supplier who receives a guaranteed loan.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System.

"Guaranteed loan" or "V loan," as used in this subpart, means a loan, revolving credit fund, or other financial arrangement made pursuant to Regulation V of the Federal Reserve Board, under which the guaranteeing agency is obligated, on demand of the lender, to purchase a stated percentage of the loan and to share any losses in the amount of the guaranteed percentage.

"Guaranteeing agency," as used in this subpart, means any agency that the President has authorized to guarantee loans, through Federal Reserve Banks, for expediting national defense production.

32.302 Authority.

Congress has authorized Federal Reserve Banks to act, on behalf of guaranteeing agencies, as fiscal agents of the United States in the making of loan guarantees for defense production (Section 301, Defense Production Act of 1950 (50 U.S.C. App. 2091)). By Executive Order 10480, August 14, 1953 (3 CFR 1949-53), as amended, the President has designated the following agencies as guaranteeing agencies:

(a) Department of Defense.
(b) Department of Energy.
(c) Department of Commerce.
(d) Department of the Interior.
(e) Department of Agriculture.
(f) General Services Administration.
(g) National Aeronautics and Space Administration.

32.303 General.

(a) Section 301 of the Defense Production Act authorizes loan guarantees for contract performance or other operations related to national defense, subject to amounts annually authorized by Congress on the maximum obligation of any guaranteeing agency under any loan, discount, advance, or commitment in connection therewith, entered into under section 301. (See 50 U.S.C. App. 2091 for statutory limitations and exceptions concerning the authorization of loan guarantee amounts and the use of loan guarantees for the prevention of insolvency or bankruptcy.)

(b) The guarantee shall be for less than 100 percent of the loan unless the agency determines that—

(1) The circumstances are exceptional;
(2) The operations of the contractor are vital to the national defense; and
(3) No other suitable means of financing are available.

(c) Loan guarantees are not issued to other agencies of the Government.

(d) Guaranteed loans are essentially the same as conventional loans made by private financial institutions, except that the guaranteeing agency is obligated, on demand of the lender, to purchase a stated percentage of the loan and to share any losses in the amount of the guaranteed percentage. It is the responsibility of the private financial institution to disburse and collect funds and to administer the loan. Under Regulation V of the Federal Reserve Board (12 CFR 245), any private financing institution may submit an application to the Federal Reserve Bank of its district for guarantee of a loan or credit.

(e) Federal Reserve Banks will make the loan guarantee agreements on behalf of the guaranteeing agencies.

(f) Under Section 302(c) of Executive Order 10480, August 14, 1953 (3 CFR 1949-53), as amended, all actions and operations of Federal Reserve Banks, as fiscal agents, are subject to the supervision of the Federal Reserve Board. The Federal Reserve Board is authorized to prescribe the following, after consultation with the heads of guaranteeing agencies:

(1) Regulations governing the actions and operations of fiscal agents.

(2) Rates of interest, guarantee and commitment fees, and other charges that may be made for loans, discounts, advances, or commitments guaranteed by the guaranteeing agencies through the Federal Reserve Banks. These prescriptions may be in the form of specific rates or limits, or in other forms.

(3) Uniform forms and procedures to be used in connection with the guarantees.

(g) The guaranteeing agency is responsible for certifying eligibility for the guarantee and fixing the maximum dollar amount and maturity date of the guaranteed loan to meet the contractor's requirement for financing performance of the defense production contract on hand at the time the guarantee application is submitted.

32.304 Procedures.

32.304-1 Application for guarantee.

(a) A contractor, subcontractor, or supplier that needs operating funds to perform a contract related to national defense may apply to a financing institution for a loan. If the financing institution is willing to extend credit, but considers a Government guarantee necessary, the institution may apply to the Federal Reserve Bank of its district for the guarantee. Application forms and guidance are available at all Federal Reserve Banks.

(b) The Federal Reserve Bank will promptly send a copy of the application, including a list of the relevant defense contracts held by the contractor, to the Federal Reserve Board. The Board will transmit the application and the list of contracts to the interested guaranteeing agency, so that the agency can determine the eligibility of the contractor.

(c) To expedite the process, the Federal Reserve Bank may, pursuant to instructions of a guaranteeing agency, submit lists of the defense contracts to the interested contracting officers.

(d) While eligibility is being determined, the Federal Reserve Bank will make any necessary credit investigations to supplement the information furnished by the applicant financing institution in order to—

(1) Expedite necessary defense financing; and
(2) Protect the Government against monetary loss.

(e) The Federal Reserve Bank will send its report and recommendation to the Federal Reserve Board. The Board will transmit them to the interested guaranteeing agency.

32.304-2 Certificate of eligibility.

(a) The contracting officer shall prepare the certificate of eligibility for a contract that the contracting officer deems to be of material consequence, when—

(1) The contract financing office requests it;
(2) Another interested agency requests it; or
(3) The application for a loan guarantee relates to a contract or subcontract within the cognizance of the contracting officer.

(b) The agency shall evaluate the relevant data, including the certificate of eligibility, the accompanying data, and any other relevant information on the contractor's financial status and performance, to determine whether authorization of a loan guarantee would be in the Government's interest.

(c) If the contractor has several major national defense contracts, it is normally not necessary to evaluate the eligibility of relatively minor contracts. The determination of eligibility should be processed, without delay, based on the the preponderance of the amount of the contracts.

(d) The certificate of eligibility shall include the following determinations:

(1) The supplies or services to be acquired are essential to the national defense.

(2) The contractor has the facilities and the technical and management ability required for contract performance.

(3) There is no practicable alternate source for the acquisition without prejudice to the national defense. (This statement shall not be included if the contractor is a small business concern.)

(e) The contracting officer shall consider the following factors in determining if a practicable alternate source exists:

(1) Prejudice to the national defense, because reletting of a contract with another source would conflict with a major policy on defense acquisition; e.g., policies relating to the mobilization base.

(2) The urgency of contract performance schedules.

(3) The technical ability and facilities of other potential sources.

(4) The extent to which other sources would need contract financing to perform.

(5) The willingness of other sources to enter into contracts.

(6) The time and expense involved in repurchasing for contracts or parts of contracts. This may include potential claims under a termination for convenience or delays incident to default at a later date.

(7) The comparative prices available from other sources.

(8) The disruption of established subcontracting arrangements.

(9) Other pertinent factors.

(f) The contracting officer shall attach sufficient data to the certificate of eligibility to support the determinations made. Available pertinent information shall be included on—

(1) The contractor's past performance;

(2) The relationship of the contractor's operations to performance schedules; and

(3) Other factors listed in paragraph (e) above, if relevant to the case under consideration.

(g) If the contracting officer determines that a certificate of eligibility is not justified, the facts and reasons supporting that conclusion shall be documented and furnished to the agency contract finance office.

(h) The guaranteeing agency shall review the proposed guarantee terms and conditions. If they are considered appropriate, the guaranteeing agency shall complete a standard form of authorization as prescribed by the Federal Reserve Board. The agency shall transmit the authorization through the Federal Reserve Board to the Federal Reserve Bank. The Bank is authorized to execute and deliver to the financing institution a standard form of guarantee agreement, with the terms and conditions approved for the particular case. The financing institution will then make the loan.

(i) Substantially the same procedure may be followed for the application of an offeror who is actively negotiating or bidding for a defense contract, except that the guarantee shall not be authorized until the contract has been executed.

(j) The contracting officer shall report to the agency contract finance office any information about the contractor that would have a potentially adverse impact on a pending guarantee application. The contracting officer is not required, however, to initiate any special investigation for this purpose.

(k) With regard to existing contracts, the agency shall not consider the percentage of guarantee requested by the financing institution in determining the contractor's eligibility.

32.304-3 Asset formula.

(a) Under guaranteed loans made primarily for working capital purposes, the agency shall normally limit the guarantee, by use of an asset formula, to an amount that does not exceed a specified percentage (90 percent or less) of the contractor's investment (e.g., payrolls and inventories) in defense production contracts. The asset formula may include all items under defense contracts for which the contractor would be entitled to payment on performance or termination. The formula shall exclude—

(1) Amounts for which the contractor has not done any work or made any expenditure;

(2) Amounts that would become due as the result of later performance under the contracts; and

(3) Cash collateral or bank deposit balances.

(b) Progress payments are deducted from the asset formula.

(c) The agency may relax the asset formula to an appropriate extent for the time actually necessary for contract performance, if the contractor's working capital and credit are inadequate.

32.304-4 Guarantee amount and maturity.

The agency may change the guarantee amount or maturity date, within the limitations at 32.304-3, as follows:

(a) If the contractor enters into additional defense production contracts after the application for, but before authorization of, a guarantee, the agency may adjust the loan guarantee amount or maturity date to meet any significant increase in financing need.

(b) If the contractor enters into defense production contracts during the term of the guaranteed loan, the parties may adjust the existing guarantee agreement to provide for financing the new contracts. Pertinent information and the Federal Reserve Bank reports will be submitted to the guaranteeing agency under the procedures for the original guarantee application, described in 32.304-1. Normally, a new certificate of eligibility is required.

32.304-5 Assignment of claims under contracts.

(a) The agency shall generally require a contractor that is provided a guaranteed loan to execute an assignment of claims under defense production contracts (including any contracts entered into during the term of the guaranteed loan that are eligible for financing under the loan); however, the agency need not require assignment if any of the following conditions are present:

(1) The contractor's financial condition is so strong that the protection to the Government provided by an assignment of claims is unnecessary.

(2) In connection with the assignment of claims under a major contract, the increased protection of the loan that would be provided by the assignments under additional, relatively smaller contracts is not considered necessary by the agency.

(3) The assignment of claims would create an administrative burden disproportionate to the protection required; e.g., if the contractor has a large number of contracts with individually small dollar amounts.

(b) The contractor shall also execute an assignment of claims if requested to do so by the guarantor or the financing institution.

(c) A subcontract or purchase order issued to a subcontractor shall not be considered eligible for financing under guaranteed loans when the issuer of the subcontract or purchase order reserves (1) the privilege of making payments directly to the assignor or to the assignor and assignee jointly, after notice of the assignment, or (2) the right to reduce or set off assigned proceeds under defense production contracts by reason of claims against the borrower arising after notice of assignment and independently of defense production contracts under which the borrower is the seller.

32.304-6 Other collateral security.

The following are examples of other forms of security that, although seldom invoked under guaranteed loans, may be required when considered necessary for protection of the Government interest:

(a) Mortgages on fixed assets.

(b) Liens against inventories.

(c) Endorsements.

(d) Guarantees.

(e) Subordinations or standbys of other indebtedness.

32.304-7 Contract surety bonds and loan guarantees.

(a) Contract surety bonds are incompatible with the Government's interests under guaranteed loans, unless the interests of the surety are subordinated to the guaranteed loan.

(b) If a substantial share of the contractor's defense contracts are covered by surety bonds, or the amount of the bond is substantial in relation to the contractor's net worth, the agency shall not authorize the guarantee of a loan on a bonded contract unless the surety enters into an agreement with the

financing institution to subordinate the surety's rights and claims in favor of the guaranteed loan.

(c) The agency approval of a guarantee for a loan involving relatively substantial subcontracts covered by surety bonds shall also depend on the establishment of a reasonable allocation agreement between the sureties and the financing institution. The agreement should give the financing institution the benefit, with regard to payments to be made on the contract, of the portion of its loans fairly attributable to expenditures made under the bonded subcontracts before notice of default.

32.304-8 Other borrowing.

(a) Because of the limitations under guaranteed loans, some contractors seek to supplement the loan by other borrowing (outside the guarantee) from the financing institution or other sources. It has been recognized in practice that, while prohibition of borrowings outside the guaranteed loan is preferable when practicable in a given V-loan case, such other borrowings should be permitted when necessary.

(b) If the agency consents to the contractor obtaining other borrowing during the guaranteed loan period, the agency shall apply the following restrictions:

(1) A reasonable limit on the amount of other borrowing.

(2) If guaranteed and unguaranteed loans are made by the same financing institution, a requirement that any collateral security requested by the institution under the unguaranteed loan is also to be secondary collateral for the guaranteed loan.

(3) A requirement that the contractor provide appropriate certificates to the guaranteeing agency, at intervals not longer than 30 days, to disclose outstanding unguaranteed borrowings.

32.305 Loan guarantees for terminated contracts.

(a) The purpose of guaranteed loans; i.e., to provide for financing based on the borrower's recoverable investment in defense production contracts, may also apply to contracts that have been terminated (partially or totally) for the convenience of the Government. Guaranteed loans also may be made before such termination if it is known that termination of particular contracts for the convenience of the Government is about to occur. These loans are expected to provide necessary financing pending termination settlements and payments. They may also finance continuing performance of defense production contracts that are eligible for guaranteed loans.

(b) The procedure for such guarantees is substantially the same as that outlined in 32.304, except that certificates of eligibility are not required for (1) contracts that have been totally terminated or (2) the terminated portion of contracts that have been partially terminated. The agency shall take precautions necessary to avoid Government losses and to ensure the loans will be self-liquidating from the proceeds of defense production contracts.

(c) Loan guarantees for contract termination financing shall not be provided before specific contract terminations are certain.

32.306 Loan guarantees for subcontracts.

If the request for a loan guarantee concerns a subcontractor that is financially weak in comparison with its contractor, the Government's interests may be fostered by the contractor making progress payments to the subcontractor. If so, the agency shall try to arrange for the contractor to provide the progress payments. As a result, the need for the loan guarantee may be reduced or eliminated and the contractor would bear part or all of the risk of loss arising from the selection of the subcontractor.

SUBPART 32.4—ADVANCE PAYMENTS

32.400 Scope of subpart.

This subpart provides policies and procedures for advance payments on prime contracts and subcontracts. It does not include policies and procedures for advance payments for the types of transactions listed in 32.404.

32.401 Statutory authority.

The agency may authorize advance payments in negotiated and formally advertised contracts if the action is appropriate under (a) section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255), (b) the Armed Services Procurement Act (10 U.S.C. 2307), or (c) Pub. L. 85-804 (50 U.S.C. 1431-1435) and Executive Order 10789, November 14, 1958 (3 CFR 1958 Supp. pp. 72-74) (see Part 50 of the Federal Acquisition Regulation (FAR) for other applications of this statute).

32.402 General.

(a) A limitation on authority to grant advance payments under Pub. L. 85-804 (50 U.S.C. 1431-1435) is described at FAR 50.203(b)(4). This limitation also applies to advance payments authorized under 10 U.S.C. 2307.

(b) Advance payments may be provided on any type of contract; however, the agency shall authorize advance payments sparingly. Except for the contracts described in 32.403(a) and (b), advance payment is the least preferred method of contract financing (see 32.106) and generally they should not be authorized if other types of financing are reasonably available to the contractor in adequate amounts. Loans and credit at excessive interest rates or other exorbitant charges, or loans from other Government agencies, are not considered reasonably available financing.

(c) If statutory requirements and standards for advance payment determinations are met, the contracting officer shall generally recommend that the agency authorize advance payments.

(1) The statutory requirements are that—

(i) The contractor gives adequate security;

(ii) The advance payments will not exceed the unpaid contract price (see 32.410(b), subparagraph (a)(2)); and

(iii) The agency head or designee determines, based on written findings, that the advance payment—

(A) Is in the public interest (under 32.401(a) or (b)); or

(B) Facilitates the national defense (under 32.401(c)).

(2) The standards for advance payment determinations are that—

(i) The advance payments will not exceed the contractor's interim cash needs based on—

(A) Analysis of the cash flow required for contract performance;

(B) Consideration of the reimbursement or other payment cycle; and

(C) To the extent possible, employment of the contractor's own working capital;

(ii) The advance payments are necessary to supplement other funds or credit available to a contractor;

(iii) The recipient is otherwise qualified as a responsible contractor;

(iv) The Government will benefit from performance prospects or there are other practical advantages; and

(v) The case fits one or more of the categories described in 32.403.

(d) If necessary, the agency may authorize advance payments in addition to progress or partial payments on the same contract (see 32.501-1(c)).

(e) Each agency that provides advance payments shall—

(1) Place the responsibility for making findings and determinations, and for approval of contract terms concerning advance payments (see 32.410), at an organizational level high enough to ensure uniform application of this subpart (see the limitation at 50.201(b) which also applies to advance payments

authorized under Pub. L. 85-804 (50 U.S.C. 1431-1435)); and

(2) Establish procedures for coordination, before advance payment authorization, with the activity that provides contract financing support.

(f) If the contract provides for advance payments under Pub. L. 85-804, the contracting officer shall ensure conformance with the requirements of FAR 50.307.

32.403 Applicability.

Advance payments may be considered useful and appropriate for the following:

(a) Contracts for experimental, research, or development work with nonprofit educational or research institutions.

(b) Contracts solely for the management and operation of Government-owned plants.

(c) Contracts for acquisition at cost of facilities for Government ownership.

(d) Contracts of such a highly classified nature that the agency considers it undesirable for national security to permit assignment of claims under the contract.

(e) Contracts entered into with financially weak contractors whose technical ability is considered essential to the agency. In these cases, the agency shall closely monitor the contractor's performance and financial controls to reduce the Government's financial risk.

(f) Contracts for which a loan by a private financial institution is not practicable, whether or not a loan guarantee under this part is issued; for example, if—

(1) Financing institutions will not assume a reasonable portion of the risk under a guaranteed loan;

(2) Loans with reasonable interest rates or finance charges are not available to the contractor; or

(3) Contracts involve operations so remote from a financial institution that the institution could not be expected to suitably administer a guaranteed loan.

(g) Contracts with small business concerns, under which circumstances that make advance payments appropriate often occur (but see 32.104(b)).

(h) Contracts under which exceptional circumstances make advance payments the most advantageous contract financing method for both the Government and the contractor.

32.404 Exclusions.

(a) This subpart does not apply to advance payments authorized by law for—

(1) Rent;

(2) Tuition;

(3) Insurance premiums;

(4) Expenses of investigations in foreign countries;

(5) Extension or connection of public utilities for Government buildings or installations;

(6) Subscriptions to publications;

(7) Purchases of supplies or services in foreign countries, if—

(i) The purchase price does not exceed $10,000 (or equivalent amount of the applicable foreign currency); and

(ii) The advance payment is required by the laws or government regulations of the foreign country concerned;

(8) Enforcement of the customs or narcotics laws; or

(9) Other types of transactions excluded by agency procedures under statutory authority.

(b) Agencies may issue their own instructions to deal with advance payment items in paragraph (a) above authorized under statutes relevant to their agencies.

32.405 Applying Pub. L. 85-804 to advance payments under formally advertised contracts.

(a) Actions that designated agencies may take to facilitate the national defense without regard to other provisions of law relating to contracts, as explained in 50.101(a), also include making advance payments. These advance payments may be made at or after award of formally advertised contracts entered into after competitive bidding, as well as negotiated contracts.

(b) Bidders may request advance payments before or after award, even if the invitation for bids does not contain an advance payment provision. However, the contracting officer shall reject any bid requiring that advance payments be provided as a basis for acceptance.

(c) When advance payments are requested, the agency may—

(1) Enter into the contract and provide for advance payments conforming to this Part 32;

(2) Enter into the contract without providing for advance payments if the contractor does not actually need advance payments; or

(3) Deny award of the contract if the request for advance payments has been disapproved under 32.409-2 and funds adequate for performance are not otherwise available to the offeror.

32.406 Letters of credit.

(a) The Department of the Treasury (Treasury) prescribes regulations and instructions covering the use of letters of credit for advance payments under contracts. See Treasury Department Circular 1075 (31 CFR 205), and the implementing instructions in the Treasury Fiscal Requirements Manual, available in offices providing financial advice and assistance.

(b) If agencies provide advance payments to contractors, use of the following methods is required unless the agency has obtained a waiver from the Treasury Department:

(1) By letter of credit if the contracting agency expects to have a continuing relationship with the contractor for a year or more, with advances totaling at least $120,000 a year.

(2) By direct Treasury check if the circumstances do not meet the criteria in subparagraph (1) above.

(c) If the agency has entered into multiple contracts (or a combination of contract(s) and assistance agreement(s)) involving eligibility of a contractor for more than one letter of credit, the agency shall follow arrangements made under Treasury procedures for (1) consolidating funding to the same contractor under one letter of credit or (2) replacing multiple letters of credit with a single letter of credit.

(d) The letter of credit enables the contractor to withdraw Government funds in amounts needed to cover its own disbursements of cash for contract performance. Whenever feasible, the agency shall, under the direction and approval of the Department of the Treasury, use a letter of credit method that requires the contractor not to withdraw the Government funds until the contractor's checks have been (1) forwarded to the payees (delay of drawdown technique), or (2) presented to the contractor's bank for payment (checks paid technique) (see 31 CFR 205.3 and 205.4(d)).

(e) The Treasury regulations provide for terminating the advance financing arrangement if the contractor is unwilling or unable to minimize the elapsed time between receipt of the advance and disbursement of the funds. In such cases, if reversion to normal payment methods is not feasible, the Treasury regulation provides for use of a working capital method of advance; i.e., for limiting advances to (1) only the estimated disbursements for a given initial period and (2) subsequently, for only actual cash disbursements (31 CFR 205.3(k) and 205.7).

32.407 Interest.

(a) Except as provided in paragraph (d) below, the contracting officer shall charge interest on the daily unliquidated balance of all advance payments at the higher of—

(1) The published prime rate of the banking institution (depository) in which

the special bank account (see 32.409-3) is established; or

(2) The rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2).

(b) The interest rate for advance payments shall be adjusted for changes in the prime rate of the depository and the semiannual determination by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). The contracting officer shall obtain data from the depository on changes in the interest rate during the month. Interest shall be computed at the end of each month on the daily unliquidated balance of advance payments at the applicable daily interest rate.

(c) Interest shall be required on contracts that are for acquisition, at cost, of facilities for Government ownership, if the contracts are awarded in combination with, or in contemplation of, supply contracts or subcontracts.

(d) The agency head or designee may authorize advance payments without interest under the following types of contracts, if in the Government's interest:

(1) Contracts for experimental, research, or development work (including studies, surveys, and demonstrations in socio-economic areas) with nonprofit education or research institutions.

(2) Contracts solely for the management and operation of Government-owned plants.

(3) Cost-reimbursement contracts with governments, including State or local governments, or their instrumentalities.

(4) Other classes of contracts, or unusual cases, for which the exclusion of interest on advances is specifically authorized by agency procedures.

(e) If a contract provides for interest-free advance payments, the contracting officer may require the contractor to charge interest on advances or downpayments to subcontractors and credit the Government for the proceeds from the interest charges. Interest rates shall be determined as described in paragraphs (a) and (b) above. The contracting officer need not require the contractor to charge interest on an advance to a subcontractor that is an institution of the kind described in subparagraph (d)(1).

(f) The contracting officer shall not allow interest charges, required by this 32.407, as reimbursable costs under cost-reimbursement contracts, whether the interest charge was incurred by the prime contractor or a subcontractor.

32.408 Application for advance payments.

(a) A contractor may apply for advance payments before or after the award of a contract.

(b) The contractor shall submit any advance payment request in writing to the contracting officer and provide the following information:

(1) A reference to the contract if the request concerns an existing contract, or a reference to the solicitation if the request concerns a proposed contract.

(2) A cash flow forecast showing estimated disbursements and receipts for the period of contract performance. If the application pertains to a type of contract described in 32.403(a) or (b), the contractor shall limit the forecast to the contract to be financed by advance payments.

(3) The proposed total amount of advance payments.

(4) The name and address of the bank at which the contractor expects to establish a special account as depository for the advance payments. If advance payments in the form of a letter of credit are anticipated, the contractor shall identify the specific account at the bank to be used. This subparagraph (4) is not applicable if an alternate method is used under agency procedures.

(5) A description of the contractor's efforts to obtain unguaranteed private financing or a V-loan (see 32.301) under eligible contracts. This requirement is not applicable to the contract types described in 32.403(a) or (b).

(6) Other information appropriate to an understanding of (i) the contractor's financial condition and need, (ii) the contractor's ability to perform the contract without loss to the Government, and (iii) financial safeguards needed to protect the Government's interest. Ordinarily, if the contract is a type described in 32.403(a) or (b), the contractor may limit the response to this subparagraph (6) to information on the contractor's reliability, technical ability, and accounting system and controls.

32.409 Contracting officer action.

After analysis of the contractor's application and any appropriate investigation, the contracting officer shall recommend approval or disapproval and transmit the request and recommendation to the approving authority designated under 32.402(e).

32.409-1 Recommendation for approval.

If recommending approval, the contracting officer shall transmit the following, under agency procedures, to the approving authority:

(a) Contract data, including—

(1) Identification and date of the award;

(2) Citation of the appropriation;

(3) Type and dollar amount of the contract;

(4) Items to be supplied, schedule of deliveries or performance, and status of any deliveries or performance;

(5) The contract fee or profit contemplated; and

(6) A copy of the contract, if available.

(b) The contractor's request and supporting information.

(c) A report on the contractor's past performance, responsibility, technical ability, and plant capacity.

(d) Comments on (1) the contractor's need for advance payments and (2) potential Government benefits from the contract performance.

(e) Proposed advance payment contract terms, including proposed security requirements.

(f) The findings, determination, and authorization (see 32.410).

(g) The recommendation for approval of the advance payment request.

(h) Justification of any proposal for waiver of interest charges (see 32.407).

32.409-2 Recommendation for disapproval.

If recommending disapproval, the contracting officer shall, under agency procedures, transmit—

(a) The items prescribed in 32.409-1(a), (b), and (c); and

(b) The recommendation for disapproval and the reasons.

32.409-3 Security, supervision, and covenants.

(a) If advance payments are approved, the contracting officer shall enter into an agreement with the contractor covering bank accounts and suitable covenants protecting the Government's interest (see 32.411). This requirement generally applies under all statutory authorities, but modified requirements applicable to certain specific cases are prescribed in paragraphs (e) through (g) below.

(b) The agency shall (1) ensure that the amount of advance payments does not exceed the contractor's financial needs, and (2) closely supervise the contractor's withdrawal of funds from special bank accounts in which the advance payments are deposited.

(c) In the terms of the agreement, the contracting officer should provide for a paramount lien in favor of the Government. This lien may supplement or replace other security requirements. The lien should cover—

(1) Supplies being acquired;

(2) Any credit balance in the special bank account in which advance payments are deposited; and

(3) All property that the contractor acquires for performing the contract, except to the extent to which the Government otherwise has valid title to the property.

(d) Security requirements vary to fit the circumstances of different cases. Minimum security requirements are covered by the clauses prescribed in the contract. The contracting officer may supplement these as necessary in each case for protection of the Government's interest. Examples of additional security terms are—

(1) Personal or corporate endorsements or guarantees;

(2) Pledges of collateral;

(3) Subordination or standby of other indebtedness;

(4) Controls or limitations on profit distributions, salaries, bonuses or commissions, rentals and royalties, capital expenditures, creation of liens, retirement of stock or debt, and creation of additional obligations; and

(5) Advance payment bonds (rarely required).

(e) In an advance payment agreement with an instrumentality of the Government, a State, a local government, or an agency or instrumentality of a State or local government, the contracting officer may omit the requirement for deposit of the advances in a special bank account, if the official approving the advance determines that other adequate security exists to protect the Government's interest.

(f) The requirements of this 32.409-3 do not apply when using letters of credit if an agency's procedures provide for—

(1) The use under a cost-reimbursement contract of Federal funds deposited in the contractor's bank account (without the contractor acquiring title to the funds); and

(2) The security of such deposit of public moneys in accordance with governing regulations of the Treasury Department.

(g) If a separate special bank account is not required; e.g., advance payment by a letter of credit, an agency may require a special bank account for an individual case, or classes of cases, if the circumstances warrant.

32.410 Findings, determination, and authorization.

(a) Each determination concerning advance payments shall be supported by written findings (see 32.402(c)(1)(iii)).

(b) The following is an example of the format and text of findings, determination, and authorization with alternative words, phrases, and paragraphs to be selected to conform to the circumstances involved:

FINDINGS, DETERMINATION, AND AUTHORIZATION FOR ADVANCE PAYMENTS

FINDINGS

(a) The undersigned hereby finds that:

(1) The .....[*insert the name of the contracting activity*] and .....[*insert the name of the contractor*] (have entered) (propose to enter) into (negotiated) (formally advertised) Contract No. ....., dated .....

[*Summarize the specific facts and significant circumstances concerning the contract and the contractor, that, together with the other findings, will clearly support the determination below.*]

(2) Advance payments (in an amount not to exceed $..... at any time outstanding) (in an aggregate amount not exceeding $....., less the aggregate amounts repaid, or withdrawn by the Government) are required by the Contractor to perform under the contract. The amount does not exceed the unpaid contract price or the estimated interim cash needs arising during the reimbursement cycle.

(3) The advance payments are necessary for prompt, efficient contract performance that will benefit the Government.

(4) The proposed advance payment clause provides for security for the protection of the Government. The clause requires that all payments will be desposited in a special bank account and that the Government will have a paramount lien on (i) the credit balance in the special bank account, (ii) any supplies contracted for, and (iii) any material or other property acquired for performance of the contract. [*Insert the following, if applicable* (The Contractor's financial management system provides for effective control over and accountability for all Federal funds under governing regulations of the Treasury Department.) (An advance payment bond is required.)] This security is considered adequate.

(5) Advance payments are the only adequate means of financing available to the Contractor, and the amount designated in (2) above is based, to the extent possible, on the use of the Contractor's own working capital in performing the contract.

[*Insert paragraph (6), (7), or (8), as applicable*].

(6) The Contractor is a nonprofit (educational) (and) (research) institution, and the contract is for (experimental) (,) (research and development) work.

(7) The contract is solely for the management and operation of a Government-owned plant.

(8) The following unusual facts and circumstances favor making advance payments to the Contractor without interest:

[*List the pertinent facts and circumstances.*]

DETERMINATION

(b) Based on the findings in (a) above, the undersigned determined that the making of the proposed advance payments, (with interest at the rate of ...[*Insert the interest rate computed in accordance with 32.407*] percent on the daily unliquidated balance of the advance payments,) (without interest, except as provided by the proposed advance payment clause,) (is in the public interest) (will facilitate the national defense).

AUTHORIZATION

(c) The advance payments, of which (the amount at any time outstanding) (the aggregate amount, less the aggregate amounts repaid, or withdrawn by the Government), shall not exceed $....., are hereby authorized under (section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255)) (the Armed Services Procurement Act (10 U.S.C. 2307)) (the Extraordinary Contracting Authority of Government Agencies in Connection with National Defense Functions (50 U.S.C. 1431-1435) and Executive Order No. 10789 of November 14, 1958 (3 CFR 1958 Supp. pp. 72-74)) [*or, if other, cite appropriate authority*] on (terms substantially as contained in the proposed advance payment clause, a copy (an outline) of which is annexed to this authorization) (the following terms:) [*Insert the appropriate terms.*]

(All prior authorizations for advance payments under Contract No. ..... are superseded.)

.....

(*Signature*)

.....

(*Name typed*)

.....

(*Title of authorized official*)

[*Each Findings, Determination, and Authorization shall be individually prepared to fit the particular circumstances at hand. Subparagraphs (a)(1), (2), (3) and (4) and paragraphs (b) and (c) shall be used in each case. If the contract is (a) for experimental, developmental, or research work and with a nonprofit educational or research institution, or (b) only for management and operation of a Government-owned plant, subparagraph (a)(5) should not be included. If the advance payment is to be made without interest to the contractor, include subparagraph (a)(6), (7), or (8). If any advance payments have previously been authorized for the contract, include the final sentence of paragraph (c). The alternate parenthetical wording or other modifications may be used as appropriate. The paragraphs actually used shall be renumbered sequentially*].

32.411 Agreement for special bank account.

The contracting officer shall use substantially the following form of agreement for a special bank account for advance payments:

AGREEMENT FOR SPECIAL BANK ACCOUNT

This agreement is entered into this ..... day of ....., 19.., between the United States of America, (the Government), represented by the Contracting Officer executing this

agreement, ... [*Insert the name of the contractor*], a ..... [*Insert the name of the State of incorporation*] corporation (the Contractor), and ....., a banking corporation under the laws of ....., located at ..... (the Bank).

RECITALS

(a) Under date of ....., 19.., the Government and the Contractor entered into Contract No. ....., or a related supplemental agreement, providing for advance payments to the Contractor. A copy of the advance payment terms was furnished to the Bank.

(b) The contract or supplemental agreement requires that amounts advanced to the Contractor be deposited separate from the Contractor's general or other funds, in a Special Bank Account at a member bank of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (12 U.S.C. 1811). The parties agree to deposit the amounts with the Bank, which meets the requirement.

(c) This Special Bank Account is designated "..... [*Insert the contractor's name*], ... [*Insert the name of the Government agency*] Special Bank Account."

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, the parties agree to the following conditions:

(a) The Government shall have a lien on the credit balance in the account to secure the repayment of all advance payments made to the Contractor. The lien is paramount to any lien or claim of the Bank regarding the account.

(b) The Bank is bound by the terms of the contract relating to the deposit and withdrawal of funds in the Special Bank Account, but is not responsible for the application of funds withdrawn from the account. The Bank shall act on written directions from the Contracting Officer, the administering office, or a duly authorized representative of either. The Bank is not liable to any party to this agreement for any action that complies with the written directions. Any written directions received by the Bank through the Contracting Officer on .....[*Insert the name of the agency*] stationery and purporting to be signed by, or by the direction of ..... or duly authorized representative, shall be, as far as the rights, duties, and liabilities of the Bank are concerned, considered as being properly issued and filed with the Bank by the .....[*Insert the name of the agency*].

(c) The Government, or its authorized representatives, shall have access to the books and records maintained by the Bank regarding the Special Bank Account at all reasonable times and for all reasonable purposes, including (but not limited to), the inspection or copying of the books and records and any and all pertinent memoranda, checks, correspondence, or documents. The Bank shall preserve the books and records for a period of 6 years after the closing of this Special Bank Account.

(d) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings regarding the Special Bank Account, the Bank will promptly notify .....[*Insert the name of the administering office*].

(e) While this Special Bank Account exists, the Bank shall inform the Government each month of the Bank's published prime interest rate and changes to the rate during the month. The Bank shall give this information to the Contracting Officer on the last business day of the month. [*This covenant will not be included in Special Bank Account Agreements covering interest-free advance payments*].

Each of the parties to this agreement has executed the agreement on ....., 19..

.....

.....

[*Signatures and official titles*]

32.412 Contract clause.

(a) The contracting officer shall insert the clause at 52.232-12, Advance Payments, in solicitations and contracts under which the Government will provide advance payments, except as provided in 32.412(b).

(b) If the agency desires to waive the countersignature requirement because of the contractor's financial strength, good performance record, and favorable experience concerning cost disallowances, the contracting officer shall use the clause with its Alternate I.

(c) If a cost-reimbursement contract is contemplated, the contracting officer shall use the clause with its Alternate II.

(d) If the agency considers a more rapid liquidation appropriate, the contracting officer shall use the clause with its Alternate III.

(e) If the agency provides advance payments under the contract at no interest to the prime contractor, the contracting officer shall use the clause with its Alternate IV.

(f) If the requirement for a special bank account is eliminated in accordance with 32.409-3(e) or (g), the contracting officer shall insert in the solicitation or contract a clause substantially the same as the one at 52.232-12, Advance Payments, omitting the terms pertaining to a special bank account.

SUBPART 32.5—PROGRESS PAYMENTS BASED ON COSTS

32.500 Scope of subpart.

This subpart prescribes policies, procedures, forms, solicitation provisions, and contract clauses for providing contract financing through progress payments based on costs. This subpart does not apply to—

(a) Payments under cost-reimbursement contracts, other than reimbursement of the contractor's progress payments to subcontractors and suppliers (see 32.504(f)); or

(b) Contracts for construction or for shipbuilding or ship conversion, alteration, or repair, when the contracts provide for progress payments based on a percentage or stage of completion.

32.501 General.

Progress payments may be customary or unusual. Customary progress payments are those made under the general guidance in this subpart, using the customary progress payment rate, the cost base, and frequency of payment established in the Progress Payments clause, and either the ordinary liquidation method or the alternate method as provided in subsections 32.503-8 and 32.503-9. Any other progress payments are considered unusual, and may be used only in exceptional cases when authorized in accordance with subsection 32.501-2.

32.501-1 Customary progress payment rates.

(a) The customary progress payment rate is 90 percent, applicable to the total costs of performing the contract. The customary rate for contracts with small business concerns is 95 percent. The Department of Defense (DOD) may establish other customary rates for foreign military sales and for flexible progress payments.

(b) Any rate higher than those permitted in paragraph (a) above shall be considered an unusual progress payment. The contracting officer shall not include a higher rate in a contract unless advance agency approval is obtained as prescribed in 32.501-2.

(c) When advance payments and progress payments are authorized under the same contract, a progress payment rate higher than the customary rate shall not be authorized.

32.501-2 Unusual progress payments.

(a) The contracting officer may provide unusual progress payments only if—

(1) The contract necessitates predelivery expenditures that are large in relation to contract price and in relation to the contractor's working capital and credit;

(2) The contractor fully documents an actual need to supplement any private financing available, including guaranteed loans; and

(3) The contractor's request is approved by the head of the contracting activity or a designee. In addition, see 32.502-2.

(b) The excess of the unusual progress payment rate approved over the customary progress payment rate should be the lowest amount possible under the circumstances.

(c) Progress payments will not be considered unusual merely because they are on letter contracts or the definitive contracts that supersede letter contracts.

32.501-3 Contract price.

(a) For the purpose of making progress payments and determining the limitation on progress payments, the contract price shall be as follows:

(1) Under firm-fixed-price contracts, the contract price is the current contract price plus any unpriced modifications for which funds have been obligated.

(2) If the contract is redeterminable or subject to economic price adjustment, the contract price is the initial price until modified.

(3) Under a fixed-price incentive contract, the contract price is the target price plus any unpriced modifications for which funds have been obligated. However, if the contractor's properly incurred costs exceed the target price, the contracting officer may provisionally increase the price up to the ceiling or maximum price.

(4) Under a letter contract, the contract price is the maximum amount obligated by the contract as modified.

(5) Under an unpriced order issued against a basic ordering agreement, the contract price is the maximum amount obligated by the order, as modified.

(6) Any portion of the contract specifically providing for reimbursement of costs only shall be excluded from the contract price.

(b) The contracting officer shall not make progress payments or increase the contract price beyond the funds obligated under the contract, as amended.

32.501-4 Consideration for progress payments.

(a) There is no requirement for a separate consideration for providing progress payments or changing progress payment or liquidation rates, if coverage is included in the terms of the contract when awarded.

(b) Occasionally, unanticipated circumstances arise during contract performance which, under the policies of this subpart, result in the contract being amended to provide progress payments. In such a case, adequate new consideration is required.

(c) The contractor may provide the new consideration by monetary or nonmonetary means. A monetary consideration could be a reduction in the contract price. A nonmonetary consideration could be the incorporation of terms in the contract modification giving the Government a new and substantial benefit.

(d) The fair and reasonable consideration should approximate as nearly as practicably ascertainable the amount by which the price would have been smaller had the Progress Payments clause been contained in the initial contract. In the absence of definite information on this point, the contracting officer should apply the following criteria in evaluating whether the proposed new consideration is adequate:

(1) The value to the contractor of the anticipated amount and duration of unliquidated progress payments at the imputed financial costs of the equivalent working capital.

(2) The estimated profit rate to be earned through contract performance.

(e) The contracting officer shall not provide for any other type of specific charges, such as interest, for progress payments.

32.501-5 Other protective terms.

If the contracting officer considers it necessary for protection of the Government's interest, protective terms such as the following may be used in addition to the Progress Payments clause of the contract:

(a) Personal or corporate guarantees.

(b) Subordinations or standbys of indebtedness.

(c) Special bank accounts.

(d) Protective covenants of the kinds in paragraph (p) of the clause at 52.232-12, Advance Payments.

32.502 Preaward matters.

This section covers matters that generally are relevant only before contract award. This does not preclude taking actions discussed here after award, if appropriate; e.g., postaward addition of a Progress Payments clause for consideration.

32.502-1 Use of customary progress payments.

The use of a Progress Payments clause in solicitations and resulting contracts generally shall be based upon considerations of the criteria in this subsection. Reasonable doubts should be resolved in favor of including the Progress Payments clause in the solicitation. Bids conditioned on progress payments when the solicitation did not provide for progress payments shall be rejected as nonresponsive.

(a) Subject to paragraphs (b) and (c) below, the contracting officer may provide for customary progress payments if the contractor (1) will not be able to bill for the first delivery of products, or other performance milestones, for a substantial time after work must begin (normally 4 months or more for small business concerns; 6 months or more for others), and (2) will make expenditures for contract performance during the predelivery period that have a significant impact on the contractor's working capital. Progress payments may also be authorized, particularly for small suppliers, if the contractor demonstrates actual financial need or the unavailability of private financing (see 32.106(a)).

(b) To reduce undue administrative effort and expense, the contracting officer generally should not provide for progress payments on contracts of less than $1,000,000 unless—

(1) The contractor is a small business concern and the contract will involve approximately $100,000 or more; or

(2) The contractor will perform a group of small contracts at the same time and the total impact on working capital is equivalent to a single contract of $1,000,000 or more.

(c) The contracting officer shall not provide for progress payments if the contract items are quick turnover types for which progress payments are not a customary commercial practice. Examples of items customarily not subject to progress payments include (1) subsistence, (2) clothing, (3) medical and dental supplies, and (4) standard commercial items not requiring a substantial accumulation of predelivery expenditures by the contractor.

(d) (1) In considering whether to provide for progress payments in circumstances under which a series of orders are awarded (e.g., indefinite delivery contracts or basic ordering agreements contemplating requisitions, task orders, etc., or their equivalent), the contracting officer shall apply the standards in paragraphs (a) through (c) above, based on—

(i) An estimate of the total work to be done; and

(ii) The probable impact on working capital of the predelivery expenditures and production lead times of the majority of the individual orders.

(2) In authorizing progress payments under multiple-order contracts, the contracting officer should establish a single liquidation rate applicable to all orders.

32.502-2 Contract finance office clearance.

The contracting officer shall obtain the approval of the contract finance office or other offices designated under

agency procedures before taking any of the following actions:

(a) Providing a progress payment rate higher than the customary rate (see 32.501-1).

(b) Deviating from the progress payments terms prescribed in this part.

(c) Providing progress payments to a contractor—

(1) Whose financial condition is in doubt;

(2) Who has had an advance payment request or loan guarantee denied for financial reasons (or approved but withdrawn or lapsed) within the previous 12 months; or

(3) Who is named in the consolidated list of contractors indebted to the United States (known commonly as the "Hold-up List").

32.502-3 Solicitation provisions.

(a) The contracting officer shall insert the provision at 52.232-13, Notice of Progress Payments, in invitations for bids and requests for proposals that include a Progress Payments clause.

(b) (1) Under the authority of the statutes cited in 32.101, an invitation for bids may restrict the availability of progress payments to small business concerns only.

(2) The contracting officer shall insert the provision at 52.232-14, Notice of Availability of Progress Payments Exclusively for Small Business Concerns, in invitations for bids if it is anticipated that (1) both small business concerns and others may submit bids in response to the same invitation and (2) only the small business bidders would need progress payments.

(c) The contracting officer shall insert the provision at 52.232-15, Progress Payments Not Included, in invitations for bids if the solicitation will not contain one of the provisions prescribed in paragraphs (a) and (b) above.

32.502-4 Contract clauses.

(a) The contracting officer shall insert the clause at 52.232-16, Progress Payments, in solicitations and fixed-price contracts under which the Government will provide progress payments based on costs.

(b) If the contractor is a small business concern, the contracting officer shall use the clause with its Alternate I.

(c) If the contract is a letter contract, the contracting officer shall use the clause with its Alternate II.

32.503 Postaward matters.

This section covers matters that are generally relevant only after award of a contract. This does not preclude taking actions discussed here before award, if appropriate; e.g., preaward review of accounting systems and controls.

32.503-1 Contractor requests.

Each contractor request for progress payment shall—

(a) Be submitted on Standard Form 1443, Contractor's Request for Progress Payment;

(b) Comply with the instructions on the reverse of the applicable form, and the contract terms; and

(c) Include any additional information reasonably requested by the contracting officer.

32.503-2 Supervision of progress payments.

(a) The extent of progress payments supervision, by prepayment review or periodic review, should vary inversely with the contractor's experience, performance record, reliability, quality of management, and financial strength, and with the adequacy of the contractor's accounting system and controls. Supervision shall be of a kind and degree sufficient to provide timely knowledge of the need for, and timely opportunity for, any actions necessary to protect Government interests.

(b) The administering office must keep itself informed of the contractor's overall operations and financial condition, since difficulties encountered and losses suffered in operations outside the particular progress payment contract may affect adversely the performance of that contract and the liquidation of the progress payments.

(c) For contracts with contractors (1) whose financial condition is doubtful or not strong in relation to progress payments outstanding or to be outstanding, (2) with management of doubtful capacity, (3) whose accounting controls are found by experience to be weak, or (4) experiencing substantial difficulties in performance, full information on progress under the contract involved (including the status of subcontracts) and on the contractor's other operations and overall financial condition should be obtained and analyzed frequently, with a view to protecting the Government's interests better and taking such action as may be proper to make contract performance more certain.

(d) So far as practicable, all cost problems, particularly those involving indirect costs, that are likely to create disagreements in future administration of the contract should be identified and resolved at the inception of the contract (see 31.109).

32.503-3 Initiation of progress payments and review of accounting system.

(a) For contractors that the administrative contracting officer (ACO) has found by previous experience or recent audit review (within the last 12 months) to be (1) reliable, competent, and capable of satisfactory performance, (2) possessed of an adequate accounting system and controls, and (3) in sound financial condition, progress payments in amounts requested by the contractor should be approved as a matter of course.

(b) For all other contractors, the ACO shall not approve progress payments before determining (1) that (i) the contractor will be capable of liquidating any progress payments or (ii) the Government is otherwise protected against loss by additional protective provisions, and (2) that the contractor's accounting system and controls are adequate for proper administration of progress payments. The services of the cognizant independent audit agency or office should be used to the greatest extent practicable. However, if the auditor so advises, a complete audit may not be necessary.

32.503-4 Approval of progress payment requests.

(a) When the reliability of the contractor and the adequacy of the contractor's accounting system and controls have been established (see 32.503-3 above) the ACO may, in approving any particular progress payment request (including initial requests on new contracts), rely upon that accounting system and upon the contractor's certification, without requiring audit or review of the request before payment.

(b) The ACO should not routinely ask for audits of progress payment requests. However, when there is reason to (1) question the reliability or accuracy of the contractor's certification or (2) believe that the contract will involve a loss, the ACO should ask for a review or audit of the request before payment is approved or the request is otherwise disposed of.

(c) When there is reason to doubt the amount of a progress payment request, only the doubtful amount should be withheld, subject to later adjustment after review or audit; any clearly proper and due amounts should be paid without awaiting resolution of the differences.

32.503-5 Administration of progress payments.

(a) While the ACO may, in approving progress payment requests under 32.503-

3 above, rely on the contractor's accounting system and certification without prepayment review. postpayment reviews (including audits when considered necessary) shall be made periodically, or when considered desirable by the ACO to determine the validity of progress payments already made and expected to be made.

(b) These postpayment reviews or audits shall, as a minimum, include a determination of whether or not—

(1) The unliquidated progress payments are fairly supported by the value of the work accomplished on the undelivered portion of the contract;

(2) The applicable limitation on progress payments in the Progress Payments clause has been exceeded;

(3) (i) The unpaid balance of the contract price will be adequate to cover the anticipated cost of completion, or

(ii) The contractor has adequate resources to complete the contract; and

(4) There is reason to doubt the adequacy and reliability of the contractor's accounting system and controls and certification.

(c) (1) Generally, the progress payments made under multiple-order contracts should be administered under each individual order as if the order constituted a separate contract.

(2) If the contractor requests it and the contracting officer approving individual progress payments agrees, the administration of progress payments may be based on the overall contract or agreement. Under this method, the contractor shall include a supporting schedule with each request for a progress payment. The schedule should identify the costs applicable to each order.

(3) The contracting officer may treat a group of orders as a single unit for administration of progress payments if each order in the group is (i) subject to a uniform liquidation rate, and (ii) under the jurisdiction of the same payment office.

32.503-6 Suspension or reduction of payments.

(a) *General.* The Progress Payments clause provides a Government right to reduce or suspend progress payments, or to increase the liquidation rate, under specified conditions. These conditions and actions are discussed in paragraphs (b) through (g) below.

(1) The contracting officer shall take these actions only in accordance with the contract terms and never precipitately or arbitrarily. These actions should be taken only after—

(i) Notifying the contractor of the intended action and providing an opportunity for discussion;

(ii) Evaluating the effect of the action on the contractor's operations, based on the contractor's financial condition, projected cash requirements, and the existing or available credit arrangements; and

(iii) Considering the general equities of the particular situation.

(2) The contracting officer shall take immediate unilateral action only if warranted by circumstances such as overpayments or unsatisfactory contract performance.

(3) In all cases, the contracting officer shall (i) act fairly and reasonably, (ii) base decisions on substantial evidence, and (iii) document the contract file. Findings made under paragraph (c) of the Progress Payments clause shall be in writing.

(b) *Contractor noncompliance.* (1) The contractor must comply with all material requirements of the contract. This includes the requirement to maintain an efficient and reliable accounting system and controls, adequate for the proper administration of progress payments. If the system or controls are deemed inadequate, progress payments shall be suspended until the necessary changes have been made.

(2) If the contractor fails to comply with the contract without fault or negligence, the contracting officer will not take action permitted by paragraph (c)(1) of the Progress Payments clause, other than to correct overpayments and collect amounts due from the contractor.

(c) *Unsatisfactory financial condition.* (1) If the contracting officer finds that contract performance (including full liquidation of progress payments) is endangered by the contractor's financial condition, or by a failure to make progress, the contracting officer shall require the contractor to make additional operating or financial arrangements adequate for completing the contract without loss to the Government.

(2) If the contracting officer concludes that further progress payments would increase the probable loss to the Government, the contracting officer shall suspend progress payments and all other payments until the unliquidated balance of progress payments is eliminated.

(d) *Excessive inventory.* If the inventory allocated to the contract exceeds reasonable requirements (including a reasonable accumulation of inventory for continuity of operations), the contracting officer should, in addition to requiring the transfer of excessive inventory from the contract, take one or more of the following actions, as necessary, to avoid or correct overpayment:

(1) Eliminate the costs of the excessive inventory from the costs eligible for progress payments, with appropriate reduction in progress payments outstanding.

(2) Apply additional deductions to billings for deliveries (increase liquidation).

(e) *Delinquency in payment of costs of performance.* (1) If the contractor is delinquent in paying the costs of contract performance in the ordinary course of business, the contracting officer shall evaluate whether the delinquency is caused by an unsatisfactory financial condition and, if so, shall apply the guidance in paragraph (c) above. If the contractor's financial condition is satisfactory, the contracting officer shall not deny progress payments if the contractor agrees to—

(i) Cure the payment delinquencies;

(ii) Avoid further delinquencies; and

(iii) Make additional arrangements adequate for completing the contract without loss to the Government.

(2) If the contractor has, in good faith, disputed amounts claimed by subcontractors, suppliers, or others, the contracting officer shall not consider the payments delinquent until the amounts due are established by the parties through litigation or arbitration. However, the amounts shall be excluded from costs eligible for progress payments so long as they are disputed.

(3) Determinations of delinquency in making contributions under employee pension, profit sharing, or stock ownership plans, and exclusion of costs for such contributions from progress payment requests, shall be in accordance with paragraph (a)(2) of the clause at 52.232-6, Progress Payments, without regard to the provisions of 32.503-6.

(f) *Fair value of undelivered work.* (1) For the purposes of Subpart 32.5, the fair value of undelivered work is the lesser of (i) the contract price of the undelivered work, minus the estimated costs required for completing contract performance, or (ii) the incurred costs applicable to the undelivered items.

(2) The contracting officer shall monitor the relationship of unliquidated progress payments to the fair value of undelivered work under the contract. If the unliquidated progress payments exceed the fair value of undelivered work, the contracting officer shall, governed by the principles in paragraphs (c) and (e) above, take appropriate action to eliminate this excess using the loss ratio adjustment described in paragraph (g) below, and based on full consideration of—

(i) The degree of completion of contract performance;

(ii) The quality and amount of work performed on the undelivered portion of the contract;

(iii) The amount of work remaining to be done and the estimated costs of completion of performance; and

(iv) The amount remaining unpaid under the contract.

(g) *Loss contracts.* (1) If the sum of the total costs incurred under a contract plus the estimated costs to complete the performance are likely to exceed the contract price, the contracting officer shall compute a loss ratio factor and adjust future progress payments to exclude the element of loss. The loss ratio factor is computed as follows:

(i) Revise the current contract price used in progress payment computations (the current ceiling price under fixed-price incentive contracts) to include any pending change orders and unpriced orders to the extent funds for the orders have been obligated.

(ii) Divide the revised contract price by the sum of the total costs incurred to date plus the estimated additional costs of completing the contract performance.

(2) If the contracting officer believes a loss is probable, future progress payment requests shall be modified as follows:

(i) The contract price shall be the revised amount computed under subparagraph (1)(i) above.

(ii) The total costs eligible for progress payments shall be the product of (A) the sum of paid costs eligible for progress payments times (B) the loss ratio factor computed under subparagraph (1)(ii) above.

(iii) The costs applicable to items delivered, invoiced, and accepted shall not include costs in excess of the contract price of the items.

(3) The contracting officer may use audit assistance, technical services, management reports, and other sources of pertinent data to evaluate progress payment requests. If the contracting officer concludes that the contractor's figures in the contractor's progress payment request are not correct, the contracting officer shall—

(i) In the manner prescribed in paragraph (4) below, prepare a supplementary analysis to be attached to the contractor's request;

(ii) Advise the contractor in writing of the differences; and

(iii) Adjust all further progress payments in accordance with paragraph (1) above, using the contracting officer's figures, until the difference is resolved.

(4) The following is an example of the supplementary analysis required in paragraph (3) above:

*This amount shall be the same as the contract price of the items delivered.

32.503-7 Limitation on general and administrative expenses (G&A) for progress payments.

If the contractor established an inventory suspense account under Appendix A of Cost Accounting Standard (CAS) 410, Allocation of Business Unit General and Administrative Expenses to Final Cost Objectives (4 CFR Part 410), and the account is $5 million or more, the following limitations shall apply to progress payments:

(a) G&A shall not be eligible for progress payments until the value of work in process inventories under new contracts exceeds that under the old. For this purpose, new contracts shall be considered to be those awarded after CAS 410 became applicable to the work of the contractor. Old contracts are those included in the suspense account prescribed in CAS 410.

(b) The amount of G&A eligible for progress payments under the contract shall be the contractor's pro rata share of G&A allocable to the excess under paragraph (a) above.

32.503-8 Liquidation rates—ordinary method.

Progress payments are recouped by the Government through the deduction of liquidations from payments that would otherwise be due to the contractor for completed contract items. To determine the amount of the liquidation, a liquidation rate is applied to the contract price of contract items delivered and accepted. The ordinary method is that the liquidation rate is the same as the progress payment rate; at the beginning of a contract, only this method may be used. If the contract is subject to the CAS limitation in 32.503-7 on G&A eligible for progress payments, the ordinary method includes the use of an adjusted liquidation rate to reflect the applicable G&A suspense account. The adjusted liquidation rate shall be established by (a) dividing the unbilled G&A by the contract price, (b) multiplying the quotient by the progress payment rate stated in the contract, and (c) subtracting the resulting rate from the progress payment rate. For example, if the price is $1,100,000 and the unbilled G&A is $47,600, the adjusted liquidation rate would be 86.1 percent, computed as follows:

Unbilled G&A divided by contract price (47,600/1,100,000)	4.33%
Result x progress payment rate (4.33% x 90%)	3.90%
Result subtracted from progress payment rate (90% - 3.90%)	86.10%

32.503-9 Liquidation rates—alternate method.

(a) The liquidation rate determined under 32.503-8 shall apply throughout the period of contract performance unless the contracting officer adjusts the liquidation rate under the alternate method in this 32.503-9. The objective of the alternate liquidation rate method is to permit the contractor to retain the earned profit element of the contract prices for completed items in the liquidation process. The contracting officer may reduce the liquidation rate if—

(1) The contractor requests a reduction in the rate;

(2) The rate has not been reduced in the preceding 12 months;

(3) The contract delivery schedule extends at least 18 months from the contract award date;

(4) Data on actual costs are available (i) for the products delivered, or (ii) if no deliveries have been made, for a performance period of at least 12 months;

(5) The reduced liquidation rate would result in the Government recouping under each invoice the full extent of the progress payments applicable to the costs allocable to that invoice;

(6) The contractor would not be paid for more than the costs of items delivered and accepted and accepted (less allocable progress payments) and the earned profit on those items;

(7) The unliquidated progress payments would not exceed the limit prescribed in paragraph (a)(4) of the Progress Payments clause;

(8) The parties agree on an appropriate rate; and

(9) The contractor agrees to certify annually, or more often if requested by the contracting officer, that the alternate rate continues to meet the conditions of subsections 5, 6, and 7 above. The certificate must be accompanied by adequate supporting information.

(b) The contracting officer shall change the liquidation rate in the following circumstances:

(1) The rate shall be increased for both previous and subsequent transactions, if the contractor experiences a lower profit rate than the rate anticipated at the time the liquidation rate was established. Accordingly, the contracting officer shall adjust the progress payments associated with contract items already delivered, as well as subsequent progress payments.

(2) The rate shall be increased or decreased in keeping with the successive changes to the contract price or target profit when—

(i) The target profit is changed under a fixed-price incentive contract with successive targets; or

(ii) A redetermined price involves a change in the profit element under a contract with prospective price redetermination at stated intervals.

(c) Whenever the liquidation rate is changed, the contracting officer shall issue a contract modification to specify the new rate in the Progress Payments clause. Adequate consideration for these contract modifications is provided by the consideration included in the initial contract. The parties shall promptly make the payment or liquidation required in the circumstances.

32.503-10 Establishing alternate liquidation rates.

(a) The contracting officer shall ensure that the liquidation rate is—

(1) High enough to result in Government recoupment of the applicable progress payments on each billing; and

(2) Supported by documentation included in the administration office contract file.

(b) The minimum liquidation rate is the expected progress payments divided by the contract price. Each of these factors is discussed below:

(1) Usually, the contracting officer shall compute the expected progress payments by multiplying the estimated cost of performing the contract by the progress payment rate. In certain cases, part of the contractor's G&A is excluded from the estimated cost for the purpose of calculating expected progress payments for the liquidation rate. These cases pertain to the implementation of CAS 410 (see 32.503-7 and 32.503-8).

(2) For purposes of computing the liquidation rate, the contracting officer may adjust the estimated cost and the contract price to include the estimated value of any work authorized but not yet priced and any projected economic adjustments; however, the contracting officer's adjustment shall not exceed the Government's estimate of the price of all authorized work or the funds obligated for the contract.

(3) The following are examples of the computation. Assuming an estimated price of $1,100,000 and total estimated costs eligible for progress payments of $1,000,000:

(i) If the progress payment rate is 90 percent, the minimum liquidation rate should be 81.9 percent, computed as follows:

$$\frac{(\$1{,}000{,}000 \times 90\%)}{\$1{,}100{,}000} = 81.9\%.$$

(ii) If the progress payment rate is 95 percent, the minimum liquidation rate should be 86.4 percent, computed as follows:

$$\frac{(\$1{,}000{,}000 \times 95\%)}{\$1{,}100{,}000} = 86.4\%.$$

(iii) If the contract is subject to a CAS limitation on G&A eligible for progress payments (see 32.503-7), an adjusted alternate liquidation rate shall be established by subtracting the estimated G&A not eligible for progress payments from the total estimated contract costs. For example, if the price is $1,100,000, costs are $1,000,000, and unbilled G&A is $47,600, the liquidation rate should be 78.0 percent, computed as follows:

$$\frac{\$1{,}000{,}000 - \$47{,}600}{\$1{,}100{,}000} \times 90\% = 78.0\%.$$

(4) Minimum liquidation rates will generally be expressed to tenths of a percent. Decimals between tenths will be rounded up to the next highest tenth (not necessarily the nearest tenth), since rounding down would produce a rate below the minimum rate calculated.

32.503-11 Adjustments for price reduction.

(a) If a retroactive downward price reduction occurs under a redeterminable contract that provides for progress payments, the contracting officer shall—

(1) Determine the refund due and obtain repayment from the contractor for the excess of payments made for delivered items over amounts due as recomputed at the reduced prices; and

(2) Increase the unliquidated progress payments amount for overdeductions made from the contractor's billings for items delivered.

(b) The contracting officer shall also increase the unliquidated progress payments amount if the contractor makes an interim or voluntary price reduction under a redeterminable or incentive contract.

32.503-12 Maximum unliquidated amount.

(a) The contracting officer shall ensure that any excess of the unliquidated progress payments over the contractual limitation in paragraph (a) of the Progress Payments clause in the contract is promptly corrected through one or more of the following actions:

(1) Increasing the liquidation rate.

(2) Reducing the progress payment rate.

(3) Suspending progress payments.

(b) The excess described in paragraph (a) above is most likely to arise under the following circumstances:

(1) The costs of performance exceed the contract price.

(2) The alternate method of liquidation (see 32.503-9) is used and the actual costs of performance exceed the cost estimates used to establish the liquidation rate.

(3) The rate of progress or the quality of contract performance is unsatisfactory.

(4) The rate of rejections, waste, or spoilage is excessive.

(c) As required, the services of the cognizant independent audit agency or office should be fully utilized, along with the services of qualified cost analysis and engineering personnel.

32.503-13 Quarterly statements for price revision contracts.

Under price revision or redeterminable contracts that include progress payments clauses, the contracting officer shall occasionally compare the quarterly statements submitted under the price revision or renegotiation clause at 52.216-5, 52.216-6, 52.216-16, or 52.216-17 with the contractor's requests for progress payments. The contracting officer should ensure, as far as is reasonably

possible, that costs of delivered items in the quarterly statements are excluded from the costs of undelivered items (the basis for unliquidated progress payments) in the contractor's request for progress payments.

32.503-14 Protection of Government title.

(a) Since the Progress Payments clause gives the Government title to all of the materials, work-in-process, finished goods, and other items of property described in paragraph (d) of the Progress Payments clause, under the contract under which progress payments have been made, the ACO must ensure that the Government title to these inventories is not compromised by other encumbrances. Ordinarily, the ACO, in the absence of reason to believe otherwise, may rely upon the contractor's certification contained in the progress payment request.

(b) If the ACO becomes aware of any arrangement or condition that would impair the Government's title to the property affected by progress payment, the ACO shall require additional protective provisions (see 32.501-5) to establish and protect the Government's title.

(c) The existence of any such encumbrance is a violation of the contractor's obligations under the contract, and the ACO may, if necessary, suspend or reduce progress payments under the terms of the Progress Payments clause covering failure to comply with any material requirement of the contract. In addition, if the contractor fails to disclose an existing encumbrance in the progress payments certification, the ACO should consult with legal counsel concerning possible violation of 31 U.S.C. 231, the False Claims Act.

32.503-15 Application of Government title terms.

(a) Property to which the Government obtains title by operation of the Progress Payments clause solely is not, as a consequence, Government-furnished property.

(b) Although property title is vested in the Government under the Progress Payments clause, the acquisition, handling, and disposition of certain types of property are governed by other clauses, as follows:

(1) The clause at 52.245-17, Special Tooling, for special tooling.

(2) The termination clauses at 52.249, for termination inventory.

(c) The contractor may sell or otherwise dispose of current production scrap in the ordinary course of business on its own volition, even if title has vested in the Government under the Progress Payments clause. The contracting officer shall require the contractor to credit the costs of the contract performance with the proceeds of the scrap disposition.

(d) When the title to materials or other inventories is vested in the Government under the Progress Payments clause, the contractor may transfer the inventory items from the contract for its own use or other disposition only if, and on terms, approved by the contracting officer. The contractor shall (1) eliminate the costs allocable to the transferred property from the costs of contract performance, and (2) repay or credit to the Government an amount equal to the unliquidated progress payments, allocable to the transferred property.

(e) If excess property remains after the contract performance is complete and all contractor obligations under the contract are satisfied, including full liquidation of progress payments, the excess property is outside the scope of the Progress Payments clause. Therefore, the contractor holds title to it.

32.503-16 Risk of loss.

(a) Under the Progress Payments clause, and except for normal spoilage, the contractor bears the risk for loss, theft, destruction, or damage to property affected by the clause, even though title is vested in the Government, unless the Government has expressly assumed this risk. The clauses prescribed in this regulation related to progress payments, default, and terminations do not constitute a Government assumption of this risk.

(b) If a loss occurs in connection with property for which the contractor bears the risk, the contractor is obligated to repay to the Government the amount of unliquidated progress payments based on costs allocable to the property.

(c) The contractor is not obligated to pay for the loss of property for which the Government has assumed the risk of loss. However, a serious loss may impede the satisfactory progress of contract performance, so that the contracting officer may need to act under paragraph (c)(5) of the Progress Payments clause.

32.504 Subcontracts.

(a) The contracting officer shall encourage the contractor to provide progress payments to subcontractors on terms that meet the standards in 32.502-1 for customary progress payments.

(b) The contractor's requests for progress payments may include the full amount paid to subcontractors as progress payments under the contract and subcontracts.

(c) If the contractor is considering making unusual progress payments to a subcontractor, the parties shall be guided by the policies in 32.501-2. If unusual progress payments for the subcontract are approved by the Government, the contracting officer shall issue a contract modification to specify the new rate in subdivision (j)(4) of the Progress Payments clause in the prime contract. This will allow the contractor to include the progress payments to the subcontractor in the cost basis for progress payments by the Government. This modification shall not be considered a deviation and shall not require the clearance prescribed in 32.502-2(b).

(d) The contractor has a duty to ensure that progress payments to subcontractors conform to the standards and principles prescribed in paragraph (j) of the Progress Payments clause in the prime contract. Although the contracting officer should, to the extent appropriate, review the subcontract as part of the overall administration of progress payments in the prime contract, there is no special requirement for contracting officer review or consent merely because the subcontract includes a progress payments clause except as provided in paragraph (c) above.

(e) The subcontract terms shall include the substance of the Progress Payments clause in the prime contract, modified to indicate that the contractor, not the Government, awards the subcontract and administers the progress payments. The following exceptions apply to wording modifications:

(1) The subcontract terms on title to property under progress payments shall provide for vesting of title in the Government, not the contractor, as in paragraph (d) of the Progress Payments clause in the prime contract. A reference to the contractor may, however, be substituted for "Government" in subdivision (d)(2)(iv) of the clause.

(2) In the subcontract terms on reports and access to records, the contractor shall not delete the references to "Contracting Officer" and "Government" in adapting paragraph (g) of the Progress Payments clause in the contract, but may expand the terms as follows:

(i) The term "Contracting Officer" may be changed to "Contracting Officer or Prime Contractor."

(ii) The term "the Government" may be changed to "the Government or Prime Contractor."

(3) The subcontract special terms regarding default shall include paragraph (h) of the Progress Payments

clause in the contract through its subdivision (i). The rest of paragraph (h) is optional.

(f) If the contractor makes progress payments to a subcontractor under a cost-reimbursement prime contract, the contracting officer shall accept the progress payments as reimbursable costs of the prime contract only under the following conditions:

(1) The payments are made under the criteria in 32.502-1 for customary progress payments.

(2) The payments do not exceed the progress payment rate in 32.501-1 unless unusual progress payments to the subcontractor have been approved in accordance with 32.501-2.

(3) The subcontractor complies with the liquidation principles of 32.503-8, 32.503-9, and 32.503-10.

(4) The subcontract contains progress payments terms as prescribed in this section.

SUBPART 32.6—CONTRACT DEBTS

32.600 Scope of subpart.

This subpart prescribes policies and procedures for the Government's actions in ascertaining and collecting contract debts, charging interest on the debts, deferring collections, and compromising and terminating certain debts.

32.601 Definition.

"Responsible official," as used in this subpart, means the contracting officer (see Subpart 2.1) or other official designated under agency procedures to administer the collection of contract debts and applicable interest.

32.602 General.

The contract debts covered in this subpart arise in various ways. The following are some examples:

(a) Damages or excess costs related to defaults in performance.

(b) Breach of contract obligations concerning progress payments, advance payments, or Government-furnished property or material.

(c) Government expense of correcting defects.

(d) Overpayments related to errors in quantity or billing or deficiencies in quality.

(e) Retroactive price reductions resulting from contract terms for price redetermination or for determination of prices under incentive type contracts.

(f) Overpayments disclosed by quarterly statements required under price redetermination or incentive contracts.

(g) Delinquency in contractor payments due under agreements or arrangements for deferral or postponement of collections.

32.603 Applicability.

Except as otherwise specified, this subpart applies to all debts to the Government arising in connection with contracts and subcontracts for the acquisition of supplies or services.

32.604 Exclusions.

This subpart does not apply to claims of the Government against military or civilian employees or their dependents arising in connection with current or past employment by the Government. Sections 32.613, 32.614, and 32.616 do not apply to claims against common carriers for transportation overcharges and freight and cargo losses.

32.605 Responsibilities and cooperation among Government officials.

(a) To protect the Government's interests, contracting officers, contract financing offices, disbursing officials, and auditors shall cooperate fully with each other to—

(1) Discover promptly when a contract debt arises;

(2) Ascertain the correct amount of the debt;

(3) Act promptly and effectively to collect the debt;

(4) Administer deferment of collection agreements; and

(5) Provide up-to-date information on the status of the debt.

(b) For most kinds of contract debts, the contracting officer has the primary responsibility for determining the amounts of and collecting contract debt. Under some agency procedures, however, the individual who is responsible for payment under the contract; e.g., the disbursing officer, may have this primary responsibility.

32.606 Debt determination and collection.

(a) If any indication of a contract debt arises, the responsible official shall determine promptly whether an actual debt is due the Government and the amount. Any unwarranted delay may contribute to—

(1) Loss of timely availability of the funds to the program for which the funds were initially provided;

(2) Increased difficulty in collecting the debt; or

(3) Actual monetary loss to the Government.

(b) In determining the amount of any contract debt, the responsible official shall fairly consider both the Government's claim and any contract claims by the contractor against the Government. This determination does not constitute a settlement of such claims, nor is it a contracting officer's final determination under the Contract Disputes Act of 1979.

(c) The responsible official shall establish a control record for each contract debt, to include at least the following information:

(1) The name and address of the contractor.

(2) The contract number, if any.

(3) A description of the debt.

(4) The amount of debt and the appropriation to be credited.

(5) The date the debt was determined.

(6) The dates of demands for payment.

(7) The amounts and dates of collections, as they occur.

(8) The date of any appeal filed or action brought in the Court of Claims under the Disputes clause.

(9) The status of collections. Examples include—

(i) Actions reported to the disbursing officer (name, location, and date);

(ii) Funds requested to be withheld by the disbursing officer;

(iii) Funds requested to be withheld by other offices (date and office);

(iv) Deferment or installment payment arrangement requested;

(v) Deferment or installment request reviewed;

(vi) Supplemental information requested to support deferment requests; and

(vii) Actions transferred to the contract financing office.

(d) Except in cases in which an agreement has been entered into for deferment of collections (32.613) or bankruptcy proceedings against the contractor have been initiated, the contractor shall be required to liquidate the debt by—

(1) Cash payment in a lump sum, on demand; or

(2) Credit against existing unpaid bills due the contractor.

(e) The responsible officials shall use all proper means available to them for collecting debts as rapidly as possible. Practices for ascertaining and collecting debts shall be comprehensive, dynamic, and as uniform as practicable. Full consideration shall be given to personal contact and followup.

32.607 Tax credit.

(a) If the contractor is entitled to a tax credit under section 1481 of the Internal Revenue Code (26 U.S.C. 1481) and requests recognition of the credit in the debt collection, the responsible official shall comply.

(b) The tax credit shall be considered to reduce the amount of the debt as of the date when interest on the debt begins to accrue.

(c) The amount of the debt reduction shall be the amount of the tax credit certificate, if a certificate was issued by

.he Internal Revenue Service (IRS). If the IRS has not yet issued a certificate, the responsible official may accept the contractor's estimate of the tax credit amount until the certificate is issued, subject to any verification that the responsible official considers appropriate.

(d) A reduction for a tax credit does not apply to a debt arising from a subcontract.

32.608 Negotiation of contract debts.

(a) The responsible official shall ensure that any negotiations concerning debt determinations are completed expeditiously. If consistent with the contract, the official shall make a unilateral determination promptly if the contractor is delinquent in any of the following actions:

(1) Furnishing pertinent information.

(2) Negotiating expeditiously.

(3) Entering into an agreement on a fair and reasonable price revision.

(4) Signing an interim memorandum evidencing a negotiated pricing agreement involving refund.

(5) Executing an appropriate contract modification reflecting the result of negotiations.

(b) The amount of indebtedness determined unilaterally shall be an amount that—

(1) Is proper based on the merits of the case;

(2) Does not exceed an amount that would have been considered acceptable in a negotiated agreement; and

(3) Is consistent with the contract terms.

(c) For unilateral debt determinations, the contracting officer shall issue a decision as required by the Disputes clause (52.233-1) at or before the time of making a demand under 32.610.

32.609 Memorandum of pricing agreement with refund.

(a) If a refund to the Government is agreed upon in negotiations under a price revision type of contract, the responsible official shall promptly write a memorandum to document the agreement and the contract debt. The memorandum shall be signed by the negotiators for the Government and the contractor. If the procedures of either the agency or the contractor require approval of the negotiation results by higher authority, the memorandum shall be written without prejudice to the final pricing. After negotiations are completed, a supplemental agreement shall be executed without delay.

(b) The amount of refund shall be computed promptly, without waiting for itemization of adjustment of past billings, accounting adjustments, or the adjusted invoices.

32.610 Demand for payment of contract debt.

(a) A demand for payment shall be made as soon as the responsible official has computed the amount of refund due. If the debt arises from excess costs for a default termination, the demand shall be made without delay, as explained in 49.402-6.

(b) The demand shall include the following:

(1) A description of the debt, including the debt amount.

(2) Notification that any amounts not paid within 30 days from the date of the demand will bear interest from the date of the demand, or from any earlier date specified in the contract and that the interest rate shall be the rate established by the Secretary of the Treasury, for the period affected, under 50 U.S.C. App. 1215(b)(2).

(3) A notification that the contractor may submit a proposal for deferment of collection if immediate payment is not practicable or if the amount is disputed.

(4) Identification of the responsible official designated for determining the amount of the debt and for its collection.

(c) Contracting officer decision under the Disputes clause is covered in 32.608. If subparagraph (b)(3) of the clause at 52.232-17, Interest, applies, the demand mentioned in paragraph (a) above shall accompany or be included in the transmittal mentioned in the clause.

32.611 Routine setoff.

If a disbursing officer is the responsible official for collection of a contract debt, or is notified of the debt by the responsible official and has contractor invoices on hand for payment, the disbursing officer shall make an appropriate setoff. The disbursing officer shall give the contractor an explanation of the setoff. To the extent that the setoff reduces the debt, the explanation shall replace the demand prescribed in 32.610.

32.612 Withholding and setoff.

During the 30 days following the issuance of a demand, the advisability of withholding payments otherwise due to the contractor shall be considered based on the circumstances of the individual cases. If payment is not completed within 30 days, and deferment is not requested, withholding of principal and interest shall be initiated immediately. In the event the contract is assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 203 and 41 U.S.C. 15), the rights of the assignee will be scrupulously respected and withholding of payments shall be consistent with those rights. For additional information on assignment of claims, see Subpart 32.8.

32.613 Deferment of collection.

(a) If the responsible official receives a written request from the contractor for a deferment of the debt collection or installment payments, the official shall promptly review the request to see if the information included is adequate for action on the request. If not, the contractor shall be asked to furnish the needed information. Any necessary changes to the terms of the proposed deferment/installment agreement shall also be suggested.

(b) If the contractor has appealed the debt under the procedures of the Disputes clause of the contract, the information with the request for deferment may be limited to an explanation of the contractor's financial condition.

(c) If there is no appeal pending or action filed under the Disputes clause of the contract, the following information about the contractor should be submitted with the request:

(1) Financial condition.

(2) Contract backlog.

(3) Projected cash receipts and requirements.

(4) The feasibility of immediate payment of the debt.

(5) The probable effect on operations of immediate payment in full.

(d) Although the existence of a contractor appeal of the debt does not of itself require the Government to suspend or delay collection action, the responsible official shall consider whether deferment of the debt collection is advisable to avoid possible overcollection. The responsible official may authorize a deferment pending the resolution of appeal.

(e) Deferments pending disposition of appeal may be granted to small business concerns and financially weak contractors, with a reasonable balance of the need for Government security against loss and undue hardship on the contractor.

(f) If a contractor has not appealed the debt or filed an action under the Disputes clause of the contract, the responsible official may arrange for deferment/installment payments if the contractor is unable to pay at once in full or the contractor's operations under national defense contracts would be seriously impaired. The arrangement shall include appropriate covenants and securities and should be limited to the shortest practicable maturity.

(g) Contracts and arrangements for deferment may not provide that a claim of the Government will not become due and payable pending mutual agreement on the amount of the claim or, in the case of a dispute, until the decision is reached.

(h) At a minimum, the deferment agreement shall contain the following:

(1) A description of the debt.

(2) The date of first demand for payment.

(3) Notice of an interest charge, in conformity with 32.614 and the clause at 52.232-17, Interest.

(4) Identification of the office to which the contractor is to send debt payments.

(5) A requirement for the contractor to submit financial information requested by the Government and for reasonable access to the contractor's records and property by Government representatives.

(6) Provision for the Government to terminate the deferment agreement and accelerate the maturity of the debt if the contractor defaults or if bankruptcy or insolvency proceedings are instituted by or against the contractor.

(7) Protective requirements that are considered by the Government to be prudent and feasible in the specific circumstances. The coverage of protective terms at 32.409 and 32.501-5 may be used as a guide.

(i) If a contractor appeal of the debt determination is pending, the deferment agreement shall also include a requirement that the contractor shall—

(1) Diligently prosecute the appeal; and

(2) Pay the debt in full when the appeal is decided, or when the parties reach agreement on the debt amount.

(j) If the contractor does not plan to appeal the debt or file an action under the Disputes clause of the contract, the deferment/installment agreement shall include a specific schedule or plan for payment. It should permit the Government to make periodic financial reviews of the contractor and to require prepayments if the Government considers the contractor's ability to pay improved. It should also provide for required stated or measurable prepayments on the occurrence of specific events or contingencies that improve the contractor's ability to pay.

(k) If desired by the contractor, the deferment agreement may provide for the right to make prepayments without prejudice, for refund of overpayments, and for crediting of interest (see 32.614-2).

(l) Actions filed by contractors under the Disputes clause shall not suspend or delay collection. Until the action is decided, deferments shall only be granted if, within 30 days after the filing of such action, the contractor presents to the responsible official a good and sufficient bond, or other collateral acceptable to the responsible official, in the amount of the claim, and approved by the responsible official. Any amount collected by the Government in excess of the amount found to be due on appeal under the Disputes clause of the contract shall be refunded to the contractor with interest thereon from the date of collection by the Government at the annual rate established by the Secretary of Treasury under 50 U.S.C. App. 1215(b)(2). Simple interest shall be calculated through the period of indebtedness to reflect each 6-month period change in the rates established by the Secretary.

32.614 Interest.

32.614-1 Interest charges.

(a) Under the clause at 52.232-17, Interest, the responsible official shall apply interest charges to any contract debt unpaid after 30 days from the issuance of a demand, unless—

(1) The contract specifies another due date or procedure for charging or collecting interest;

(2) The contract is a kind excluded under 32.617; or

(3) The contract or debt has been exempted from interest charges under agency procedures.

(b) If not already applicable under the contract terms, interest on contract debt shall be made an element of any agreement entered into on deferment of collection.

(c) The interest charge shall be at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2) for the period in which the amount becomes due. The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(1) The date on which the designated office receives payment from the contractor;

(2) 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;

(3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the contractor; or

(4) The date of any applicable tax credit under 32.607.

32.614-2 Interest credits.

(a) An equitable interest credit shall be applied under the following circumstances:

(1) When the amount of debt initially determined is subsequently reduced; e.g., through a successful appeal.

(2) When the collection procedures followed in a given case result in an overcollection of the debt due.

(3) When the responsible official determines that the Government has unduly delayed payments to the contractor on the same contract at some time during the period to which the interest charge applied, provided an interest penalty was not paid for such late payment.

(b) Any appropriate interest credits shall be computed under the following procedures:

(1) Interest at the rate under 32.614-1(c) shall be charged on the reduced debt from the date specified in the first demand made for payment of the higher debt.

(2) Interest may not be reduced for any time between the due date under the demand and the period covered by a deferment of collection, unless the contract includes an interest clause; e.g., the clause prescribed in 32.617.

(3) Interest shall not be credited in an amount that, when added to other amounts refunded or released to the contractor, exceeds the total amount that has been collected, or withheld for the purpose of collecting the debt. This limitation shall be further reduced by the amount of any limitation applicable under 32.614-2(b)(2).

32.615 Delays in receipt of notices or demands.

If delivery of the demands or notices required by the clause at 52.232-17, Interest, is delayed by the Government (e.g., undue delay after dating at the originating office or delays in the mail), the date of the debt and accrual of interest shall be extended to a time that is fair and reasonable under the particular circumstances.

32.616 Compromise actions.

For debts under $20,000, excluding interest, if further collection is not practicable or would cost more than the amount of recovery, the agency may compromise the debt or terminate or suspend further collection action. Compromise is authorized by the Federal Claims Collection Act of 1966 (31 U.S.C. 952). Compromise actions shall conform to Federal claims collection standards (4 CFR 101-105), and agency regulations.

32.617 Contract clause.

(a) The contracting officer shall insert the clause at 52.232-17, Interest, in solicitations and contracts, unless it is

contemplated that the contract will be in one or more of the following categories:

(1) Small purchases.

(2) Contracts with Government agencies.

(3) Contracts with a State or local government or instrumentality.

(4) Contracts with a foreign government or instrumentality.

(5) Contracts without any provision for profit or fee with a nonprofit organization.

(6) Contracts described in Subpart 5.5, Paid advertisements.

(7) Any other exceptions authorized under agency procedures.

(b) The contracting officer may insert the clause at 52.232-17, Interest, in solicitations and contracts when it is contemplated that the contract will be in any of the categories specified in 32.617(a).

SUBPART 32.7—CONTRACT FUNDING

32.700 Scope.

This subpart (a) describes basic requirements for contract funding and (b) prescribes procedures for using limitation of cost or limitation of funds clauses. Detailed acquisition funding requirements are contained in agency fiscal regulations.

32.701 Reserved.

32.702 Policy.

No officer or employee of the Government may create or authorize an obligation in excess of the funds available, or in advance of appropriations (Anti-Deficiency Act, 31 U.S.C. 665), unless otherwise authorized by law. Before executing any contract, the contracting officer shall (a) obtain written assurance from responsible fiscal authority that adequate funds are available or (b) expressly condition the contract upon availability of funds in accordance with 32.703-2.

32.703 Contract funding requirements.

32.703-1 General.

(a) If the contract is fully funded, funds are obligated to cover the price or target price of a fixed-price contract or the estimated cost and any fee of a cost-reimbursement contract.

(b) If the contract is incrementally funded, funds are obligated to cover the amount allotted and any corresponding increment of fee.

32.703-2 Contracts conditioned upon availability of funds.

(a) *Fiscal year contracts.* The contracting officer may initiate a contracting action properly chargeable to funds of the new fiscal year before these funds are available; *provided*, that the contract includes the clause at 52.232-18, Availability of Funds (see 32.705-1(a)). This authority may be used only for operation and maintenance and continuing services (e.g., rentals, utilities, and supply items not financed by stock funds) (1) necessary for normal operations and (2) for which Congress previously had consistently appropriated funds, unless specific statutory authority exists permitting applicability to other requirements.

(b) *Indefinite-quantity or requirements contracts.* A one-year indefinite-quantity or requirements contract for services that is funded by annual appropriations may extend beyond the fiscal year in which it begins; *provided*, that (1) any specified minimum quantities are certain to be ordered in the initial fiscal year (see 37.106) and (2) the contract includes the clause at 52.232-19, Availability of Funds for the Next Fiscal Year (see 32.705-1(b)).

(c) *Acceptance of supplies or services.* The Government shall not accept supplies or services under a contract conditioned upon the availability of funds until the contracting officer has given the contractor notice, to be confirmed in writing, that funds are available.

32.703-3 Contracts crossing fiscal years.

A contract that is funded by annual appropriations may not cross fiscal years, except in accordance with statutory authorization (see 31 U.S.C. 668, 668a, and 699), or when the contract calls for an end product that cannot feasibly be subdivided for separate performance in each fiscal year (e.g., contracts for expert or consultant services).

32.704 Limitation of cost or funds.

(a) (1) When a contract contains the clause at 52.232-20, Limitation of Cost; 52.232-21, Limitation of Cost (Facilities); or 52.232-22, Limitation of Funds, the contracting officer, upon learning that the contractor is approaching the estimated cost of the contract or the limit of the funds allotted, shall promptly obtain funding and programming information pertinent to the contract's continuation and notify the contractor in writing that—

(i) Additional funds have been allotted, or the estimated cost has been increased, in a specified amount;

(ii) The contract is not to be further funded and that the contractor should submit a proposal for an adjustment of fee, if any, based on the percentage of work completed in relation to the total work called for under the contract;

(iii) The contract is to be terminated; or

(iv) (A) The Government is considering whether to allot additional funds or increase the estimated cost, (B) the contractor is entitled by the contract terms to stop work when the funding or cost limit is reached, and (C) any work beyond the funding or cost limit will be at the contractor's risk.

(2) Upon learning that a partially funded contract containing any of the clauses referenced in subparagraph (1) above will receive no further funds, the contracting officer shall promptly give the contractor written notice of the decision not to provide funds.

(b) Under a cost-reimbursement contract, the contracting officer may issue a change order, a direction to replace or repair defective items or work, or a termination notice without immediately increasing the funds available. Since a contractor is not obligated to incur costs in excess of the estimated cost in the contract, the contracting officer shall ensure availability of funds for directed actions. The contracting officer may direct that any increase in the estimated cost or amount allotted to a contract be used for the sole purpose of funding termination or other specified expenses.

(c) Government personnel encouraging a contractor to continue work in the absence of funds will incur a violation of Revised Statutes Section 3679 (31 U.S.C. 665) that may subject the violator to civil or criminal penalties.

32.705 Contract clauses.

32.705-1 Clauses for contracting in advance of funds.

(a) The contracting officer shall insert the clause at 52.232-18, Availability of Funds, in solicitations and contracts if the contract will be chargeable to funds of the new fiscal year and the contracting action is to be initiated before the funds are available.

(b) The contracting officer shall insert the clause at 52.232-19, Availability of Funds for the Next Fiscal Year, in solicitations and contracts if a one-year indefinite-quantity or requirements contract for services is contemplated and the contract (a) is funded by annual appropriations and (b) is to extend beyond the initial fiscal year (see 32.703-2(b)).

32.705-2 Clauses for limitation of cost or funds.

(a) The contracting officer shall insert the clause at 52.232-20, Limitation of Cost, in solicitations and contracts if a fully funded cost-reimbursement contract is contemplated, except those

for consolidated facilities, facilities acquisition, or facilities use, whether or not the contract provides for payment of a fee.

(b) The contracting officer shall insert the clause at 52.232-21, Limitation of Cost (Facilities), in solicitations and contracts for consolidated facilities, facilities acquisition, or facilities use (see 45.301).

(c) The contracting officer shall insert the clause at 52.232-22, Limitation of Funds, in solicitations and contracts if an incrementally funded cost-reimbursement contract is contemplated.

SUBPART 32.8—ASSIGNMENT OF CLAIMS.

32.800 Scope of subpart.

This subpart prescribes policies and procedures for the assignment of claims under the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 203, 41 U.S.C. 15 (hereafter referred to as "the Act").

32.801 Definitions.

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

"Designated agency," as used in this subpart, means any agency authorized to include a no-setoff commitment in its contracts. The designated agencies are the Department of Defense, the General Services Administration, the National Aeronautics and Space Administration, the Federal Aviation Administration, and any other agency authorized by statute or designated by the President.

"No-setoff commitment," as used in this subpart, means a contractual undertaking that, to the extent permitted by the Act, payments by the designated agency to the assignee under an assignment of claims will not be reduced to liquidate the indebtedness of the contractor to the Government.

32.802 Conditions.

Under the Assignment of Claims Act, a contractor may assign moneys due or to become due under a contract if all the following conditions are met:

(a) The contract specifies payments aggregating $1,000 or more.

(b) The assignment is made to a bank, trust company, or other financing institution, including any Federal lending agency.

(c) The contract does not prohibit the assignment.

(d) Unless otherwise expressly permitted in the contract, the assignment—

(1) Covers all unpaid amounts payable under the contract;

(2) Is made only to one party, except that any assignment may be made to one party as agent or trustee for two or more parties participating in the financing of the contract; and

(3) Is not subject to further assignment.

(e) The assignee sends a written notice of assignment together with a true copy of the assignment instrument to the—

(1) Contracting officer or the agency head;

(2) Surety on any bond applicable to the contract; and

(3) Disbursing officer designated in the contract to make payment.

32.803 Policies.

(a) Any assignment of claims that has been made under the Act to any type of financing institution listed in 32.802(b) may thereafter be further assigned and reassigned to any such institution if the conditions in 32.802(d) and (e) continue to be met.

(b) A contract may prohibit the assignment of claims if the agency determines the prohibition to be in the Government's interest.

(c) Under a requirements or indefinite quantity type contract that authorizes ordering and payment by multiple Government activities, amounts due for individual orders for $1,000 or more may be assigned.

(d) Each designated agency (see 32.801) may include a no-setoff commitment only in time of war or national emergency in any contract permitting the assignment of claims. In such times there should be special considerations to justify a determination that exclusion of a no-setoff commitment is in the Government's interest.

(e) When an assigned contract does not include a no-setoff commitment, the Government may apply against payments to the assignee any liability of the contractor to the Government arising independently of the assigned contract if the liability existed at the time notice of the assignment was received even though that liability had not yet matured so as to be due and payable.

32.804 Extent of assignee's protection.

(a) No payments made by the Government to the assignee under any contract assigned in accordance with the Act may be recovered on account of any liability of the contractor to the Government. This immunity of the assignee is effective whether the contractor's liability arises from or independently of the assigned contract.

(b) Except as provided in paragraph (c) below, the inclusion of a no-setoff commitment in an assigned contract entitles the assignee to receive contract payments free of reduction or setoff for—

(1) Any liability of the contractor to the Government arising independently of the contract; and

(2) Any of the following liabilities of the contractor to the Government arising from the assigned contract:

(i) Renegotiation under any statute or contract clause.

(ii) Fines.

(iii) Penalties, exclusive of amounts that may be collected or witheld from the contractor under, or for failure to comply with, the terms of the contract.

(iv) Taxes or social security contributions.

(v) Withholding or nonwithholding of taxes or social security contributions.

(c) In some circumstances, a setoff may be appropriate even though the assigned contract includes a no-setoff commitment, e.g.—

(1) When the assignee has neither made a loan under the assignment nor made a commitment to do so; or

(2) To the extent that the amount due on the contract exceeds the amount of any loans made or expected to be made under a firm commitment for financing.

32.805 Procedure.

(a) *Assignments.* (1) Assignments by corporations should be (i) executed by an authorized representative, (ii) attested by the secretary or the assistant secretary of the corporation, and (iii) impressed with the corporate seal or accompanied by a certified copy of the resolution of the corporation's board of directors authorizing the signing representative to execute the assignment.

(2) If the contractor is a partnership, the assignment may be signed by one partner, if it is accompanied by an acknowledged certification that the signer is a general partner of the partnership.

(3) If the contractor is an individual, the assignment must be signed by that individual and the signature acknowledged before a notary public or other person authorized to administer oaths.

(b) *Filing.* The assignee shall forward to each party specified in 32.802(e) an original and three copies of the notice of assignment, together with one true copy of the instrument of assignment. The true copy shall be a certified duplicate

or photostat copy of the original assignment.

(c) *Format for notice of assignment.* The following is a suggested format for use by an assignee in providing the notice of assignment required by 32.802(e).

NOTICE OF ASSIGNMENT

TO: .....[*address to one of the parties specified in 32.802(e)*].

This has reference to Contract No. ..... dated ....., entered into between ..... [*contractor's name and address*] and ..... [*government agency, name of office, and address*], for .....[*describe nature of the contract*].

Moneys due or to become due under the contract described above have been assigned to the undersigned under the provisions of the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 203, 41 U.S.C. 15.

A true copy of the instrument of assignment executed by the Contractor on .....[*date*], is attached to the original notice.

Payments due or to become due under this contract should be made to the undersigned assignee.

Please return to the undersigned the three enclosed copies of this notice with appropriate notations showing the date and hour of receipt, and signed by the person acknowledging receipt on behalf of the addressee.

Very truly yours,

.....

[*name of assignee*]

By.....

[*signature of signing officer*

Title.....

[*title of signing officer*]

.....

.....

[*address of assignee*]

ACKNOWLEDGEMENT

Receipt is acknowledged of the above notice and of a copy of the instrument of assignment. They were received at .....(a.m.) (p.m.) on ....., 19... .

.....

[*signature*]

.....

[*title*]

.....

On behalf of

.....

[*name of addressee of this notice*]

(d) *Examination by the Government.* In examining and processing notices of assignment and before acknowleging their receipt, contracting officers should assure that the following conditions and any additional conditions specified in agency regulations, have been met:

(1) The contract has been properly approved and executed.

(2) The contract is one under which claims may be assigned.

(3) The assignment covers only money due or to become due under the contract.

(e) *Release of assignment.* (1) A release of an assignment is required whenever—

(i) There has been a further assignment or reassignment under the Act; or

(ii) The contractor wishes to reestablish its right to receive further payments after the contractor's obligations to the assignee have been satisfied and a balance remains due under the contract.

(2) The assignee, under a further assignment or reassignment, in order to establish a right to receive payment from the Government, must file with the addressees listed in 32.802(e) a—

(i) Written notice of release of the contractor by the assigning financing institution;

(ii) Copy of the release instrument;

(iii) Written notice of the further assignment or reassignment; and

(iv) Copy of the further assignment or reassignment instrument.

(3) If the assignee releases the contractor from an assignment of claims under a contract, the contractor, in order to establish a right to receive payment of the balance due under the contract, must file a written notice of release together with a true copy of the release of assignment instrument with the addressees noted in 32.802(e).

(4) The addressee of a notice of release of assignment or the official acting on behalf of that addressee shall acknowledge receipt of the notice.

32.806 Contract clauses.

(a) (1) The contracting officer shall insert the clause at 52.232-23, Assignment of Claims, in solicitations and contracts when the contract amount is expected to be $1,000 or more, unless the contract will prohibit the assignment of claims (see 32.803(b)). The use of this clause is not required for purchase orders. However, the clause may be used in purchase orders for $1,000 or more that are accepted in writing by the contractor, if such use is consistent with agency policies and regulations.

(2) If a no-setoff commitment is to be included in the contract (see 32.801 and 32.803(d)) and the contract is expected to be for $1,000 or more, the contracting officer shall use the clause with its Alternate I.

(b) The contracting officer shall insert the clause at 52.242-24, Prohibition of Assignment of Claims, in solicitations and contracts for which a determination has been made under agency regulations that the prohibition of assignment of claims is in the Government's interest.

PART 33—DISPUTES AND APPEALS

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

33.000 Scope of part.

This part prescribes policies and procedures for processing contract disputes and appeals.

33.001 Definitions.

"Claim," as used in this part, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the contractor seeking the payment of money exceeding $50,000 is not a claim under the Contract Disputes Act of 1978 until certified as required by the Act and 33.007. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in 33.006(a), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

"Misrepresentation of fact," as used in this part, means a false statement of substantive fact, or any conduct which leads to the belief of a substantive fact

material to proper understanding of the matter in hand, made with intent to deceive or mislead.

33.002 Contract Disputes Act of 1978.

The Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act) establishes procedures and requirements for asserting and resolving claims by or against contractors arising under or relating to a contract subject to the Act. In addition, the Act provides for the payment of interest on contractor claims, for the certification of contractor claims in excess of $50,000, and for a civil penalty for contractor claims that are fraudulent or based on a misrepresentation of fact.

33.003 Applicability.

(a) Except as specified in paragraph (b) below, this part applies to any express or implied contract covered by the Federal Acquisition Regulation.

(b) This Part 33 does not apply to any contract with (1) a foreign government or agency of that government, or (2) an international organization or a subsidiary body of that organization, if the agency head determines that the application of the Act to the contract would not be in the public interest.

(c) This part applies to all disputes with respect to contracting officer decisions on matters "arising under" or "relating to" a contract. Agency Boards of Contract Appeals (BCA's) authorized under the Act continue to have all of the authority they possessed before the Act with respect to disputes arising under a contract, as well as authority to decide disputes relating to a contract. The clause at 52.233-1, Disputes, recognizes the "all disputes" authority established by the Act and states certain requirements and limitations of the Act for the guidance of contractors and contracting agencies. The clause is not intended to affect the rights and obligations of the parties as provided by the Act or to constrain the authority of the statutory agency BCA's in the handling and deciding of contractor appeals under the Act.

33.004 Policy.

It is the Government's policy to try to resolve all contractual issues by mutual agreement at the contracting officer's level, without litigation. In appropriate circumstances, the contracting officer, before issuing a decision on a claim, should consider the use of informal discussions between the parties by individuals who have not participated substantially in the matter in dispute, to aid in resolving the differences.

33.005 Relationship of the Act to Public Law 85-804.

(a) Requests for relief under Public Law 85-804 (50 U.S.C. 1431-1435) are not claims within the Contract Disputes Act of 1978 or the Disputes clause at 52.233-1, Disputes, and shall be processed under Part 50, Extraordinary Contractual Actions. However, relief formerly available only under Public Law 85-804; i.e., legal entitlement to rescission or reformation for mutual mistake, is now available within the authority of the contracting officer under the Contract Disputes Act of 1978 and the Disputes clause. In case of a question whether the contracting officer has authority to settle or decide specific types of claims, the contracting officer should seek legal advice.

(b) A contractor's allegation that it is entitled to rescission or reformation of its contract in order to correct or mitigate the effect of a mistake shall be treated as a claim under the Act. A contract may be reformed or rescinded by the contracting officer if the contractor would be entitled to such remedy or relief under the law of Federal contracts. Due to the complex legal issues likely to be associated with allegations of legal entitlement, contracting officers shall make written decisions, prepared with the advice and assistance of legal counsel, either granting or denying relief in whole or in part.

(c) A claim that is either denied or not approved in its entirety under paragraph (b) above may be cognizable as a request for relief under Public Law 85-804 as implemented by Part 50. However, the claim must first be submitted to the contracting officer for consideration under the Contract Disputes Act of 1978 because the claim is not cognizable under Public Law 85-804, as implemented by Part 50, unless other legal authority in the agency concerned is determined to be lacking or inadequate.

33.006 Initiation of a claim.

(a) Contractor claims shall be submitted in writing to the contracting officer for a decision. The contracting officer shall document the contract file with evidence of the date of receipt of any submission from the contractor deemed to be a claim by the contracting officer.

(b) The contracting officer shall issue a written decision on any Government claim initiated against a contractor.

33.007 Contractor claim certification.

(a) A contractor claim exceeding $50,000 shall be accompanied by a certification that—

(1) The claim is made in good faith;

(2) Supporting data are accurate and complete to the best of the contractor's knowledge and belief; and

(3) The amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable.

(b) The aggregate amount of both the increased and decreased costs shall be used in determining when the dollar thresholds requiring claim certification are met (see the example in subdivision 15.804-2(a)(1)(ii)).

(c) (1) If the contractor is an individual, the certification shall be executed by that individual.

(2) If the contractor is not an individual, the certification shall be executed by—

(i) A senior company official in charge at the contractor's plant or location involved; or

(ii) An officer or general partner of the contractor having overall responsibility for the conduct of the contractor's affairs.

33.008 Interest on claims.

The Government shall pay interest on a contractor's claim on the amount found due and unpaid from (a) the date the contracting officer receives the claim (properly certified if required by 33.007(a)), or (b) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the contracting officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. See 32.614 for the right of the Government to collect interest on its claims against a contractor.

33.009 Suspected fraudulent claims.

If the contractor is unable to support any part of the claim and there is evidence that the inability is attributable to misrepresentation of fact or to fraud on the part of the contractor, the contracting officer shall refer the matter to the agency official responsible for investigating fraud.

33.010 Contracting officer's authority.

Except as provided in this section, contracting officers are authorized, within any specific limitations of their warrants, to decide or settle all claims arising under or relating to a contract subject to the Act. This authorization does not extend to—

(a) A claim or dispute for penalties or forfeitures prescribed by statute or regulation that another Federal agency is specifically authorized to administer, settle, or determine; or

(b) A claim involving fraud (see 33.009).

33.011 Contracting officer's decision.

(a) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the contracting officer shall—

(1) Review the facts pertinent to the claim;

(2) Secure assistance from legal and other advisors;

(3) Coordinate with the contract administration office or contracting office, as appropriate; and

(4) Prepare a written decision that shall include a—

(i) Description of the claim or dispute;

(ii) Reference to the pertinent contract terms;

(iii) Statement of the factual areas of agreement and disagreement;

(iv) Statement of the contracting officer's decision, with supporting rationale; and

(v) Paragraph substantially as follows:

This is the final decision of the Contracting Officer. You may appeal this decision to the Board of Contract Appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the Board of Contract Appeals and provide a copy to the Contracting Officer from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. Instead of appealing to the Board of Contract Appeals, you may bring an action directly in the U.S. Claims Court (except as provided in the Contract Disputes Act of 1978, 41 U.S.C. 603, regarding Maritime Contracts) within 12 months of the date you receive this decision. If you appeal to the Board of Contract Appeals, you may, solely at your election, proceed under the Board's small claims procedure for claims of $10,000 or less or its accelerated procedure for claims of $50,000 or less.

(b) The contracting officer shall furnish a copy of the decision to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. This requirement shall apply to decisions on claims initiated by or against the contractor.

(c) The contracting officer shall issue the decision within the following statutory time limitations:

(1) For claims of $50,000 or less, 60 days after receiving a written request from the contractor that a decision be rendered within that period, or within a reasonable time after receipt of the claim if the contractor does not make such a request.

(2) For claims over $50,000, 60 days after receiving a certified claim; *provided, however*, that if a decision will not be issued within 60 days, the contracting officer shall notify the contractor, within that period, of the time within which a decision will be issued.

(d) The contracting officer shall issue a decision within a reasonable time, taking into account—

(1) The size and complexity of the claim;

(2) The adequacy of the contractor's supporting data; and

(3) Any other relevant factors.

(e) In the event of undue delay by the contracting officer in rendering a decision on a claim, the contractor may request the agency BCA to direct the contracting officer to issue a decision in a specified time period determined by the BCA.

(f) Any failure of the contracting officer to issue a decision within the required time periods will be deemed a decision by the contracting officer denying the claim and will authorize the contractor to file an appeal or suit on the claim.

(g) The amount determined payable under the decision, less any portion already paid, should be paid, if otherwise proper, without awaiting contractor action concerning appeal. Such payment shall be without prejudice to the rights of either party.

33.012 Contracting officer's duties upon appeal.

To the extent permitted by any agency procedures controlling contacts with agency BCA personnel, the contracting officer shall provide data, documentation, information, and support as may be required by the agency BCA for use on a pending appeal from the contracting officer's decision.

33.013 Obligation to continue performance.

(a) In general, before passage of the Act, the obligation to continue performance applied only to claims arising under a contract. However, Section 6(b) of the Act authorizes agencies to require a contractor to continue contract performance in accordance with the contracting officer's decision pending final decision on a claim relating to the contract. In recognition of this fact, an alternate paragraph is provided for paragraph (h) of the clause at 52.233-1, Disputes. This paragraph shall be used only as authorized by agency procedures.

(b) In all contracts that include the clause at 52.233-1, Disputes, with its Alternate I, in the event of a dispute not arising under, but relating to, the contract, the contracting officer shall consider providing, through appropriate agency procedures, financing of the continued performance; *provided*, that the Government's interest is properly secured.

33.014 Contract clause.

The contracting officer shall insert the clause at 52.233-1, Disputes, in solicitations and contracts, unless the conditions in 33.003 apply. If it is determined under agency procedures that continued performance is necessary pending resolution of any claim arising under or relating to the contract, the contracting officer shall use the clause with its Alternate I.

SUBCHAPTER F—Special Categories of Contracting

PART 34—MAJOR SYSTEM ACQUISITION

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

34.000 Scope of part.

This part describes acquisition policies and procedures for use in acquiring major systems consistent with OMB Circular No. A-109, Major System Acquisitions (A-109) (see 34.003).

34.001 Reserved.

34.002 Policy.

The policies of this part are designed to ensure that agencies acquire major systems in the most effective, economical, and timely manner. Agencies acquiring major systems shall—

(a) Promote innovation and competition in the development of major system concepts by (1) expressing agency needs and major system acquisition program objectives in terms of the agency's mission and not in terms

of specified systems to satisfy needs, and (2) focusing agency resources and special management attention on activities conducted in the initial stage of major programs; and

(b) Sustain effective competition between alternative system concepts for as long as it is beneficial.

34.003 Responsibilities.

(a) As required by A-109, the agency head or designee shall establish written procedures for its implementation.

(b) The agency procedures shall identify the key decision points of each major system acquisition and the agency official(s) for making those decisions.

(c) Systems acquisitions normally designated as major are those programs that, as determined by the agency head, (1) are directed at and critical to fulfilling an agency mission need, (2) entail allocating relatively large resources for the particular agency, and (3) warrant special management attention, including specific agency-head decisions. The agency procedures may establish additional criteria, as specified in A-109, for designating major programs system acquisitions.

34.004 Acquisition strategy.

The program manager, as specified in agency procedures, shall develop an acquisition strategy tailored to the particular major system acquisition program. This strategy is the program manager's overall plan for satisfying the mission need in the most effective, economical, and timely manner. The strategy shall be in writing and prepared in accordance with the requirements of Subpart 7.1, except where inconsistent with this part, and shall qualify as the acquisition plan for the major system acquisition, as required by that subpart.

34.005 General requirements.

34.005-1 Competition.

(a) The program manager shall, throughout the acquisition process, promote and sustain competition between alternative major system concepts, as long as it is economically beneficial and practicable to do so. Notice of the proposed acquisition shall be given the broadest and most effective circulation practicable throughout the business, academic, and Government communities. Foreign contractors, technology, and equipment may be considered when it is feasible and permissible to do so.

(b) The contracting officer should time solicitation issuance and contract award to maintain continuity of concept development during the transition from withdrawing concept proposer to new contractor.

34.005-2 Mission-oriented solicitation.

(a) Before issuing the solicitation, whenever practicable and consistent with agency procedures, the contracting officer should take the actions outlined in subparagraphs (1) and (2):

(1) Advance notification of the acquisition should be given the widest practicable dissemination, including publication in the Commerce Business Daily (see Subpart 5.2) and should be sent to as wide a selection of potential sources as practicable, including smaller and newer firms, Government laboratories, federally funded research and development centers, educational institutions and other not-for-profit organizations, and, if it would be beneficial and is not prohibited, foreign sources.

(2) If appropriate, hold a presolicitation conference (see 15.404) and/or send copies of the proposed request for proposals (RFP) to all prospective proposers for their comments. After evaluation of these comments, the RFP should be revised, if appropriate.

(b) The contracting officer shall send the final RFP to all prospective proposers. It shall—

(1) Describe the nature of the need in terms of mission capabilities required, without reference to any specific systems to satisfy the need;

(2) Indicate, and explain when appropriate, the schedule, capability, and cost objectives and any known constraints in the acquisition;

(3) Provide, or indicate how access can be obtained to, all Government data related to the acquisition;

(4) Include selection requirements consistent with the acquisition strategy; and

(5) Clearly state that each offeror is free to propose its own technical approach, main design features, subsystems, and alternatives to schedule, cost, and capability goals.

(c) To the extent practicable, the RFP shall not reference or mandate Government specifications or standards, unless the agency is mandating a subsystem or other component as approved under agency procedure.

34.005-3 Concept exploration contracts.

Whenever practicable, contracts to be performed during the concept exploration phase shall be for relatively short periods, at planned dollar levels. These contracts are to refine the proposed concept and to reduce the concept's technical uncertainties. The scope of work for this phase of the program shall be consistent with the Government's planned budget for the phase. Follow-on contracts for such tasks in the exploration phase shall be awarded as long as the concept approach remains promising, the contractor's progress is acceptable, and it is economically practicable to do so.

34.005-4 Demonstration contracts.

Whenever practicable, contracts for the demonstration phase should provide for contractors to submit, by the end of the phase, priced proposals, totally funded by the Government, for full-scale development. The contracting officer should provide contractors with operational test conditions, performance criteria, life cycle cost factors, and any other selection criteria necessary for the contractors to prepare their proposals.

34.005-5 Full-scale development contracts.

Whenever practicable, the full-scale development contracts should provide for the contractors to submit priced proposals for production that are based on the latest quantity, schedule, and logistics requirements and other considerations that will be used in making the production decision.

34.005-6 Full production.

Contracts for full production of successfully tested major systems selected from the full-scale development phase may be awarded if the agency head (a) reaffirms the mission need and program objectives and (b) grants approval to proceed with production.

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

35.000 Scope of part.

(a) This part prescribes policies and procedures of special application to

research and development (R&D) contracting.

(b) R&D integral to acquisition of major systems is covered in Part 34. Independent research and development (IR&D) is covered at 31.205-18.

35.001 Definitions.

"Applied research" means the effort that (a) normally follows basic research, but may not be severable from the related basic research; (b) attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques; and (c) attempts to advance the state of the art. When being used by contractors in cost principle applications, this term does not include efforts whose principal aim is the design, development, or testing of specific items or services to be considered for sale; these efforts are within the definition of "development," given below.

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

"Cost sharing," as used in this part, means an explicit arrangement under which the contractor bears some of the burden of reasonable, allocable, and allowable contract cost.

"Development," as used in this part, means the systematic use of scientific and technical knowledge in the design, development, testing, or evaluation of a potential new product or service (or of an improvement in an existing product or service) to meet specific performance requirements or objectives. It includes the functions of design engineering, prototyping, and engineering testing; it excludes subcontracted technical effort that is for the sole purpose of developing an additional source for an existing product.

"Recoupment," as used in this part, means the recovery by the Government of Government-funded nonrecurring costs from contractors that sell, lease, or license the resulting products or technology to buyers other than the Federal Government.

35.002 General.

The primary purpose of contracted R&D programs is to advance scientific and technical knowledge and apply that knowledge to the extent necessary to achieve agency and national goals. Unlike contracts for supplies and services, most R&D contracts are directed toward objectives for which the work or methods cannot be precisely described in advance. It is difficult to judge the probabilities of success or required effort for technical approaches, some of which offer little or no early assurance of full success. The contracting process shall be used to encourage the best sources from the scientific and industrial community to become involved in the program and must provide an environment in which the work can be pursued with reasonable flexibility and minimum administrative burden.

35.003 Policy.

(a) *Use of contracts.* Contracts shall be used only when the principal purpose is the acquisition of supplies or services for the direct benefit or use of the Federal Government. Grants or cooperative agreements should be used when the principal purpose of the transaction is to stimulate or support research and development for another public purpose.

(b) *Cost sharing.* Cost sharing policies (which are not otherwise required by law) under Government contracts shall be in accordance with 16.303, 42.707(a) and agency procedures.

(c) *Recoupment.* Recoupment not otherwise required by law shall be in accordance with agency procedures.

35.004 Publicizing requirements and expanding research and development sources.

(a) In order to obtain a broad base of the best contractor sources from the the scientific and industrial community, agencies shall, in addition to following the requirements of Part 5, continually search for and develop information on sources (including small business concerns) competent to perform R&D work. These efforts should include—

(1) Early identification and publication of agency R&D needs and requirements, including publication in the *Commerce Business Daily* (see Part 5);

(2) Cooperation among technical personnel, contracting officers, and Government small business personnel early in the acquisition process; and

(3) Providing agency R&D points of contact for potential sources.

(b) See Subpart 9.7 for information regarding R&D pools and Subpart 9.6 for teaming arrangements.

35.005 Work statement.

(a) A clear and complete work statement concerning the area of exploration (for basic research) or the end objectives (for development and applied research) is essential. The work statement should allow contractors freedom to exercise innovation and creativity. Work statements must be individually tailored by technical and contracting personnel to attain the desired degree of flexibility for contractor creativity and the objectives of the R&D.

(b) In basic research the emphasis is on achieving specified objectives and knowledge rather than on achieving predetermined end results prescribed in a statement of specific performance characteristics. This emphasis applies particularly during the early or conceptual phases of the R&D effort.

(c) In reviewing work statements, contracting officers should ensure that language suitable for a level-of-effort approach, which requires the furnishing of technical effort and a report on the results, is not intermingled with language suitable for a task-completion approach, which often requires the development of a tangible end item designed to achieve specific performance characteristics. The wording of the work statement should also be consistent with the type and form of contract to be negotiated (see 16.207 and 16.306(d)). For example, the work statement for a cost-reimbursement contract promising the contractor's best efforts for a fixed term would be phrased differently than a work statement for a cost-reimbursement completion contract promising the contractor's best efforts for a defined task. Differences between work statements for fixed-price contracts and cost-reimbursement contracts should be even clearer.

(d) In preparing work statements, technical and contracting personnel shall consider and, as appropriate, provide in the solicitation—

(1) A statement of the area of exploration, tasks to be performed, and objectives of the research or development effort;

(2) Background information helpful to a clear understanding of the objective or requirement (e.g., any known phenomena, techniques, methodology, or results of related work);

(3) Information on factors such as personnel, environment, and interfaces that may constrain the results of the effort;

(4) Reporting requirements and information on any additional items that the contractor is required to furnish (at specified intervals) as the work progresses;

(5) The type and form of contract contemplated by the Government and, for level-of-effort work statements, an estimate of applicable professional and technical effort involved; and

(6) Any other considerations peculiar to the work to be performed; for example, any design-to-cost requirements.

35.006 Contracting methods and contract type.

(a) In R&D acquisitions, the precise specifications necessary for formal advertising are generally not available, thus making negotiation necessary (see 15.205 and 15.211). However, the use of negotiation in R&D contracting does not change the obligation to obtain competition to the maximum practicable extent.

(b) Selecting the appropriate contract type is the responsibility of the contracting officer. However, because of the importance of technical considerations in R&D, the choice of contract type should be made after obtaining the recommendations of technical personnel. Although the Government ordinarily prefers fixed-price arrangements in contracting, this preference applies in R&D contracting only to the extent that goals, objectives, specifications, and cost estimates are sufficient to permit such a preference. The precision with which the goals, performance objectives, and specifications for the work can be defined will largely determine the type of contract employed. The contract type must be selected to fit the work required.

(c) Because the absence of precise specifications and difficulties in estimating costs with accuracy (resulting in a lack of confidence in cost estimates) normally precludes using fixed-price contracting for R&D, the use of cost-reimbursement contracts is usually appropriate (see Subpart 16.3). The nature of development work often requires a cost-reimbursement completion arrangement [see 16.306(d)]. When the use of cost and performance incentives is desirable and practicable, fixed-price incentive and cost-plus-incentive-fee contracts should be considered in that order of preference.

(d) When levels of effort *can* be specified in advance, a short-duration fixed-price contract *may* be useful for developing system design concepts, resolving potential problems, and reducing Government risks. Fixed-price contracting may also be used in minor projects when the objectives of the research are well defined and there is sufficient confidence in the cost estimate for price negotiations. (See 16.207.)

(e) Projects having production requirements as a follow-on to R&D efforts normally should progress from cost-reimbursement contracts to fixed-price contracts as designs become more firmly established, risks are reduced, and production tooling, equipment, and processes are developed and proven. When possible, a final commitment to undertake specific product development and testing should be avoided until (1) preliminary exploration and studies have indicated a high degree of probability that development is feasible and (2) the Government has determined both its minimum requirements and desired objectives for product performance and schedule completion.

35.007 Solicitations.

(a) The submission and subsequent evaluation of an inordinate number of R&D proposals from sources lacking appropriate qualifications is costly and time-consuming to both industry and the Government. Therefore, contracting officers should initially distribute solicitations only to sources technically qualified to perform research or development in the specific field of science or technology involved. Cognizant technical personnel should recommend potential sources that appear qualified, as a result of—

(1) Present and past performance of similar work;

(2) Professional stature and reputation;

(3) Relative position in a particular field of endeavor;

(4) Ability to acquire and retain the professional and technical capability, including facilities, required to perform the work; and

(5) Other relevant factors.

(b) Proposals generally shall be solicited from technically qualified sources, including sources that become known as a result of synopses or other means of publicizing requirements. If it is not practicable to initially solicit all apparently qualified sources, only a reasonable number need be solicited. In the interest of competition, contracting officers shall furnish copies of the solicitation to other apparently qualified sources.

(c) Solicitations shall require offerors to describe their technical and management approach, identify technical uncertainties, and make specific proposals for the resolution of any uncertainties. The solicitation should require offerors to include in the proposal any planned subcontracting of scientific or technical work (see 35.009).

(d) Solicitations may require that proposals be organized so that the technical portions can be efficiently evaluated by technical personnel (see 15.406-5(b)). Solicitation and evaluation of proposals should be planned to minimize offerors' and Government expense.

(e) R&D solicitations should contain evaluation factors to be used to determine the most technically competent (see 15.605(e)), such as—

(1) The offeror's understanding of the scope of the work;

(2) The approach proposed to accomplish the scientific and technical objectives of the contract or the merit of the ideas or concepts proposed;

(3) The availability and competence of experienced engineering, scientific, or other technical personnel;

(4) The offeror's experience;

(5) Pertinent novel ideas in the specific branch of science and technology involved; and

(6) The availability, from any source, of necessary research, test, laboratory, or shop facilities.

(f) In addition to evaluation factors for technical competence, the contracting officer shall consider, as appropriate, management capability (including cost management techniques), experience and past performance, subcontracting practices, and any other significant evaluation criteria (e.g., unrealistically low cost estimates in proposals for cost-reimbursement or fixed-price incentive contracts). Although cost or price is not normally the controlling factor in selecting a contractor to perform R&D, it should not be disregarded in arriving at a selection that best satisfies the Government's requirement at a fair and reasonable cost.

(g) The contracting officer should ensure that each prospective offeror fully understands the details of the work, especially the Government interpretation of the work statement. If the effort is complex, the contracting officer should provide prospective offerors an opportunity to comment on the details of the requirements as contained in the work statement, the contract Schedule, and any related specifications. This may be done through the use of preproposal conferences (see 15.409).

(h) If it is appropriate to do so, solicitations should permit offerors to propose an alternative contract type (see 16.103).

(i) In circumstances when a concern has a new idea or product to discuss that incorporates the results of independent R&D work funded by the concern in the private sector and is of interest to the Government, there should be no hesitancy to discuss it; however, the concern should be warned that the Government will not be obligated by the discussion. Under such circumstances, it may be appropriate to negotiate directly

with the concern without competition. Also see Subpart 15.5 concerning unsolicited proposals.

(j) The Government may issue an exploratory request to determine the existence of ideas or prior work in a specific field of research. Any such request shall clearly state that it does not impose any obligation on the Government or signify a firm intention to enter into a contract.

35.008 Evaluation for award.

(a) Generally, an R&D contract should be awarded to that organization, including any educational institution, that proposes the best ideas or concepts and has the highest competence in the specific field of science or technology involved. However, an award should not be made to obtain capabilities that exceed those needed for successful performance of the work.

(b) In R&D contracting, precise specifications are ordinarily not available. The contracting officer should therefore take special care in reviewing the solicitation evaluation factors to assure that they are properly presented and consistent with the solicitation.

(c) When a small business concern would otherwise be selected for award but is considered not responsible, the SBA Certificate of Competency procedure shall be followed (see Subpart 19.6).

(d) The contracting officer should use the procedures in Subpart 15.10 to notify and debrief offerors.

(e) It is important to evaluate a proposed contractor's cost or price estimate, not only to determine whether the estimate is reasonable but also to provide valuable insight into the offeror's understanding of the project, perception of risks, and ability to organize and perform the work. Cost or price analysis, as appropriate (see 15.805), is a useful tool.

35.009 Subcontracting research and development effort.

Since the selection of R&D contractors is substantially based on the best scientific and technological sources, it is important that the contractor not subcontract technical or scientific work without the contracting officer's advance knowledge. During the negotiation of a cost-reimbursement R&D contract, the contracting officer shall obtain complete information concerning the contractor's plans for subcontracting any portion of the experimental, research, or development effort (see also 35.007(c)). Also when negotiating a fixed-price contract, the contracting officer should evaluate this information and may obtain an agreement that protects the Government's interests. The clause at 52.244-2, Subcontracts Under Cost-Reimbursement and Letter Contracts, prescribed for cost-reimbursement contracts at 44.204(c), requires the contracting officer's prior approval for the placement of a substantial cost-reimbursement subcontract that has experimental, developmental, or research work as one of its purposes.

35.010 Scientific and technical reports.

(a) R&D contracts shall require contractors to furnish scientific and technical reports, consistent with the objectives of the effort involved, as a permanent record of the work accomplished under the contract.

(b) Agencies should make R&D contract results available to other Government activities and the private sector. Contracting officers shall follow agency regulations regarding such matters as national security, protection of data, and new-technology dissemination policy. The contract should require that contractors send copies of scientific and technical reports to a specified address (ordinarily, the Defense Technical Information Center, Attn: DTIC, Cameron Station, Alexandria, VA 22314, or the National Technical Information Service (303Y), Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161). These activities provide a central service for the interchange of scientific and technical information. When agencies require that completed reports be covered by a report documentation page, the contractor should submit a copy with the report.

35.011 Data.

(a) R&D contracts shall specify the technical data to be delivered under the contract, since the data clauses required by Part 27 do not require the *delivery* of any such data.

(b) In planning a developmental program when subsequent production contracts are contemplated, consideration should be given to the need and time required to obtain a technical package (plans, drawings, specifications, and other descriptive information) that can be used to achieve competition in production contracts. In some situations, the developmental contractor may be in the best position to produce such a technical package.

35.012 Patent rights.

For a discussion of patent rights, see agency regulations and Part 27.

35.013 Insurance.

Nonprofit, educational, or State institutions performing cost-reimbursement contracts often do no carry insurance. They may claim immunity from liability for torts, or, as State institutions, they may be prohibited by State law from expending funds for insurance. When this is the case, see 28.311 for appropriate clause coverage.

35.014 Government property and title.

(a) The requirements in Part 45 for establishing and maintaining control over Government property apply to all R&D contracts.

(b) In implementing 41 U.S.C. 506, and unless an agency head provides otherwise, the policies in subparagraphs (1) through (4) following, regarding title to equipment (and other tangible personal property) purchased by the contractor using Government funds provided for the conduct of basic or applied scientific research, apply to contracts with nonprofit institutions of higher education and nonprofit organizations whose primary purpose is the conduct of scientific research:

(1) If the contractor obtains the contracting officer's advance approval, the contractor shall automatically acquire and retain title to any item of equipment costing less than $5,000 (or a lesser amount established by agency regulations) acquired on a reimbursable basis.

(2) If purchased equipment costs $5,000 (or a lesser amount established by agency regulations) or more, and as the parties specifically agree in the contract, title may—

(i) Vest in the contractor upon acquisition without further obligation to the Government;

(ii) Vest in the contractor, subject to the Government's right to direct transfer of the title to the Government or to a third party within 12 months after the contract's completion or termination (transfer of title to the Government or third party shall not be the basis for any claim by the contractor); or

(iii) Vest in the Government, if the contracting officer determines that vesting of title in the contractor would not further the objectives of the agency's research program.

(3) If title to equipment is vested in the contractor, depreciation, amortization, or use charges are not allowable with respect to that equipment under any existing or future Government contract or subcontract.

(4) If the contract is performed at a Government installation and there is a continuing need for the equipment

following contract completion, title need not be transferred to the contractor.

(c) (1) Vesting title under paragraph (b) above is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested, the contractor must agree that—

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to equipment)."

(2) By signing the contract, the contractor accepts and agrees to comply with this requirement.

(d) The policies in subparagraphs (b)(1) through (b)(3) and paragraph (c) above are implemented in the Government property clauses (Alternate II of the clause at 52.245-2, Government Property (Fixed-Price); Alternate I of the clause at 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts); Alternate I of the clause at 52.245-11, Government Property (Facilities Use); and the clause at 52.245-15, Transfer of Title to the Facilities), which are prescribed in Part 45 (at 45.106 for fixed-price and cost-reimbursement contracts and at 45.302-6 and 45.302-7 for facilities contracts).

(e) The absence of an agreement covering title to equipment acquired by the contractor with Government funds that cost $1,000 or more does not limit an agency's right to act to vest title in a contractor as authorized by 41 U.S.C. 506.

35.015 Contracts for research with educational institutions and nonprofit organizations.

(a) *General.* (1) When the R&D work is not defined precisely and the contract states only a period during which work is conducted (that is, a specific time for achievement of results is not required), research contracts with educational institutions and nonprofit organizations shall—

(i) State that the contractor bears primary responsibility for the research;

(ii) Give (A) the name of the principal investigator (or project leader), if the decision to contract is based on that particular individual's research effort and management capabilities, and (B) the contractor's estimate of the amount of time that individual will devote to the work;

(iii) Provide that the named individual shall be closely involved and continuously responsible for the conduct of the work;

(iv) Provide that the contractor must obtain the contracting officer's approval to change the principal investigator (or project leader);

(v) Require that the contractor advise the contracting officer if the principal investigator (or project leader) will, or plans to, devote substantially less effort to the work than anticipated; and

(vi) Require that the contractor obtain the contracting officer's approval to change the phenomenon under study, the stated objectives of the research, or the methodology.

(2) If a research contract *does* provide precise objectives or a specific date for achievement of results, the contracting officer may include in the contract the requirements set forth in subparagraph (1) above, if it is necessary for the Government to exercise oversight and approval over the avenues of approach, methods, or schedule of work.

(b) *Basic agreements.* (1) A basic agreement should be negotiated if the number of contracts warrants such an agreement (see 16.702). Basic agreements should be reviewed and updated at least annually.

(2) To promote uniformity and consistency in dealing with educational institutions and nonprofit organizations, agencies are encouraged to use basic agreements of other agencies.

(3) Each year as of September 30, each agency shall furnish to the FAR Secretariat a list of its basic agreements pertaining to R&D. The FAR Secretariat shall be responsible for preparing and publishing a list of all these agreements.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Sec.

SUBPART 36.7—STANDARD FORMS FOR CONTRACTING FOR CONSTRUCTION, ARCHITECT-ENGINEER SERVICES, AND DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

36.000 Scope of part.

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

SUBPART 36.1—GENERAL

36.101 Applicability.

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

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

(c) A contract for both construction and supplies or services shall include (1) clauses applicable to the predominant part of the work (see Subpart 22.4), or (2) if the contract is divided into parts, the clauses applicable to each portion.

36.102 Definitions.

"As-built drawings," see record drawings.

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

"Contract," as used in this part, is intended to refer to a contract for construction or a contract for architect-engineer services, unless another meaning is clearly intended.

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

"Plans and specifications," as used in this part, means drawings, specifications, and other data for and preliminary to the construction.

"Record drawings," as used in this part, means drawings submitted by a contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract.

"Shop drawings," as used in this part, means drawings submitted by the construction contractor or a subcontractor at any tier or required under a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, (2) the installation (i.e., form, fit, and attachment details) of materials or equipment, or (3) both.

36.103 Methods of contracting.

(a) Contracting officers shall acquire construction by formal advertising when it is feasible and practicable under the circumstances. Permissible exceptions include overseas construction, construction of a classified or experimental nature, and other types of construction when authorized in accordance with law.

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

SUBPART 36.2—SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION

36.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.* (1) The contracting activity shall evaluate contractor performance and prepare a performance report for each construction contract of—

(i) $500,000 or more;

(ii) $100,000 or more, if any element of performance was either unsatisfactory or outstanding;

(iii) More than $10,000, if the contract was terminated for default; or

(iv) $100,000 or more, if the contract was terminated for the convenience of the Government.

(2) The report shall be prepared at the time of final acceptance of the work, at the time of contract termination, or at other times, as appropriate, in accordance with agency procedures. Ordinarily, the evaluating official who prepares the report should be the person responsible for monitoring contract performance.

(3) If the evaluating official concludes that a contractor's overall performance was unsatisfactory, the contractor shall be advised in writing that a report of unsatisfactory performance is being prepared and the basis for the report. If the contractor submits any written comments, the evaluating official shall include them in the report, resolve any alleged factual discrepancies, and make appropriate changes in the report.

(4) The head of the contracting activity shall establish procedures which ensure that fully qualified personnel prepare and review performance reports.

(b) *Review of performance reports.* Each performance report shall be reviewed to ensure that it is accurate and fair. The reviewing official should have knowledge of the contractor's performance and should normally be at an organizational level above that of the evaluating official.

(c) *Distribution and use of performance reports.* (1) Each performance report shall be distributed in accordance with agency procedures. One copy shall be included in the contract file. The contracting activity shall retain the report for at least six years after the date of the report.

(2) Before making a determination of responsibility in accordance with Subpart 9.1, the contracting officer may consider performance reports in accordance with agency instructions.

36.202 Specifications.

(a) Construction specifications shall conform to the requirements in Part 10 of this regulation.

(b) Whenever possible, contracting officers shall ensure that references in specifications are to widely recognized standards or specifications promulgated by governments, industries, or technical societies.

(c) When "brand name or equal" descriptions are necessary,

specifications must clearly identify and describe the particular physical, functional, or other characteristics of the brand-name items which are considered essential to satisfying the requirement.

36.203 Government estimate of construction costs.

(a) An independent Government estimate of construction costs shall be prepared and furnished to the contracting officer at the earliest practicable time for each proposed contract and for each contract modification anticipated to cost $25,000 or more. The contracting officer may require an estimate when the cost of required work is anticipated to be less than $25,000. The estimate shall be prepared in as much detail as though the Government were competing for award.

(b) When two-step formal advertising is used, the independent Government estimate shall be prepared when the contract requirements are definitized.

(c) Access to information concerning the Government estimate shall be limited to Government personnel whose official duties require knowledge of the estimate. An exception to this rule may be made during contract negotiations to allow the contracting officer to identify a specialized task and disclose the associated cost breakdown figures in the Government estimate, but only to the extent deemed necessary to arrive at a fair and reasonable price. The overall amount of the Government's estimate shall not be disclosed except as permitted by agency regulations.

36.204 Disclosure of the magnitude of construction projects.

Advance notices and solicitations shall state the magnitude of the requirement in terms of physical characteristics and estimated price range. In no event shall the statement of magnitude disclose the Government's estimate. Therefore, the estimated price should be described in terms of one of the following price ranges:

(a) Less than $25,000.

(b) Between $25,000 and $100,000.

(c) Between $100,000 and $250,000.

(d) Between $250,000 and $500,000.

(e) Between $500,000 and $1,000,000.

(f) Between $1,000,000 and $5,000,000.

(g) Between $5,000,000 and $10,000,000.

(h) More than $10,000,000.

36.205 Statutory cost limitations.

(a) Contracts for construction shall not be awarded at a cost to the Government—

(1) In excess of statutory cost limitations, unless applicable limitations can be and are waived in writing for the particular contract; or

(2) Which, with allowances for Government-imposed contingencies and overhead, exceeds the statutory authorization.

(b) Solicitations (both invitations for bids and requests for proposals) containing one or more items subject to statutory cost limitations shall state (1) the applicable cost limitation for each affected item in a separate schedule; (2) that an offer which does not contain separately-priced schedules will not be considered; and (3) that offers must contain a certification that the price on each schedule includes an approximate apportionment of all estimated direct costs, allocable indirect costs, and profit.

(c) The Government shall reject an offer if its prices exceed applicable statutory limitations, unless laws or agency procedures provide pertinent exemptions. However, if it is in the Government's interest, the contracting officer may include a provision in the solicitation which permits the award of separate contracts for individual items whose prices are within or not subject to applicable statutory limitations.

(d) The Government shall also reject an offer if its prices are within statutory limitations only because it is materially unbalanced. An offer is unbalanced if its prices are significantly less than cost for some work, and overstated for other work.

36.206 Liquidated damages.

The contracting officer shall evaluate the need for liquidated damages in a construction contract in accordance with 12.202 and agency regulations.

36.207 Pricing fixed-price construction contracts.

(a) Generally, firm-fixed-price contracts shall be used to acquire construction. They may be priced (1) on a lump-sum basis (when a lump sum is paid for the total work or defined parts of the work), (2) on a unit-price basis (when a unit price is paid for a specified quantity of work units), or (3) using a combination of the two methods.

(b) Lump-sum pricing shall be used in preference to unit pricing except when—

(1) Large quantities of work such as grading, paving, building outside utilities, or site preparation are involved;

(2) Quantities of work, such as excavation, cannot be estimated with sufficient confidence to permit a lump-sum offer without a substantial contingency;

(3) Estimated quantities of work required may change significantly during construction; or

(4) Offerors would have to expend unusual effort to develop adequate estimates.

(c) Fixed-price contracts with economic price adjustment may be used if such a provision is customary in contracts for the type of work being acquired, or when omission of an adjustment provision would preclude a significant number of firms from submitting offers or would result in offerors including unwarranted contingencies in proposed prices.

36.208 Concurrent performance of firm-fixed-price and other types of construction contracts.

In view of potential labor and administrative problems, cost-plus-fixed-fee, price-incentive, or other types of contracts with cost variation or cost adjustment features shall not be permitted concurrently, at the same work site, with firm-fixed-price, lump sum, or unit price contracts except with the prior approval of the head of the contracting activity.

36.209 Construction contracts with architect-engineer firms.

No contract for the construction of a project shall be awarded to the firm that designed the project or its subsidiaries or affiliates, except with the approval of the head of the agency or authorized representative.

36.210 Inspection of site and examination of data.

The contracting officer should make appropriate arrangements for prospective offerors to inspect the work site and to have the opportunity to examine data available to the Government which may provide information concerning the performance of the work, such as boring samples, original boring logs, and records and plans of previous construction. The data should be assembled in one place and made available for examination. The solicitation should notify offerors of the time and place for the site inspection and data examination. If it is not feasible for offerors to inspect the site or examine the data on their own, the solicitation should also designate an individual who will show the site or data to the offerors. Significant site information and the data should be made available to all offerors in the same manner, including information regarding any utilities to be furnished during construction. A record should be kept of the identity and affiliation of all offerors' representatives who inspect the site or examine the data.

36.211 Distribution of advance notices and solicitations.

Advance notices and solicitations should be distributed to reach as many prospective offerors as practicable. Contracting officers may send notices and solicitations to organizations that maintain, without charge to the public, display rooms for the benefit of prospective offerors, subcontractors, and material suppliers. If requested by such organizations, this may be done for all or a stated class of construction projects on an annual or semiannual basis. Contracting officers may determine the geographical extent of distribution of advance notices and solicitations on a case-by-case basis.

SUBPART 36.3—SPECIAL ASPECTS OF FORMAL ADVERTISING IN CONSTRUCTION CONTRACTING

36.301 General.

Contracting officers shall follow the procedures for formal advertising in Part 14, as modified and supplemented by the requirements in this subpart.

36.302 Presolicitation notices.

(a) Unless the requirement is waived by the head of the contracting activity or a designee, the contracting officer shall send presolicitation notices to prospective bidders on any construction requirement when the proposed contract is expected to equal or exceed $100,000. Presolicitation notices may also be used when the proposed contract is expected to be less than $100,000. These notices shall be issued sufficiently in advance of the invitation for bids to stimulate the interest of the greatest number of prospective bidders.

(b) Presolicitation notices shall—

(1) Describe the proposed work in sufficient detail to disclose the nature and volume of work (in terms of physical characteristics and estimated price range);

(2) State the location of the work;

(3) Include tentative dates for issuing invitations, opening bids, and completing contract performance;

(4) State where plans will be available for inspection without charge;

(5) Specify a date by which requests for the invitation for bids should be submitted;

(6) Notify recipients that if they do not submit a bid they should advise the issuing office as to whether they want to receive future preinvitation notices;

(7) State whether award is restricted to small businesses; and

(8) Specify any amount to be charged for solicitation documents.

36.303 Invitations for bids.

(a) Invitations for bids for construction shall allow sufficient time for bid preparation (i.e., the period of time between the date invitations are distributed and the date set for opening of bids) to allow bidders an adequate opportunity to prepare and submit their bids, giving due regard to the construction season and the time necessary for bidders to inspect the site, obtain subcontract bids, examine data concerning the work, and prepare estimates based on plans and specifications.

(b) Invitations for bids shall be prepared in accordance with Subpart 14.2 and this section using the forms prescribed in Part 53.

(c) Contracting officers should assure that each invitation for bids includes the following information, when applicable:

(1) The appropriate wage determination of the Secretary of Labor (see Subpart 22.4), or, if the invitation for bids must be issued before the wage determination is received, a notice that the schedule of minimum wage rates to be paid under the contract will be issued as an amendment to the invitation for bids before the opening date for bids (see 14.208 and 22.404-3(b)).

(2) The Performance of Work by the Contractor clause (see 36.501 and 52.236-1).

(3) The magnitude of the proposed construction project (see 36.204).

(4) The period of performance (see Subpart 12.1).

(5) Arrangements made for bidders to inspect the site and examine the data concerning performance of the work (see 36.210).

(6) Information concerning any facilities, such as utilities, office space, and warehouse space, to be furnished during construction.

(7) Information concerning the prebid conference (see 14.207).

(8) Any special qualifications or experience requirements that will be considered in determining the responsibility of bidders (see Subpart 9.1).

(9) Any special instructions concerning bids, alternate bids, and award.

(10) Any instructions concerning reporting requirements.

(d) The contracting officer shall send invitations for bids to prospective bidders who requested them in response to the preinvitation notice, and should send them to other prospective bidders upon their specific request (see 14.205 and 5.102(a)).

36.304 Notice of award.

When a notice of award is issued, it shall contain information required by 14.407 and shall—

(a) Identify the invitation for bids;

(b) Identify the contractor's bid;

(c) State the award price;

(d) Advise the contractor that any required payment and performance bonds must be promptly executed and returned to the contracting officer;

(e) Specify the date of commencement of work, or advise that a notice to proceed will be issued.

36.305 Preconstruction conference.

The contracting officer shall conduct a preconstruction conference to inform the contractor concerning the labor standards clauses of the contract, when appropriate in accordance with 22.405-1(b).

SUBPART 36.4—SPECIAL PROCEDURES FOR NEGOTIATION OF CONSTRUCTION CONTRACTS

36.401 Use of negotiated contracts.

(a) *Construction in the United States.* (1) Agencies covered by 41 U.S.C. 252(c) may negotiate for construction to be performed in the continental United States (49 States on the North American Continent and the District of Columbia) only if authorized under sections (c)(1), (2), (3), (10), (11), (12), or (14). (See Subpart 15.2, "Negotiation Authorities," and 41 U.S.C. 252(e)). The appropriate statutory authority for negotiation shall be cited in the contract.

(2) Agencies covered by 10 U.S.C. 2304 may negotiate for construction to be performed in the United States, its possessions, and Puerto Rico only if authorized under subsection (1), (2), (3), (10), (11), (12), or (15) of 10 U.S.C. 2304(a), or subsection (17) for contracts with the Small Business Administration. (See Subpart 15.2, "Negotiation Authorities.") The appropriate statutory authority for negotiation shall be cited in the contract.

(b) *Construction outside the United States.* (1) Agencies covered by 41 U.S.C. 252(c) shall negotiate for construction to be performed outside the continental United States, unless formal advertising is authorized by agency regulations. Negotiated contracts shall include a citation of the statutory authority for their negotiation. Contracts to be performed in Hawaii, Puerto Rico, or any possession of the United States may not be negotiated under 41 U.S.C. 252(c)(6).

(2) Agencies covered by 10 U.S.C. 2304 shall negotiate for construction to be performed outside the United States, its

possessions, or Puerto Rico, unless formal advertising is authorized by agency regulations. Negotiated contracts shall include a citation of the statutory authority for their negotiation.

(c) *Small purchases.* Construction contracts that are within the dollar thresholds for small purchases may be negotiated in accordance with 41 U.S.C. 252(c)(3) or 10 U.S.C. 2304(a)(3). (See 15.203, Purchases under the small purchase limitation, and Part 13, Small Purchases and Other Simplified Purchase Procedures.)

36.402 Price negotiation

(a) Agencies shall follow the policies and procedures in Part 15 when negotiating prices for construction.

(b) The contracting officer shall evaluate proposals and associated cost or pricing data and shall compare them to the Government estimate.

(1) When any element of a proposal differs significantly from the Government estimate, the contracting officer should request the offeror to submit cost or pricing data concerning that element (e.g., wage rates or fringe benefits, significant materials, equipment allowances, and subcontractor costs).

(2) When a proposed price is significantly lower than the Government estimate, the contracting officer shall make sure both the offeror and the Government estimator completely understand the scope of the work. If negotiations reveal errors in the Government estimate, the estimate shall be corrected and the changes shall be documented in the contract file.

(c) When appropriate, additional pricing tools may be used. For example, proposed prices may be compared to current prices for similar types of work, adjusted for differences in the work site and the specifications. Also, rough yardsticks may be developed and used, such as cost per cubic foot for structures, cost per linear foot for utilities, and cost per cubic yard for excavation or concrete.

36.403 Cost-reimbursement contracts.

Contracting officers may use a cost-reimbursement contract to acquire construction only when its use is consistent with Subpart 16.3 and Part 15 (see 15.903(d)(1)(iii) for fee limitation on cost-reimbursement contracts).

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 when a fixed-price construction contract is contemplated and the contract amount is expected to exceed $1,000,000. 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 $1,000,000 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 small purchase limitation. 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 within the small purchase limitation.

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 small purchase limitation. 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 within the small purchase limitation.

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 when a fixed-price construction contract is contemplated.

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 small purchase limitation. 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 within the small purchase limitation.

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 construction contract or a fixed-price dismantling, demolition, or removal of improvements 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 small purchase limitation. 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 within the small purchase limitation.

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 small purchase limitation. 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 within the small purchase limitation.

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 small purchase limitation. 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 within the small purchase limitation.

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 small purchase limitations. This clause may be inserted in solicitations and contracts when the contract amount is expected to be within the small purchase limitations.

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 small purchase limitation. 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 within the small purchase limitation.

36.513 Accident prevention.

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 small purchase limitation. 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 within the small purchase limitation. If the contract will involve work of a long duration or hazardous nature, the contracting officer shall use the clause with its Alternate I.

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 contract 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 small purchase limitation 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 clauses covering other management approaches for ensuring that a contractor makes adequate progress.

36.516 Quantity surveys.

The contracting officer may insert the clause at 52.236-16, Quantity Surveys, in solicitations and contracts when a fixed-price construction contract providing for unit pricing of items and for payment based on quantity surveys is contemplated. If it is determined at a level above that of the contracting officer that it is impracticable for Government personnel to perform the original and final surveys, and the Government wishes the contractor to perform these surveys, the clause shall be used with its Alternate.

36.517 Layout of work.

The contracting officer shall insert the clause at 52.236-17, Layout of Work, in solicitations and contracts when a fixed-price construction contract is contemplated and use of this clause is appropriate due to a need for accurate work layout and for siting verification during work performance.

36.518 Work oversight in cost-reimbursement construction contracts.

The contracting officer shall insert the clause at 52.236-18, Work Oversight in Cost-Reimbursement Construction Contracts, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

36.519 Organization and direction of the work.

The contracting officer shall insert the clause at 52.236-19, Organization and Direction of the Work, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

36.520 Special requirements.

The contracting officer shall insert the clause at 52.236-20, Special Requirements, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

36.521 Specifications and drawings for constructions.

The contracting officer shall insert the clause at 52.236-21, Specifications and Drawings for Construction, 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 small purchase limitation. 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 within the small purchase limitation. When the Government needs record drawings the contracting officer shall (a) use the clause with its Alternate I, if reproducible shop drawings are needed, or (b) use the clause with Alternate II, if reproducible shop drawings are not needed.

SUBPART 36.6—ARCHITECT-ENGINEER SERVICES

36.600 Scope of subpart.

This subpart prescribes policies and procedures applicable to the acquisition of architect-engineer services.

36.601 Policy.

The Government shall publicly announce all requirements for architect-engineer services, and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective contractors to perform the services required at fair and reasonable prices. (See Pub. L. 92-582, 40 U.S.C. 541 et seq.) Sources for architect-engineer contracts shall be selected in accordance with the procedures in this subpart, rather than the formal advertising or source selection procedures prescribed in Parts 14 and 15 of this regulation.

36.602 Selection of firms for architect-engineer contracts.

36.602-1 Selection criteria.

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

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

(2) Specialized experience and technical competence in the type of work required;

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

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

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

(6) Acceptability under other appropriate evaluation criteria.

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

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

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

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

36.602-2 Evaluation boards.

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

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

36.602-3 Evaluation board functions.

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

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

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

(c) Hold discussions with at least three of the most highly qualified firms regarding concepts and the relative utility of alternative methods of furnishing the required services, when the prospective architect-engineer contract is estimated to exceed $10,000. Architect-engineer fees shall not be considered in these discussions.

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

36.602-4 Selection authority.

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

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

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

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

36.602-5 Short selection processes for contracts not to exceed $10,000.

When authorized by the agency, either or both of the short processes described in this subsection may be used to select firms for contracts not expected to exceed $10,000. Otherwise, the procedures prescribed in 36.602-3 and 36.602-4 shall be followed.

(a) *Selection by the board.* The board shall review and evaluate architect-engineer firms in accordance with 36.602-3, except that the selection report shall serve as the final selection list and

shall be provided directly to the contracting officer. The report shall serve as an authorization for the contracting officer to commence negotiations in accordance with 36.606.

(b) *Selection by the chairperson of the board.* When the board decides that formal action by the board is not necessary in connection with a particular selection, the following procedures shall be followed:

(1) The chairperson of the board shall perform the functions required in 36.602-3.

(2) The agency head or designated selection authority shall review the report and approve it or return it to the chairperson for appropriate revision.

(3) Upon receipt of an approved report, the chairperson of the board shall furnish the contracting officer a copy of the report which will serve as an authorization for the contracting officer to commence negotiations in accordance with 36.606.

36.603 Collecting data on and appraising firms' qualifications.

(a) *Establishing offices.* Agencies shall maintain offices or permanent evaluation boards, or arrange to use the offices or boards of other agencies, to receive and maintain data on firms wishing to be considered for Government contracts. Each office or board shall be assigned a jurisdiction by its parent agency, making it responsible for a geographical region or area, or a specialized type of construction.

(b) *Qualifications data.* To be considered for architect-engineer contracts, a firm must file with the appropriate office or board the Standard Form 254 (SF 254), "Architect-Engineer and Related Services Questionnaire," and when applicable, the Standard Form 255 (SF 255), "Architect-Engineer and Related Services Questionnaire for Specific Project."

(c) *Data files and the classification of firms.* Under the direction of the parent agency, offices or permanent evaluation boards shall maintain an architect-engineer qualifications data file. These offices or boards shall review the SF's 254 and 255 filed, and shall classify each firm with respect to:

(1) Location;

(2) Specialized experience;

(3) Professional capabilities; and

(4) Capacity, with respect to the scope of work that can be undertaken. A firm's ability and experience in computer-assisted design should be considered, when appropriate.

(d) *Currency of files.* Any office or board maintaining qualifications data files shall review and update each file at least once a year. This process should include:

(1) Encouraging firms to submit annually an updated statement of qualifications and performance data on a SF 254.

(2) Reviewing the SF's 254 and 255 and, if necessary, updating the firm's classification (see 36.603(c)).

(3) Recording any contract awards made to the firm in the past year.

(4) Assuring that the file contains a copy of each pertinent performance report (see 36.604).

(5) Discarding any material that has not been updated within the past three years, if it is no longer pertinent, see 36.604(c).

(6) Posting the date of the review in the file.

(e) *Use of data files.* Evaluation boards and other appropriate Government employees, including contracting officers, shall use data files on firms.

36.604 Performance evaluation.

(a) *Preparation of performance reports.* (1) For each contract of more than $25,000, a performance evaluation report shall be prepared by the cognizant contracting activity, using the SF 1421, Performance Evaluation (Architect-Engineer). Performance evaluation reports may also be prepared for contracts of $25,000 or less.

(2) The report shall be prepared after final acceptance of the work or after contract termination, as appropriate. Ordinarily, the evaluating official who prepares the report should be the person responsible for monitoring contract performance.

(3) If the evaluating official concludes that a contractor's overall performance was unsatisfactory, the contractor shall be advised in writing that a report of unsatisfactory performance is being prepared and the basis for the report. If the contractor submits any written comments, the evaluating official shall include them in the report, resolve any alleged factual discrepancies, and make appropriate changes in the report.

(4) The head of the contracting activity shall establish procedures which ensure that fully qualified personnel prepare and review performance reports.

(b) *Review of performance reports.* Each performance report shall be reviewed to ensure that it is accurate and fair. The reviewing official should have knowledge of the contractor's performance and should normally be at an organizational level above that of the evaluating official.

(c) *Distribution and use of performance reports.* Each performance report shall be distributed in accordance with agency procedures. The report shall be included in the contract file, and copies shall be sent to offices or boards for filing with the firm's qualifications data (see 36.603(d)(4)). The contracting activity shall retain the report for at least six years after the date of the report.

36.605 Government cost estimate for architect-engineer work.

(a) An independent Government estimate of the cost of architect-engineer services shall be prepared and furnished to the contracting officer before commencing negotiations for each proposed contract or contract modification expected to exceed $25,000. The estimate shall be prepared on the basis of a detailed analysis of the required work as though the Government were submitting a proposal

(b) Access to information concerning the Government estimate shall be limited to Government personnel whose official duties require knowledge of the estimate. An exception to this rule may be made during contract negotiations to allow the contracting officer to identify a specialized task and disclose the associated cost breakdown figures in the Government estimate, but only to the extent deemed necessary to arrive at a fair and reasonable price. The overall amount of the Government's estimate shall not be disclosed except as permitted by agency regulations.

36.606 Negotiations.

(a) Unless otherwise specified by the selection authority, the final selection authorizes the contracting officer to begin negotiations. Negotiations shall be conducted in accordance with Part 15 of this regulation, beginning with the most preferred firm in the final selection (see 15.903(d)(1)(ii) on fee limitation).

(b) The contracting officer should ordinarily request a proposal from the firm, ensuring that the solicitation does not inadvertently preclude the firm from proposing the use of modern design methods.

(c) The contracting officer shall inform the firm that no construction contract may be awarded to the firm that designed the project, except as provided in 36.209.

(d) During negotiations, the contracting officer should seek advance agreement (see 31.109) on any charges for computer-assisted design. When the firm's proposal does not cover appropriate modern and cost-effective design methods (e.g., computer-assisted design), the contracting officer should discuss this topic with the firm.

(e) Because selection of firms is based upon qualifications, the extent of any subcontracting is an important negotiation topic. The clause prescribed at 44.204(d), "Subcontractors and Outside Associates and Consultants" (see 52.244-4), limits a firm's subcontracting to firms agreed upon during negotiations.

(f) If a mutually satisfactory contract cannot be negotiated, the contracting officer shall obtain a written best and final offer from the firm, and notify the firm that negotiations have been terminated. The contracting officer shall then initiate negotiations with the next firm on the final selection list. This procedure shall be continued until a mutually satisfactory contract has been negotiated. If negotiations fail with all selected firms, the contracting officer shall refer the matter to the selection authority who, after consulting with the contracting officer as to why a contract cannot be negotiated, may direct the evaluation board to recommend additional firms in accordance with 36.602.

36.607 Release of information on firm selection.

After final selection has taken place, the contracting officer may release information identifying only the architect-engineer firm with which a contract will be negotiated for certain work. The work should be described in any release only in general terms, unless information relating to the work is classified. If negotiations are terminated without awarding a contract to the highest rated firm, the contracting officer may release that information and state that negotiations will be undertaken with another (named) architect-engineer firm. When an award has been made, the contracting officer may release award information, (see 5.401).

36.608 Liability for Government costs resulting from design errors or deficiencies.

Architect-engineer contractors shall be responsible for the professional quality, technical accuracy, and coordination of all services required under their contracts. A firm may be liable for Government costs resulting from errors or deficiencies in designs furnished under its contract. Therefore, when a modification to a construction contract is required because of an error or deficiency in the services provided under an architect-engineer contract, the contracting officer (with the advice of technical personnel and legal counsel) shall consider the extent to which the architect-engineer contractor may be reasonably liable. The contracting officer shall enforce the liability and collect the amount due, if the recoverable cost will exceed the administrative cost involved or is otherwise in the Government's interest. The contracting officer shall include in the contract file a written statement of the reasons for the decision to recover or not to recover the costs from the firm.

36.609 Contract clauses.

36.609-1 Design within funding limitations.

(a) The Government may require the architect-engineer contractor to design the project so that construction costs will not exceed a contractually specified dollar limit (funding limitation). If the price of construction proposed in response to a Government solicitation exceeds the construction funding limitation in the architect-engineer contract, the firm shall be solely responsible for redesigning the project within the funding limitation. These additional services shall be performed at no increase in the price of this contract. However, if the cost of proposed construction is affected by events beyond the firm's reasonable control (e.g., if there is an increase in material costs which could not have been anticipated, or an undue delay by the Government in issuing a construction solicitation), the firm shall not be obligated to redesign at no cost to the Government. If a firm's design fails to meet the contractual limitation on construction cost and the Government determines that the firm should not redesign the project, a written statement of the reasons for that determination shall be placed in the contract file.

(b) The amount of the construction funding limitation (to be inserted in paragraph (c) of the clause at 52.236-22) is to be established during negotiations between the contractor and the Government. This estimated construction contract price shall take into account any statutory or other limitations and exclude any allowances for Government supervision and overhead and any amounts set aside by the Government for contingencies. In negotiating the amount, the contracting officer should make available to the contractor the information upon which the Government has based its initial construction estimate and any subsequently acquired information that may affect the construction costs.

(c) The contracting officer shall insert the clause at 52.236-22, Design Within Funding Limitations, in architect-engineer contracts except when (1) the head of the contracting activity or a designee determines in writing that cost limitations are secondary to performance considerations and additional project funding can be expected, if necessary, (2) the design is for a standard structure and is not intended for a specific location, or (3) there is little or no design effort involved.

36.609-2 Redesign responsibility for design errors or deficiencies.

(a) Under architect-engineer contracts, contractors shall be required to make necessary corrections at no cost to the Government when the designs, drawings, specifications, or other items or services furnished contain any errors, deficiencies, or inadequacies. If, in a given situation, the Government does not require a firm to correct such errors, the contracting officer shall include a written statement of the reasons for that decision in the contract file.

(b) The contracting officer shall insert the clause at 52.236-23, Responsibility of the Architect-Engineer Contractor, in architect-engineer contracts.

36.609-3 Work oversight in architect-engineer contracts.

The contracting officer shall insert the clause at 52.236-24, Work Oversight in Architect-Engineer Contracts, in architect-engineer contracts.

36.609-4 Requirements for registration of designers.

The contracting officer shall insert the clause at 52.236-25, Requirements for Registration of Designers, in fixed-price architect-engineer contracts, except that it may be omitted from a contract when the design is to be performed (a) outside the United States, its possessions, or Puerto Rico, or (b) in a State or possession that does not have registration requirements for the particular field involved.

SUBPART 36.7—STANDARD FORMS FOR CONTRACTING FOR CONSTRUCTION, ARCHITECT-ENGINEER SERVICES, AND DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS

36.700 Scope of subpart.

This subpart sets forth requirements for the use of standard forms, prescribed in Part 53, for contracting for construction, architect-engineer services, or dismantling, demolition, or removal of improvements. These standard forms are illustrated in Part 53.

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

(a) Contracting officers shall use Standard Form 1417, Presolicitation Notice (Construction), to inform prospective offerors that a solicitation will be released for a proposed construction or dismantling, demolition, or removal of improvements contract estimated to be $100,000 or more. This form may also be used if the proposed contract is estimated to be less than $100,000.

(b) Standard Form 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair), shall be used to solicit and submit offers, and award construction or dismantling, demolition, or removal of improvements contracts expected to exceed the small purchase limitations, and may be used for contracts within the small purchase limitations. In all advertised solicitations, or when the Government otherwise requires a noncancellable offer acceptance period, the contracting officer shall insert in the blank provided in Block 13D the number of calendar days that the offer must be available for acceptance after the date offers are due.

(c) Optional Form 347, Order for Supplies or Services, may be used for construction or dismantling, demolition, or removal of improvements contracts that are within the small purchase limitation *provided*, that the contracting officer includes the clauses required (see Subpart 36.5) in the small purchases documents (see Part 13, Small Purchases and Other Simplified Purchase Procedures).

(d) Contracting officers should use Standard Form 1419, Abstract of Offers-Construction or the automated equivalent, to record offers submitted in response to an advertised solicitation (see 14.403) and may also use it to record offers submitted in response to negotiated solicitations.

(e) Contracting activities shall use Standard Form 1420, Performance Evaluation (Construction), in evaluating and reporting on the performance of construction contractors as required in 36.201.

36.702 Forms for use in contracting for architect-engineer services.

(a) Contracting officers shall use Standard Form 252, Architect-Engineer Contract, to award fixed-price contracts for architect-engineer services when the services are to be performed in the United States, its possessions, or Puerto Rico.

(b) The following standard forms shall be used preliminary to award of a contract for architect-engineer services relating to the construction, alteration, or repair of real property:

(1) Standard Form 254, Architect-Engineer and Related Services Questionnaire, shall be used to obtain information from architect-engineer firms regarding their professional qualifications.

(2) Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, shall be used to supplement the SF 254 with additional, specific information on the firms' qualifications for a particular project when the contract amount is expected to exceed the small purchase limitation. This form may be used when the contract amount is expected to be within the small purchase limitations, if the contracting officer determines that its use is appropriate.

(c) Standard Form 1421, Performance Evaluation (Architect-Engineer), shall be used in evaluating and reporting on the performance of architect-engineer contractors as required in 36.604.

PART 37—SERVICE CONTRACTING

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

37.000 Scope of part.

This part prescribes general policy and procedures for acquiring services by contract, and includes but does not limit coverage to only those services to which the Service Contract Act of 1965 applies (see 37.107). It distinguishes between contracts for personal services and those for nonpersonal services and includes special conditions to be observed in acquiring consulting services. Dismantling, demolition, or removal of improvements is covered in Subpart 37.3. This part does not regulate the obtaining of services by direct appointment, under normal civil service employment procedures, or by cooperative agreement.

SUBPART 37.1—SERVICE CONTRACTS—GENERAL

37.101 Definitions.

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

"Personal services contract" means a contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, Government employees (see 37.104).

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

(a) Maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment.

(b) Routine recurring maintenance of real property.

(c) Housekeeping and base services.

(d) Consulting services.

(e) Engineering and technical services.

(f) Operation of Government-owned equipment, facilities, and systems.

(g) Communications services.

(h) Architect-Engineering (see Subpart 36.6).

(i) Transportation and related services (see Part 47).

(j) Research and development (see Part 35).

37.102 Policy.

(a) Agencies shall generally rely on the private sector for commercial services (see OMB Circular No. A-76,

Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government).

(b) In no event may a contract be awarded for the performance of an inherently governmental function.

(c) The relative costs of Government and contract performance require appropriate consideration where Government performance is practicable (see Subpart 7.3).

(d) Nonpersonal service contracts are proper under general contracting authority.

37.103 Contracting officer responsibility.

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

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

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

(3) Document the file (except as provided in paragraph (b) below) with (i) the opinion of legal counsel, if any, (ii) a memorandum of the facts and rationale supporting the conclusion that the contract does not violate the provisions in 37.104(b), and (iii) any further documentation that the contracting agency may require.

(b) Nonpersonal services contracts are exempt from the requirements of subparagraph (a)(3) above.

37.104 Personal services contracts.

(a) As indicated in 37.101, a personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.

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

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

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

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

(1) Performance on site.

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

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

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

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

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

(i) Adequately protect the Government's interest;

(ii) Retain control of the function involved; or

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

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

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

37.105 Competition in service contracting.

(a) Unless otherwise provided by statute, contracts for services shall be awarded through formal advertising whenever feasible and practicable (see Parts 14 or 15).

(b) The provisions of statute and of this regulation requiring competition apply fully to service contracts. Therefore, when formal advertising is not feasible and practicable and negotiation is authorized, competition still must be obtained to the maximum practicable extent, except for acquisitions not in excess of $1,000. The method of obtaining competition will vary with the type of service being acquired and will not necessarily be limited to price comparison.

37.106 Funding and term of service contracts.

When contracts for services are funded by annual appropriations, the term of contracts so funded shall not extend beyond the end of the fiscal year of the appropriation except when authorized by law (see 32.703-2 for contracts conditioned upon availability of funds and 32.703-3 for contracts crossing fiscal years).

37.107 Service Contract Act of 1965.

The Service Contract Act of 1965 (41 U.S.C. 351-357) (the Act) provides for minimum wages and fringe benefits as well as other conditions of work under certain types of service contracts (see Subpart 22.10). Whether or not the Act applies to a specific service contract will be determined by the definitions and exceptions given in the Act, or implementing regulations.

37.108 Small business Certificate of Competency.

In those service contracts for which the Government requires the highest competence obtainable, as evidenced in a solicitation by a request for a technical/management proposal and a resultant technical evaluation and source selection, the small business Certificate of Competency procedures may not apply (see Subpart 19.6).

37.109 Services of quasi-military armed forces.

Contracts with "Pinkerton Detective Agencies or similar organizations" are prohibited by 5 U.S.C. 3108. This prohibition applies only to contracts with organizations that offer quasi-military armed forces for hire, or with their employees, regardless of the contract's character. An organization providing guard or protective services does not thereby become a "quasi-

military armed force," even though the guards are armed or the organization provides general investigative or detective services. (See 57 Comp. Gen. 524).

37.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.237-1, Site Visit, in solicitations for services to be performed on Government installations, unless the solicitation is for construction.

(b) The contracting officer shall insert the clause at 52.237-2, Protection of Government Buildings, Equipment, and Vegetation, in solicitations and contracts for services to be performed on Government installations, unless a construction contract is contemplated.

(c) The contracting officer may insert the clause at 52.237-3, Continuity of Services, in solicitations and contracts for services, when the Government anticipates difficulties during the transition from one contractor to another or to the Government.

(d) See 9.508 regarding the use of an appropriate provision and clause concerning the subject of conflict-of-interest, which may at times be significant in solicitations and contracts for services.

(e) The contracting officer shall also insert in solicitations and contracts for services the provisions and clauses prescribed elsewhere in the FAR, as appropriate for each acquisition, depending on the conditions that are applicable.

SUBPART 37.2—CONSULTING SERVICES

37.200 Scope of subpart.

This subpart prescribes policies and procedures for acquiring consulting services by contract. The subpart regulates these contracts with individuals and organizations for both personal and nonpersonal services, including stenographic reporting services.

37.201 Definition.

"Consulting services" means those services of a purely advisory nature relating to the governmental functions of agency administration and management and program management (see 37.203 for examples of the types of services covered by this term). These services are normally provided by persons and/or organizations that are considered to have knowledge and special abilities not generally available within the agency. The form of compensation is irrelevant to the definition.

37.202 General.

This subpart governs contracts for consulting services. Related services, such as studies and professional and management services, may also be governed by this subpart, as supplemented by agency regulations.

37.203 Types of consulting services.

(a) The following are examples of consulting services subject to this Subpart 37.2:

(1) Advice on or evaluation of agency administration and management, such as—

(i) Organizational structures;
(ii) Reorganization plans;
(iii) Management methods;
(iv) Budgeting procedures;
(v) Mail-handling procedures;
(vi) Records and file organization;
(vii) Personnel procedures;
(viii) Discriminatory labor practices;
(ix) Agency publications;
(x) Internal policies, directives, orders, manuals, and procedures; and
(xi) Management information systems.

(2) Advice on or evaluation of agency program management, such as—

(i) Program plans;
(ii) Acquisition strategies;
(iii) Assistance strategies;
(iv) Regulations;
(v) Solicited or unsolicited technical and cost proposals;
(vi) Legal aspects;
(vii) Economic impacts;
(viii) Program impact; and
(ix) Mission and program analysis.

(b) This subpart applies also to any contract task assignment for consulting services that is proposed for assignment to a Federally Funded Research and Development Center. Note that contracts for the conduct of research and development and technology assessments are not contracts for consulting services.

37.204 Policy.

(a) Using consulting services properly is a legitimate way to improve Government services and operations. Accordingly, under the terms of this part, consulting services may be used at all organizational levels to help managers achieve maximum effectiveness or economy in their operations.

(b) Subject to the provisions of 37.205, agencies may contract for consulting services, when essential to the agency's mission, to obtain—

(1) Specialized opinions or professional or technical advice not available within the agency or from another agency;

(2) Outside points of view, to avoid too limited a judgment on critical issues;

(3) Advice on developments in industry, university, or foundation research;

(4) The opinion of experts whose national or international prestige can contribute to the success of important projects; or

(5) Citizen advisory participation in developing or implementing Government programs that by their nature or by statutory provision require such participation.

(c) Agencies shall not contract for consulting services—

(1) To perform work of a policy-making, decision-making, or managerial nature that is the direct responsibility of agency officials;

(2) To bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;

(3) To specifically aid in influencing or enacting legislation; or

(4) In a manner affording preferential treatment to former Government employees.

(d) Extension of a consulting services contract by modification legally creates a new contract; therefore, such a modification is improper unless all the requirements and limitations of this part have been complied with.

37.205 Management controls.

(a) The contracting officer is responsible for determining whether a requested contractual action or solicitation, regardless of dollar value, is for consulting services. The contracting officer's determination shall be final. Before processing any contractual action or solicitation for consulting services, the contracting officer shall ensure that the applicable provisions of this subpart and 37.103 and 37.104 have been complied with and that the required documentation is complete and included in the contract file.

(b) For acquisition of consulting services, agencies shall establish procedures to ensure that—

(1) Every requirement is appropriate and fully justified in writing (the justification shall include (i) a statement of need and (ii) the requesting official's certification that the services do not unnecessarily duplicate any previously performed work or services);

(2) Work statements are specific and complete and specify a fixed period of performance for the services to be provided;

(3) Contracts are competitively awarded to the maximum extent practicable to ensure that costs are reasonable and to avoid charges of favoritism;

(4) Appropriate disclosure is required of, and warning is given to, the contractor personnel to avoid conflicts of interest;

(5) The contract is properly administered and monitored to ensure that performance meets the requirements;

(6) There are specific levels of delegation of authority, at a level above the sponsor for the services, to approve the need for the use of the services;

(7) Any requests submitted for approval during the fourth quarter of the fiscal year are approved at the second level above the organization sponsoring the activity, or equivalent level as defined in implementing agency regulations;

(8) Proposed contract actions are properly authorized by a written, signed document in accordance with agency regulations; and

(9) The approval and authorization in subparagraphs (6), (7), and (8) above are obtained in the case of supplemental agreements or change orders that increase the scope of work, extend time limitations, add funds, or otherwise substantially alter the arrangement originally approved.

SUBPART 37.3—DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS

37.300 Scope of subpart.

This subpart prescribes procedures for contracting for dismantling or demolition of buildings, ground improvements, and other real property structures and for the removal of such structures or portions of them (hereafter referred to as "dismantling, demolition, or removal of improvements").

37.301 Labor standards.

Contracts for dismantling, demolition, or removal of improvements are subject to either the Service Contract Act (41 U.S.C. 351-358) or the Davis-Bacon Act (40 U.S.C. 276a—276a-7). If the contract is solely for dismantling, demolition, or removal of improvements, the Service Contract Act applies unless further work which will result in the construction, alteration, or repair of a public building or public work at that location is contemplated. If such further construction work is intended, even though by separate contract, then the Davis-Bacon Act applies to the contract for dismantling, demolition, or removal.

37.302 Bonds or other security.

When a contract is solely for dismantling, demolition, or removal of improvements, the Miller Act (40 U.S.C. 270a-270f) (see 28.102) does not apply. However, the contracting officer may require the contractor to furnish a performance bond or other security (see 28.103) in an amount that the contracting officer considers adequate to (a) ensure completion of the work, (b) protect property to be retained by the Government, (c) protect property to be provided as compensation to the contractor, and (d) protect the Government against damage to adjoining property.

37.303 Payments.

(a) The contract may provide that the (1) Government pay the contractor for the dismantling or demolition of structures or (2) contractor pay the Government for the right to salvage and remove the materials resulting from the dismantling or demolition operation.

(b) The contracting officer shall consider the usefulness to the Government of all salvageable property. Any of the property that is more useful to the Government than its value as salvage to the contractor should be expressly designated in the contract for retention by the Government. The contracting officer shall determine the fair market value of any property not so designated, since the contractor will get title to this property, and its value will therefore be important in determining what payment, if any, shall be made to the contractor and whether additional compensation will be made if the contract is terminated.

37.304 Contract clauses.

(a) The contracting officer shall insert the clause at 52.237-4, Payment by Government to Contractor, in solicitations and contracts solely for dismantling, demolition, or removal of improvements whenever the contracting officer determines that the Government shall make payment to the contractor in addition to any title to property that the contractor may receive under the contract. If the contracting officer determines that all material resulting from the dismantling or demolition work is to be retained by the Government, use the basic clause with its Alternate I.

(b) The contracting officer shall insert the clause at 52.237-5, Payment by Contractor to Government in solicitations and contracts for dismantling, demolition, or removal of improvements whenever the contractor is to receive title to dismantled or demolished property and a net amount of compensation is due to the Government, except if the contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments and the government to transfer title to the contractor for increments of property only upon receipt of those payments.

(c) The contracting officer shall insert the clause at 52.237-6, Incremental Payment by Contractor to Government, in solicitations and contracts for dismantling, demolition, or removal of improvements if (1) the contractor is to receive title to dismantled or demolished property and a net amount of compensation is due the Government, and (2) the contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments, and for the Government to transfer title to the contractor for increments of property only upon receipt of those payments. This determination may be appropriate, for example, if it encourages greater competition or participation of small business concerns.

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

38.000 Scope of part.

This part prescribes policies and procedures for contracting for supplies and services under the Federal Supply Schedule program, which is directed and managed by the General Services Administration. Procedures for ordering from Federal Supply Schedules are covered in Subpart 8.4. See Part 39 for automatic data processing and telecommunications equipment and services coverage. The Department of Defense uses a similar system of schedule contracting for military items that are also not a part of the Federal Supply Schedule program.

SUBPART 38.1—FEDERAL SUPPLY SCHEDULE PROGRAM

38.101 General.

(a) The Federal Supply Schedule program provides Federal agencies with a simplified process of acquiring commonly used supplies and services in varying quantities at lower prices while obtaining discounts associated with volume buying. Indefinite delivery contracts (primarily requirements contracts) are established with commercial firms to provide supplies and services at stated prices for given periods of time. The schedule contracting office issues publications, titled Federal Supply Schedules, containing the information needed for placing delivery orders with the contractors.

(b) Each schedule identifies specific agencies in designated geographic areas that are required to use the contracts as primary sources of supply. Except as specified in 8.404-1, agencies included as mandatory users must order needed supplies and services from the schedule if the consignee is located within the geographic area of coverage. Geographic areas of coverage are determined on the basis of the location of the consignee, not the ordering office.

(c) Federal agencies not identified in the schedules as mandatory users (see 8.404-2) may issue orders under the schedules, and the contractors are encouraged to accept the orders.

(d) Under the schedule program, ordering agencies—

(1) Issue orders directly to the contractors;

(2) Receive shipments;

(3) Pay the contractors; and

(4) Administer individual orders.

(e) Although GSA awards most Federal Supply Schedule contracts, it may authorize other agencies to award schedule contracts and publish schedules; e.g., the Veterans Administration awards schedule contracts for certain medical and nonperishable subsistence items.

38.102 Types of Federal Supply Schedules.

38.102-1 Single-award schedules.

(a) Single-award schedules cover contracts made with one supplier at a stated price for delivery to a geographic area as defined in the schedule. A single-award schedule is appropriate if there are adequate commercial descriptions or specifications to permit competitive offers.

(b) Each single-award schedule lists the supplies or services covered and the prices. Unit prices are normally established on a zonal basis to provide for differences in transportation. The schedules contain the necessary information for placing orders. Some single-award schedules specify that contractors have prepared brochures containing additional information, usually fabric or color selections or similar variables.

38.102-2 Multiple-award schedules.

(a) Multiple-award schedules are based on negotiated contracts established with more than one supplier for delivery of comparable commercial supplies or services. Contracts are awarded to firms supplying the same generic types of items or services at varying prices for delivery within the same geographic areas.

(b) These contracts are appropriate when—

(1) It is not practical to draft specifications or other descriptions for the required supplies or services and there are multiple suppliers able to furnish similar commercial supplies or services (either established catalogs or market prices, or cost or pricing data will be used as a basis for determining price reasonableness); or

(2) Selectivity is necessary for ordering offices to meet their varying needs.

(c) Multiple-award schedule contractors are required to prepare and distribute pricelists and catalogs that must be used with the schedule to prepare orders.

38.102-3 New Item Introductory Schedule.

(a) The New Item Introductory Schedule (NIIS) is used to introduce new or improved products into the Federal supply system. Potential suppliers submit applications, on GSA Form 1171, Application for Presenting New Articles, through any GSA Business Service Center (BSC). These centers are listed in the clause at 52.210-1, Availability of Specifications Listed in the Index of Federal Specifications and Standards. The BSC screens the applications and forwards them to the GSA, Office of Federal Supply and Services (FSS), for review and acceptance or rejection. This review considers such factors as possible duplication of present supply support items, anticipated demand, and health, safety, and legal requirements.

(b) If the application is accepted, a contract is negotiated and the item is placed on the NIIS. If sufficient demand for an item is generated, the item is transferred from the NIIS to a regular acquisition program; e.g., Federal Supply Schedule or stock.

(c) This schedule is published approximately four times a year and is cumulative. The user must obtain the contractors' catalogs and pricelists to use the schedule effectively. A contractor is required to make those documents available upon request.

(d) Agencies receiving applications from suppliers for consideration under the NIIS program shall forward them to the nearest GSA Business Service Center.

SUBPART 38.2—ESTABLISHING AND ADMINISTERING FEDERAL SUPPLY SCHEDULES

38.201 Coordination requirements.

(a) Subject to current or future interagency agreements, contracting officers having responsibility for awarding Federal Supply Schedule contracts shall coordinate with the General Services Administration (GSA) before—

(1) Establishing new schedules;

(2) Discontinuing existing schedules;

(3) Changing the scope of agency or geographical coverage of existing schedules; or

(4) Adding or deleting special item numbers, national stock numbers, or revising their description.

(b) The coordination shall be accomplished by using GSA Form 1649, Recommendation for Improvement of Federal Supply Schedules. This form shall be submitted to GSA, Office of Federal Supply and Services (FSS), FCP, Washington, DC 20406, in duplicate, well in advance of solicitation preparation. A leadtime of 90 days is required by GSA to coordinate and obtain concurrences from the various agencies.

38.202 Criteria.

(a) To justify establishing or continuing a Federal Supply Schedule, the annual business volume expected from a single Federal Supply Schedule should normally exceed $20,000, if regional in scope. For national scope schedules, the annual business volume expected should be $200,000 for a multiple-award schedule and $50,000 for a single-award schedule.

(b) Items included in schedules shall be such that—

(1) It is not feasible to forecast definite quantity requirements for delivery to specific consignees or no advantage accrues for doing so;

(2) Industry distribution facilities are adequate to serve the consignees; and

(3) Price advantages are sufficient to warrant the cost of maintaining the schedules.

(c) A special item number (SIN) should not be retained in a future multiple-award schedule when the

anticipated purchases of the SIN will be less than $10,000 for the contract period. An item should not be retained in a future schedule when the anticipated purchases of the item will be less than $2,000 for the contract period. (For the purpose of these criteria, an item is defined as a product on a multiple-award schedule; or a National Stock Number (NSN) or SIN on a single-award schedule.) This policy does not apply to service contracts or to the following:

(1) A part or accessory for a basic item.

(2) A component of a unit assembly.

(3) An item needed to fill out a range of colors, sizes, or other characteristics.

(4) A service related to an item that is being retained on a schedule.

(5) An item that is determined by the contracting officer to be economically advantageous to retain even though the expected demand is less than $2,000 per contract period. A justification must be included in the case file explaining the reasons for retaining the item.

(d) In addition, an item should be removed from a schedule when the item is—

(1) Discontinued by the manufacturer;

(2) Obsolete;

(3) Transferred to another schedule;

(4) To be provided through another method of supply;

(5) Similar to an item available from stock; or

(6) Not to be acquired because it is unsafe, requires a special license, or it is a luxury (see 41 CFR 101-26.103-2).

38.203 Solicitation preparation.

(a) Solicitations for Federal Supply Schedule contracts shall contain the solicitation provisions and contract clauses prescribed elsewhere in this regulation (e.g., see the clause matrix for indefinite delivery contracts in Subpart 52.3). The schedule contracting officer may include additional provisions and clauses which apply to the particular commodity or service to be acquired. Also, GSA shall prescribe, at the time of assignment of a schedule to a contracting office, special clauses for inclusion in the solicitations and contracts.

(b) Small Business set-aside programs apply to both single and multiple-award schedule contracting (see Part 19).

38.204 Schedule preparation.

The schedule contracting office shall publish schedules by commodity or service classification. Depending upon the type of schedule used, information provided may include the names of the contractors, their addresses, the contract periods, contract numbers, geographical areas of coverage, mandatory and optional users, minimum and maximum order limitations, prices, and any other information essential to placing orders. When schedule formats are provided by GSA, schedule contracting offices shall adhere to them so as to facilitate the use of the schedules by using agencies.

38.205 Schedule contract administration.

The schedule contracting officer shall—

(a) Exercise general supervision of schedule contracts;

(b) Issue final decisions on all disputes which relate to schedule contracts, or arise under orders which cannot be resolved by the ordering office and the contractor;

(c) When necessary, terminate schedule contracts for default or for the convenience of the Government (see Part 49); and

(d) Make necessary changes to the schedule. The following documents may be used to make changes to Federal Supply Schedules:

(1) *Cumulative schedule.* The preferred document to transmit changes is a complete schedule reprint containing all the information in the prior issuance with the new information added.

(2) *Amendment.* An amendment may be used to transmit changes to a schedule when the new information does not justify a complete reprint. Generally, if more than one page is needed, a cumulative schedule should be issued.

(3) *Notice to Ordering Offices.* A Notice to Ordering Offices may be used to transmit changes to a schedule when time will not permit the use of a cumulative schedule or amendment.

PART 39—MANAGEMENT, ACQUISITION, AND USE OF INFORMATION RESOURCES

Title 41 CFR 150 contains policies, procedures, and guidelines peculiar to automatic data processing (ADP), telecommunications, and related resources. Contracting for ADP, telecommunications, and related resources shall be accomplished in accordance with agency supplements and other FAR parts when applicable.

PART 40—[RESERVED]

PART 41—[RESERVED]

SUBCHAPTER G—Contract Management

PART 42—CONTRACT ADMINISTRATION

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

42.000 Scope of part.

This part prescribes general policies and procedures for performing contract administration functions and related audit services.

SUBPART 42.1—INTERAGENCY CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.100 Scope of subpart.

This subpart prescribes policies and procedures for obtaining and providing interagency contract administration and audit services in order to (a) provide specialized assistance through field offices located at or near contractors' establishments, (b) avoid or eliminate overlapping and duplication of Government effort, and (c) provide more consistent treatment of contractors.

42.101 Policy.

(a) Agencies requiring field contract administration or audit services are encouraged to use cross-servicing arrangements with existing contract administration and contract audit components (see 42.102(a) for the directories of cognizant offices). The customer agency and the servicing agency shall enter into a formal cross-servicing arrangement when the volume of work or other circumstances warrants a formal understanding.

(b) Multiple reviews, inspections, and examinations of a contractor or subcontractor by several agencies involving the same practices, operations, or functions shall be eliminated to the maximum practicable extent through the use of cross-servicing arrangements.

(c) OMB Circular No. A-73, Audit of Federal Operations and Programs, states executive branch policy on audit cross-servicing arrangements. As further provided in OFPP Policy Letter 78-4, Field Contract Support Cross-Servicing Program, (1) agencies shall use cross-servicing arrangements for the audit of costs incurred under contracts of two or more agencies being performed at the same business entity, and (2) the responsible auditor or contracting officer shall coordinate with concerned agencies the establishment of indirect cost rates at such entities and shall convey the finally established rates to those agencies for application to their contracts to the extent allocable and allowable (see Subpart 42.7).

(d) Subject to the fiscal regulations of the agencies concerned, agencies (1) may be reimbursed in accordance with the Economy Act of 1932 (31 U.S.C. 686) for services rendered under formal or informal cross-servicing arrangements, (2) normally should refrain from seeking reimbursement for cross-servicing accomplished incidental to their own needs or Government-wide responsibilities, and (3) may use the hourly rate established under the cross-servicing arrangement between the Department of Defense and the National Aeronautics and Space Administration to facilitate reimbursement arrangements.

(e) Agencies are not expected to enter into cross-servicing arrangements that would unduly burden agency resources or otherwise obstruct an agency in fulfilling its responsibilities.

42.102 Procedures.

(a) In locating available field contract administration or audit services, contracting offices shall consult the Department of Defense Directory of Contract Administration Services Components or the Directory of Federal Contract Audit Offices. Questions regarding contract administration offices may be referred to the Defense Logistics Agency; Attn: DLA-AO, Cameron Station, Alexandria, Virginia, 22314. Questions regarding audit offices may be referred to the Defense Contract Audit Agency, Attn: OTD, Cameron Station, Alexandria, Virginia, 22314. Agencies having a field contract administration or audit cross-servicing capability shall arrange for identification of this capability (including changes as they occur) in the appropriate directory by contacting one of these offices.

(b) Services may be obtained by direct request to the cognizant contract administration or audit component indicated in the applicable directory or as specified in a formal cross-servicing arrangement (see 42.101(a)).

(c) Except for requests submitted under formal cross-servicing arrangements, requests for services from Government agencies may be declined on a case-by-case basis if resources are inadequate to accomplish delegated tasks, provided the decision is made by an official above the level of the contract administration office, or as otherwise provided in agency regulations.

(d) Contract administration and audit services will be performed using the procedures of the servicing agency

unless formal agreements between agencies provide otherwise.

(e) Both the requesting and servicing activities are responsible for prudent use of the services provided under either formal or informal interagency cross-servicing arrangements. When it is appropriate, servicing activities shall counsel requesting agencies or contracting offices concerning the desirability and practicality of relaxing or waiving controls and surveillance that may not be necessary to ensure satisfactory contract performance.

SUBPART 42.2—ASSIGNMENT OF CONTRACT ADMINISTRATION

42.200 Scope of subpart.

This subpart prescribes policies and procedures for (a) assigning, retaining, or reassigning contract administration responsibility, (b) withholding normal functions or delegating additional functions when assigning contracts for administration, and (c) requesting and performing supporting contract administration. Subpart 42.3 lists both the normal contract administration functions and those requiring specific authorization by the contracting office.

42.201 Definition.

"Supporting contract administration" means performance of specific contract administration functions by another contract administration office (CAO) as required by (a) the CAO to which a contract is assigned for administration or (b) the contracting office retaining a contract for administration.

42.202 Assignment of contract administration.

(a) *Authority.* Except as provided in paragraph (b) below, assignment of a contract to a CAO for administration automatically carries with it the authority to perform all of the normal functions listed in 42.302(a) to the extent that those functions apply to the contract. The CAO has authority to perform the functions requiring specific authorizations, listed in 42.302(b), only to the extent specified by the contracting office. No other function shall be performed by the CAO unless delegated as provided under 42.202(c).

(b) *Withholding normal functions.* In assigning a contract for administration by a CAO, the contracting office may withhold individual functions among those listed in 42.302(a) if—

(1) Their retention by the contracting office is required by (i) the contracting agency's agency-level acquisition regulations or (ii) a formal interagency cross-servicing arrangement (see 42.101(a) and 42.102(b)); or

(2) It is clear, after consultation with the CAO when appropriate, that they can best be performed by the contracting office and the decision to withhold them is approved above the contracting officer's level.

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

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

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

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

(d) *Transmittal and documentation.* When assigning a contract for administration by a CAO, the contracting officer shall—

(1) Enter on the contract the name and address of the CAO designated to administer it;

(2) Provide any special instructions, including any specific authorization to perform functions listed in 42.302(b), in an accompanying letter to the CAO;

(3) Include, along with the contract furnished to the CAO, copies of all contracting agency regulations or directives that are (i) incorporated into the contract by reference or (ii) otherwise necessary to administer the contract, unless copies have been previously provided; and

(4) Advise the contractor (and other activities as appropriate) of any functions withheld or additional functions delegated in the special instructions under subparagraph (2) above.

(e) *Contract administration office responsibilities.* For each contract assigned for administration, the CAO shall—

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

(2) Perform the functions listed in 42.302(b) to the extent that they apply and are specifically authorized by the contracting office;

(3) Serve as a focal point for inquiries and keep the contracting office and other interested activities advised concerning all pertinent matters related to administration of the contract;

(4) Request supporting contract administration under 42.204 when it is required; and

(5) Reassign contract administration under 42.206(a) if reassignment is required.

42.203 Retention of contract administration.

(a) Contracting offices shall retain for administration any contract (1) not requiring the performance of contract administration functions (see 42.302) at or near contractor facilities, or (2) for which retention by the contracting office is prescribed by agency acquisition regulations. However, 30.401 requires that retained contracts to which Cost Accounting Standards (CAS) apply be assigned for CAS administration only. Instructions for marking and distributing these contracts are provided in 4.201(c).

(b) Contracting offices or CAO's may request supporting contract administration under 42.204 for contracts for which they have contract administration responsibility. However, if a substantial proportion of the normal contract administration functions listed in 42.302(a) are to be requested, an official above the contracting officer's level shall review the validity of retaining administration while requesting extensive supporting contract administration.

42.204 Supporting contract administration.

(a) A CAO assigned a contract for administration under 42.202 or a contracting office retaining administration under 42.203 may request supporting contract administration from the CAO cognizant of the contractor location where performance of specific contract administration functions is required. The request shall (1) be in writing, (2) clearly state the specific functions to be performed, and (3) be accompanied by a copy of pertinent contractual and other necessary documents.

(b) The prime contractor is responsible for managing its subcontracts. The CAO's concern with subcontracts is normally limited to evaluating the prime contractor's management of them (see Part 44). Therefore, supporting contract administration shall not be used for subcontracts unless (1) the Government would otherwise incur undue cost, (2) successful completion of the prime contract is threatened, or (3) it is authorized under paragraph (c) below or elsewhere in this regulation.

(c) For major system acquisitions (see Part 34), the contracting officer may

designate certain high-risk or critical subsystems or components for special surveillance (see 44.205) in addition to requesting supporting contract administration. This surveillance shall be conducted in a manner fully consistent with the policy of calling upon the cognizant CAO to perform contract administration functions at a contractor's facility (see Subpart 42.1).

42.205 Designation of the paying office.

If the information is available, the contracting officer shall enter on the contract the name and address of the office designated under agency procedures to make payments on the contract. Unless agency acquisition regulations otherwise provide, the assignment of contract administration to a CAO does not affect the designation of the paying office.

42.206 Reassignment of contract administration.

(a) The administrative contracting officer at the CAO of initial assignment shall reassign a contract for administration when the need for reassignment results from (1) an incorrect initial assignment, (2) organizational transfer of the cognizant CAO, (3) establishment or disestablishment of a CAO, or (4) a change in a CAO's geographical responsibility.

(b) The contracting officer at the contracting office shall reassign a contract for administration when reasons other than those in paragraph (a) above make reassignment appropriate.

(c) To reassign a contract, the responsible contracting officer shall use a unilateral contract modification. The CAO of initial assignment shall transfer the contract file and necessary supporting documents to the successor CAO.

(d) When warranted by a change in circumstances and approved at a higher level, a contracting officer may recall a contract or function previously assigned for administration.

SUBPART 42.3—CONTRACT ADMINISTRATION OFFICE FUNCTIONS

42.301 General.

When a contract is assigned for administration under Subpart 42.2, the contract administration office (CAO) shall perform contract administration functions in accordance with this regulation, the contract terms, and, unless otherwise agreed upon in formal cross-servicing arrangements (see 42.101(a)), the applicable regulations of the servicing agency.

42.302 Contract administration functions.

(a) The following are the normal contract administration functions to be performed by the cognizant CAO, to the extent they apply, as prescribed in 42.202:

(1) Review the contractor's compensation structure.

(2) Review the contractor's insurance plans.

(3) Conduct post-award orientation conferences.

(4) Review and evaluate contractors' proposals under Subpart 15.8 and, when negotiation will be accomplished by the contracting officer, furnish comments and recommendations to that officer.

(5) Negotiate forward pricing rate agreements (see 15.809).

(6) Negotiate advance agreements applicable to treatment of costs under contracts currently assigned for administration (see 31.109).

(7) Determine the allowability of costs suspended or disapproved as required (see Subpart 42.8), direct the suspension or disapproval of costs when there is reason to believe they should be suspended or disapproved, and approve final vouchers.

(8) Issue Notices of Intent to Disallow or not Recognize Costs (see Subpart 42.8).

(9) Establish final indirect cost rates and billing rates for those contractors meeting the criteria for contracting officer determination in Subpart 42.7.

(10) Prepare findings of fact and issue decisions under the Disputes clause on matters in which the administrative contracting officer (ACO) has the authority to take definitive action.

(11) In connection with Cost Accounting Standards (see Part 30)—

(i) Determine the adequacy of the contractor's disclosure statements;

(ii) Determine whether disclosure statements are in compliance with Cost Accounting Standards and Part 31;

(iii) Determine the contractor's compliance with Cost Accounting Standards and disclosure statements, if applicable; and

(iv) Negotiate price adjustments and execute supplemental agreements under the Cost Accounting Standards clauses at 52.230-3, 52.230-4, and 52.230-5.

(12) Review and approve or disapprove the contractor's requests for payments under the progress payments clause.

(13) Make payments on assigned contracts when prescribed in agency acquisition regulations (see 42.205).

(14) Manage special bank accounts.

(15) Ensure timely notification by the contractor of any anticipated overrun or underrun of the estimated cost under cost-reimbursement contracts.

(16) Monitor the contractor's financial condition and advise the contracting officer when it jeopardizes contract performance.

(17) Analyze quarterly limitation on payments statements and recover overpayments from the contractor.

(18) Issue tax exemption certificates.

(19) Ensure processing and execution of duty-free entry certificates.

(20) For classified contracts, administer those portions of the applicable industrial security program designated as ACO responsibilities (see Subpart 4.4).

(21) Issue work requests under maintenance, overhaul, and modification contracts.

(22) Negotiate prices and execute supplemental agreements for spare parts and other items selected through provisioning procedures when prescribed by agency acquisition regulations.

(23) Negotiate and execute contractual documents for settlement of partial and complete contract terminations for convenience, except as otherwise prescribed by Part 49.

(24) Negotiate and execute contractual documents settling cancellation charges under multi-year contracts.

(25) Process and execute novation and change of name agreements under Subpart 42.12.

(26) Perform property administration (see Part 45).

(27) Approve contractor acquisition or fabrication of special test equipment under the clause at 52.245-18, Special Test Equipment.

(28) Perform necessary screening, redistribution, and disposal of contractor inventory.

(29) Issue contract modifications requiring the contractor to provide packing, crating, and handling services on excess Government property. When the ACO determines it to be in the Government's interests, the services may be secured from a contractor other than the contractor in possession of the property.

(30) In facilities contracts—

(i) Evaluate the contractor's requests for facilities and for changes to existing facilities and provide appropriate recommendations to the contracting officer;

(ii) Ensure required screening of facility items before acquisition by the contractor;

(iii) Approve use of facilities on a noninterference basis in accordance

with the clause at 52.245-9, Use and Charges;

(iv) Ensure payment by the contractor of any rental due; and

(v) Ensure reporting of items no longer needed for Government production.

(31) Perform production support, surveillance, and status reporting, including timely reporting of potential and actual slippages in contract delivery schedules.

(32) Perform pre-award surveys (see Subpart 9.1).

(33) Advise and assist contractors regarding their priorities and allocations responsibilities and assist contracting offices in processing requests for special assistance and for priority ratings for privately owned capital equipment.

(34) Monitor contractor industrial labor relations matters under the contract; apprise the contracting officer and, if designated by the agency, the cognizant labor relations advisor, of actual or potential labor disputes; and coordinate the removal of urgently required material from the strikebound contractor's plant upon instruction from, and authorization of, the contracting officer.

(35) Perform traffic management services, including issuance and control of Government bills of lading and other transportation documents.

(36) Review the adequacy of the contractor's traffic operations.

(37) Review and evaluate preservation, packaging, and packing.

(38) Ensure contractor compliance with contractual quality assurance requirements (see Part 46).

(39) Ensure contractor compliance with applicable safety requirements, including contractual requirements for the handling of hazardous and dangerous materials and processes.

(40) Perform engineering surveillance to assess compliance with contractual terms for schedule, cost, and technical performance in the areas of design, development, and production.

(41) Evaluate for adequacy and perform surveillance of contractor engineering efforts and management systems that relate to design, development, production, engineering changes, subcontractors, tests, management of engineering resources, reliability and maintainability, data control systems, configuration management, and independent research and development.

(42) Review and evaluate for technical adequacy the contractor's logistics support, maintenance, and modification programs.

(43) Report to the contracting office any inadequacies noted in specifications.

(44) Perform engineering analyses of contractor cost proposals.

(45) Review and analyze contractor-proposed engineering and design studies and submit comments and recommendations to the contracting office, as required.

(46) Review engineering change proposals for proper classification, and when required, for need, technical adequacy of design, producibility, and impact on quality, reliability, schedule, and cost; submit comments to the contracting office.

(47) Assist in evaluating and make recommendations for acceptance or rejection of waivers and deviations.

(48) Evaluate and monitor the contractor's procedures for complying with procedures regarding restrictive markings on data.

(49) Monitor the contractor's value engineering program.

(50) Review, approve or disapprove, and maintain surveillance of the contractor's purchasing system (see Part 44).

(51) Consent to the placement of subcontracts.

(52) Review, evaluate, and approve plant or division-wide small and small disadvantaged business master subcontracting plans.

(53) Obtain the contractor's currently approved company- or division-wide plans for small business and small disadvantaged business subcontracting for its commercial products, or, if there is no currently approved plan, assist the contracting officer in evaluating the plans for those products.

(54) Assist the contracting officer, upon request, in evaluating an offeror's proposed small business and small disadvantaged business subcontracting plans, including documentation of compliance with similar plans under prior contracts.

(55) By periodic surveillance, ensure the contractor's compliance with small business and small disadvantaged business subcontracting plans and any labor surplus area contractual requirements; maintain documentation of the contractor's performance under and compliance with these plans and requirements; and provide advice and assistance to the firms involved, as appropriate.

(56) Maintain surveillance of flight operations.

(57) Assign and perform supporting contract administration.

(58) Ensure timely submission of required reports.

(59) With the exception of changes in accounting and appropriation data which must be issued by the contracting office, issue administrative changes (see 43.101).

(60) Cause release of shipments from contractor's plants according to the shipping instructions. When applicable, the order of assigned priority shall be followed; shipments within the same priority shall be determined by date of the instruction.

(61) Obtain contractor proposals for any contract price adjustments resulting from amended shipping instructions. ACO's shall review all amended shipping instructions on a periodic, consolidated basis to assure that adjustments are timely made. Except when the ACO has settlement authority, the ACO shall forward the proposal to the contracting officer for contract modification. The ACO shall not delay shipments pending completion and formalization of negotiations of revised shipping instructions.

(b) The CAO shall perform the following functions only when and to the the extent specifically authorized by the contracting office:

(1) Negotiate or negotiate and execute supplemental agreements incorporating contractor proposals resulting from change orders issued under the Changes clause. Before completing negotiations, coordinate any delivery schedule change with the contracting office.

(2) Negotiate prices and execute priced exhibits for unpriced orders issued by the contracting officer under basic ordering agreements.

(3) Negotiate or negotiate and execute supplemental agreements changing contract delivery schedules.

(4) Negotiate or negotiate and execute supplemental agreements providing for the deobligation of unexpended dollar balances considered excess to known contract requirements.

(5) Issue amended shipping instructions and, when necessary, negotiate and execute supplemental agreements incorporating contractor proposals resulting from these instructions.

(6) Negotiate changes to interim billing prices.

(7) Negotiate and definitize adjustments to contract prices resulting from exercise of an economic price adjustment clause (see Subpart 16.2).

(8) Issue change orders and negotiate and execute resulting supplemental agreements under contracts for ship construction, conversion, and repair.

(c) Any additional contract administration functions not listed in 42.302(a) and (b), or not otherwise delegated, remain the responsibility of the contracting office.

SUBPART 42.4—CORRESPONDENCE AND VISITS

42.401 Contract correspondence.

(a) The contracting officer (or other contracting agency personnel) normally shall (1) forward correspondence relating to assigned contract administration functions through the cognizant contract administration office (CAO) to the contractor and (2) provide a copy for the CAO's file. When urgency requires sending such correspondence directly to the contractor, a copy shall be sent concurrently to the CAO.

(b) The CAO shall send the contracting office a copy of pertinent correspondence conducted between the CAO and the contractor.

42.402 Visits to contractors' facilities.

(a) Government personnel planning to visit a contractor's facility in connection with one or more Government contracts shall provide the cognizant CAO with the following information, sufficiently in advance to permit the CAO to make necessary arrangements:

(1) Visitors' names, official positions, and security clearances.

(2) Date and duration of visit.

(3) Name and address of contractor and personnel to be contacted.

(4) Contract number, program involved, and purpose of visit.

(5) If desired, visitors to a contractor's plant may request that a representative of the CAO accompany them. In any event, the CAO has final authority to decide whether a representative shall accompany a visitor.

(b) Visitors shall fully inform the CAO of any agreements reached with the contractor or other results of the visit that may affect the CAO.

42.403 Evaluation of contract administration offices.

Onsite inspections or evaluations of the performance of the assigned functions of a contract administration office shall be accomplished only by or under the direction of the agency of which that office is a part.

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 small business and small disadvantaged business concerns (see Part 19).

(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 or small disadvantaged business concern;

(j) Contractor's performance history with small business and small disadvantaged 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 (see 43.101) 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 below) 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.

SUBPART 42.6—CORPORATE ADMINISTRATIVE CONTRACTING OFFICER

42.601 General.

Contractors with more than one operational location (e.g., division, plant, or subsidiary) often have corporate-wide policies, procedures, and activities requiring Government review and approval and affecting the work of more than one administrative contracting officer (ACO). In these circumstances, effective and consistent contract administration may require the assignment of a corporate administrative contracting officer (CACO) to deal with corporate management and to perform selected contract administration functions on a corporate-wide basis.

42.602 Assignment and location.

(a) A CACO may be assigned only when (1) the contractor has at least two locations with resident ACO's or (2) the need for a CACO is approved by the agency head or designee (for this purpose, a nonresident ACO will be considered as resident if at least 75 percent of the ACO's effort is devoted to a single contractor). One of the resident ACO's may be designated to perform the CACO functions, or a full-time CACO may be assigned. In determining the location of the CACO, the responsible agency shall take into account such factors as the location(s) of the corporate records, corporate office, major plant, cognizant government auditor, and overall cost effectiveness.

(b) A decision to initiate or discontinue a CACO assignment should be based on such factors as (1) the benefits of coordination and liaison at the corporate level, (2) the volume of Government sales, (3) the degree of control exercised by the contractor's corporate office over Government-oriented lower-tier operating elements, and (4) the impact of corporate policies and procedures on those elements.

(c) Responsibility for assigning a CACO shall be determined as follows:

(1) When all locations of a corporate entity are under the contract administration cognizance of a single agency, that agency is responsible.

(2) When the locations are under the contract administration cognizance of more than one agency, the agencies concerned shall agree on the responsible agency (normally on the basis of the agency with the largest unliquidated dollar balance of affected contracts). In such cases, agencies may sometimes also consider geographic location.

(d) The directory of contract administration components referenced in 42.102(a) includes a listing of CACO's and the contractors for which they are assigned responsibility. When the directory indicates that the services of a CACO are available, the provisions of Subpart 42.1 apply to the CACO functions.

42.603 Responsibilities.

(a) The CACO shall perform, on a corporate-wide basis, the contract administration functions (see Subpart 42.3) as designated by the responsible agency. Typical CACO functions include (1) the determination of final indirect cost rates for cost-reimbursement contracts, (2) establishment of advance agreements or recommendations on corporate/home office expense allocations, and (3) administration of Cost Accounting Standards (CAS) applicable to corporate-level and corporate-directed accounting practices.

(b) The CACO shall—

(1) Fully utilize the cognizant contract audit agency financial and advisory accounting services, including (i) advice regarding the acceptability of corporate-wide policies and (ii) advisory audit reports;

(2) Keep cognizant ACO's and auditors informed of important matters under consideration and determinations made; and

(3) Solicit their advice and participation as appropriate.

SUBPART 42.7—INDIRECT COST RATES

42.700 Scope of subpart.

This subpart prescribes policies and procedures for establishing (a) billing rates and (b) final indirect cost rates.

42.701 Definitions.

"Billing rate" means an indirect cost rate (a) established temporarily for interim reimbursement of incurred indirect costs and (b) adjusted as necessary pending establishment of final indirect cost rates.

"Business unit" (see 30.102).

"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. In the case of 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.

"Indirect cost" (see 31.001 and 31.203).

"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.

42.702 Purpose.

(a) Establishing final indirect cost rates under this subpart provides—

(1) Uniformity of approach with a contractor when more than one contract or agency is involved;

(2) Economy of administration; and

(3) Timely settlement under cost-reimbursement contracts.

(b) Establishing billing rates provides a method for interim reimbursement of indirect costs at estimated rates subject to adjustment during contract performance and at the time the final indirect cost rates are established.

42.703 Policy.

(a) A single agency (see 42.705-1(a)) shall be responsible for establishing indirect cost rates for each business unit. These rates shall be binding on all agencies and their contracting offices, unless otherwise specifically prohibited by statute.

(b) Billing rates and final indirect cost rates shall be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.

(c) Contracting officers shall—

(1) Unless the quick-closeout procedure in 42.708 is used, use final indirect cost rates of a business unit for a given period, which shall be binding for all the cost-reimbursement contracts of the business unit for that period, subject to any specific limitation in a contract or advance agreement (when contracts of more than one agency are involved, see 42.101(c)); and

(2) Take into consideration established final indirect cost rates in negotiating the final price of fixed-price incentive and fixed-price redeterminable contracts and in other situations requiring that indirect costs be settled before contract prices are established (see 31.103(b)).

42.704 Billing rates.

(a) The contracting officer or auditor responsible under 42.705 for determining the final indirect cost rate ordinarily shall also be responsible for determining the billing rate.

(b) The contracting officer or auditor shall establish a billing rate on the basis of information resulting from recent review, previous audits or experience, or similar reliable data or experience of other contracting activities. In establishing the billing rate, the contracting officer or auditor should ensure that it is as close as possible to the final indirect cost rate anticipated for the contractor's fiscal period, as adjusted for any unallowable costs. When the contracting officer or auditor determines that the dollar value of contracts requiring use of a billing rate does not warrant submission of a detailed billing rate proposal, the billing rate may be established by making appropriate adjustments from the prior year's indirect cost experience to eliminate unallowable and nonrecurring costs and to reflect new or changed conditions.

(c) Once established, billing rates may be prospectively or retroactively revised by mutual agreement of the contracting officer or auditor and the contractor at either party's request, to prevent substantial overpayment or underpayment.

(d) The elements of indirect cost and the base or bases used in computing billing rates shall not be construed as determinative of the indirect costs to be distributed or of the bases of distribution to be used in the final settlement.

42.705 Final indirect cost rates.

Final indirect cost rates shall be established on the basis of (a) contracting officer determination procedure (see 42.705-1) or (b) auditor determination procedure (see 42.705-2).

42.705-1 Contracting officer determination procedure.

(a) *Applicability and responsibility.* Contracting officer determination shall be used for the following, with the indicated cognizant contracting officer responsible for establishing the final indirect cost rates:

(1) Business units of a multidivisional corporation under the cognizance of a corporate administrative contracting officer (see Subpart 42.6), with that officer responsible for the determination, assisted, as required, by the administrative contracting officers assigned to the individual business units. Negotiations may be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor's organization.

(2) Business units not under the cognizance of a corporate administrative contracting officer, but having a resident administrative contracting officer (see 42.602), with that officer responsible for the determination. For this purpose, a nonresident administrative contracting officer is considered as resident if at least 75 percent of the administrative contracting officer's time is devoted to a single contractor.

(3) Business units not included in subparagraph (1) or (2) above, but where the predominant interest (on the basis of unliquidated contract dollar amount) is in an agency whose procedures require contracting officer determination. In such cases, the responsible contracting officer will be as designated under that agency's procedures.

(4) Educational institutions (see 42.705-3 for responsibility and procedures).

(5) State and local governments (see 42.705-4).

(6) Nonprofit organizations other than educational and state and local governments (see 42.705-5).

(b) *Procedures.* (1) In accordance with the Allowable Cost and Payment clause at 52.216-7 or 52.216-13, the contractor shall submit to the contracting officer and, if required by agency procedures, to the cognizant auditor a final indirect cost rate proposal reflecting actual cost experience during the covered period, together with supporting cost or pricing data.

(2) The auditor shall submit to the contracting officer an advisory audit report (i) identifying any relevant advance agreements or restrictive terms of specific contracts and (ii) including the information required by 15.805-5(e).

(3) The contracting officer shall head the Government negotiating team, which includes the cognizant auditor and technical or functional personnel as required. Contracting offices having significant dollar interest shall be invited to participate in the negotiation and in the preliminary discussion of critical issues. Individuals or offices that have provided a significant input to the Government position should be invited to attend.

(4) The Government negotiating team shall develop a negotiation position.

(5) The cognizant contracting officer shall—

(i) Conduct negotiations;

(ii) Prepare a written indirect cost rate agreement conforming to the requirements of the contracts;

(iii) Prepare, sign, and place in the contractor general file (see 4.801(c)(3)) a negotiation memorandum covering (A) the disposition of significant matters in the advisory audit report, (B) reconciliation of all costs questioned, with identification of items and amounts allowed or disallowed in the final settlement as well as the disposition of period costing or allocability issues, (C) reasons why any recommendations of the auditor or other Government advisors were not followed, and (D) identification of cost or pricing data submitted during the negotiations and relied upon in reaching a settlement; and

(iv) Distribute resulting documents in accordance with 42.706.

42.705-2 Auditor determination procedure.

(a) *Applicability and responsibility.* (1) The cognizant Government auditor shall establish final indirect cost rates for business units not covered in 42.705-1(a).

(2) In addition, auditor determination may be used for business units that are covered in 42.705-1(a) when the contracting officer and auditor agree that the indirect costs can be settled with little difficulty and any of the following circumstances apply:

(i) The business unit has primarily fixed-price contracts, with only minor involvement in cost-reimbursement contracts.

(ii) The administrative cost of contracting officer determination would exceed the expected benefits.

(iii) The business unit does not have a history of disputes and there are few cost problems.

(iv) The contracting officer and auditor agree that special circumstances require auditor determination.

(b) *Procedures.* (1) The contractor shall submit to the cognizant contracting officer and auditor a final indirect cost rate proposal reflecting actual cost experience during the covered period,

together with supporting cost or pricing data.

(2) The auditor shall—

(i) Audit the proposal and seek agreement on it with the contractor;

(ii) Obtain from the contractor a Certificate of Current Cost or Pricing Data, if required (see 15.804-4);

(iii) In coordination with the affected contracting officers, prepare an indirect cost rate agreement conforming to the requirements of the contracts;

(iv) Prepare an audit report including the information required by 15.805-5(e);

(v) If agreement with the contractor is not reached, forward the audit report to the contracting officer designated by the agency with the predominant interest (on the basis of unliquidated contract dollar amounts) or, where applicable, the contracting officer designated in 42.705-2(a)(2) above, who will then resolve the disagreement; and

(vi) Distribute resulting documents in accordance with 42.706.

42.705-3 Educational institutions.

(a) *General.* (1) Postdetermined final indirect cost rates shall be used in the settlement of indirect costs for all cost-reimbursement contracts with educational institutions, unless predetermined final indirect cost rates are authorized and used (see paragraph (b) below).

(2) OMB Circular No. A-88, Indirect Cost Rates, Audit, and Audit Followup at Educational Institutions, (i) assigns each educational institution to a single Government agency for the negotiation of indirect cost rates and (ii) provides that those rates shall be accepted by all Federal agencies. Cognizant Government agencies and educational institutions are listed in the Directory of Federal Contract Audit Offices (see 42.102(a)).

(3) The cognizant agency shall establish the billing rates and final indirect cost rates at the educational institution, consistent with the requirements of this subpart, Subpart 31.3, and the OMB Circular. The agency shall follow the procedures outlined in 42.705-1(b).

(4) If the cognizant agency is unable to reach agreement with an institution, the appeals system of the cognizant agency shall be followed for resolution of the dispute.

(b) *Predetermined final indirect cost rates.* (1) Under cost-reimbursement research and development contracts with universities, colleges, or other educational institutions (41 U.S.C. 254a), payment for reimbursable indirect costs may be made on the basis of predetermined final indirect cost rates. The cognizant agency is not required to establish predetermined rates, but if they *are* established, their use must be extended to all the institution's Government contracts.

(2) In deciding whether the use of predetermined rates would be appropriate for the educational institution concerned, the agency should consider both the stability of the institution's indirect costs and bases over a period of years and any anticipated changes in the amount of the direct and indirect costs.

(3) Unless their use is approved at a level in the agency (see subparagraph (a)(2) above) higher than the contracting officer, predetermined rates shall not be used when—

(i) There has been no recent audit of the indirect costs;

(ii) There have been frequent or wide fluctuations in the indirect cost rates and the bases over a period of years; or

(iii) The estimated reimbursable costs for any individual contract are expected to exceed $1 million annually.

(4) (i) If predetermined rates are to be used and no rate has been previously established for the institution's current fiscal year, the agency shall obtain from the institution a proposal for a predetermined rate to be applied until the end of the fiscal year.

(ii) If the proposal is found to be generally acceptable, the agency shall negotiate the predetermined rates with the institution. The rates should be based on an audit of the institution's costs for the year immediately preceding the year in which the rates are being negotiated. If this is not possible, an earlier audit may be used, but appropriate steps should be taken to identify and evaluate significant variations in costs incurred or in bases used that may have a bearing on the reasonableness of the proposed rates. However, in the case of smaller contracts (e.g., $100,000 or less), an audit made at an earlier date is acceptable if (A) there have been no significant changes in the contractor's organization and (B) it is reasonably apparent that another audit would have little effect on the rates finally agreed upon and the potential for overpayment of indirect cost is relatively insignificant.

(5) If predetermined rates are used—

(i) The contracting officer shall include the negotiated rates and bases in the contract Schedule; and

(ii) See 16.307(i), which prescribes the clause at 52.216-15, Predetermined Indirect Cost Rates.

(6) Predetermined indirect cost rates shall be applicable for a period of not more than 1 year. The agency shall obtain the contractor's proposal for a new predetermined rate sufficiently in advance so that the new rate, based on current data, may be promptly negotiated near the beginning of the new fiscal year (see paragraphs (b) and (d) of the clause at 52.216-15, Predetermined Indirect Cost Rates).

(7) Contracting officers shall use billing rates established by the agency to reimburse the contractor for work performed during a period not covered by predetermined rates.

42.705-4 State and local governments.

OMB Circular No. A-87 concerning cost principles for state and local governments (see Subpart 31.6) establishes the cognizant agency concept and procedures for determining a cognizant agency for approving state and local government indirect costs associated with federally-funded programs and activities. The indirect cost rates negotiated by the cognizant agency will be used by all Federal agencies that also award contracts to these same state and local governments.

42.705-5 Nonprofit organizations other than educational and state and local governments.

See OMB Circular No. A-122.

42.706 Distribution of documents.

(a) The contracting officer or auditor shall promptly distribute executed copies of the indirect cost rate agreement to the contractor and to each affected contracting agency and shall provide copies of the agreement for the contract files, in accordance with the guidance for contract modifications in Subpart 4.2, Contract Distribution.

(b) Copies of the negotiation memorandum prepared under contracting officer determination or audit report prepared under auditor determination shall be furnished, as appropriate, to the contracting offices and Government audit offices.

42.707 Cost-sharing rates and limitations on indirect cost rates.

(a) Cost-sharing arrangements, when authorized, may call for the contractor to participate in the costs of the contract by accepting indirect cost rates lower than the anticipated actual rates. In such cases, a negotiated indirect cost rate ceiling may be incorporated into the contract for prospective application. For cost sharing under research and development contracts, see 35.003(b).

(b) (1) Other situations may make it prudent to provide a final indirect cost rate ceiling in a contract. Examples of such circumstances are when the proposed contractor—

(i) Is a new or recently reorganized company, and there is no past or recent record of incurred indirect costs;

(ii) Has a recent record of a rapidly increasing indirect cost rate due to a declining volume of sales without a commensurate decline in indirect expenses; or

(iii) Seeks to enhance its competitive position in a particular circumstance by basing its proposal on indirect cost rates lower than those that may reasonably be expected to occur during contract performance, thereby causing a cost overrun.

(2) In such cases, an equitable ceiling covering the final indirect cost rates may be negotiated and specified in the contract.

(c) When ceiling provisions are utilized, the contract shall also provide that (1) the Government will not be obligated to pay any additional amount should the final indirect cost rates exceed the negotiated ceiling rates and, (2) in the event the final indirect cost rates are less than the negotiated ceiling rates, the negotiated rates will be reduced to conform with the lower rates.

42.708 Quick-closeout procedure.

(a) The contracting officer responsible for contract closeout may negotiate the settlement of indirect costs for a specific contract, in advance of the determination of final indirect cost rates, if—

(1) The contract is physically complete;

(2) The amount of unsettled indirect cost to be allocated to the contract is relatively insignificant; and

(3) Agreement can be reached on a reasonable estimate of allocable dollars.

(b) Determinations of final indirect costs under the quick-closeout procedure provided for by the Allowable Cost and Payment clause at 52.216-7 or 52.216-13 shall be final for the contract it covers and no adjustment shall be made to other contracts for over- or under-recoveries of costs allocated or allocable to the contract covered by the agreement.

(c) Indirect cost rates used in the quick closeout of a contract shall not be considered a binding precedent when establishing the final indirect cost rates for other contracts.

SUBPART 42.8—DISALLOWANCE OF COSTS

42.800 Scope of subpart.

This subpart prescribes policies and procedures for (a) issuing notices of intent to disallow costs and (b) disallowing costs already incurred during the course of performance.

42.801 Notice of intent to disallow costs.

(a) At any time during the performance of a contract of a type referred to in 42.802, the cognizant contracting officer responsible for administering the contract may issue the contractor a written notice of intent to disallow specified costs incurred or planned for incurrence. However, before issuing the notice, the contracting officer responsible for administering the contract shall make every reasonable effort to reach a satisfactory settlement through discussions with the contractor.

(b) A notice of intent to disallow such costs usually results from monitoring contractor costs. The purpose of the notice is to notify the contractor as early as practicable during contract performance that the cost is considered unallowable under the contract terms and to provide for timely resolution of any resulting disagreement. In the event of disagreement, the contractor may submit to the contracting officer a written response. Any such response shall be answered by withdrawal of the notice or by making a written decision within 60 days.

(c) As a minimum, the notice shall—

(1) Refer to the contract's Notice of Intent to Disallow Costs clause;

(2) State the contractor's name and list the numbers of the affected contracts;

(3) Describe the costs to be disallowed, including estimated dollar value by item and applicable time periods, and state the reasons for the intended disallowance;

(4) Describe the potential impact on billing rates and forward pricing rate agreements;

(5) State the notice's effective date and the date by which written response must be received;

(6) List the recipients of copies of the notice; and

(7) Request the contractor to acknowledge receipt of the notice.

(d) The contracting officer issuing the notice shall furnish copies to all contracting officers cognizant of any segment of the contractor's organization.

(e) If the notice involves elements of indirect cost, it shall not be issued without coordination with the contracting officer or auditor having authority for final indirect cost settlement (see 42.705).

(f) In the event the contractor submits a response that disagrees with the notice (see paragraph (b) above), the contracting officer who issued the notice shall either withdraw the notice or issue the written decision, except when elements of indirect cost are involved, in which case the contracting officer responsible under 42.705 for determining final indirect cost rates shall issue the decision.

42.802 Contract clause.

The contracting officer shall insert the clause at 52.242-1, Notice of Intent to Disallow Costs, in solicitations and contracts when a cost-reimbursement contract, a fixed-price incentive contract, or a contract providing for price redetermination is contemplated.

42.803 Disallowing costs after incurrence.

Cost-reimbursement contracts, the cost-reimbursement portion of fixed-price contracts, letter contracts that provide for reimbursement of costs, and time-and-material and labor-hour contracts provide for disallowing costs during the course of performance after the costs have been incurred. The following procedures shall apply:

(a) *Contracting officer receipt of vouchers.* When contracting officers receive vouchers directly from the contractor and, with or without auditor assistance, approve or disapprove them, the process shall be conducted in accordance with the normal procedures of the individual agency.

(b) *Auditor receipt of vouchers.* (1) When authorized by agency regulations, the contract auditor may be authorized to (i) receive reimbursement vouchers directly from contractors, (ii) approve for payment those vouchers found acceptable, and (iii) suspend payment of questionable costs. The auditor shall forward approved vouchers for payment to the cognizant contracting, finance, or disbursing officer, as appropriate under the agency's procedures.

(2) If the examination of a voucher raises a question regarding the allowability of a cost under the contract terms, the auditor, after informal discussion as appropriate, may, where authorized by agency regulations, issue a notice of contract costs suspended and/or disapproved simultaneously to the contractor and the disbursing officer, with a copy to the cognizant contracting officer, for deduction from current payments with respect to costs claimed but not considered reimbursable.

(3) If the contractor disagrees with the deduction from current payments, the contractor may—

(i) Submit a written request to the cognizant contracting officer to consider whether the unreimbursed costs should be paid and to discuss the findings with the contractor;

(ii) File a claim under the Disputes clause, which the cognizant contracting officer will process in accordance with agency procedures; or

(iii) Do both of the above.

SUBPART 42.9—[RESERVED]

SUBPART 42.10—NEGOTIATING ADVANCE AGREEMENTS FOR INDEPENDENT RESEARCH AND DEVELOPMENT/BID AND PROPOSAL COSTS

42.1001 Definitions.

See 31.205-18(a).

42.1002 Applicability.

The procedures in this subpart shall be used for negotiating advance agreements containing dollar ceilings for allowability of independent research and development (IR&D) costs and bid and proposal (B&P) costs, when these agreements are required by 31.205-18(c)(1).

42.1003 Designation of lead negotiating agency.

A single lead agency shall negotiate all required advance agreements for IR&D/B&P costs for each company required to negotiate an advance agreement under 31.205-18(c)(1). These agreements are binding on the company and on all Government agencies, unless prohibited by statute. The lead agency shall be designated as follows:

(a) To implement section 203 of Pub. L. 91-441, as amended by Section 208 of Pub. L. 96-342, the Department of Defense (DOD) shall be the lead agency for each company receiving combined IR&D/B&P payments from DOD during the company's previous fiscal year exceeding the threshold in 31.205-18(c)(1).

(b) When DOD is not the lead agency as indicated in paragraph (a) preceding, and more than one agency has contracts with the company, the agency that paid the largest dollar amount of IR&D/B&P costs in the company's previous fiscal year shall (1) be the lead agency or (2) arrange for another agency having contracts with that company to be the lead agency.

(c) In the case of DOD, the term "lead negotiating agency" means the military service responsible for performing the negotiation of IR&D/B&P costs.

42.1004 Location of negotiators in a central office.

In order to facilitate participation, consistency, and interagency coordination, agencies with negotiating responsibilities shall locate at a central office(s) all personnel responsible for negotiating and executing advance agreements required under 31.205-18(c)(1). These agencies shall issue instructions on the use, by contracting officers, of estimated IR&D/B&P factors in forward pricing, interim billings, etc. Contracting officers shall obtain such factors, when applicable, from the cognizant central office.

42.1005 Lead negotiating agency responsibilities.

The lead agency shall perform the functions listed in paragraphs (a) through (h) following:

(a) Furnish contractors with guidance on the technical and financial information needed to support IR&D/B&P proposals, as well as how and when to submit the proposals.

(b) Perform, or arrange for performance of, a technical evaluation of the IR&D proposed by the contractor, to assist the contracting officer in evaluating the reasonableness and technical quality of the IR&D program. The technical evaluation shall include an opinion concerning the proposed IR&D program and any agency special rules on allowability.

(c) Provide the contractor with a contracting officer's determination concerning the proposed IR&D/B&P projects and any agency special rules on allowability.

(d) When advance agreements have not yet been negotiated, provide information regarding estimated ceilings, the allocation base, and indirect rate data, as appropriate, to contracting officers or other interested agency personnel who require information on IR&D/B&P costs for forward pricing and interim billing.

(e) Coordinate participation by affected agencies in prenegotiation meetings and in negotiations (see 31.109(f)).

(f) Prepare a prenegotiation position in coordination with the affected agencies.

(g) Negotiate advance agreements establishing dollar ceilings for IR&D/B&P costs allowable during the company's fiscal year for allocation to all work of that part of the company's operation covered by the agreement.

(h) Prepare advance agreements and distribute them to affected agencies (see 31.109(g)).

(i) Prepare negotiation memorandums and distribute them to affected agencies upon request. The contracting officer may delete from the distributed copy portions of a memorandum that are not pertinent to the affected agency. When a negotiation memorandum must contain company data subject to protection, that data should be so marked, and, when it is useful and feasible to do so, it may be separated from the body of the memorandum.

42.1006 Conducting negotiations.

(a) Each contractor required to negotiate an advance agreement under 31.205-18(c)(1) shall submit, in accordance with agency guidance, technical and financial information to support its proposed IR&D/B&P programs (see 42.1005(a)). Separate dollar ceilings shall be negotiated for IR&D costs and for B&P costs. In negotiating the ceilings, in addition to other considerations, contracting officers shall pay particular attention to—

(1) Comparison with the previous year's programs, including the level of Government participation;

(2) Changes in the company's current business activities and projected future business activities, to the extent these future activities can be determined with reasonable certainty;

(3) The results of the technical evaluation of IR&D;

(4) The extent to which the company's B&P program is well planned and managed; and

(5) The determination concerning the company's IR&D/B&P projects and any agency special rules on allowability.

(b) Negotiated ceilings must take into account the general rules of reasonableness (see 31.201-3) and the preceding considerations.

42.1007 Content of advance agreements.

Agreements negotiated in accordance with this subpart shall include the items specified in paragraphs (a) through (j) following:

(a) A dollar ceiling for total IR&D costs.

(b) A dollar ceiling for total B&P costs.

(c) A total dollar ceiling for IR&D/B&P costs equal to the sum of paragraphs (a) and (b) above.

(d) The base or other information necessary for allocating IR&D/B&P costs.

(e) A statement that a review in accordance with 42.1005 has been performed.

(f) For those companies meeting the threshold requirements, a provision that the recovery of IR&D/B&P costs under Government contracts shall not exceed the lesser of—

(1) Such contracts' allocable share of incurred costs up to the total ceiling specified in (c) above; or

(2) The amount of incurred costs as determined under any agency special rules on allowability.

(g) Any additional agreements concerning the allocability or allowability of IR&D costs or B&P costs.

(h) A provision stating whether recovery is authorized under either paragraph (a) or (b) above in excess of the established ceiling, provided the total recovery in the two categories does

not exceed the total ceiling in paragraph (c) above.

(i) A requirement that the lesser of (1) the current IR&D/B&P estimates or (2) the appropriate ceiling amounts shall be used by the Government and the contractor for estimating and pricing contractual actions. (Also see (e) above.)

(j) A requirement that the lesser of (1) the actual costs incurred or (2) the appropriate ceiling amounts shall be used by the Government and the contractor for final price determinations. (Also see (f) above.)

42.1008 Administrative appeals.

If negotiations are held and an advance agreement is not reached, the contracting officer shall make a determination of a reduced amount of payment for IR&D/B&P (see 31.205-18(c)(1)(v) and (vi)). Each lead negotiating agency shall establish an administrative appeals hearing group and procedures for hearing and deciding contractor appeals of the contracting officer's decision to reduce payment. Appeal procedures under this section are separate and distinct from board or court appeals under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

SUBPART 42.11—PRODUCTION SURVEILLANCE AND REPORTING

42.1101 General.

Production surveillance is a function of contract administration used to determine contractor progress and to identify any factors that may delay performance. Production surveillance involves Government review and analysis of (a) contractor performance plans, schedules, controls, and industrial processes and (b) the contractor's actual performance under them.

42.1102 Applicability.

This subpart applies to all contracts for supplies or services other than facilities, construction contracts, and Federal Supply Schedule contracts.

42.1103 Policy.

The contractor is responsible for timely contract performance. The Government will maintain surveillance of contractor performance as necessary to protect its interests. When the contracting office retains a contract for administration, the contracting officer administering the contract shall determine the extent of surveillance.

42.1104 Surveillance requirements.

(a) The contract administration office determines the extent of production surveillance on the basis of (1) the criticality (degree of importance to the Government) assigned by the contracting officer (see 42.1105) to the supplies or services and (2) consideration of the following factors:

(i) Contract requirements for reporting production progress and performance.

(ii) The contract performance schedule.

(iii) The contractor's production plan.

(iv) The contractor's history of contract performance.

(v) The contractor's experience with the contract supplies or services.

(vi) The contractor's financial capability.

(vii) Any supplementary written instructions from the contracting office.

(b) Contracts of values less than the small purchase threshold should not normally require production surveillance.

(c) In planning and conducting surveillance, contract administration offices shall make maximum use of any reliable contractor production control or data management systems.

(d) In performing surveillance, contract administration office personnel shall avoid any action that may (1) be inconsistent with any contract requirement or (2) result in claims of waivers, of changes, or of other contract modifications.

42.1105 Assignment of criticality designator.

Contracting officers shall assign a criticality designator to each contract in the space for designating the contract administration office, as follows:

Criticality Designator	*Criterion*
A	Critical contracts, including DX-rated contracts (see Subpart 12.3), contracts negotiated under public exigency (see 15.202), and contracts for major systems.
B	Contracts (other than those designated "A") for items needed to maintain a Government or contractor production or repair line, to preclude out-of-stock conditions or to meet user needs for nonstock items.
C	All contracts other than those designated "A" or "B."

42.1106 Reporting requirements.

(a) When information on contract performance status is needed, contracting officers may require contractors to submit production progress reports (see 42.1107(a)). Reporting requirements shall be limited to that information essential to Government needs and shall take maximum advantage of data output generated by contractor management systems.

(b) Contract administration offices shall review and verify the accuracy of contractor reports and advise the contracting officer of any required action. The accuracy of contractor-prepared reports shall be verified either by a program of continuous surveillance of the contractor's report-preparation system or by individual review of each report.

(c) The contract administration office may at any time initiate a report to advise the contracting officer (and the inventory manager, if one is designated in the contract) of any potential or actual delay in performance. This advice shall (1) be in writing, (2) be provided in sufficient time for the contracting officer to take necessary action, and (3) provide a definite recommendation, if action is appropriate.

42.1107 Contract clause.

(a) The contracting officer shall insert the clause at 52.242-2, Production Progress Reports, in solicitations and contracts when production progress reporting is required; unless a facilities contract, a construction contract, or a Federal Supply Schedule contract is contemplated.

(b) When the clause at 52.242-2 is used, the contracting officer shall specify appropriate reporting instructions in the Schedule (see 42.1106(a)).

SUBPART 42.12—NOVATION AND CHANGE-OF-NAME AGREEMENTS

42.1200 Scope of subpart.

This subpart prescribes policies and procedures for—

(a) Recognition of a successor in interest to Government contracts when contractor assets are transferred;

(b) Recognition of a change in a contractor's name; and

(c) Execution of novation agreements and change-of-name agreements by the responsible contracting officer.

42.1201 Definitions.

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

"Novation agreement" means a legal instrument executed by (a) the contractor (transferor), (b) the successor in interest (transferee), and (c) the Government by which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets.

42.1202 Responsibility for executing agreements.

The contracting officer responsible for processing and executing novation and change-of-name agreements shall be determined as follows:

(a) If any of the affected contracts held by the transferor have been assigned to an administrative contracting officer (ACO) (see 2.1 and 42.202), the responsible contracting officer shall be—

(1) This ACO; or

(2) The ACO responsible for the corporate office, if affected contracts are in more than one plant or division of the transferor.

(b) If none of the affected contracts held by the transferor have been assigned to an ACO, the contracting officer responsible for the largest unsettled (unbilled plus billed but unpaid) dollar balance of contracts shall be the responsible contracting officer.

(c) If several transferors are involved, the responsible contracting officer shall be—

(1) The ACO administering the largest unsettled dollar balance; or

(2) The contracting officer (or ACO) designated by the agency having the largest unsettled dollar balance, if none of the affected contracts have been assigned to an ACO.

42.1203 Processing agreements.

(a) When a firm performing Government contracts wishes the Government to recognize (1) a successor in interest to these contracts or (2) a name change, the contractor shall submit a written request to the responsible contracting officer (see 42.1202).

(b) The responsible contracting officer shall—

(1) Promptly notify each contract administration office and contracting office affected by a proposed agreement for recognizing a successor in interest;

(2) Provide these offices with a list of all affected contracts; and

(3) Request submission within 30 days of their comments, which shall include technical considerations, if appropriate.

(c) The responsible contracting officer shall determine whether or not it is in the Government's interest to recognize the proposed successor in interest on the basis of—

(1) The comments received from the affected contract administration offices and contracting offices (failure to comment by the specified date shall be taken as consent); and

(2) A determination that the proposed successor is responsible under Subpart 9.1, Responsible Prospective Contractors.

(d) Before novation and change-of-name agreements are executed, the responsible contracting officer shall ensure that Government counsel has reviewed them for legal sufficiency.

(e) The responsible contracting officer shall (1) forward a signed copy of the executed novation or change-of-name agreement to the transferor and to the transferee and (2) retain a signed copy in the case file.

(f) Following distribution of the agreement, the responsible contracting officer shall—

(1) Prepare a Standard Form 30, Amendment of Solicitation/Modification of Contract, incorporating a summary of the agreement and attaching a complete list of contracts affected;

(2) Retain the original Standard Form 30 with the attached list in the case file;

(3) Send a signed copy of the Standard Form 30, with attached list to the transferor and to the transferee; and

(4) Send a copy of this Standard Form 30 with attached list to each contract administration office or contracting office involved, which shall be responsible for further appropriate distribution.

42.1204 Agreement to recognize a successor in interest (novation agreement).

(a) The law (41 U.S.C. 15) prohibits transfer of Government contracts. However, the Government may, in its interest, recognize a third party as the successor in interest to a Government contract when the third party's interest in the contract arises out of the transfer of (1) all the contractor's assets or (2) the entire portion of the assets involved in performing the contract. (See 14.404-2(k) for the effect of novation agreements after bid opening but before award.) Examples include but are not limited to—

(i) Sale of these assets with a provision for assuming liabilities;

(ii) Transfer of these assets incident to a merger or corporate consolidation; and

(iii) Incorporation of a proprietorship or partnership, or formation of a partnership.

(b) When it is in the Government's interest not to concur in the transfer of a contract from one company to another company, the original contractor remains under contractual obligation to the Government, and the contract may be terminated for reasons of default, should the original contractor not perform.

(c) When a contractor asks the Government to recognize a successor in interest, the responsible contracting officer shall obtain from the contractor three signed copies of the proposed novation agreement and one copy each, as applicable, of the following:

(1) An authenticated copy of the instrument effecting the transfer of assets; e.g., bill of sale, certificate of merger, contract, deed, agreement, or court decree.

(2) A list of all affected contracts and purchase orders remaining unsettled between the transferor and the Government, showing for each the (i) contract number and type, (ii) name and address of the contracting office, (iii) total dollar value as amended, and (iv) remaining unpaid balance.

(3) A certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets.

(4) A certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets.

(5) An authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the Government contracts.

(6) The opinion of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of transfer.

(7) Evidence of the transferee's capability to perform the contracts.

(8) Balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, certified for accuracy by independent accountants.

(9) Evidence that any security clearance requirements have been met.

(10) The consent of sureties on all contracts listed under subparagraph (2) above if bonds are required, or a statement from the transferor that none are required.

(d) When recognizing a successor in interest to a Government contract is consistent with the Government's interest, the responsible contracting officer shall execute a novation agreement with the transferor and the transferee. It shall ordinarily provide in part that—

(1) The transferee assumes all the transferor's obligations under the contract;

(2) The transferor waives all rights under the contract against the Government;

(3) The transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted instead of the guarantee); and

(4) Nothing in the agreement shall relieve the transferor or transferee from compliance with any Federal law.

(e) The responsible contracting officer shall use the following format for agreements when the transferor and transferee are corporations and all the transferor's assets are transferred. This format may be adapted to fit specific cases and may be used as a guide in preparing similar agreements for other situations.

NOVATION AGREEMENT

The ABC CORPORATION (Transferor), a corporation duly organized and existing under the laws of .....[*insert State*] with its principal office in .....[*insert city*]; the XYZ CORPORATION (Transferee), [*if appropriate add "formerly known as the EFG Corporation"*] a corporation duly organized and existing under the laws of .....[*insert State*] with its principal office in .....[*insert city*]; and the UNITED STATES OF AMERICA (Government) enter into this Agreement as of .....[*insert the date transfer of assets became effective under applicable State law*].

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

(1) The Government, represented by various Contracting Officers of the .....[*insert name(s) of agency(ies)*], has entered into certain contracts with the Transferor, namely: .....[*insert contract or purchase order identifications*]; [*or delete "namely" and insert "as shown in the attached list marked 'Exhibit A' and incorporated in this Agreement by reference."*]. The term "the contracts," as used in this Agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made between the Government and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights, duties, or obligations under these contracts and purchase orders). Included in the term "the contracts" are also all modifications made under the terms and conditions of these contracts and purchase orders between the Government and the Transferee, on or after the effective date of this Agreement.

(2) As of ....., 19.., the Transferor has transferred to the Transferee all the assets of the Transferor by virtue of a .....[*insert term descriptive of the legal transaction involved*] between the Transferor and the Transferee.

(3) The Transferee has acquired all the assets of the Transferor by virtue of the above transfer.

(4) The Transferee has assumed all obligations and liabilities of the Transferor under the contracts by virtue of the above transfer.

(5) The Transferee is in a position to fully perform all obligations that may exist under the contracts.

(6) It is consistent with the Government's interest to recognize the Transferee as the successor party to the contracts.

(7) Evidence of the above transfer has been filed with the Government.

[*When a change of name is also involved; e.g., a prior or concurrent change of the Transferee's name, an appropriate statement shall be inserted (see example in paragraph (8) below)*].

(8) A certificate dated....., 19.., signed by the Secretary of State of .....[*insert State*], to the effect that the corporate name of EFG CORPORATION was changed to XYZ CORPORATION on ....., 19.., has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT BY THIS AGREEMENT—

(1) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the Government that it now has or may have in the future in connection with the contracts.

(2) The Transferee agrees to be bound by and to perform each contract in accordance with the conditions contained in the contracts. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the contracts as if the Transferee were the original party to the contracts.

(3) The Transferee ratifies all previous actions taken by the Transferor with respect to the contracts, with the same force and effect as if the action had been taken by the Transferee.

(4) The Government recognizes the Transferee as the Transferor's successor in interest in and to the contracts. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the contracts as if the Transferee were the original party to the contracts. Following the effective date of this Agreement, the term "Contractor," as used in the contracts, shall refer to the Transferee.

(5) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Government against the Transferor.

(6) All payments and reimbursements previously made by the Government to the Transferor, and all other previous actions taken by the Government under the contracts, shall be considered to have discharged those parts of the Government's obligations under the contracts. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the Government's obligations under the contracts, to the extent of the amounts paid or reimbursed.

(7) The Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contracts.

(8) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee (i) assumes under this Agreement or (ii) may undertake in the future should these contracts be modified under their terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

(9) The contracts shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA,

By.....

Title.....

ABC CORPORATION,

By.....

Title.....

[CORPORATE SEAL]

XYZ CORPORATION,

By.....

Title.....

[CORPORATE SEAL]

CERTIFICATE

I, ..., certify that I am the Secretary of ABC CORPORATION; that ....., who signed this Agreement for this corporation, was then ..... of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this .....day of ..... 19...

By.....

[CORPORATE SEAL]

CERTIFICATE

I, ..., certify that I am the Secretary of XYZ CORPORATION; that ....., who signed this Agreement for this corporation, was then ..... of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this .....day of ..... 19..

By.....

[CORPORATE SEAL]

42.1205 Agreement to recognize contractor's change of name.

(a) If only a change of the contractor's name is involved and the Government's and contractor's rights and obligations remain unaffected, the parties shall execute an agreement to reflect the name change. The contractor shall forward to the responsible contracting officer three signed copies of the Change-of-Name Agreement, and one copy each of the following:

(1) The document effecting the name change, authenticated by a proper official of the State having jurisdiction.

(2) The opinion of the contractor's legal counsel stating that the change of name was properly effected under

applicable law and showing the effective date.

(3) A list of all affected contracts and purchase orders remaining unsettled between the contractor and the Government, showing for each the (i) contract number and type, (ii) name and address of the contracting office, (iii) total dollar value as amended, and (iv) remaining unpaid balance.

(b) The following suggested format for an agreement may be adapted for specific cases:

CHANGE-OF-NAME AGREEMENT

The ABC CORPORATION (Contractor), a corporation duly organized and existing under the laws of .....[*insert State*], and the UNITED STATES OF AMERICA (Government), enter into this Agreement as of .....[*insert date when the change of name became effective under applicable State law*].

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

(1) The Government, represented by various Contracting Officers of the ..... [*insert name(s) of agency(ies)*], has entered into certain contracts and purchase orders with the XYZ CORPORATION, namely: .....[*insert contract or purchase order identifications*]; [*or delete "namely" and insert "as shown in the attached list marked "Exhibit A" and incorporated in this Agreement by reference."*]. The term "the contracts," as used in this Agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made by the Government and the Contractor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Contractor has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) The XYZ CORPORATION, by an amendment to its certificate of incorporation, dated ....., 19.., has changed its corporate name to ABC CORPORATION.

(3) This amendment accomplishes a change of corporate name only and all rights and obligations of the Government and of the Contractor under the contracts are unaffected by this change.

(4) Documentary evidence of this change of corporate name has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT—

(1) The contracts covered by this Agreement are amended by substituting the name "ABC CORPORATION" for the name "XYZ CORPORATION" wherever it appears in the contracts; and

(2) Each party has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA.

By.....

Title.....

ABC CORPORATION.

By.....

Title.....

[CORPORATE SEAL]

CERTIFICATE

I, ..., certify that I am the Secretary of ABC CORPORATION; that ....., who signed this Agreement for this corporation, was then ..... of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this .....day of ....., 19...

By.....

[CORPORATE SEAL]

SUBPART 42.13—[RESERVED]

SUBPART 42.14—TRAFFIC AND TRANSPORTATION MANAGEMENT

42.1401 General.

(a) The contract administration office (CAO) shall ensure that instructions to contractors result in the most efficient and economical use of carrier services and equipment. If the transportation data regarding f.o.b. origin contracts is insufficient for Government transportation management purposes, the CAO shall obtain the data used in the evaluation of offers.

(b) Transportation personnel assigned to or supporting the CAO, or appropriate agency personnel, are responsible for—

(1) Furnishing timely routings and releases for port shipments;

(2) Monitoring shipments to provide for carload or truckload quantities when practicable;

(3) Controlling and issuing U.S. Government bills of lading (GBL's) and determining proper freight classification descriptions;

(4) Reviewing documentation to ensure the proper distribution and validation of shipping documents;

(5) Developing, and advising on, transportation cost differentials brought on by proposed changes in contract terms; e.g., delivery schedules;

(6) Determining, for contract requirements, the size and carrying capability of carrier equipment to transport overdimensional and/or overweight supplies, hazardous materials, or supplies requiring special shipping arrangements;

(7) Developing information and reporting movements that may be the basis for negotiating special rates for volume movements or for rate adjustments (see 42.1402(b));

(8) Exercising control of irregularities in preservation, packing, loading, blocking and bracing, and other causes contributing to loss and damage; sealing of carrier equipment and documentation;

(9) Providing information on the use of transit arrangements;

(10) Recommending, when appropriate, prepayment by contractor for f.o.b. origin shipments or parcel post (see 42.1403-2 and 42.1404);

(11) Recommending, when appropriate, the use of commercial forms and procedures for small shipments of a recurring nature if transportation costs do not exceed $100, as authorized in 41 CFR 101-41.304-2 and, for the Department of Defense (DOD), in Chapter 24, Section XVII, paragraphs 120 through 124 of the Military Traffic Management Regulation (MTMR).

(12) Diverting, reconsigning, tracing, and expediting shipments; and

(13) Considering the capabilities of contractors for meeting new or emergency requirements that arise during the contract administration and using these capabilities when appropriate.

(14) Using routings through established consolidation stations when it is in the Government's interest.

(c) Civilian agencies shall consult and cooperate with the Office of Transportation of the General Services Administration (GSA) as required in 41 CFR 101-40. (See 47.105, Transportation assistance, for assistance to civilian Government activities or to military installations.)

42.1402 Volume movements within the continental United States.

(a) (1) For purposes of contract administration, a volume movement is—

(i) In DOD, the aggregate of freight shipments amounting to or exceeding 25 carloads, 25 truckloads, or 500,000 pounds, to move during the contract period from one origin point for delivery to one destination point or area; and

(ii) In civilian agencies, 50 short tons (100,000 pounds) in the aggregate to move during the contract period from one origin point for delivery to one destination point or area.

(2) Transportation personnel assigned to or supporting the CAO, or appropriate agency personnel, shall report planned and actual volume movements in accordance with agency regulations. DOD activities report to the Military Traffic Management Command (MTMC) under the Military Traffic Management Regulation (MTMR). Civilian agencies report to GSA, Office of Transportation, or other designated offices under the Federal Property Management Regulations (FPMR), specifically 41 CFR 101-40.305-2.

(b) Reporting of volume movements permits MTMC and GSA transportation personnel to determine the reasonableness of applicable current rates and, when appropriate, to negotiate adjusted or modified rates.

42.1403 Shipping documents covering f.o.b. origin shipments.

42.1403-1 U.S. Government bills of lading.

(a) Except as provided in 42.1403-2, when a contract specifies delivery of supplies f.o.b. origin with transportation costs to be paid by the Government, the contractor shall make shipments on U.S. Government bills of lading (GBL's), or on other shipping documents prescribed by MTMC in the case of seavan containers, furnished by the CAO or the appropriate agency transportation office. Each agency shall establish appropriate procedures by which the contractor shall obtain GBL's. The contracting officer shall not authorize the contractor to ship on commercial bills of lading for conversion to GBL's unless delivery is extremely urgent and GBL's are not readily available.

(b) The possible application of reduced rates under section 10721 of the Interstate Commerce Act for shipments on commercial bills of lading and the Commercial Bill of Lading Notations clause are discussed at 47.104.

(c) (1) The limited authority for the use of commercial forms and procedures to acquire freight or express transportation for small shipments of a recurring nature when transportation costs do not exceed $100, is prescribed in the Transportation Documentation and Audit Regulation, specifically 41 CFR 101-41.304-2.

(2) For DOD shipments, corresponding guidance is in Chapter 214 of the MTMR.

42.1403-2 Contractor-prepaid commercial bills of lading.

(a) If it is advantageous to the Government, the contracting officer may authorize the contractor to ship by common carriers on commercial bills of lading supplies, which have been acquired f.o.b. origin and are therefore Government property, to domestic destinations, including DOD air and water terminals. Such shipments shall not exceed 150 pounds by commercial air or 1,000 pounds by other commercial carriers and shall not have a security classification.

(b) The contracting officer may authorize the shipments under paragraph (a) above to be consolidated with the contractor's own prepaid shipments for delivery to one or more destinations, if all appropriate f.o.b. origin shipments under one or more Government contracts have been consolidated initially. The contractor may be authorized to consolidate less-than-carload or less-than-truckload Government shipments with its own shipments so that the Government can take advantage of lower carload or truckload freight costs. The Government shall assume its pro rata share of the combined shipment cost. Agency transportation personnel shall evaluate overall transportation costs before authorizing any movement to ensure savings to the Government consistent with other contract and traffic management considerations. When consolidation is authorized, a copy of the commercial bill of lading shall be mailed promptly to each consignee.

(c) Shipments under prepaid commercial bills of lading, as authorized in paragraph (a) above, do not require a contract modification. Unless otherwise provided in the contract, the supplies move for the account of, and at the risk of, the Government. The supplies become Government property when loaded on the carrier's equipment and the contractor has obtained the carrier's receipt. The contractor pays the transportation charges and is reimbursed by the Government. Loss or damage claims shall be processed in accordance with agency regulations.

(d) The contractor's invoice for reimbursement by the Government shall show the prepaid transportation charges or apportioned charges as agreed (see paragraph (b) above), as a separate item for each individual shipment. The contractor shall support the transportation charges with a copy of the carrier's receipted freight bill or other evidence of receipt, except as follows:

(1) A Government agency may determine that receipted freight bills or other evidence of receipt are not required for transportation charges of $25 or less.

(2) A Government agency may pay an invoiced but unsupported transportation charge of $100 or less per transaction (i.e., purchase, invoice, or aggregate billing or payment for multiple purchases), if—

(i) The contractor cannot reasonably provide a receipted freight bill; and

(ii) The agency has determined that the charges are reasonable. Determination of reasonableness may be based on—

(A) Past experience (authenticated transportation charges for similar shipments);

(B) Rate checks;

(C) Copies of previous freight bills submitted by the contractor; or

(D) Other information submitted by the contractor to substantiate the amount claimed.

(3) Receipted freight bills in support of invoiced transportation charges of $100 or less are not required for reimbursement by the Government, if—

(i) The underlying contract specifies retention by the contractor of all records for at least 3 years after final payment under the contract; and

(ii) The contractor certifies that payment of the transportation charges has been made and that the contractor will furnish evidence of payment when requested by the Government.

(e) Shipments and invoices shall not be split to reduce transportation charges to $100 or less per transaction as a means of avoiding the required documented support for the charges. See 42.1403-2(d)(1) for unsupported transportation charges of $25 or less.

42.1404 Shipments by parcel post or other classes of mail.

42.1404-1 Parcel post.

(a) (1) Use of parcel post or other classes of mail permits direct movements from source of supply to the user, without the intermediate documentation that is required when supplies are transported through depots or air or water terminals. However, the use of parcel post and other classes of mail shall be confined to deliveries of mailable matter that meet the size, weight, and distance limitations prescribed by the U.S. Postal Service. Contractors shall not divide delivery quantities into mailable parcels for the purpose of avoiding shipments by other modes of transportation.

(2) When parcel post or other classes of mail are used by contractors, they shall prepay the postage costs by using their own mailing labels or stamps and include prepaid postage costs as separate items in the invoices for supplies shipped.

(b) (1) Use of indicia mail (in lieu of stamps or cancellations) is not authorized. However, deviations from this ban may be granted. A request for a deviation should be processed to the U.S. Postal Service following agency procedures. If a deviation is granted, the agency shall follow the U.S. Postal Service permit requirements.

(2) When indicia mail is authorized, the contractor will be provided with official mailing labels, envelopes, or cards printed "Postage and Fees Paid." These must bear in every case (i) the printed return address of the agency concerned above the printed words "Official Business" and (ii) the proper permit imprint number. The name and address of a private person or firm shall not be shown.

(c) When a contractor uses the contractor's own label for making a shipment to a post office servicing military and other agency consignees outside the United States, the contractor shall stamp or imprint the parcel

immediately above the label in 1/4 inch block letters with (i) the name of the agency and (ii) the words "Official Mail-Contents for Official Use-Exempt from Customs Requirements." This permits identification and expedites handling within the postal system. Use of this marking does not eliminate the requirement for payment of postage by the contractor when so required by the contract or when the contractor is to be reimbursed for the cost of postage.

(d) Contractors may not insure shipments at Government expense for the purpose of recovery in case of loss and/or damage, except that minimum insurance required for the purposes of obtaining receipts at point of origin and upon delivery is authorized.

42.1404-2 Contract clauses.

(a) The contracting officer shall insert the clause at 52.242-10, F.o.b. Origin—Government Bills of Lading or Prepaid Postage, in solicitations and contracts when f.o.b. origin shipments are to be made using Government bills of lading or prepaid postage.

(b) The contracting officer shall insert the clause at 52.242-11, F.o.b. Origin—Government Bills of Lading or Indicia Mail, in solicitations and contracts when f.o.b. origin shipments are to be made using Government bills of lading or indicia mail, if indicia mail has been authorized by the U.S. Postal Service.

42.1405 Discrepancies incident to shipment of supplies.

(a) Discrepancies incident to shipment include overage, shortage, loss, damage, and other discrepancies between the quantity and/or condition of supplies received from commercial carriers and the quantity and/or condition of these supplies as shown on the covering bill of lading or other transportation document. Regulations and procedures for reporting and adjusting discrepancies in Government shipments are in Subpart 40.7 of the Federal Property Management Regulations (41 CFR 101-40.7). (Military installations shall consult "Reporting of Transportation Discrepancies in Shipments," AR 55-38, NAVSUP INST 4610.33C, AFR 75-18, MCO P4610.19, DLAR 4500.15).

(b) Generally, when the place of delivery is f.o.b. origin, the Government consignee at destination is also accountable for the supplies, and all claims or reports dealing with discrepancies shall be initiated at that point in accordance with the property accountability regulations of the agency concerned.

(c) If supplies are acquired on an f.o.b. destination basis, any claim arising from a discrepancy occurring in transit is a matter for settlement between the contractor and the carrier. However, the Government consignee shall (1) notify the carrier of the discrepancy by noting the exception on the carrier's delivery receipt and (2) furnish all available data to the CAO or appropriate agency office, which shall promptly transmit the data to the contractor.

42.1406 Report of shipment.

42.1406-1 Advance notice.

Military (and as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of shipments en route from contractors' plants. Generally, this notification is required only for minimum carload or truckload shipments. It facilitates arrangements for transportation control, labor, space, and use of materials handling equipment at destination. Also, timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges.

42.1406-2 Contract clause.

The contracting officer shall insert the clause at 52.242-12, Report of Shipment (RESHIP), in solicitations and contracts when carload or truckload shipments will be made to DOD installations or, as required, to civilian agency facilities.

PART 43—CONTRACT MODIFICATIONS

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

43.000 Scope of part.

This part prescribes policies and procedures for preparing and processing contract modifications for all types of contracts including construction and architect-engineer contracts. It does not apply to—

(a) Orders for supplies or services not otherwise changing the terms of contracts or agreements (e.g., delivery orders under indefinite-delivery contracts); or

(b) Modifications for extraordinary contractual relief (see Part 50).

SUBPART 43.1—GENERAL

43.101 Definitions.

"Administrative change" means a unilateral (see 43.103(b)) contract change, in writing, that does not affect the substantive rights of the parties (e.g., a change in the paying office or the appropriation data).

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

"Contract modification" means any written change in the terms of a contract (see 43.103).

"Effective date" has various meanings based on the circumstances in which it is used:

(a) For a solicitation amendment, change order, or administrative change, the effective date shall be the issue date of the amendment, change order, or administrative change.

(b) For a supplemental agreement, the effective date shall be the date agreed upon by the contracting parties.

(c) For a modification issued as a confirming notice of termination for the convenience of the Government, the effective date of the confirming notice shall be the same as the effective date of the initial notice.

(d) For a modification converting a termination for default to a termination for the convenience of the Government, the effective date shall be the same as the effective date of the termination for default.

(e) For a modification confirming the termination contracting officer's previous letter determination of the amount due in settlement of a contract termination for convenience, the effective date shall be the same as the effective date of the previous letter determination.

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

43.102 Policy.

(a) Only contracting officers acting within the scope of their authority are empowered to execute contract modifications on behalf of the Government. Other Government personnel shall not—

(1) Execute contract modifications;

(2) Act in such a manner as to cause the contractor to believe that they have authority to bind the Government; or

(3) Direct or encourage the contractor to perform work that should be the subject of a contract modification.

(b) Contract modifications, including changes that could be issued unilaterally, shall be priced before their execution if this can be done without adversely affecting the interest of the Government. If a significant cost increase could result from a contract modification and time does not permit negotiation of a price, at least a maximum price shall be negotiated unless impractical.

43.103 Types of contract modifications.

Contract modifications are of the following types:

(a) *Bilateral.* A bilateral modification (supplemental agreement) is a contract modification that is signed by the contractor and the contracting officer. Bilateral modifications are used to—

(1) Make negotiated equitable adjustments resulting from the issuance of a change order;

(2) Definitize letter contracts; and

(3) Reflect other agreements of the parties modifying the terms of contracts.

(b) *Unilateral.* A unilateral modification is a contract modification that is signed only by the contracting officer. Unilateral modifications are used, for example, to—

(1) Make administrative changes;

(2) Issue change orders;

(3) Make changes authorized by clauses other than a changes clause (e.g., Property clause, Options clause, Suspension of Work clause, etc.); and

(4) Issue termination notices.

43.104 Notification of contract changes.

(a) When a contractor considers that the Government has effected or may effect a change in the contract that has not been identified as such in writing and signed by the contracting officer, it is necessary that the contractor notify the Government in writing as soon as possible. This will permit the Government to evaluate the alleged change and (1) confirm that it is a change, direct the mode of further performance, and plan for its funding; (2) countermand the alleged change; or (3) notify the contractor that no change is considered to have occurred.

(b) The clause at 52.243-7, Notification of Changes, which is prescribed in 43.106, (1) incorporates the policy expressed in paragraph (a) above; (2) requires the contractor to notify the Government promptly of any Government conduct that the contractor considers a change to the contract, and (3) specifies the responsibilities of the contractor and the Government with respect to such notifications.

43.105 Availability of funds.

(a) The contracting officer shall not execute a contract modification that causes or will cause an increase in funds without having first obtained a certification of fund availability, except for modifications to contracts that—

(1) Are conditioned on availability of funds (see 32.703-2); or

(2) Contain a limitation of cost or funds clause (see 32.704).

(b) The certification required by paragraph (a) above shall be based on the negotiated price, except that modifications executed before agreement on price may be based on the best available estimate of cost.

43.106 Contract clause.

The contracting officer may insert a clause substantially the same as the clause at 52.243-7, Notification of Changes, in solicitations and contracts. The clause is available for use primarily in negotiated research and development or supply contracts for the acquisition of major weapon systems or principal subsystems. If the contract amount is expected to be less than $1,000,000, the clause shall not be used, unless the contracting officer anticipates that situations will arise that may result in a contractor alleging that the Government has effected changes other than those identified as such in writing and signed by the contracting officer.

SUBPART 43.2—CHANGE ORDERS

43.201 General.

(a) Generally, Government contracts contain a changes clause that permits the contracting officer to make unilateral changes, in designated areas, within the general scope of the contract. These are accomplished by issuing written change orders on Standard Form 30, Amendment of Solicitation/Modification of Contract (SF 30), unless otherwise provided (see 43.301).

(b) The contractor must continue performance of the contract as changed, except that in cost-reimbursement or incrementally funded contracts the contractor is not obligated to continue performance or incur costs beyond the limits established in the Limitation of Cost or Limitation of Funds clause (see 32.705-2).

(c) The contracting officer may issue a change order by telegraphic message under unusual or urgent circumstances; *provided*, that—

(1) Copies of the message are furnished promptly to the same addressees that received the basic contract;

(2) Immediate action is taken to confirm the change by issuance of a SF 30;

(3) The message contains substantially the information required by the SF 30 (except that the estimated change in price shall not be indicated), including in the body of the message the statement, "Signed by (Name), Contracting Officer"; and

(4) The contracting officer manually signs the original copy of the message.

43.202 Authority to issue change orders.

Change orders shall be issued by the contracting officer except when authority is delegated to an administrative contracting officer (see 42.202(c)).

43.203 Change order accounting procedures.

(a) Contractors' accounting systems are seldom designed to segregate the costs of performing changed work. Therefore, before prospective contractors submit offers, the contracting officer should advise them of the possible need to revise their accounting procedures to comply with the cost segregation requirements of the Change Order Accounting clause at 52.243-6.

(b) The following categories of direct costs normally are segregable and accountable under the terms of the Change Order Accounting clause:

(1) Nonrecurring costs (e.g., engineering costs and costs of obsolete or reperformed work).

(2) Costs of added distinct work caused by the change order (e.g., new subcontract work, new prototypes, or new retrofit or backfit kits).

(3) Costs of recurring work (e.g., labor and material costs).

43.204 Administration.

(a) *Change order documentation.* When change orders are not forward priced, they require two documents: the change order and a supplemental agreement reflecting the resulting equitable adjustment in contract terms. If an equitable adjustment in the contract price or delivery terms or both can be agreed upon in advance, only a supplemental agreement need be issued, but administrative changes and changes issued pursuant to a clause giving the Government a unilateral right to make a change (e.g., an option clause) initially require only one document.

(b) *Definitization.* (1) Contracting officers shall negotiate equitable

adjustments resulting from change orders in the shortest practicable time.

(2) Administrative contracting officers negotiating equitable adjustments by delegation under 42.302(b)(1), shall obtain the contracting officer's concurrence before adjusting the contract delivery schedule.

(3) Contracting offices and contract administration offices, as appropriate, shall establish suspense systems adequate to ensure accurate identification and prompt definitization of unpriced change orders.

(4) The contracting officer shall ensure that a cost analysis is made, if appropriate, under 15.805 and shall consider the contractor's segregable costs of the change, if available. If additional funds are required as a result of the change, the contracting officer shall secure the funds before making any adjustment to the contract.

(c) *Complete and final equitable adjustments.* To avoid subsequent controversies that may result from a supplemental agreement containing an equitable adjustment as the result of a change order, the contracting officer should—

(1) Ensure that all elements of the equitable adjustment have been presented and resolved; and

(2) Include, in the supplemental agreement, a release similar to the following:

CONTRACTOR'S STATEMENT OF RELEASE

In consideration of the modification(s) agreed to herein as complete equitable adjustments for the Contractor's.....(describe)..... "proposal(s) for adjustment," the Contractor hereby releases the Government from any and all liability under this contract for further equitable adjustments attributable to such facts or circumstances giving rise to the "proposal(s) for adjustment" (except for .....).

43.205 Contract clauses.

(a) (1) The contracting officer shall insert the clause at 52.243-1, Changes—Fixed-Price, in solicitations and contracts when a fixed-price contract for supplies is contemplated.

(2) If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, the contracting officer shall use the clause with its Alternate I.

(3) If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, the contracting officer shall use the clause with its Alternate II.

(4) If the requirement is for architect-engineer or other professional services, the contracting officer shall use the clause with its Alternate III.

(5) If the requirement is for transportation services, the contracting officer shall use the clause with its Alternate IV.

(6) If it is desired to include the clause in solicitations and contracts when a research and development contract is contemplated, the contracting officer shall use the clause with its Alternate V.

(b) (1) The contracting officer shall insert the clause at 52.243-2, Changes—Cost-Reimbursement, in solicitations and contracts when a cost-reimbursement contract for supplies is contemplated.

(2) If the requirement is for services and no supplies are to be furnished, the contracting officer shall use the clause with its Alternate I.

(3) If the requirement is for services and supplies are to be furnished, the contracting officer shall use the clause with its Alternate II.

(4) If the requirement is for construction, the contracting officer shall use the clause with its Alternate III.

(5) If a facilities contract is contemplated, the contracting officer shall use the clause with its Alternate IV.

(6) If it is desired to include the clause in solicitations and contracts when a research and development contract is contemplated, the contracting officer shall use the clause with its Alternate V.

(c) The contracting officer shall insert the clause at 52.243-3, Changes—Time-and-Materials or Labor-Hours, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated.

(d) The contracting officer shall insert the clause at 52.243-4, Changes, in solicitations and contracts for (1) dismantling, demolition, or removal of improvements; and (2) construction, when a fixed-price contract is contemplated and the contract amount is expected to exceed the applicable small purchase limitation in Part 13.

(e) The contracting officer shall insert the clause at 52.243-5, Changes and Changed Conditions, in solicitations and contracts for construction, when the contract amount is not expected to exceed the applicable small purchase limitation in Part 13.

(f) The contracting officer may insert a clause, substantially the same as the clause at 52.243-6, Change Order Accounting, in solicitations and contracts for supply and research and development contracts of significant technical complexity, if numerous changes are anticipated.

SUBPART 43.3—FORMS

43.301 Use of forms.

(a) (1) The Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, shall (except for the options stated in 43.301(a)(2)) be used for—

(i) Any amendment to a solicitation;

(ii) Change orders issued under the Changes clause of the contract;

(iii) Any other unilateral contract modification issued under a contract clause authorizing such modification without the consent of the contractor;

(iv) Administrative changes such as the correction of typographical mistakes, changes in the paying office, and changes in accounting and appropriation data;

(v) Supplemental agreements (see 43.103); and

(vi) Removal, reinstatement, or addition of funds to a contract.

(2) The SF 30 may be used for (i) modifications that change the price of contracts for the acquisition of petroleum as a result of economic price adjustment, and (ii) termination notices.

(3) If it is anticipated that a change will result in a price change, the estimated amount of the price change shall not be shown on copies of SF 30 furnished to the contractor.

(b) The Standard Form 36 (SF 36), Continuation Sheet, or a blank sheet of paper, may be used as a continuation sheet for a contract modification.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

Sec.

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

44.000 Scope of part.

This part prescribes policies and procedures for consent to subcontracts and for review, evaluation, and approval of contractors' purchasing systems.

SUBPART 44.1—GENERAL

44.101 Definitions.

"Approved purchasing system" means a contractor's purchasing system that has been reviewed and approved in accordance with this part.

"Consent to subcontract" means the contracting officer's written consent for the prime contractor to enter into a particular subcontract.

"Contractor," as used in this part, means the total contractor organization or a separate entity of it, such as an affiliate, division, or plant, that performs its own purchasing.

"Contractor purchasing system review (CPSR)" means the complete evaluation of a contractor's purchasing of material and services, subcontracting, and subcontract management from development of the requirement through completion of subcontract performance.

"Subcontract," as used in this part, means any contract as defined in Subpart 2.1 entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

"Subcontractor," as used in this part, means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

44.102 Policy.

(a) Consent to subcontracts is required under 44.201 when the subcontract work is complex, the dollar value is substantial, or the Government's interest is not adequately protected by competition and the type of prime contract or subcontract.

(b) Consent requirements may be waived when the contractor's purchasing system has been reviewed and approved in accordance with Subpart 44.3.

SUBPART 44.2—CONSENT TO SUBCONTRACTS

44.201 Consent requirements.

44.201-1 Fixed-price prime contracts.

(a) Consent to subcontracts is not required under prime contracts that are firm-fixed-price or fixed-price with economic price adjustment provisions. (See paragraph (c) below for unpriced modifications.)

(b) If the contractor has an approved purchasing system, consent to subcontracts is not required under other fixed-price prime contracts, except for any subcontracts selected for special surveillance. (See 44.205).

(c) If the contractor does not have an approved purchasing system, consent to the subcontracts specified in paragraph (d) below is required—

(1) Under fixed-price incentive and fixed-price redeterminable prime contracts; and

(2) Under prime contracts that are firm-fixed-price or fixed-price with economic price adjustment provisions, only when a new subcontract results from an unpriced modification to the prime contract.

(d) Under prime contracts required to include the clause at 52.244-1, Subcontracts Under Fixed-Price Contracts, consent is required under paragraph (c) above for any subcontract that is—

(1) To be a cost-reimbursement, time-and-materials, or labor-hour contract estimated to be over $25,000, including any fee;

(2) Estimated to be over $100,000 (or less if the contract clause has been modified as permitted by its preface); or

(3) One of a number of subcontracts, under the prime contract, with a single subcontractor for the same or related supplies or services, which in the aggregate are estimated to be over $100,000 (or less, if the contract clause has been modified as permitted by its preface).

44.201-2 Cost-reimbursement and letter prime contracts.

(a) Consent is required under cost-reimbursement and letter prime contracts (except facilities contracts) for subcontracts (1) for fabrication, purchase, rental, installation, or other acquisition of special test equipment valued at more than $10,000 or of any items of industrial facilities, or (2) that have experimental, developmental, or research work as one of their purposes.

(b) If the contractor does not have an approved purchasing system, consent is also required, under cost-reimbursement and letter prime contracts for (1) cost-reimbursement, time-and-materials, or labor-hour subcontracts and (2) fixed-price subcontracts that exceed either $25,000 or 5 percent of the total estimated cost of the prime contract.

(c) If the contractor has an approved purchasing system, consent is not required for the subcontracts identified in paragraph (b) above, but advance notification is still required by 10 U.S.C. 2306(e) or 41 U.S.C 254(b).

(d) In contracts for acquisition of major systems, subsystems, or their components (see Part 34), consent is required for the subcontracts identified in paragraph (b) above, even though the contractor has an approved purchasing system.

44.201-3 Other prime contracts.

Except for purchase of raw material or commercial stock items, consent is required for all subcontracts under time-and-material contracts. Consent is required for subcontracts under prime contracts for—

(a) Architect-engineer services; and

(b) Mortuary services, refuse service, or shipment and storage of personal property, when an agency requires prior approval of subcontractors' facilities.

44.201-4 Contractor use of Government sources.

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

44.202 Contracting officer's evaluation.

44.202-1 Responsibilities.

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

(b) The responsible contracting officer shall—

(1) Promptly evaluate the contractor's requests for consent to subcontract;

(2) Obtain assistance in the evaluation from subcontracting, audit, pricing, technical, or other specialists as necessary; and

(3) Notify the contractor in writing of consent or the withholding of consent, including any changes or corrections required.

44.202-2 Considerations.

(a) The contracting officer responsible for consent shall review the request and supporting data and consider the following:

(1) Is the decision to subcontract consistent with the contractor's approved make-or-buy program, if any (see Subpart 15.7)?

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

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

(4) Has the contractor complied with the prime contract requirements regarding labor surplus area or small business subcontracting, including, if applicable, its plan for subcontracting with small business concerns and small disadvantaged business concerns (see Part 19)?

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

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

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

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

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

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

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

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

(13) Is the proposed subcontractor on the Consolidated List of Debarred, Suspended, and Ineligible Contractors (see Subpart 9.4)?

(b) Particularly careful and thorough consideration under paragraph (a) above is necessary when—

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

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

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

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

44.203 Consent limitations.

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

(b) Contracting officers shall not consent to—

(1) Cost-reimbursement subcontracts if the fee exceeds the fee limitations of 16.301-3;

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

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

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

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

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

44.204 Contract clauses.

(a) *Fixed-price contracts.* (1) Except as specified in (a)(2) below, the contracting officer—

(i) Shall insert the clause at 52.244-1, Subcontracts Under Fixed-Price Contracts, in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to exceed $500,000; and

(ii) May insert the clause in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is not expected to exceed $500,000, if the contracting officer determines that its use will be in the Government's interest.

(2) The clause shall not be used (i) in solicitations and contracts for mortuary services, refuse services, or shipment and storage of personal property, when an agency prescribed clause on approval of subcontractors' facilities is required, or (ii) in architect-engineer contracts.

(3) If the contracting officer elects to delete the requirement for advance notification of, or consent to, any subcontracts that were evaluated during negotiations (this election is not authorized for acquisition of major systems and subsystems or their components), the contracting officer shall use the clause with its Alternate I. See also 44.205.

(b) *Cost-reimbursement and letter contracts.* The contracting officer shall insert the clause at 52.244-2, Subcontracts Under Cost-Reimbursement and Letter Contracts, in solicitations and contracts when a cost-reimbursement or letter contract is contemplated. See also 44.205.

(c) *Time-and-materials and labor-hour contracts.* The contracting officer shall insert the clause at 52.244-3, Subcontracts Under Time-and-Materials and Labor-Hour Contracts, in solicitations and contracts when a time-and-materials and labor-hour contract is contemplated.

(d) *Architect-engineer contracts.* The contracting officer shall insert the clause at 52.244-4, Subcontractors and Outside Associates and Consultants, in fixed-price architect-engineer contracts.

(e) *Competition in subcontracting.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.244-5, Competition in Subcontracting, in solicitations and contracts when the contract amount is expected to exceed the appropriate small purchase limitation in Part 13, unless—

(1) A firm-fixed-price contract, awarded on the basis of adequate price competition or whose prices are set by law or regulation, is contemplated; or

(2) A contract of the type and/or purpose identified in paragraphs (c) and (d) above is contemplated.

44.205 Special surveillance.

In exceptional circumstances, contracting officers may select subcontracts requiring extraordinary Government surveillance for special

surveillance, by specifying the selected subcontracts in the prime contract Schedule.

SUBPART 44.3—CONTRACTORS' PURCHASING SYSTEMS REVIEWS

44.301 Objective.

The objective of a contractor purchasing system review (CPSR) is to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the administrative contracting officer (ACO) a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

44.302 Requirements.

(a) Except as provided in paragraph (b) below, a CPSR shall be conducted for each contractor whose negotiated sales to the Government are expected to exceed $10 million during the next 12 months. Such sales include those represented by prime contracts, subcontracts under Government prime contracts, and modifications to competitively awarded contracts and formally advertised contracts (except when the negotiated price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or is set by law or regulation). Generally, a CPSR is not performed for a specific contract. The head of the agency responsible for contract administration may raise or lower the $10 million review level if such action is considered to be in the Government's best interest.

(b) A CPSR shall be conducted by the cognizant contract administration agency (see Subpart 42.3) at least every 3 years for contractors that continue to meet the requirements of paragraph (a) above. This review may be accomplished at one time or on a continuing basis. A more frequent review cycle may be established if warranted (e.g., when resident surveillance personnel are not assigned), and special reviews may be conducted when information reveals a deficiency or major change in the contractor's purchasing system.

44.303 Extent of review.

A CPSR requires a complete evaluation of the contractor's purchasing system. The considerations listed in 44.202-2 for consent evaluations of particular subcontracts shall also be used to evaluate the contractor's purchasing system, including the contractor's policies, procedures, and performance under that system. Special attention shall be given to—

(a) The degree of price competition obtained;

(b) Pricing policies and techniques, including methods of obtaining accurate, complete, and current cost or pricing data and certification as required;

(c) Methods of evaluating subcontractors' responsibility;

(d) Treatment accorded affiliates and other concerns having close working arrangements with the contractor;

(e) Policies and procedures pertaining to labor surplus area concerns and small business concerns, including small disadvantaged business concerns;

(f) Planning, award, and postaward management of major subcontract programs;

(g) Compliance with Cost Accounting Standards in awarding subcontracts; and

(h) Appropriateness of types of contracts used (see 16.103).

44.304 Surveillance.

(a) In the period between complete CPSR's, the ACO shall maintain a sufficient level of surveillance to assure that the contractor is effectively managing its purchasing program. The ACO shall make a determination annually to (1) continue approval based on surveillance or (2) request a CPSR or special review as a basis for continuing or withdrawing approval.

(b) Surveillance shall be accomplished in accordance with a plan developed by the ACO with the assistance of subcontracting, audit, pricing, technical, or other specialists as necessary. The plan shall cover pertinent phases of a contractor's purchasing system (preaward, postaward, performance, and contract completion) and pertinent operations that affect the contractor's purchasing and subcontracting. The plan shall also provide for reviewing the effectiveness of the contractor's corrective actions taken as a result of previous Government recommendations. Duplicative reviews of the same areas by CPSR and other surveillance monitors shall be avoided.

44.305 Granting, withholding, or withdrawing approval.

44.305-1 Responsibilities.

(a) The cognizant ACO is responsible for granting, withholding, or withdrawing approval of a contractor's purchasing system. The ACO shall—

(1) Approve a purchasing system only after a CPSR discloses that the contractor's purchasing policies and practices are efficient and provide adequate protection of the Government's interests;

(2) Between CPSR's, determine annually whether there are any significant deviations from approved policies and practices that would indicate a need for a special review or new CPSR to decide whether or not to withdraw approval; and

(3) Promptly notify the contractor in writing of the granting, withholding, or withdrawing of approval.

(b) If, upon expiration of approval of the contractor's purchasing system, the ACO has not specifically withheld, continued, or withdrawn approval, the approval shall continue for another 90 days. Any further extension requires written approval at least one level higher than the ACO.

44.305-2 Notification.

(a) The notification granting initial system approval or continuation of system approval shall include—

(1) Identification of the plant or plants where the review was conducted;

(2) The effective date of approval and period for which approval is valid;

(3) A statement that system approval—

(i) Applies to all Federal Government contracts at that plant to the extent that cross-servicing arrangments exist;

(ii) Waives the contractual requirement for advance notification in fixed-price contracts, but not for cost-reimbursement contracts;

(iii) Waives the contractual requirement for consent to subcontracts in fixed-price contracts and for specified subcontracts in cost-reimbursement contracts but not for those subcontracts, if any, selected for special surveillance and identified in the contract Schedule;

(iv) Shall automatically terminate at the end of the approval period (or approval period as extended);

(v) Shall automatically terminate when any significant change occurs in the system unless approved by the ACO; and

(vi) May be withdrawn at any time at the ACO's discretion.

(b) In exceptional circumstances, consent to certain subcontracts or classes of subcontracts may be required even though the contractor's purchasing system has been approved. The system approval notification shall identify the class or classes of subcontracts requiring consent. Reasons for selecting the subcontracts include the fact that a CPSR or continuing surveillance has revealed sufficient weaknesses in a particular area of subcontracting to warrant special attention by the ACO.

(c) When recommendations are made for improvement of an approved system, the contractor shall be requested to reply within 15 days with a position regarding the recommendations.

44.305-3 Withholding or withdrawing approval.

(a) The ACO shall withhold or withdraw approval of a contractor's purchasing system when there are major weaknesses or when the contractor is unable to provide sufficient information upon which to make an affirmative determination. The ACO may withdraw approval at any time on the basis of a determination that there has been a deterioration of the contractor's purchasing system or to protect the Government's interest. Approval shall be withheld or withdrawn when there is a recurring noncompliance with requirements, including but not limited to—

(1) Cost or pricing data (see 15.804);

(2) Implementation of cost accounting standards (see Part 30);

(3) Advance notification as required by the clauses prescribed in 44.204; or

(4) Small business subcontracting (see Subpart 19.7).

(b) When approval of the contractor's purchasing system is withheld or withdrawn, the ACO shall within 10 days after completing the in-plant review (1) inform the contractor in writing, (2) specify the deficiencies that must be corrected to qualify the system for approval, and (3) request the contractor to furnish within 15 days a plan for accomplishing the necessary actions. If the plan is accepted, the ACO shall make a follow-up review as soon as the contractor notifies the ACO that the deficiencies have been corrected.

44.306 Disclosure of approval status.

Upon request, the ACO may inform a contractor that the purchasing system of a proposed subconcontractor has been approved, but shall caution that the Government will not keep the contractor advised of any changes in the approval status. If the proposed subcontractor's purchasing system has not been examined or approved, the contractor shall be so advised.

44.307 Reports.

The ACO shall distribute copies of CPSR reports; notifications granting, continuing, withholding, or withdrawing system approval; and Government recommendations for improvement of an approved system, including the contractor's response, to at least—

(a) The cognizant contract audit office;

(b) Activities prescribed by the cognizant agency; and

(c) The contractor (except that furnishing copies of the contractor's response is optional).

PART 45—GOVERNMENT PROPERTY

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

45.000 Scope of part.

This part prescribes policies and procedures for providing Government property to contractors, contractors' use and management of Government property, and reporting, redistributing, and disposing of contractor inventory. It does not apply to providing property under any statutory leasing authority, except as to non-Government use of plant equipment under 45.407; to property to which the Government has acquired a lien or title solely because of partial, advance, or progress payments; or to disposal of real property.

SUBPART 45.1—GENERAL

45.101 Definitions.

(a) "Contractor-acquired property," as used in this part, means property acquired or otherwise provided by the contractor for performing a contract and to which the Government has title.

"Government-furnished property," as used in this part, means property in the possession of or directly acquired by the Government and subsequently made available to the contractor.

"Government property" means all property owned by or leased to the Government or acquired by the Government under the terms of the contract. It includes Government-furnished property.

"Plant equipment," as used in this part, means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

"Property," as used in this part, means all property, both real and personal. It includes facilities, material, special tooling, special test equipment, and agency-peculiar property.

"Real property," as used in this part, means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

"Special test equipment," as used in this part, means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.

"Special tooling," as used in this part, means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items.

(b) Additional definitions also applying throughout this part appear in those subparts where the terms are most frequently used.

45.102 Policy.

Contractors are ordinarily required to furnish all property necessary to perform Government contracts. However, if contractors possess Government property, agencies shall—

(a) Eliminate to the maximum practical extent any competitive advantage that might arise from using such property;

(b) Require contractors to use Government property to the maximum practical extent in performing Government contracts;

(c) Permit the property to be used only when authorized;

(d) Charge appropriate rentals when the property is authorized for use on other than a rent-free basis;

(e) Require contractors to be responsible and accountable for, and keep the Government's official records of Government property in their possession or control (but see 45.105);

(f) Require contractors to review and provide justification for retaining Government property not currently in use; and

(g) Ensure maximum practical reutilization of contractor inventory (see 45.601) within the Government.

45.103 Responsibility and liability for Government property.

(a) Contractors are responsible and liable for Government property in their possession, unless otherwise provided by the contract.

(b) Generally, Government contracts do not hold contractors liable for loss of or damage to Government property when the property is provided under—

(1) Negotiated fixed-price contracts for which the contract price is not based upon (i) adequate price competition, (ii) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (iii) prices set by law or regulation;

(2) Cost-reimbursement contracts; or

(3) Facilities contracts.

(c) When justified by the circumstances, the contract may require the contractor to assume greater liability for loss of or damage to Government property than that contemplated by the

Government property clauses or the clause at 52.245-8, Liability for the Facilities. For example, this may be the case when the contractor is using Governmment property primarily for commercial work rather than Government work.

(d) If the Government provides Government property directly to a subcontractor, the terms of paragraph (b) above shall apply to the subcontractor.

(e) Subcontractors are liable for loss of or damage to Government property furnished through a prime contractor. However, if the prime contract is of a type listed in subparagraph (b)(1) or (2) above, the prime contractor may, after obtaining the contracting officer's consent, reduce the subcontractor's liability by including in the subcontract a clause similar to paragraph (g), Limited risk of loss, as provided in Alternate I of the clause at 52.245-2, Government Property (Fixed-Price Contracts), (for fixed-price contracts) or similar to the same paragraph of the clause at 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (for cost-reimbursement contracts). Before consenting to a clause that reduces the subcontractor's liability, the contracting officer should ensure that the Government's interests are sufficiently protected.

(f) A prime contractor that provides Government property to a subcontractor shall not be relieved of any responsibility to the Government that the prime contractor may have under the terms of the prime contract.

45.104 Review and correction of contractors' property control systems.

(a) The review and approval of a contractor's property control system shall be accomplished by the agency responsible for contract administration at a contractor's plant or installation. The review and approval of a contractor's property control system by one agency shall be binding on all other departments and agencies based on interagency agreements.

(b) The contracting officer or the representative assigned the responsibility as property administrator shall review contractors' property control systems to assure compliance with the Government property clauses of the contract.

(c) The property administrator shall notify the contractor in writing when its property control system does not comply with Subpart 45.5 or other contract requirements and shall request prompt correction of deficiencies. If the contractor does not correct the deficiencies within a reasonable period, the property administrator shall request action by the contracting officer administering the contract. The contracting officer shall—

(1) Notify the contractor in writing of any required corrections and establish a schedule for completion of actions;

(2) Caution the contractor that failure to take the required corrective actions within the time specified will result in withholding or withdrawing system approval; and

(3) Advise the contractor that its liability for loss of or damage to Government property may increase if approval is withheld or withdrawn.

45.105 Records of Government property.

(a) Contractor records of Government property established and maintained under the terms of the contract are the Government's official Government property records. Duplicate official records shall not be furnished to or maintained by Government personnel, except as provided in paragraph (b) below.

(b) Contracts may provide for the contracting office to maintain the Government's official Government property records when the contracting office retains contract administration and Government property is furnished to a contractor (1) for repair or servicing and return to the shipping organization, (2) for use on a Government installation, (3) under a local support service contract, (4) under a contract with a short performance period or involving Government property having an acquisition cost of $25,000 or less, or (5) when otherwise determined by the contracting officer to be in the Government's interest.

45.106 Government property clauses.

This section prescribes the principal Government property clauses. Other clauses pertaining to Government property are prescribed in Subpart 45.3.

(a) The contracting officer shall insert the clause at 52.245-1, Property Records, in solicitations and contracts when the conditions in 45.105(b) exist and the Government maintains the Government's official Government property records.

(b) (1) The contracting officer shall insert the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated, except as provided in paragraphs (d) and (e) below.

(2) If the contract is a negotiated fixed-price contract for which prices are not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall use the clause with its Alternate I.

(3) If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.014), the contracting officer shall use the clause with its Alternate II.

(c) The contracting officer shall insert the clause at 52.245-3, Identification of Government-Furnished Property, in addition to the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price construction contract is contemplated under which the Government is to furnish Government property f.o.b. railroad cars at a specified destination or f.o.b. truck at the project site. The contract Schedule shall specify the point of delivery and may include special terms and conditions covering installation, preparation for operation, or equipment testing by the Government or by another contractor.

(d) The contracting officer may insert the clause at 52.245-4, Government-Furnished Property (Short Form), in solicitations and contracts when a fixed-price, time-and-material, or labor-hour contract is contemplated and (1) the acquisition cost of all Government-furnished property to be involved in the contract is $50,000 or less or (2) all Government-furnished property will be located at a Government-controlled worksite or installation and the contracting office will retain contract administration; unless a contract with an educational or nonprofit organization is contemplated.

(e) When the cost of the property furnished does not exceed $10,000, purchase orders for property repair need not include a Government property clause.

(f) (1) The contracting officer shall insert the clause at 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts), in solicitations and contracts when a cost-reimbursement, time-and-material, or labor-hour contract is contemplated, except as provided in paragraph (d) above.

(2) If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.014), the contracting

officer shall use the clause with its Alternate I.

(g) The contracting officer shall insert the clause at 52.245-6, Liability for Government Property (Demolition Services), in addition to the clauses prescribed at 37.304, in solicitations and contracts for dismantling, demolition, or removal of improvements.

SUBPART 45.2—COMPETITIVE ADVANTAGE

45.201 General.

(a) The contracting officer shall, to the maximum practical extent, eliminate competitive advantage accruing to a contractor possessing Government production and research property (see 45.301). This is done by (1) adjusting the offers of those contractors by applying, for evaluation purposes only, a rental equivalent evaluation factor or, (2) when adjusting offers is not practical, by charging the contractor rent for using the property. Applying a rental equivalent factor is not appropriate in awarding negotiated contracts when the contracting officer determines that using the factor would not affect the choice of contractors.

(b) In evaluating offers, the contracting officer shall also consider any costs or savings to the Government related to providing such property, regardless of any competitive advantage that may result (see 45.202-3).

45.202 Evaluation procedures.

45.202-1 Rental equivalents.

If a rental equivalent evaluation factor is used, it shall be equal to the rent allocable to the proposed contract that would otherwise have been charged for the property, as computed in accordance with the clause at 52.245-9, Use and Charges. (See 45.205(b) for solicitation requirements.)

45.202-2 Rent.

If using a rental equivalent evaluation factor is not practical, and the competitive advantage is to be eliminated by charging rent, any offeror or subcontractor may use Government production and research property after obtaining the written approval of the contacting officer having cognizance of the property. Rent shall be charged in accordance with 45.403.

45.202-3 Other costs and savings.

(a) If furnishing Government production and research property will result in direct measurable costs that the Government must bear, additional factors shall be considered in evaluating bids or proposals. These factors shall be specified in the solicitation either as dollar amounts or as formulas and shall be limited to the cost of—

(1) Reactivation from storage;

(2) Rehabilitation and conversion; and

(3) Making the property available on an f.o.b. basis.

(b) If, under the terms of the solicitation, the contractor will bear the transportation cost of furnishing Government production and research property or the cost of making it suitable for use (such as when property is offered on an "as is" basis (see 45.308)), no additional evaluation factors related to those costs shall be used.

(c) If using Government production and research property will result in measurable savings to the Government, the dollar amount of these savings shall be specified in the solicitation and used in evaluating offers. Examples of such savings include—

(1) Savings occurring as a direct result of activating tools being maintained in idle status at known cost to the Government; and

(2) Avoiding the costs of deactivating and placing tools in layaway or storage or of maintaining them in an idle state, if the prospective costs are known. For these costs to be included in the evaluation, firm decisions must have been made that the tools will be laid away or stored if not used on the proposed contract and that such costs are not merely being deferred.

45.203 Postaward utilization requests.

When, after award, a contractor requests the use of special tooling or special test equipment, the administrative contracting officer shall obtain a fair rental or other adequate consideration if use is authorized. The value of the items, if known, and any amount included for them in the contract price shall be considered.

45.204 Residual value of special tooling and special test equipment.

(a) In awarding competitively negotiated contracts that permit the acquisition of special tooling or special test equipment, an evaluation may be made of the residual value of the property to the Government. This evaluation is appropriate when the contracting officer (1) determines that the property will have a reasonably foreseeable usefulness and related residual value beyond the period of use on the proposed contract and (2) anticipates that the cost of the property (as proposed by the several offerors) may be a factor in making the award. This evaluation is not appropriate if the contract will include the special tooling or special test equipment as a contract line item.

(b) The purpose of evaluating the residual value of special tooling or special test equipment is to apportion to each proposal only that part of the total cost of the property that represents the amount of useful life to be consumed during contract performance. Accordingly, the proposed price or cost may be reduced for evaluation purposes by an amount representing the residual value of such property to the Government. In estimating residual value, the contracting officer shall consider—

(1) The useful life of the special tooling and special test equipment to be acquired;

(2) Adaptability of the property for use by other contractors or by the Government;

(3) Reasonably foreseeable requirements for future use of the property; and

(4) The scrap or salvage value of the property.

(c) If the contacting officer decides to consider the residual value of special tooling or special test equipment, the solicitation shall so notify offerors and state the Government's reasonably foreseeable future requirements for the property.

45.205 Solicitation requirements.

(a) When Government production and research property (see 45.301) is offered for use in a competitive acquisition, solicitations will ordinarily require the contractor to assume all costs related to making the property available for use (such as payment of all transportation or rehabilitation costs).

(b) The solicitation shall describe the evaluation procedures to be followed, including rental charges or equivalents (see 45.202) and other costs or savings to be evaluated (see 45.202-3), and shall require all offerors to submit with their offers the following information:

(1) A list or description of all Government production and research property that the offeror or its subcontractors propose to use on a rent-free basis. The list shall include property offered for use in the solicitation, as well as property already in possession of the offeror and its subcontractors under other contracts.

(2) Identification of the facilities contract or other instrument under which property already in possession of the offeror and its subontractors is held, and the written permission for its use from the contracting officer having cognizance of the property.

(3) The dates during which the property will be available for use (including the first, last, and all

intervening months) and, for any property that will be used concurrently in performing two or more contracts, the amounts of the respective uses in sufficient detail to support proration of the rent.

(4) The amount of rent that would otherwise be charged, computed in accordance with 45.403.

(c) Solicitations shall provide that using Government production and research property (other than as described and permitted in the solicitation (see paragraph (b) above)) will not be authorized under the contract unless such use is approved in writing by the contracting officer cognizant of the property, and either rent calculated in accordance with the clause at 52.245-9, Use and Charges, is charged, or the contract price is reduced by an equivalent amount. (See 45.203 for postaward requests for special tooling and special test equipment and 45.204(c) for solicitation requirements for special tooling and special test equipment with residual value.)

SUBPART 45.3—PROVIDING GOVERNMENT PROPERTY TO CONTRACTORS

45.300 Scope of subpart.

This subpart prescribes policies and procedures for providing Government property to contractors.

45.301 Definitions.

"Agency-peculiar property," as used in this subpart, means Government-owned personal property that is peculiar to the mission of one agency (e.g., military or space property). It excludes Government material, special test equipment, special tooling, and facilities.

"Facilities," as used in this subpart and when used in other than a facilities contract, means property used for production, maintenance, research, development, or testing. It includes plant equipment and real property (see 45.101). It does not include material, special test equipment, special tooling, or agency-peculiar property. When used in a facilities contract, the term includes all property provided under that contract.

"Facilities contract," as used in this subpart, means a contract under which Government facilities are provided to a contractor or subcontractor by the Government for use in connection with performing one or more related contracts for supplies or services. It is used occasionally to provide special tooling or special test equipment. Facilities contracts may take any of the following forms:

(a) A facilities acquisition contract providing for the acquisition, construction, and installation of facilities.

(b) A facilities use contract providing for the use, maintenance, accountability, and disposition of facilities.

(c) A consolidated facilities contract, which is a combination of a facilities acquisition and a facilities use contract.

"Government production and research property," as used in this subpart, means Government-owned facilities, Government-owned special test equipment, and special tooling to which the Government has title or the right to acquire title.

"Material," as used in this subpart, means property that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a contract. It includes assemblies, components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract.

"Nonprofit organization," as used in this subpart, means any corporation, foundation, trust, or institution operated for scientific, educational, or medical purposes, not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

"Nonseverable," as used in this subpart, when related to Government production and research property, means property that cannot be removed after erection or installation without substantial loss of value or damage to the property or to the premises where installed.

45.302 Providing facilities.

45.302-1 Policy.

(a) Contractors shall furnish all facilities required for performing Government contracts except as provided in this subsection. Agencies shall not furnish facilities to contractors for any purpose, including restoration, replacement, or modernization, except as follows:

(1) For use in a Government-owned, contractor-operated plant operated on a cost-plus-fee basis.

(2) For support of industrial preparedness programs.

(3) As components of special tooling or special test equipment acquired or fabricated at Government expense.

(4) When, as a result of the prospective contractor's written statement asserting inability or unwillingness to obtain facilities, the agency head or designee determines that the contract cannot be fulfilled by any other practical means or that it is in the public interest to provide the facilities. If the contractor's inability to provide facilities is due to insufficient lead time, the Government may provide existing facilities until the contractor's facilities can be installed.

(5) As otherwise authorized by law or regulation.

(b) Agencies shall not—

(1) Furnish new facilities to contractors unless existing Government-owned facilities are either inadequate or cannot be economically furnished;

(2) Use research and development funds to provide contractors with new construction or improvements of general utility, unless authorized by law; or

(3) Provide facilities to contractors solely for non-Government use, unless authorized by law.

(c) Competitive solicitations shall not include an offer by the Government to provide new facilities, nor shall solicitations offer to furnish existing Government facilities that must be moved into a contractor's plant, unless adequate price competition cannot be otherwise obtained. Such solicitations shall require contractors to identify the Government-owned facilities desired to be moved into their plants.

(d) Government facilities with a unit cost of less than $10,000 shall not be provided to contractors unless—

(1) The contractor is a nonprofit institution of higher education or other nonprofit organization whose primary purpose is the conduct of scientific research;

(2) A contractor is operating a Government-owned plant on a cost-plus-fee basis;

(3) A contractor is performing on a Government establishment or installation;

(4) A contractor is performing under a contract specifying that it may acquire or fabricate special tooling, special test equipment, and components thereof subsequent to obtaining the approval of the contracting officer; or

(5) The facilities are unavailable from other than Government sources.

45.302-2 Facilities contracts.

(a) Facilities shall be provided to a contractor or subcontractor only under a facilities contract using the appropriate clauses required by 45.302-6, except as provided in 45.302-3.

(b) All facilities provided by a contracting activity for use by a contractor at any one plant or general location shall be governed by a single facilities contract, unless the contracting officer determines this to be impractical. Each agency should consolidate, to the

maximum practical extent, its facility contracts covering specific contractor locations.

(c) No fee shall be allowed under a facilities contract. Profit or fee (plus or minus) shall be considered in awarding any related supply or service contract, consistent with the profit guidelines of Subpart 15.9.

(d) Special tooling and special test equipment will normally be provided to a contractor under a supply contract, but may be provided under a facilities contract when administratively desirable.

(e) Agencies shall ensure that facility projects involving real property transactions comply with applicable laws (e.g., 10 U.S.C. 2676 and 41 U.S.C. 12 and 14).

45.302-3 Other contracts.

(a) Facilities may be provided to a contractor under a contract other than a facilities contract when—

(1) The actual or estimated cumulative acquisition cost of the facilities provided by the contracting activity to the contractor at one plant or general location does not exceed $100,000;

(2) The contract is for construction;

(3) The contract is for services and the facilities are to be used in connection with the operation of a Government-owned plant or installation; or

(4) The contract is for work within an establishment or installation operated by the Government.

(b) When a facilities contract is not used, the Government's interest shall normally be protected by using the appropriate Government property clause or, in the case of (a)(3) above, by appropriate portions of the facilities clauses.

45.302-4 Contractor use of Government-owned and -operated test facilities.

(a) Agencies may authorize onsite use by contractors of existing Government-owned and -operated test facilities in connection with Government contracts only when—

(1) No adequate commercial test capability is available;

(2) Substantial cost savings will result from using the Government-owned test facilities; or

(3) Otherwise authorized by law.

(b) When such use is authorized, the contracting officer shall obtain adequate consideration comparable to commercial rates.

45.302-5 Standby or layaway requirements.

A facilities contract may include requirements for maintenance and storage of Government production and research property in standby or layaway status. The contract shall include appropriate specifications for the care and maintenance of the property. If the Government is required to pay the contractor for maintenance and storage, the contract shall define what constitutes standby or layaway and specify when payments will begin and end. The contract may provide for reimbursing the contractor for any State or local property tax it is required to pay because of its possession of or interest in such property (see 31.205-41).

45.302-6 Required Government property clauses for facilities contracts.

(a) The contracting officer shall insert the clause at 52.245-7, Government Property (Consolidated Facilities), in solicitations and contracts when a consolidated facilities contract is contemplated (see 45.301).

(b) The contracting officer shall insert the clause at 52.245-8, Liability for the Facilities, in solicitations and contracts when a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is contemplated (see 45.301).

(c) The contracting officer shall insert the clause at 52.245-9, Use and Charges, in solicitations and contracts (1) when a consolidated facilities contract or a facilities use contract (see 45.301) or (2) when a fixed-price contract is contemplated, and Government production and research property is provided other than on a rent-free basis.

(d) The contracting officer shall insert the clause at 52.245-10, Government Property (Facilities Acquisition), in solicitations and contracts when a facilities acquisition contract is contemplated (see 45.301).

(e) (1) The contracting officer shall insert the clause at 52.245-11, Government Property (Facilities Use), in solicitations and contracts when a facilities use contract is contemplated (see 45.301).

(2) If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education, or is awarded to a nonprofit organization whose primary purpose is the conduct of scientific research (see 35.014), the contracting officer shall use the clause with its Alternate I.

45.302-7 Optional property-related clauses for facilities contracts.

(a) The contracting officer may insert the clause at 52.245-12, Contract Purpose (Nonprofit Educational Institutions), in solicitations and contracts when a facilities use contract is contemplated and award may be made to a nonprofit educational institution (also see 45.302-6).

(b) The contracting officer may insert the clause at 52.245-13, Accountable Facilities (Nonprofit Educational Institutions), in solicitations and contracts when a facilities contract is contemplated and award may be made to a nonprofit educational institution (also see 45.302-6).

(c) The contracting officer may insert the clause at 52.245-14, Use of Government Facilities, in solicitations and contracts when a facilities use contract is contemplated and award may be made to a nonprofit educational institution (also see 45.302-6).

(d) The contracting officer may, under a proper delegation of authority, insert the clause at 52.245-15, Transfer of Title to the Facilities, in solicitations and contracts when a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is contemplated for the conduct of basic or applied research at nonprofit institutions of higher education, or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.015 and 45.302-6).

(e) The contracting officer may insert the clause at 52.245-16, Facilities Equipment Modernization, in solicitations and contracts when a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is contemplated under which the Government will provide modernized or replacement facilities.

45.303 Providing material.

45.303-1 Policy.

Contractors shall ordinarily furnish all material for performing Government contracts. However, agencies should provide material to a contractor when necessary to achieve significant economy, standardization, or expedited production, or when it is otherwise in the Government's interest.

45.303-2 Procedures.

Solicitations shall specify material that the Government will furnish in sufficient detail (including requisitioning procedures) to enable offerors to evaluate it accurately. The contracting officer shall insert the appropriate Government property clause prescribed in 45.106, in all solicitations when the Government will provide material.

45.304 Providing motor vehicles.

Contractors shall ordinarily furnish any motor vehicles needed in performing Government contracts.

Agencies may provide contractors with motor vehicles only when—

(a) The number of vehicles required for use by contractor personnel is predictable and expected to remain fairly constant;

(b) The proposed contract will bear the entire cost of the vehicle program;

(c) The motor vehicles will not be used on any contract other than that for which the vehicles were provided, unless approved by the appropriate department or agency official;

(d) Prospective contractors do not have or would not be expected to have an existing and continuing capability for providing the vehicles from their own resources; and

(e) Substantial savings are expected.

45.305 Additional clauses for facilities contracts.

(a) (1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.245-17, Special Tooling, in solicitations and contracts when a fixed-price contract is contemplated, the contracting officer decides (see 45.306-2(d)) to acquire rights to the contractor's special tooling, and it is not practical to identify the special tooling required.

(2) If the Government does not intend to acquire special tooling from subcontractors and an appropriate price reduction is obtained, the contracting officer shall use the clause with its Alternate I.

(b) The contracting officer shall insert the clause at 52.245-18, Special Test Equipment, in solicitations and contracts when contracting by negotiation and the contractor will acquire or fabricate special test equipment for the Government but the exact identification of the special test equipment to be acquired or fabricated is unknown.

(c) The contracting officer shall insert the clause at 52.245-19, Government Property Furnished "As Is," in solicitations and contracts when a contract other than a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is contemplated and Government production and research property is to be furnished "as is" (see 45.106 for additional clauses that may be required).

45.306 Providing special tooling.

45.306-1 Providing existing special tooling.

(a) The contracting officer shall offer existing Government special tooling to prospective contractors for use in Government work if it will not disrupt programs of equal or higher priority, it is otherwise advantageous to the Government, and use of the special tooling is authorized under 45.402(a). (See also 45.308 and 45.309.)

(b) Contracts authorizing the furnishing of existing special tooling shall contain a description of the special tooling, the terms and conditions of shipment, and the terms covering the cost of adapting and installing the tooling.

45.306-2 Acquiring special tooling.

(a) *General.* Contractors should ordinarily provide and retain title to special tooling required for contract performance when existing Government tooling is not available.

(b) *Competitive acquisitions.* Competition generally results in fair charges for amortizing special tooling costs. Therefore, the Government does not take title (or the right to title) to special tooling in competitive acquisitions, unless the contracting officer decides that it is advantageous to the Government.

(c) *Noncompetitive acquisitions.* When competition is inadequate, it is appropriate for the Government to acquire special tooling or rights to it because the Government typically pays the cost of special tooling, regardless of who owns it, and because it may facilitate competition in follow-on acquisitions. If the Government decides not to take title, the contracting officer shall consider using special contract provisions covering contractor plans for future recovery of any initial special tooling costs in follow-on competition acquisitions.

(d) *Criteria for acquisition.* In deciding whether to acquire special tooling or rights to it (or to exercise the Government's acquisition rights under contracts or subcontracts pursuant to the clause at 52.245-17, Special Tooling), the contracting officer shall consider the following factors. (In fixed-price contracts where a certificate of current cost or pricing data is not required, special tooling or rights to it shall not be acquired unless it is advantageous to the Government.)

(1) The current or probable future need of the Government for the items involved (including in-house use) and the estimated cost of producing them if not acquired.

(2) The estimated residual value of the items.

(3) The administrative burden and other expenses incident to reporting, recordkeeping, preparation, handling, transportation, and storage.

(4) The feasibility and probable cost of making the items available to other offerors in the event of future acquisitions.

(5) The amount offered by the contractor for the right to retain the items.

(6) The effect on future competition and contract pricing.

45.306-3 Acquiring special tooling under fixed-price contracts.

(a) If the Government will acquire identifiable special tooling under the contract, the solicitation—

(1) Shall identify each item or category of special tooling to be acquired as a contract line item;

(2) May group items costing less than $1,000 by category as a contract line item; and

(3) Shall not include the clause at 52.245-17, Special Tooling.

(b) In contracts in which the Government will not acquire special tooling, or rights to it, but will pay for a substantial portion of special tooling in the contract price of the supplies or services, special requirements may be included in the contract Schedule to recognize the Government's investment (e.g., a requirement governing the contractor's future amortization of special tooling costs under Government contracts).

(c) If the contracting officer has determined not to take title to special tooling, or rights to it, and there is substantial indication of future requirements for the supplies involved, solicitations may indicate current estimates of such requirements. Offerors shall be advised that such estimates are not a representation that the current estimates or any quantity will be purchased.

45.306-4 Acquiring special tooling under cost-reimbursement contracts.

Title to special tooling under cost-reimbursement contracts shall be acquired by using the clause at 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).

45.307 Providing special test equipment.

45.307-1 General.

(a) Contracting officers shall offer existing Government-owned special test equipment to contractors, consistent with the conditions in 45.306-1(a). (See also 45.308 and 45.309.)

(b) Contracting officers may also authorize contractors to acquire special test equipment for the Government when it is advantageous to the Government under the criteria in 45.306-2(c) and existing special test equipment is not available.

45.307-2 Acquiring special test equipment.

(a) When special test equipment or components are known, the solicitation (and the contract) shall separately identify each item to be furnished by the Government or acquired or fabricated by the contractor for the Government. Individual items of less than $1,000 may be grouped by category.

(b) *Notice and approval.* Under negotiated contracts containing the clause at 52.245-18, Special Test Equipment, the contractor must notify the contracting officer if it intends to acquire or fabricate special test equipment. Within 30 days of receipt of the notice, the contracting officer shall—

(1) Review the proposed items for necessity and proper classification as "special" test equipment;

(2) Screen the availability of existing Government-owned test equipment in accordance with agency procedures; and

(3) Notify the contractor, approving or disapproving the acquisition or fabrication and, if it is disapproved, state whether the equipment will be furnished by the Government.

45.308 Providing Government production and research property "as is."

(a) The contracting officer may provide Government production and research property on an "as is" basis for performing fixed-price, time-and-material, and labor-hour contracts. It may also be furnished under a facilities contract, in which case the contract shall state that the contractor will not be reimbursed for transporting, installing, modifying, repairing, or otherwise making the property ready for use.

(b) When the property is provided under other than a facilities contract, the solicitation shall state that—

(1) Offerors may inspect the property before submitting offers and the conditions under which it may be inspected;

(2) The property is offered in its current condition, f.o.b. present location (provide specific locations);

(3) Offerors must satisfy themselves that the property is suitable for their use;

(4) The successful offeror shall bear the cost of transporting, installing, modifying, repairing, or otherwise making the property suitable for use; and

(5) Evaluations will be made in accordance with Subpart 45.2 to eliminate any competitive advantage resulting from using the property.

45.309 Providing Government production and research property under special restrictions.

(a) Government production and research property, other than foundations and similar improvements necessary for installing special tooling, special test equipment, or plant equipment, shall not be installed or constructed on land not owned by the Government in such fashion as to be nonseverable, unless the head of the contracting activity determines that the location is necessary, and the contract under which the property is provided contains—

(1) A requirement for the contractor to reimburse the Government for the fair value of the property at contract completion or termination or within a reasonable time thereafter (for example, the provision may require the contractor to purchase the property at a value determined by appraisal or at a price equal to its acquisition cost less depreciation at a specified rate);

(2) An option for the Government to acquire the underlying land; or

(3) An alternative provision that the agency head considers adequate to protect the Government's interests.

(b) If patent or other proprietary rights of a contractor may restrict the disposal of Government production and research property, the condition in either subparagraph (a)(1) or (a)(3) above shall be satisfied before the property is provided.

(c) If Government production and research property is not available to all offerors, the solicitation shall identify the offerors to whom the property is available.

45.310 Providing agency-peculiar property.

(a) Agency-peculiar property may be furnished to contractors when necessary for use as a standard or model, for testing the contractor's end item where suitable commercial equipment is not available, to establish equipment compatibility, or for other reasons that the contracting officer determines to be in the Government's interest.

(b) Agency-peculiar property may be furnished under a facilities contract, a supply or service contract containing the appropriate Government Property clause, or a special bailment agreement.

(c) Contracting officers shall provide special instructions for security, liability, maintenance, and/or property control, when agency-peculiar property requires special handling or safeguards.

SUBPART 45.4—CONTRACTOR USE AND RENTAL OF GOVERNMENT PROPERTY

45.400 Scope of subpart.

This subpart prescribes policies and procedures for contractor use and rental of Government production and research property.

45.401 Policy.

In performing Government contracts or subcontracts, Government production and research property in the possession of contractors or subcontractors shall be used to the greatest possible extent, provided that a competitive advantage is not conferred on the contractor or its subcontractors (see Subpart 45.2).

45.402 Authorizing use of Government production and research property.

(a) Contracting officers who believe it to be in the Government's interest for a prospective contractor or subcontractor to use existing Government production and research property shall authorize such use in the contract. The contracting officer shall confirm the availability of the property before authorizing its use on either a rental or rent-free basis.

(b) Unless the solicitation provides for the successful offeror to use Government production and research property in the offeror's possession, the solicitation shall require any offeror desiring to use such property to request the written concurrence of the contracting officer cognizant of the property. To preclude a competitive advantage, the contracting officer's concurrence should include any information required by Subpart 45.2.

(c) The contracting officer shall review the contractor's request for non-Government use of Government production and research property when the property is no longer required for performing Government contracts but is retained for spares or for mobilization and readiness requirements. (Also see 45.302-1(b)(3).)

45.403 Rental—Use and Charges clause.

(a) The contracting officer shall charge contractors rent for using Government production and research property, except as prescribed in 45.404 and 45.405. Rent shall be computed in accordance with the clause at 52.245-9, Use and Charges. If the agency head or designee determines it to be in the Government's interest, rent for classes of production and research property other than plant equipment identified in item (ii) of Table I of the clause at 52.245-9, Use and Charges, may be charged on the basis of use rather than the rental period, or on some other

equitable basis. In such cases, the clause at 52.245-9, Use and Charges, shall be appropriately modified.

(b) The contracting officer cognizant of the Government production and research property shall ensure the collection of any rent due the Government from the contractor.

45.404 Rent-free use.

(a) The rental required by 45.403 above does not apply to the following Government production and research property:

(1) That which is located in Government-owned, contractor-operated plants operated on a cost-plus-fee basis (but see 45.405).

(2) That which is left in place or installed on contractor-owned property for mobilization or future Government production purposes. However, rent computed in accordance with 45.403(a) shall apply to that portion of property or its capacity used or authorized for use.

(3) Items of equipment that are part of a general program approved by the Federal Emergency Management Agency (FEMA) and present unusual problems in relation to the time required for their preparation for shipment, installation, and operation because of size, complexity, or performance characteristics.

(4) Any other Government production and research property that may be excepted by FEMA.

(b) The contracting officer cognizant of the Government production and research property may grant written authorization for rent-free use of production and research property in the possession of nonprofit organizations when used for research, development, or educational work and—

(1) The use of the property is directly or indirectly in the national interest;

(2) The property will not be used for the direct benefit of a profitmaking organization; and

(3) The Government receives some direct benefit (such as rights to use the results of the work without charge) from its use. As a minimum, the contractor shall furnish a report on the work for which the property was provided.

(c) If the contracting officer has obtained adequate price or other consideration, Government production and research property may also be used rent-free under—

(1) Prime contracts that specifically authorize such use without charge; and

(2) Subcontracts of any tier, if the contracting officer awarding the prime contract has specifically authorized rent-free use by the subcontractor.

(d) After award, a contract may be modified to eliminate rent for using Government production and research property. In this case, the contract shall be equitably adjusted to reflect the elimination of rent and any other amount attributable thereto.

45.405 Contracts with foreign governments or international organizations.

Requests by, or for the benefit of, foreign governments or international organizations to use Government production and research property shall be processed and costs shall be recovered or rental charged in accordance with agency procedures.

45.406 Use of Government production and research property on independent research and development programs.

The contracting officer cognizant of Government production and research property in the possession of a contractor may authorize a contractor to use the property on an independent research and development (IR&D) program, if—

(a) Such use will not conflict with the primary use of the property or enable the contractor to retain property that could otherwise be released;

(b) The contractor agrees not to include as a charge against any Government contract the rental value of the property used on its IR&D program; and

(c) A rental charge for the portion of the contractor's IR&D program cost allocated to commercial work, computed in accordance with 45.403, is deducted from any agreed-upon Government share of the contractor's IR&D costs.

45.407 Non-Government use of plant equipment.

Requirements for authorization and dollar thresholds for non-Government use of specific types of plant equipment shall be set at the agency level. The following general policies and requirements shall be used by agencies in supplementing this section:

(a) The contracting officer's advance written approval shall be required for any non-Government use of active plant equipment. Before authorizing non-Government use exceeding 25 percent, the contracting officer shall obtain approval of the head (or designee) of the agency that awarded the contract to which the property is accountable.

(b) The approvals under paragraph (a) above may be granted only when it is in the Government's interest—

(1) To keep the equipment in a high state of operational readiness through regular use;

(2) Because substantial savings to the Government would accrue through overhead cost-sharing and receipt of rental; or

(3) To avoid an inequity to a contractor who is required by the Government to retain the equipment in place.

(c) If the contractor's request for non-Government use in excess of 25 percent is approved, the contracting officer may require the contractor to insure the property against loss or damage. Facilities contracts may be modified to require such insurance.

SUBPART 45.5—MANAGEMENT OF GOVERNMENT PROPERTY IN THE POSSESSION OF CONTRACTORS

45.500 Scope of subpart.

This subpart prescribes the minimum requirements contractors must meet in establishing and maintaining control over Government property. It applies to contractors organized for profit and, except as otherwise noted, to non-profit organizations. In order for the special requirements in this subpart governing nonprofit organizations to apply, the contract must identify the contractor as a nonprofit organization. If there is any inconsistency between this subpart and the terms of the contract under which the Government property is provided, the terms of the contract shall govern.

45.501 Definitions.

"Accessory item," as used in this subpart, means an item that facilitates or enhances the operation of plant equipment but which is not essential for its operation.

"Agency-peculiar property" (see 45.301).

"Auxiliary item," as used in this subpart, means an item without which the basic unit of plant equipment cannot operate.

"Contractor-acquired property" (see 45.101).

"Custodial records," as used in this subpart, means written memoranda of any kind, such as requisitions, issue hand receipts, tool checks, and stock record books, used to control items issued from tool cribs, tool rooms, and stockrooms.

"Discrepancies incident to shipment," as used in this subpart, means all deficiencies incident to shipment of Government property to or from a contractor's facility whereby differences exist between the property purported to have been shipped and property actually received. Such deficiencies include loss, damage, destruction, improper status and condition coding, errors in identity or classification, and improper consignment.

"Facilities" (see 45.301).

"Government-furnished property" (see 45.101).

"Government property" (see 45.101).

"Individual item record," as used in this subpart, means a separate card, form, document or specific line(s) of computer data used to account for one item of property.

"Material" (see 45.301).

"Nonprofit organization" (see 45.301).

"Plant equipment" (see 45.101).

"Property administrator," as used in this subpart, means an authorized representative of the contracting officer assigned to administer the contract requirements and obligations relating to Government property.

"Real property" (see 45.101).

"Salvage," as used in this subpart, means property that, because of its worn, damaged, deteriorated, or incomplete condition or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs, but has some value in excess of its scrap value.

"Scrap," as used in this subpart, means personal property that has no value except for its basic material content.

"Special test equipment" (see 45.101).

"Special tooling" (see 45.101).

"Stock record," as used in this subpart, means a perpetual inventory record which shows by nomenclature the quantities of each item received and issued and the balance on hand.

"Utility distribution system," as used in this subpart, includes distribution and transmission lines, substations, or installed equipment forming an integral part of the system by which gas, water, steam, electricity, sewerage, or other utility services are transmitted between the outside building or structure in which the services are used and the point of origin, disposal, or connection with some other system. It does not include communication services.

"Work-in-process," as used in this subpart, means material that has been released to manufacturing, engineering, design or other services under the contract and includes undelivered manufactured parts, assemblies, and products, either complete or incomplete.

45.502 Contractor responsibility.

(a) The contractor is directly responsible and accountable for all Government property in accordance with the provisions of the contract. This includes Government property in the possession or control of a subcontractor. The contractor shall establish and maintain a system in accordance with this subpart to control, protect, preserve, and maintain all Government property. This property control system shall be in writing unless the property administrator determines that maintaining a written system is unnecessary. The system shall be reviewed and, if satisfactory, approved in writing by the property administrator.

(b) The contractor shall maintain and make available the records required by this subpart and account for all Government property until relieved of that responsibility. The contractor shall furnish all necessary data to substantiate any request for relief from responsibility.

(c) (1) The contractor shall be responsible for the control of Government property under this Subpart 45.5 upon—

(i) Delivery of Government-furnished property into its custody or control;

(ii) Delivery, when property is purchased by the contractor and the contract calls for reimbursement by the Government (this requirement does not alter or modify contractual requirements relating to passage of title);

(iii) Approval of its claim for reimbursement by the Government or upon issuance for use in contract performance, whichever is earlier, of property withdrawn from contractor-owned stores and charged directly to the contract; or

(iv) Acceptance of title by the Government when title is acquired pursuant to specific contract clauses or as a result of change orders or contract termination.

(2) Property to which the Government has acquired a lien or title solely as a result of advance, progress, or partial payments is not subject to the requirements of this subpart.

(d) The contractor shall require subcontractors provided Government property under the prime contract to comply with the requirements of this subpart. Procedures for assuring subcontractor compliance shall be included in the contractor's property control system. Where the property administrator assigned to the contract has requested supporting property administration from another contract administration office, the contractor may accept the system approval of the supporting property administrator instead of performing duplicative actions to assure the subcontractor's compliance.

(e) If the property administrator finds any portion of the contractor's property control system to be inadequate, the contractor must take any necessary corrective action before the system can be approved. If the contractor and property administrator cannot agree regarding the adequacy of control and corrective action, the matter shall be referred to the contracting officer.

(f) When Government property (excluding misdirected shipments, see 45.505-12) is disclosed to be in the possession or control of the contractor but not provided under any contract, the contractor shall promptly (1) record such property according to the established property control procedure and (2) furnish to the property administrator all known circumstances and data pertaining to its receipt and a statement as to whether there is a need for its retention.

(g) The contractor shall promptly report all Government property in excess of the amounts needed to complete full performance under the contracts providing it or authorizing its use.

(h) When unrecorded Government property is found, both the cause of the discrepancy and actions taken or needed to prevent recurrence shall be determined and reported to the property administrator.

45.502-1 Receipts for Government property.

The contractor shall furnish written receipts for all or specified classes of Government property only when the property administrator deems it essential for maintaining minimum acceptable property controls. If evidence of receipt is required for contractor-acquired property, the contractor shall provide it before submitting its request for payment for the property. For Government-furnished property, the contractor shall provide the required receipt immediately upon receipt of the property.

45.502-2 Discrepancies incident to shipment.

(a) *Government-furnished property.* If overages, shortages, or damages are discovered upon receipt of Government-furnished property, the contractor shall provide a statement of the condition and apparent causes to the property administrator and to other activities specified in the approved property control system. Only that quantity of property actually received will be recorded on the official records.

(b) *Contractor-acquired property.* The contractor shall take all actions necessary in adjusting overages, shortages, or damages in shipment of contractor-acquired property from a vendor or supplier. However, when the shipment has moved by Government bill of lading and carrier liability is indicated, the contractor shall report the

discrepancy in accordance with paragraph (a) above.

45.503 Relief from responsibility.

(a) Unless the contract or contracting officer provides otherwise, the contractor shall be relieved of property control responsibility for Government property by—

(1) Reasonable and proper consumption of property in the performance of the contract as determined by the property administrator;

(2) Retention by the contractor, with the approval of the contracting officer, of property for which the Government has received consideration;

(3) The authorized sale of property, provided the proceeds are received by or credited to the Government;

(4) Shipment from the contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the contractor; or

(5) A determination by the contracting officer of the contractor's liability for any property that is lost, damaged, destroyed, or consumed in excess of that normally anticipated in a manufacturing or processing operation, if—

(i) The determination is furnished to the contractor in writing;

(ii) The Government is reimbursed where required by the determination; and

(iii) Property rendered unserviceable by damage is properly disposed of, and the determination is cross-referenced to the shipping or other documents evidencing disposal.

(b) Nonprofit organizations are relieved of responsibility for Government property when title to the property is transferred to the contractor (see 35.014).

45.504 Contractor's liability.

(a) Subject to the terms of the contract and the circumstances surrounding the particular case, the contractor may be liable for shortages, loss, damages, or destruction of Government property. The contractor may also be liable when the use or consumption of Government property unreasonably exceeds the allowances provided for by the contract, the bill of material, or other appropriate criteria.

(b) The contractor shall investigate and report to the property administrator all cases of loss, damage, or destruction of Government property in its possession or control as soon as the facts become known or when requested by the property administrator. A report shall also be furnished when completed and accepted products or end items are lost, damaged, or destroyed while in the contractor's possession or control.

(c) The contractor shall require any of its subcontractors possessing or controlling Government property accountable under the contract to investigate and report all instances of loss, damage, or destruction of such property.

45.505 Records and reports of Government property.

(a) The contractor's property control records shall constitute the Government's official property records unless an exception has been authorized. The contractor shall establish and maintain adequate control records for all Government property, including property provided to and in the possession or control of a subcontractor. The property control records specified in this section are the minimum required by the Government. Unless the property administrator directs otherwise, when a subcontractor has an approved property control system for Government property provided under its own prime contracts, the contractor shall use the records created and maintained under that system.

(b) The contractor's property control system shall provide financial accounts for Government-owned property in the contractor's possession or control. The system shall be subject to internal control standards and be supported by property records for such property.

(c) Official Government property records must identify all Government property and provide a complete, current, auditable record of all transactions. The records shall be safeguarded from tampering or destruction. Records shall be accessible to authorized Government personnel.

(d) Separate property records for each contract are desirable, but a consolidated property record may be maintained if it provides the required information.

(e) Special tooling and special test equipment fabricated from materials that are the property of the Government shall be recorded as Government-owned immediately upon fabrication. Special tooling and special test equipment fabricated from materials that are the property of the contractor shall be recorded as Government property at the time title passes to the Government.

(f) Property records of the type established for components acquired separately shall be used for serviceable components permanently removed from items of Government property as a result of modification.

(g) The contractor's property control system shall contain a system or technique to locate any item of Government property within a reasonable period of time.

45.505-1 Basic information.

Unless summary records are used as authorized under 45.505-5(a), the contractor's property control records shall provide the following basic information for every item of Government property in the contractor's possession, regardless of value (other subsections of 45.505 require additional information for specific categories of Government property):

(a) The name, description, and National Stock Number (if furnished by the Government or available in the property control system).

(b) Quantity received (or fabricated), issued, and on hand.

(c) Unit price (and unit of measure).

(d) Contract number or equivalent code designation.

(e) Location.

(f) Disposition.

(g) Posting reference and date of transaction.

45.505-2 Records of pricing information.

(a) *Requirement for unit prices.* (1) The contractor's property control system shall contain the unit price for each item of Government property except as provided in (b) below. When a contractor records the unit price of property on other than the quantitative inventory records, those supplementary records shall become part of the official Government property records.

(2) *(Note: This subparagraph (2) does not apply to nonprofit organizations.)* The requirement that unit prices be contained in the official Government property records does not apply to those separate property records located at a contractor's secondary sites and subcontractor plants; *provided*, that—

(i) Records maintained by the prime contractor at its primary site include unit prices; and

(ii) The prime contractor agrees to furnish actual or estimated unit prices to the secondary site or subcontractor as the need arises.

(3) When definite information as to unit price cannot be obtained, reasonable estimates will be used.

(b) *Determining unit price.* (1) *Contractor-acquired and contractor-fabricated property.* Except for items fabricated by nonprofit organizations for research and development purposes, the unit price of contractor-acquired and contractor-fabricated property shall be determined in accordance with the

system established by the contractor in conformance with consistently applied sound accounting principles. Generally, separate unit prices should be applied to items of special tooling and special test equipment fabricated or acquired by the contractor. However, if the contractor's accounting system is acceptable, and if maintaining detailed cost records results in excessive accounting cost or is otherwise impracticable, group pricing may be used for special tooling, special test equipment, and work-in-process in accordance with the contractor's acceptable cost accounting system. All processed material, fabricated parts, components, and assemblies charged to the contractor's work-in-process inventory, including items in temporary storage while awaiting processing, may be considered as work-in-process for this purpose.

(2) *Government-furnished property.* The Government shall determine and furnish to the contractor the unit price of Government-furnished property. Transportation and installation costs shall not generally be considered as part of the unit price for this purpose. Normally, the unit price of Government-furnished property will be provided on the document covering shipment of the property to the contractor. In the event the unit price is not provided on the document, the contractor will take action to obtain the information.

45.505-3 Records of material.

(a) *General.* All Government material furnished to the contractor, as well as other material to which title has passed to the Government by reason of allocation from contractor-owned stores or purchase by the contractor for direct charge to a Government contract or otherwise, shall be recorded in accordance with the contractor's property control system and the requirements of this section.

(b) *Consolidated stock record.* When a contractor has more than one Government contract under which Government material is provided, a consolidated record for materials may be authorized by the property administrator, *provided*, the total quantity of any item is allocated to each contract by contract number and each requisition of material from contractor-owned stores is charged to the contract on which the material is to be used. The supporting document or issue slip shall show the contract number or equivalent code designation to which the issue is charged.

(c) *Custodial records.* The contractor shall maintain custodial records for tool crib items, guard force items, protective clothing, and other items issued to individuals for use in their work.

(d) *Use of receipt and issue documents. (Note: This paragraph (d) does not apply to nonprofit organizations.)* The property administrator may authorize the contractor to maintain, in lieu of stock records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of Government-provided material that is issued for immediate consumption and is not entered in the inventory record as a matter of sound business practice. This method of control may be authorized for—

(1) Material charged through overhead;

(2) Material under research and development contracts;

(3) Subcontracted or outside production items;

(4) Nonstock or special items;

(5) Items that are produced for direct charge to a contract, or are acquired and issued for installation upon receipt, and involve no spoilage; and

(6) Items issued from contractor-owned inventory direct to production or maintenance, etc.

(e) *Material issued directly upon receipt. (Note: This paragraph (e) applies only to nonprofit organizations.)*

(1) Under fixed-price contracts, the contractor's documents evidencing receipt and issue will be accepted as property control records for Government-furnished material issued directly by the contractor upon receipt so as to be considered consumed under the contract.

(2) Under cost-reimbursement contracts, Government invoices, contractor's purchase documents, or other evidence of acquisition and issue will be accepted as adequate property records for material furnished to or acquired by the contractor and issued directly so as to be considered consumed under the contract.

(f) *Multicontract cost and material control. (Note: This paragraph (f) does not apply to nonprofit organizations.)*

(1) *Description and scope.* A multicontract cost and material control system substitutes a system of financial accounting for the requirements for physical identification of Government material. The system operates as follows:

(i) The contractor may acquire, requisition, receive, store, and issue like items of material for the total requirements of all contracts involved in the system without identifying the material to each contract.

(ii) The contractor may commingle, during any stage of contract performance, Government-owned and contractor-owned material and work-in-process that was furnished, acquired, or produced for all Government contracts covered by the system, without physical segregation or identification to the individual contracts.

(iii) In lieu of physical segregation and identification to individual contracts, periodic calculation of requirements and distribution of costs to all contracts permits the allocation of costs of material to products delivered. This system, by reflecting the material expended to perform each contract at any stage in production, permits usage analysis to determine the reasonableness of consumption and expenditure of Government material.

(iv) The system may include all Government contracts of any type that involve common repetitive operations.

(v) The system does not require commingling of all common materials under all contracts. For example, items of Government-furnished material of high value or in short supply may be excluded from commingling and reserved for use in performing the contract under which furnished.

(vi) The contractor shall take physical inventories of material in stores included in the systems (other than work-in-process) at least annually, extend and reconcile prices to the quantitative balance for each item, and record adjustments in the stock record and financial inventory control accounts. Such physical inventories and adjustments, as well as equitable distribution to cost accounts of any inventory losses, shall be reviewed by and are subject to the approval of the property administrator.

(2) *Criteria.* A multicontract cost and material control system may be authorized if—

(i) The contractor demonstrates that adopting the system will result in savings or improved operations or that it will otherwise be in the Government's interest;

(ii) The system is applied to existing Government contracts only and excludes materials acquired or costs incurred for non-Government work or in anticipation of future Government work; and

(iii) The contractor's accounting system is adequate to—

(A) Provide on a complete and timely basis a clear "audit trail" from costs of materials acquired for each contract to materials used or disposed of on each contract;

(B) Reflect separately for Government-furnished and contractor-acquired material in stores (except work-in-process) the inventory balances as affected by receipts, issues, adjustments, and other dispositions;

(C) Determine unit costs for each identifiable part, component, subassembly, assembly, end item, and contract item;

(D) Calculate amounts for cost reimbursements and progress payments during the life of the contract by applying or allocating such unit costs developed through each stage of work-in-process to contract items for the requirements of each contract; and

(E) Assure that when Government material furnished for use under one contract is authorized for use on another contract, the initial contract receives credit.

(3) *Authorization.* The administrative contracting officer may authorize a contractor who is performing or will perform more than one Government contract to use the multicontract cost and material control system. The property administrator shall approve whatever detailed operating procedures are necessary for each system authorized.

(4) *Requirement.* Whenever a multicontract cost and material control system is authorized, the contractor's financial accounts shall include all material in the system acquired or furnished for Government work and shall satisfy the requirements in subdivision (f)(2)(iii) of 45.505-3 above.

45.505-4 Records of special tooling and special test equipment.

(Note: The special tooling requirements of this subsection 45.505-4 do not apply to nonprofit organizations except for paragraph (c).)

(a) The contractor's property control system shall provide the basic information listed in 45.505-1 regarding each item of Government-owned special tooling and special test equipment, including any general purpose test equipment incorporated as components in such a manner that removal and reuse may be feasible and economical.

(b) If the contractor uses group pricing of special tooling or special test equipment, as recognized in 45.505-2(b), unit prices may be computed when required.

(c) In the case of special tooling acquired or fabricated by nonprofit organizations or furnished by the Government to nonprofit organizations for research and development, the Government invoices, contractor's purchase document, or other documents that evidence acquisition or issue will be accepted as adequate property control records.

(d) Records identifying special tooling and special test equipment shall include the identification number and item on which used.

(e) The contractor shall, when specified by the contract, identify and report special tooling and special test equipment by retention category (e.g., assembly tooling or critical tooling for spares or replacements).

45.505-5 Records of plant equipment.

(a) The contractor shall maintain individual item records for each item of plant equipment having a unit cost of $5,000 or more. Summary stock records may be maintained for plant equipment costing less than $5,000 per unit, except where the contract administration office determines that individual item records are necessary for effective control, calibration, or maintenance.

(b) In addition to the information required in 45.505-1, the contractor's records of Government-owned plant equipment, regardless of value, shall include—

(1) Federal Supply Code for the manufacturer (as listed in Cataloging Handbook H4-1 and H4-2) (available from the Superintendent of Documents, Government Printing Office (GPO), Washington, D.C. 20402);

(2) Federal Supply Classification (Cataloging Handbooks H2-1, H2-2, and H2-3) (available from GPO); and

(3) The original manufacturer's model or part number.

(c) For each item of Government-owned plant equipment having a unit cost of $5,000 or more, the contractor shall, in addition to the requirements of (b) above, include—

(1) Serial number and year built (when available);

(2) Government identification/tag number; and

(3) Acquisition and disposition document references and dates.

(d) The property administrator may determine that the information in (c)(1) and (2) above should be recorded in the property records for plant equipment costing less than $5,000.

(e) Accessory and auxiliary equipment shall be recorded on the record of the associated item of plant equipment. If the accessory or auxiliary item is not attached to, a part of, or acquired for use with a specific item of plant equipment, it shall be recorded either in an individual item record or in a summary stock record. When accessory and auxiliary items are permanently separated from the basic item of plant equipment, the unit price of the basic item shall be appropriately reduced.

45.505-6 Special reports of plant equipment.

An agency may set requirements for any special reports of plant equipment it determines necessary.

45.505-7 Records of real property.

(a) The contractor shall maintain an itemized record of the description, location, acquisition cost, and disposition of all Government real property (including unimproved real property); all alterations, all construction work, and sites connected with such alteration and construction, acquired by purchase, lease, or otherwise. These records, including maps, drawings, plans, specifications, and supplementary data where necessary, shall (1) be complete, (2) show the original cost of the property and improvements and the cost of any changes and additions, and (3) be appropriately indexed.

(b) Costs incurred by the contractor or the Government for new construction, including erection, installation, or assembly of Government real property in possession of the contractor, shall be capitalized in the official Government real property records and financial accounts maintained by the contractor for the Government.

(c) Costs incurred for additions, expansions, extensions, conversions, alterations, and improvements, including applicable portions of capital maintenance, that increase the value, life, utility, capability, or serviceability of Government real property shall be capitalized.

(d) Costs incurred for portable buildings or facilities specifically constructed for tests that involve destruction of the facility shall not be capitalized in the Government real property records or financial accounts.

(e) Costs incurred for maintenance, repair, or rearrangement to maintain the Government real property in good physical condition, utility, capacity, or serviceability shall be charged to expense, and the real property records shall not be affected.

(f) When Government-owned real property is sold, transferred, donated, destroyed by fire or other cause, abandoned-in-place, or condemned, the financial accounts shall be reduced by the presently recorded cost and the real property records annotated with a supporting statement, including pertinent facts.

45.505-8 Records of scrap or salvage.

(a) The contractor shall maintain records of all scrap or salvage generated, except as provided in 45.507. These records shall conform to the contractor's established system of scrap and salvage control approved by the property administrator.

(b) The contractor's property control system shall provide the following information:

(1) Contract number, if practical, or equivalent code designation from which the scrap or salvage derived.

(2) Nomenclature or description of salvable items or classification (material content) of scrap.

(3) Quantity on hand.

(4) Posting reference and date of transaction.

(5) Disposition.

45.505-9 Records of related data and information.

The contractor shall maintain property control and accountability, in accordance with sound business practice, of manufacturing or assembly drawings; installation, operation, repair, or maintenance instructions; and other similar information furnished to the contractor by the Government or generated or acquired by the contractor under the contract and for which title vests in the Government. The requirements of this subpart do not otherwise apply to such property.

45.505-10 Records of completed products.

The contractor shall maintain a record of all completed products produced under a contract as follows:

(a) When there is no time lapse between Government inspection and acceptance of the completed products and shipment from the plant site, the records shall, as a minimum, consist of a summary of quantities accepted and shipped. When end items are accepted by the Government and stored with the contractor awaiting shipment, the record shall identify quantities stored, location, and disposition action.

(b) On contracts that provide for the contractor to retain completed products for further use under the contract or other contracts, such items shall be considered "Government-furnished property" upon acceptance and shall be recorded as required by this subpart.

(c) When completed products are returned to a contractor under the terms of a warranty clause, the contractor shall maintain, by contract, a record containing a description of the items involved, quantities received and returned to the Government, and other pertinent data necessary to determine that a proper accounting for all property has been made.

45.505-11 Records of transportation and installation costs of plant equipment.

(Note: This subsection 45.505-11 does not apply to nonprofit organizations.)

(a) *Transportation costs.* (1) The contractor shall record within the property control system the transportation and installation costs directly borne by the Government for each item of Government-owned plant equipment with an acquisition cost of $5,000 or more. The administrative contracting officer may require the contractor to provide such recorded costs for use in computing rental charges.

(2) If transportation costs are not included in the price of equipment delivered, the contractor shall contact the property administrator for instructions for obtaining applicable freight data.

(b) *Installation costs.* (1) When the contractor performs installation, the cost shall be computed in accordance with the contractor's accounting system (if the system is acceptable for other contract cost determination purposes) and recorded in the property record.

(2) When installation is subcontracted, the contractor shall record the cost paid to the subcontractor in the property record.

(3) When installation costs are included in the price of equipment delivered to the using location, the property records should be so annotated.

45.505-12 Records of misdirected shipments.

The contractor's property control system shall provide the following information regarding each misdirected shipment of Government property received:

(a) Identity of shipment, such as shipping document or bill of lading.

(b) Origin of shipment.

(c) Content (items in the shipment) per shipping documents, if available.

(d) Location.

(e) Disposition.

45.505-13 Records of property returned for rework.

(a) The contractor shall maintain quantitative records of property returned for processing to assure control from time of receipt through return of the items to the Government. The contractor shall establish item records under its property control system and shall include the information required in 45.505-1.

(b) The records shall specify the quantity of units returned to the Government and the quantity otherwise disposed of with proper authority.

45.505-14 Reports of Government property.

(a) The contractor's property control system should provide annually the total acquisition cost of Government property for which the contractor is accountable under each contract with each agency, including Government property at subcontractor plants and alternate locations, in the following classifications (property classifications may be varied to meet individual agency needs):

(1) Land and rights therein.

(2) Other real property, including utility distribution systems, buildings, structures, and improvements thereto.

(3) Plant equipment of $5,000 or more.

(4) Plant equipment of less than $5,000.

(b) The contractor shall report the information under paragraph (a) as directed by the contracting officer.

45.506 Identification.

(a) The contractor shall identify, mark, and record all Government property promptly upon receipt, unless exempted by this section, and shall record assigned numbers on all applicable documents pertaining to the property control system. Markings shall be removed or obliterated when Government property is sold, scrapped, or donated.

(b) All Government material and plant equipment having an acquisition cost less than $5,000 shall be identified as Government property except in those cases where—

(1) No material or plant equipment of the same type costing less than $5,000 at the same location is owned by the contractor, its employees, or other contracting agencies;

(2) Adequate physical control is maintained over protective clothing, tool crib, guard force, and other items issued to individuals for use in their work;

(3) Property is of bulk type, or its general nature of packing or handling precludes adequate marking; or

(4) Property is commingled, as authorized by 45.507.

(c) In accordance with procedures approved by the property administrator, the contractor shall mark Government-owned special tooling and special test equipment with a serial number and the identity of the agency owning the property. If marking will damage the equipment or is otherwise impracticable, the contractor shall promptly report the problem to the property administrator. The contractor shall mark in a manner similar to plant equipment all

components of special test equipment that have an acquisition cost of $5,000 or more and are incorporated in a manner that makes removal and reutilization feasible and economical.

(d) The contractor shall identify Government-owned plant equipment as such, unless (1) summary records are used as authorized under 45.505-5(a), (2) it is excluded under 45.506(b), or (3) when the size or nature of the equipment makes identification impracticable. (Excepted items shall be entered and described on the equipment property record.) Property shall be identified by a legible, permanent, conspicuous, and tamper-proof method (e.g., decals, plates, stamping, etc.). Identification shall consist of a serial number and an indication of Government ownership (unless already properly identified as Government property). For items included in a standard agency registration system, registration numbers obtained from the owning agency through the property administrator may be used in lieu of other identification numbers.

(e) Accessory or auxiliary equipment associated with a specific item of plant equipment and recorded on the property records need not be marked with an identification number, unless necessary to assure its return with the associated basic item.

45.507 Segregation of Government property.

Government property shall be kept physically separate from contractor-owned property. However, when advantageous to the Government and consistent with the contractor's authority to use such property, the property may be commingled—

(a) When the Government property is special tooling, special test equipment, or plant equipment clearly identified and recorded as Government property;

(b) When approved by the property administrator in connection with research and development contracts;

(c) When material is included in a multicontract cost and material control system (however, see 45.505-3(f));

(d) When (1) scrap of a uniform nature is produced from both Government-owned and contractor-owned material and physical segregation is impracticable, (2) scrap produced from Government-owned material is insignificant in consideration of the cost of segregation and control, or (3) Government contracts involved are fixed-price and provide for the retention of the scrap by the contractor; or

(e) When otherwise approved by the property administrator.

45.508 Physical inventories.

The contractor shall periodically physically inventory all Government property (except materials issued from stock for manufacturing, research, design, or other services required by the contract) in its possession or control and shall cause subcontractors to do likewise. Physical inventories consist of sighting, tagging or marking, describing, recording, reporting, and reconciling the property with the records. The contractor, with the approval of the property administrator, shall establish the type, frequency, and procedures. Type and frequency of inventory should be based on the contractor's established practices, the type and use of the Government property involved, or the amount of Government property involved and its monetary value, and the reliability of the contractor's property control system. Type and frequency of physical inventories normally will not vary between contracts being performed by the contractor, but may vary with the types of property being controlled. Personnel who perform the physical inventory shall not be the same individuals who maintain the property records or have custody of the property unless the contractor's operation is too small to do otherwise.

45.508-1 Inventories upon termination or completion.

(a) *General.* Immediately upon termination or completion of a contract, the contractor shall perform and cause each subcontractor to perform a physical inventory, adequate for disposal purposes, of all Government property applicable to the contract, unless the requirement is waived as provided in paragraph (b) below.

(b) *Exception.* The requirement for physical inventory at the completion of a contract may be waived by the property administrator when the property is authorized for use on a follow-on contract; *provided*, that—

(1) Experience has established the adequacy of property controls and an acceptable degree of inventory discrepancies; and

(2) The contractor provides a statement indicating that record balances have been transferred in lieu of preparing a formal inventory list and that the contractor accepts responsibility and accountability for those balances under the terms of the follow-on contract.

(c) *Listings for disposal purposes.* (Note: This paragraph (c) applies only to nonprofit organizations.)

(1) Standard items that have been modified may be described on listings for disposal purposes as standard items with a general description of the modification.

(2) Items that have been fabricated, such as test equipment, shall be described in sufficient detail to permit a potential user to determine whether they are of sufficient interest to warrant further inspection.

45.508-2 Reporting results of inventories.

The contractor shall, as a minimum, submit the following to the property administrator promptly after completing the physical inventory:

(a) A listing that identifies all discrepancies disclosed by a physical inventory.

(b) A signed statement that physical inventory of all or certain classes of Government property was completed on a given date and that the official property records were found to be in agreement except for discrepancies reported.

45.508-3 Quantitative and monetary control.

When requested by the contracting officer, the contractor's reports of results of physical inventory shall be prepared on a quantitative and monetary basis and segregated by categories of property.

45.509 Care, maintenance, and use.

The contractor shall be responsible for the proper care, maintenance, and use of Government property in its possession or control from the time of receipt until properly relieved of responsibility, in accordance with sound industrial practice and the terms of the contract. The removal of Government property to storage, or its contemplated transfer, does not relieve the contractor of these responsibilities.

45.509-1 Contractor's maintenance program.

(a) Consistent with the terms of the contract, the contractor's maintenance program shall provide for—

(1) Disclosure of need for and the performance of preventive maintenance;

(2) Disclosure and reporting of need for capital rehabilitation; and

(3) Recording of work accomplished under the program.

(b) Preventive maintenance is maintenance performed on a regularly scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences. An effective preventive maintenance program shall include at least—

(1) Inspection of buildings at periodic intervals to assure detection of deterioration and the need for repairs;

(2) Inspection of plant equipment at periodic intervals to assure detection of maladjustment, wear, or impending breakdown;

(3) Regular lubrication of bearings and moving parts in accordance with a lubrication plan;

(4) Adjustments for wear, repair, or replacement of worn or damaged parts and the elimination of causes of deterioration;

(5) Removal of sludge, chips, and cutting oils from equipment that will not be used for a period of time;

(6) Taking necessary precautions to prevent deterioration caused by contamination, corrosion, and other substances; and

(7) Proper storage and preservation of accessories and special tools furnished with an item of plant equipment but not regularly used with it.

(c) The contractor's maintenance program shall provide for disclosing and reporting the need for major repair, replacement, and other capital rehabilitation work for Government property in its possession or control.

(d) The contractor shall keep records of maintenance actions performed and any deficiencies in the Government property discovered as a result of inspections.

45.509-2 Use of Government property.

(a) The contractor's procedures shall be in writing and adequate (1) to assure that Government property will be used only for those purposes authorized in the contract and that any required approvals will be obtained, and (2) to provide a basis for determining and allocating rental charges.

(b) The procedures shall—

(1) Establish a minimum level of use below which an analysis of need shall be made and retention justified, except for inactive package plants and standby lines (the use level may be established for individual items or families of items, depending upon circumstances of use);

(2) Provide for recording authorized and actual use consistent with the established use levels;

(3) Require periodic analyses of production needs for plant equipment utilization based upon known requirements; and

(4) Provide for prompt reporting to the contracting officer of all plant equipment for which retention is not justified.

45.510 Property in possession of subcontractors.

The contractor shall require any of its subcontractors possessing or controlling Government property to adequately care for and maintain that property and assure that it is used only as authorized by the contract. The contractor's approved property control system shall include procedures necessary for accomplishing this responsibility.

45.511 Audit of property control system.

The Government may audit the contractor's property control system as frequently as conditions warrant. These audits may take place at any time during contract performance, upon contract completion or termination, or at any time thereafter during the period the contractor is required to retain such records. The contractor shall make all such records and related correspondence available to the auditors.

SUBPART 45.6—REPORTING, REDISTRIBUTION, AND DISPOSAL OF CONTRACTOR INVENTORY

45.600 Scope of subpart.

This subpart establishes policies and procedures for the reporting, redistribution, and disposal of Government property excess to contracts and of property that forms the basis of a claim against the Government (e.g., termination inventory under fixed-price contracts). This subpart does not apply to the disposal of real property or to property for which the Government has a lien or title solely as a result of advance or progress payments that have been liquidated.

45.601 Definitions.

"Common item," as used in this subpart, means material that is common to the applicable Government contract and the contractor's other work.

"Contractor-acquired property" (see 45.101).

"Contractor inventory," as used in this subpart, means—

(a) Any property acquired by and in the possession of a contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;

(b) Any property that the Government is obligated or has the option to take over under any type of contract as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(c) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

"Government-furnished property" (see 45.101).

"Government property" (see 45.101).

"Line item," as used in this subpart, means a single line entry on a reporting form that indicates a quantity of property having the same description and condition code from any one contract at any one reporting location.

"Personal property," as used in this subpart, means property of any kind or interest in it except real property, records of the Federal Government, and naval vessels of the following categories: battleships, cruisers, aircraft carriers, destroyers, and submarines.

"Plant clearance," as used in this subpart, means all actions relating to the screening, redistribution, and disposal of contractor inventory from a contractor's plant or work site. The term "contractor's plant" includes a contractor-operated Government facility.

"Plant clearance officer," as used in this subpart, means an authorized representative of the contracting officer assigned responsibility for plant clearance.

"Plant clearance period," as used in this subpart, means the period beginning on the effective date of contract completion or termination and ending 90 days (or such longer period as may be agreed to) after receipt by the contracting officer of acceptable inventory schedules for each property classification. The final phase of the plant clearance period means that period after receipt of acceptable inventory schedules.

"Plant equipment" (see 45.101).

"Precious metals," as used in this subpart, means uncommon and highly valuable metals characterized by their superior resistance to corrosion and oxidation. Included are silver, gold, and the platinum group metals—platinum, palladium, iridium, osmium, rhodium, and ruthenium.

"Property administrator" (see 45.501).

"Public body" means any State, Territory, or possession of the United States, any political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, any agency or instrumentality of any of the foregoing, any Indian tribe, or any agency of the Federal Government.

"Real property" (see 45.101).

"Reportable property," as used in this subpart, means contractor inventory

that must be reported for screening in accordance with this subpart before disposition as surplus.

"Reporting activity," as used in this subpart, means the Government activity that initiates the Standard Form 120, Report of Excess Personal Property (or when acceptable to GSA, by data processing output).

"Salvage" (see 45.501).

"Scrap" (see 45.501).

"Screening completion date," as used in this subpart, means the date on which all screening required by this subpart is to be completed. It includes screening within the Government and the donation screening period.

"Serviceable or usable property," as used in this subpart, means property that has a reasonable prospect of use or sale either in its existing form or after minor repairs or alterations.

"Special test equipment" (see 45.101).

"Special tooling" (see 45.101).

"Surplus property," as used in this subpart, means contractor inventory not required by any Federal agency.

"Surplus Release Date (SRD)," as used in this subpart, means the date on which screening of personal property for Federal use is completed and the property is not needed for any Federal use. On that date, property becomes surplus and is eligible for donation.

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

"Work-in-process" (see 45.501).

45.602 Reserved.

45.603 Disposal methods.

An agency may exercise its rights to require delivery of any contractor inventory. If the agency does not exercise these rights, the contractor inventory shall be disposed of by one of the following methods in the priority indicated:

(a) Purchase or retention at cost by prime contractor or subcontractor of contractor-acquired property (see 45.605-1).

(b) Return of contractor-acquired property to suppliers (see 45.605-2).

(c) Use within the Government through the use of prescribed screening procedures (see 45.608).

(d) Donation to eligible donees (see 45.609).

(e) Sale (including purchase or retention at less than cost by the prime contractor or subcontractor)(see 45.610).

(f) Donation to public bodies in lieu of abandonment (see 45.611).

(g) Abandonment or destruction (see 45.611).

45.604 Restrictions on purchase or retention of contractor inventory.

A contractor's or subcontractor's authority to purchase, retain, or dispose of contractor inventory is subject to any contract provisions and to applicable Government restrictions on the disposition of property that is classified for security reasons, possesses military offensive or defensive characteristics, or is dangerous to public health, safety, or welfare.

45.605 Contractor-acquired property.

45.605-1 Purchase or retention at cost.

(a) The plant clearance officer shall encourage contractors to purchase or retain contractor-acquired property at cost. However, the contractor shall not include any part of the cost of property purchased or retained in any claim for reimbursement against the Government. Under cost-reimbursement contracts, appropriate adjustments shall be made for previously reimbursed costs. When the property is for use on a continuing Government contract or commercial operation, handling and transportation charges may be considered an allowable cost (included in the contractor's settlement proposal as "other costs" in the case of a termination), provided that the charges are reasonable.

(b) If a contractor purchases or retains contractor inventory for use on a continuing Government contract that is subsequently terminated, the property shall be allocated to the continuing contract, even though its purchase would otherwise constitute undue anticipation of production schedules. If, as a result of the purchase or retention of property from a terminated contract for use on other Government contracts, the contractor terminates subcontracts under the other Government contracts, reasonable termination charges of the subcontracts may be included as an allocable cost under the contract that generated the excess property.

45.605-2 Return to suppliers.

The plant clearance officer shall encourage contractors to return allocable quantities of contractor-acquired property to suppliers for full credit less either the supplier's normal restocking charge or 25 percent of the cost, whichever is less. Contractors may be reimbursed for reasonable transportation, handling, and restocking charges, but not for the cost of the returned property. Under cost-reimbursement contracts, appropriate adjustments shall be made for costs previously reimbursed.

45.605-3 Cost-reimbursement contracts.

Under cost-reimbursement contracts, property purchased or retained by the contractor or returned to suppliers shall not be reported on inventory schedules. The cognizant contract administration office, in coordination with the cognizant auditor, shall periodically review such transactions to protect the Government's interests.

45.606 Inventory schedules.

45.606-1 Submission.

(a) When property is no longer needed to perform the contract, the contractor shall prepare inventory schedules in accordance with the contract and instructions from the plant clearance officer and shall promptly submit the schedules to the cognizant contract administration office. Detailed instructions and requirements governing preparing and submitting inventory schedules are contained in 45.606-5. Agencies may use special inventory schedules for intra-agency screening of particular categories of contractor inventory (e.g., plant equipment of $5,000 or more). Such schedules may also be used for screening with other Federal agencies after coordination with GSA.

(b) The certificate on the inventory schedule (which tenders title to the property) must be executed when contractor inventory is reported. The prime contractor shall execute this certificate, except that for subcontractor termination inventory the subcontractor shall execute the certificate.

45.606-2 Common items.

The contractor's inventory schedules shall not include any items that the contractor can reasonably use on other work without financial loss. However, the schedules shall include common items specified by the contracting officer for delivery to the Government or which are Government-furnished property.

45.606-3 Acceptance.

(a) Within 15 days after receipt of inventory schedules, the plant clearance officer shall review them, determine their acceptability, and request the contractor to correct any inadequate listings. Inventory schedules should not be rejected if the information is adequate for disposal purposes, even if complete cost data on work-in-process

are not available. Rejection shall be limited, when possible, to specific items and shall not necessarily render the entire schedule unacceptable. If substantial errors are discovered that were not apparent on termination inventory schedules previously found acceptable, the final phase of a plant clearance period shall not begin until corrected schedules have been submitted, unless the plant clearance officer determines otherwise.

(b) The plant clearance officer, with the assistance of other Government personnel as necessary, shall verify that (1) the inventory is present at the location indicated, (2) the inventory is allocable to the contract, (3) the quantity and condition are correctly stated, and (4) the contractor has endeavored to divert items to other work or to return contractor-acquired property to the supplier for appropriate credit. The verification may be recorded on SF 1423, Inventory Verification Survey. The plant clearance officer shall require the contractor to promptly correct any discrepancies on the inventory schedule or resubmit the schedule as necessary.

45.606-4 Withdrawals.

If, before final disposition, the contractor becomes aware that any items of contractor-acquired property listed in the inventory schedules are usable on other work without financial loss, the contractor shall purchase the items or retain them at cost and amend the inventory schedules and claim accordingly. Upon notifying the plant clearance officer, the contractor may purchase or retain at cost any other items of property included in the inventory schedules. Withdrawal of any Government-furnished property is subject to the written approval of the plant clearance officer. If withdrawal is requested after screening has started, the plant clearance officer shall notify immediately the appropriate screening activity.

45.606-5 Instructions for preparing and submitting schedules of contractor inventory.

(a) *Use of forms.* The contractor shall report contractor inventory on the following forms, as appropriate.

(1) *Standard Form 1426, Inventory Schedule A (Metals in Mill Product Form) and SF 1427, Inventory Schedule A - Continuation Sheet.* These forms are to be used to list metals in raw or primary form as furnished by the mill and on which there has been no subsequent fabricating operations. They are also to be used for listing nonmetallic materials, such as plastics, rubber, or lumber, in mill product form. They are not to be used for listing castings or forgings, which shall be reported on SF 1428.

(2) *Standard Form 1428, Inventory Schedule B and SF 1429, Inventory Schedule B - Continuation Sheet.* These forms are to be used to list all contractor inventory (including plant equipment) for which Standard Forms 1426, 1430, 1432, or 1434 are not appropriate. However, agencies may direct listing of particular categories of plant equipment on agency forms when standard forms are not appropriate. (See 45.505-6 and 45.606-1(a).)

(3) *Standard Form 1430, Inventory Schedule C (Work in Process) and SF 1431, Inventory Schedule C - Continuation Sheet.* These forms are to be used to list all work in process.

(4) *Standard Form 1432, Inventory Schedule D (Special Tooling and Special Test Equipment) and SF 1433, Inventory Schedule D - Continuation Sheet.* These forms are to be used to list such contractor inventory as dies, jigs, gauges, fixtures, special tools, and special test equipment.

(5) *Standard Form 1434, Termination Inventory Schedule E.* This is a short form to be used with SF 1438, Settlement Proposal (Short Form). Applicability is limited to termination settlement proposals under $10,000.

(b) *Submission.*

(1) Contractors shall report contractor inventory promptly after determining it to be excess, unless a later date is authorized by the contract or the plant clearance officer.

(2) Unless contract provisions or agency regulations prescribe otherwise, 12 copies of inventory schedules listing serviceable or salvable items and 6 copies of inventory schedules listing scrap items shall be presented to the plant clearance officer at the cognizant contract administration office.

(3) The standard inventory schedule forms may be reproduced by contractors, provided no change is made in size or format. Machine listings may be submitted if all essential elements of data are included and the appropriate signed standard form is submitted as a cover sheet.

(4) The appropriate continuation sheet shall be used when more than one page is needed.

(5) Partial schedules may be submitted when they cover substantial portions of a particular property classification of contractor inventory. The first page of each schedule submitted shall be identified as partial or final in the title block of the schedule.

(6) The contractor should consult with the plant clearance officer when in doubt as to item descriptions or other inventory schedule requirements.

(c) *Grouping contractor inventory for reporting purposes.* All line items of contractor inventory shall be grouped into the following categories in the order indicated and reported on separate forms (line items may not be divided for the purpose of avoiding screening requirements):

(1) *Classified property.* This category includes all property bearing a security classification, regardless of acquisition cost. Classified property should be further subdivided into the same categories as unclassified property (see paragraph (3) below).

(2) *Government-furnished property.* This category should be subdivided into the same categories as unclassified property (see paragraph (3) below).

(3) *Unclassified property.* Unclassified property shall be subdivided as follows:

(i) Special tooling, regardless of acquisition cost.

(ii) Scrap, regardless of acquisition cost.

(iii) Salvage, regardless of acquisition cost.

(iv) Remaining property having a line item acquisition cost of $500 or less.

(v) Property having a line item acquisition cost of more than $500, further separated into the following categories (these categories may be revised to suit agency needs):

(A) Aeronautical material and equipment.

(B) Electronic material and equipment.

(C) Special test equipment.

(D) Other serviceable or usable property.

(d) *General instructions for completing forms.* The inventory schedule forms are self-explanatory, except for the following general instructions and the specific instructions in paragraph (e) below.

(1) If the inventory applies solely to one contract modification, indicate the contract modification number in the same block as the prime contract number. If the inventory results from the termination of a contract, enter the termination docket number in the same block as the prime contract number.

(2) Provide in column b an accurate and complete commercial description for each item of serviceable contractor inventory. Where practical, show the manufacturer's name, address, and catalog number. Describe other items in sufficient detail to permit the Government to determine appropriate disposition. Include in descriptions for all line items the National Stock Number furnished to the contractor with Government-furnished property and the

National Stock Number available in the contractor's property control system.

(3) Identify in column b any industrial diamonds, diamond swarf, and property containing economically recoverable quantities of precious metals by the type of metal and express the quantity of the metal in the appropriate weight unit or in the percentage of total content.

(4) Enter in column c one of the following codes to indicate the condition of each item of material:

Code 1, Unused-good. Unused property that is usable without repairs and identical or interchangeable with new items from normal supply sources.

Code 2, Unused-fair. Unused property that is usable without repairs, but is deteriorated or damaged to the extent that utility is somewhat impaired.

Code 3, Unused-poor. Unused property that is usable without repairs, but is considerably deteriorated or damaged. Enough utility remains to classify the property better than salvage.

Code 4, Used-good. Used property that is usable without repairs and most of its useful life remains.

Code 5, Used-fair. Used property that is usable without repairs, but is somewhat worn or deteriorated and may soon require repairs.

Code 6, Used-poor. Used property that may be used without repairs, but is considerably worn or deteriorated to the degree that remaining utility is limited or major repairs will soon be required.

Code 7, Repairs required-good. Required repairs are minor and should not exceed 15 percent of original acquisition cost.

Code 8, Repairs required-fair. Required repairs are considerable and are estimated to range from 16 percent to 40 percent of original acquisition cost.

Code 9, Repairs required-poor. Required repairs are major because property is badly damaged, worn, or deteriorated, and are estimated to range from 41 percent to 65 percent of original acquisition cost.

Code X, Salvage. Property has some value in excess of its basic material content, but repair or rehabilitation to use for the originally intended purpose is clearly impractical. Repair for any use would exceed 65 percent of the original acquisition cost.

Code S, Scrap. Material that has no value except for its basic material content.

(5) Enter in columns e and f the standard or invoiced cost of the material being reported. If such data are not available, enter the estimated cost, identified by the symbol "(e)".

(6) Enter after the amount of the contractor's offer in column g the letter "A" if a credit for acquisition has been authorized or approved by the plant clearance officer. Enter the letter "C" if the amount represents your offer to acquire the item. In either case, enter the quantity on a second line if it is less than the full quantity shown in column d.

(e) *Instructions for completing specific forms.* The following instructions are in addition to the general instructions in paragraph (d) and the self-explanatory blocks on the inventory forms.

(1) *Inventory Schedule A (Metals in Mill Product Form) (SF 1426).*

(i) *Classification.* List each type of metal (such as aluminum or carbon steel) on a separate form, with the name or alloy shown in the Property Classification block. List like forms of the metal or alloy together in sequence. (For example, for carbon steel, group all the strip, followed by sheets, followed by the bar stock, etc.)

(ii) *Description.* Enter in column b the full commercial description and weight for all items. Identify the material specification entered in column b2 as either a Government specification or that of a particular industrial society or manufacturer. Complete columns b3, b4, and b5 to show the thickness, width, and length.

(2) *Inventory Schedule B (SF 1428).*

(i) *Classification.* Use a separate form for each classification. Enter the name of the classification in the Property Classification block. Items having no commercial value should be placed in a single classification designated "no commercial value." The term "raw materials (other than metals)" means material in primary form. Examples are plastics, textiles, lumber, and chemicals. Arrange items in sequence under separate subheadings. For example, under the classification "chemicals," group separately all acids, all alkalis, all resins, etc.

(ii) *Description.* In the inventory description for plant equipment (see 45.101 for definition), include the following as a minimum:

(A) Nomenclature or description of the item and Federal Supply Classification (see Cataloging Handbooks H2-1, H2-2, and H2-3).

(B) Federal Supply Code for Manufacturers (see Cataloging Handbooks H4-1 and H4-2) and, if available in the contractor's property control system, the name and address of the equipment manufacturer.

(C) Model/part number.

(3) *Inventory Schedule C (Work in Process) (SF 1430).*

(i) *Classification.* No classification of items is required. Do not list finished components on this form (use SF 1428).

(ii) *Description.* Enter in column b a description in sufficient detail to permit the Government to determine the appropriate disposition. Estimate percentage of completion for each line item.

(iii) *Condition* (column c). Generally, conditions X (salvage) or S (scrap) are applicable to work in process (see paragraph (d)(4) above).

(4) *Inventory Schedule D (Special Tooling and Special Test Equipment) (SF 1432).*

(i) *Classification.* Use a new form for each general classification, such as dies, jigs, gauges, fixtures, special tooling, and special test equipment.

(ii) *Description.* Furnish a description which will enable the plant clearance officer or screener to determine the appropriate disposition. Include tool nomenclature, tool number, related product part number, or function which the tool performs. Designate special tooling usable for maintenance programs by placing the letter "M" in the left-hand column, "For Use of Contracting Agency Only."

(5) *Termination Inventory Schedule E (SF 1434).*

(i) *Classification.* No special classification is required, but similar items should be grouped together. Several classifications may be listed on one form.

(ii) *Description.* Enter in column b the full commercial description of all items which have commercial value. For other items, furnish a description in sufficient detail to permit the Government to determine the appropriate disposition.

45.607 Scrap.

45.607-1 General.

(a) The contractor need not itemize scrap on inventory schedules if (1) the material is physically segregated in the contractor's plant and (2) the contractor submits a statement describing the material, estimating its cost, and providing other information necessary for the plant clearance officer to verify whether the property is scrap. The contractor shall sort the scrap to the extent economically feasible to assure the highest sale proceeds.

(b) The plant clearance officer shall review the schedules of property reported as scrap and, if necessary, physically inspect the property involved. If the plant clearance officer determines that any of the property is serviceable, usable, or salvable, the contractor shall

resubmit it on appropriate inventory schedules.

45.607-2 Recovering precious metals.

(a) GSA is responsible for initiating the Government-wide precious metals recovery program (see FPMR 101-42.3 for procedures and requirements in recovering precious metals).

(b) Agencies shall assure that contractors generating contractor inventory containing precious metal-bearing scrap identify and promptly report such items. Agencies are also responsible for establishing and maintaining a program for recovering precious metals. Agencies having no recovery and disposal facility available may request information or recovery assistance from the GSA regional office serving the area or the DOD Precious Metals Recovery Program Manager, Attention DLA-SIP, Cameron Station, Alexandria, VA 22314.

(c) Precious metals shall be packaged in nonporous, smooth containers in a manner to prevent loss through leakage or damage to the containers. (Glass containers shall not be used.) Grindings or sweepings shall not be packaged in paper or wooden containers, because loss occurs by adhesion to the containers. Containers shall be marked to show the type of precious metals.

(d) The shipping document shall indicate the net weight of each item to the nearest ounce (troy or avoirdupois). Shipment shall be made by the most economical means available, consistent with adequate safeguards to prevent loss or theft.

45.608 Screening of contractor inventory.

45.608-1 General.

(a) Serviceable or usable property included in the contractor's inventory schedules that is not purchased or retained by the prime contractor or subcontractor or returned to suppliers shall be screened for use by Government agencies before disposition by donation or sale. Agencies shall assure the widespread dissemination of information concerning the availability of contractor inventory.

(b) There are four categories of screening: standard, agency, limited, and special items. The plant clearance officer shall determine the categories of screening required, initiate prescribed screening, and assure accomplishment of transfer and donation.

Table 45-1 lists the type of property and screening period for each of these categories. When circumstances warrant, the plant clearance officer may extend the period for agency screening or arrange for more extensive screening than that prescribed. In the event of a conflict between Table 45-1 and a specific contract requirement, items shall be screened as provided by the contract.

Table 45-1

Screening Requirements by Type of Property

Screening Categories	Type of Property	Period
Standard	Line items in excess of $500	90 days/(see 45.608-2)
Agency	Special tooling, perishables, property bearing a security classification, property dangerous to public health and safety, regardless of acquisition cost, and agency-peculiar property	30 days/(See 45.608-3)
Limited	Special tooling, scrap and salvage, property in condition codes 3, 6, 9, X, and S, work-in-process, inventory schedules (the total acquisition cost of which is reported as $2,500 or less), and line items of $500 or less (except perishables, property bearing a security classification, and property dangerous to public health and safety)	30 days/(see 45.608-4)
Special Items	Special test equipment with standard components	(see 45.608-5(a))
	Special test equipment without standard components	(see 45.608-5(b))
	Printing equipment	(see 45.608-5(c))
	Automatic data processing equipment	(see 45.608-5(d))
	Nuclear materials	(see 45.608-5(e))

45.608-2 Standard screening.

(a) Standard screening applies to serviceable property with a line item value in excess of $500 that does not meet the criteria for another screening category.

(b) Standard screening begins on the date the plant clearance officer receives acceptable contractor inventory schedules and ends 90 days thereafter. The period is broken into three phases as follows:

(1) *1st through 30th day—screening by the contracting agency.* The agency shall screen the listed items for its use. When screening is completed, the plant clearance officer shall delete the retained items from the schedules.

(2) *31st through 75th day—screening by all Federal agencies.* Not later than the 31st day, the plant clearance officer shall send four copies of the revised schedules and Standard Form (SF) 120, Report of Excess Personal Property, to the General Services Administration (GSA) regional office that serves the region in which the property is located. If the plant clearance officer receives a request for property transfer after submission of the SF 120, and before receiving a GSA property transfer order, a prompt request shall be forwarded to GSA for approval to withdraw the items from the inventory schedule. The regional GSA office will prepare and issue circulars and catalogs to all Federal agencies within the region. GSA will honor requests for transfer of property on a "first-come first-served" basis through the 75th day. The GSA regional office will transmit to the plant clearance officer the approved orders and shipping instructions for property to be transferred. The 75th day is the surplus release date and will be shown on the SF 120. The plant clearance officer may not extend this date.

(3) *76th through 90th day—screening by GSA for possible donation.* During this period, GSA will arrange for screening of all remaining property for possible donation to eligible donees. Procedures for donation are in 45.609. The 90th day is the screening completion date and will be shown on the SF 120. The plant clearance officer shall not extend this date.

45.608-3 Agency screening.

Agency screening is the procedure for screening certain types of property (see Table 45-1) only within the contracting agency. The screening period begins on the date the plant clearance officer receives acceptable inventory schedules and ends 30 days later.

45.608-4 Limited screening.

(a) Items that are scrap or salvage or that otherwise have a limited potential for use (except special tooling) are not ordinarily subject to standard or agency screening. The plant clearance officer shall include listings of such property in a special file, which shall be made available to GSA for limited screening. The screening period for such property begins on the date the plant clearance officer receives acceptable inventory schedules and ends 30 days later. This period is apportioned into two phases, as follows:

(1) 1st through 15th day—GSA selection of items for Federal utilization.

(2) 16th through 30th day—GSA selection of items for donation.

(b) For special tooling, the screening period described in paragraph (a) above begins upon completion of agency screening.

45.608-5 Special items screening.

Special procedures are established for the following types of property:

(a) *Special test equipment with standard components.* (1) Contractors reporting special test equipment that contains standard, general, or multipurpose components will describe the composite unit to clearly reflect its capability. Standard components that

can be economically removed and reused will be listed and described in sufficient detail to permit screening.

(2) If the contractor has a requirement for the standard components to meet other approved special test equipment or facilities requirements, the contractor shall annotate the SF 1432, Inventory Schedule D (Special Tooling and Special Test Equipment), to reflect this requirement. Screening shall be accomplished in accordance with agency procedures for the first 30 days. If there are no agency requirements for the composite unit, and if the administrative contracting officer approves the retention, the contractor shall have priority for the standard components for which it has indicated a requirement.

(3) Standard components that have not been retained by the agency or the contractor shall be screened in accordance with standard requirements for the 31st through 75th day. Standard components shall not be removed from the composite unit until a requirement has been established. If no requirements exist, the composite units shall be donated or sold in accordance with prescribed procedures.

(b) *Special test equipment without standard components.* Special test equipment without standard components shall receive agency screening for 30 days. Items for which no requirements exist shall receive limited screening for an additional 30 days.

(c) *Printing equipment.* Agencies shall report all printing equipment excess to their requirements to the Public Printer, Government Printing Office, North Capitol and H Streets, NW, Washington, DC 20401, after screening within the agency (see 44 U.S.C. 312). If the Public Printer indicates no requirements, the reporting activity shall submit the listing of printing equipment to the General Services Administration for further use and donation screening.

(d) *Procedures for automatic data processing equipment (ADPE).* (1) The plant clearance officer shall report ADPE items on SF 120, Report of Excess Personal Property (or when acceptable to GSA, by data processing output). This requirement applies, regardless of Federal Supply Class, to Government-owned ADPE or to ADPE leased by the contractor under terms providing the Government an option to purchase (or other residual interests, including the right to use until expiration of the lease). ADPE should be reported as soon as it is possible to project the release date, within the following reporting schedule:

(i) Government-owned ADPE shall be reported upon receipt of notice of complete termination or when it is determined that the property will no longer be needed on the contract. After completion of screening within the agency, schedules listing ADPE shall be referred to GSA for a 90-day screening period.

(ii) Leased ADPE, which is charged to one or more cost-reimbursement contracts, shall be reported promptly on a separate SF 120 when it is determined that the property will no longer be needed on the contracts. To preclude unnecessary lease costs, the release date established shall not extend the rental period beyond the date it can be released to the lessor. A quotation shall be requested from the lessor projecting the reduced price at which the equipment may be purchased based on accumulated rental credits through the anticipated release date. A copy of this quotation should be attached to the Standard Form 120, but submission of the Standard Form 120 should not be delayed pending receipt of this information.

(2) The following information shall be reported on SF 120:

(i) A complete list of each equipment item, identified by manufacturer's series and model number, and modifications and attachments applied to each component (including identification number if Government-owned); type of maintenance contract; contractor; and monthly cost.

(ii) A separate attachment showing the time in service for each component, average use (hours per month), average downtime per month for the 12-month period immediately preceding the report, and, if appropriate, a narrative description of any history of repeated equipment failure.

(iii) A list of compilers and software packages, such as executive routines, engineering drawings, and maintenance manuals, available with the equipment.

(iv) In the case of a complete equipment configuration, information regarding power and air conditioning requirements.

(e) *Nuclear materials.* (1) The possession, use, and transfer of certain nuclear materials are subject to the regulatory controls of the Nuclear Regulatory Commission (NRC). The materials are defined as follows:

(i) By-product material—any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to producing or using special nuclear material.

(ii) Source material—uranium or thorium, or any combination thereof, in any physical or chemical form; or ores which contain by weight one-twentieth of 1 percent (0.05 percent) or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

(iii) Special nuclear material—plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the NRC determines to be special nuclear material (but not including source material); or any material artificially enriched by any nuclear material.

(2) Plant clearance officers shall submit listings of excess nuclear material in the categories described above for screening by the contracting activity. If there are no requirements, the ultimate method of disposal shall be dependent upon the license issued by the NRC or the respective states and pertinent Federal and agency regulations.

(f) *Construction and construction-related architect-engineer materials.*

(1) *Applicability* (i) This paragraph covers disposition of contractor inventory generated under construction contracts and construction-related architect-engineer contracts.

(ii) It applies to termination inventory and to any other inventory that is excess (A) because of a contract modification or (B) under a price-revision contract; *provided*, the cost is included in a request for equitable adjustment or for price revision.

(iii) It applies also to (A) property excess to the requirement of cost-reimbursement contracts and (B) excess Government-furnished property under both fixed-price and cost-reimbursement contracts.

(2) *Separate schedules.* Construction equipment shall be submitted on separate inventory schedules.

(3) *Return of materials to stock.* Materials taken from stock and shipped to the construction site are common items and shall be returned to stock, unless the contractor establishes that they cannot be used without loss. Contractors shall not include in settlement proposals the cost of returned materials, but costs in connection with withdrawing, replacing, or transporting them may be included as "Other Costs."

(4) *Allocability of contractor-acquired material on inventory schedules.* The contracting officer is responsible for determining whether—

(i) Property listed on inventory schedules is qualitatively and quantitatively allocable to the terminated contract (or its terminated portion), taking into account any work in place; and (when appropriate)

(ii) The difference between the cost of allocable property on the inventory schedules and the total cost of property included in the settlement has either been (A) incorporated in the work or (B) consumed in performing the work.

(5) *Contractor's certificate—property incorporated in work.* Any settlement proposal that includes the cost of property (materials, etc.) incorporated in the work must include the contractor's certification that all property not listed on the inventory schedules has been incorporated in the work or consumed in performing the work.

(6) *Inventory at construction site.* The contracting officer shall make every effort to relieve the contractor, as promptly as possible, of responsibility for preserving and protecting termination inventory located at the construction site. As promptly as possible, the contractor shall remove the property (including construction equipment) that is not to be listed on inventory schedules.

(7) *Contracts for other agencies.* Under contracts funded by an agency other than the agency administering the contract, the funding agency has first priority to the property listed on the inventory schedules.

45.608-6 Waiver of screening requirements.

Agency heads or their designees may authorize exceptions from screening requirements; *provided*, (a) there are compelling circumstances clearly in the Government's interest and (b) the contracting agency prepares a written notice, including justification, and provides a copy to the Administrator, General Services Administration, and the contract administration office 10 days before the effective date of the exception.

45.608-7 Reimbursement of costs for transfer of contractor inventory.

The contracting agency shall not be reimbursed for the acquisition cost of any property selected by another agency. However, except for termination inventory, the transferee will pay any transfer costs that are not the contractor's responsibility. These costs include packing, crating, preparation for shipment, loading, and transportation. Costs incident to the transfer of termination inventory are ordinarily included in the contractor's settlement proposal and are not payable by the transferee. The contract administration office is responsible for obtaining packing, crating, and handling services. To accelerate plant clearance, the transferee shall include all appropriate data, including funding data, in the transfer or shipping document.

45.608-8 Report of excess personal property (SF 120).

(a) This subsection provides instructions for completing SF 120, Report of Excess Personal Property, when reporting contractor inventory in accordance with 45.608-2. (For reporting other agency excess personal property, see 41 CFR 101-43.4901-120-1, Instructions for preparing SF 120).

(b) All items on the form are self-explanatory, except as follows:

Item 1, Report number. Enter the serial number of the report and any other identifying number or symbol required by the reporting agency. If the report is a correction or withdrawal (complete or partial) of a prior report, the original report number shall be entered, followed by the letter a, b, or c, etc., to identify the number of successive correcting or withdrawing reports.

Item 3, Total cost. Enter the total of all amounts shown on the inventory schedules.

Item 4, Type of report.

Box b—Check if necessary to correct an original report and complete items 1, 2, 3, 4, 5, and 7. Complete the remaining items only to the extent necessary to show the correction.

Box c—Check for partial withdrawals of contractor inventory previously reported and complete items 1, 2, 3, 4, 5, and 7. Re-identify in column 18(b) the line items or portions of line items withdrawn. In column 18(e), show the number of units withdrawn. In column 18(g), show the acquisition cost of the units withdrawn. In item 3, enter the total acquisition cost of all items withdrawn.

Box d—Check for total withdrawal of contractor inventory previously reported and complete items 1, 2, 3, 4, 5, and 7. Provide explanatory remarks in column 18(b).

Item 5, To. Enter the name and address of the GSA regional office cognizant of the location of the property. (ADPE, except supply items under $1500, is reported to the Central Office GSA.)

Item 6, Appropriation or fund to be reimbursed. No entry shall be made in this item if the net proceeds are to be deposited in the Treasury as miscellaneous receipts (see 45.610-3). However, in exchange/sale transactions an appropriation number is required.

Item 8, Report approved by. Enter signature and title of the Federal official approving report.

Item 12, GSA control number. Not to be used by reporting activity.

Item 13, FSC group number, if known.

Item 14, Location of property. Enter the name of contractor holding the property and the specific address where the property is located.

Item 15, Reimbursement required. Enter X in the block designated "No."

Item 16, Agency control number. Leave blank.

Item 17, Surplus release date (see 45.608-2). To be entered by GSA.

Item 18, Excess property list. Leave blank.

Column a, Item number. Leave blank.

Column b, Description. Enter the following information:

(1) Identification of attached inventory schedules and the number of pages for each schedule.

(2) The screening completion date (see 45.608-2).

(3) The following notation: "If the property described herein is not termination inventory, it is imperative that fund appropriations for the transportation, packing, crating, and handling of the materials be furnished with the transfer order."

(4) Contract number.

(5) When reporting motor vehicles in Federal Supply Groups 23, 24, and 38—

(i) In column 18(b), the estimated one-time cost of repairs (parts and labor); and

(ii) In column 18(c), a condition code based on the estimated cost of repairs.

(c) Columns c through h. Leave blank, except as they are used for 5(ii) above.

45.609 Donations.

(a) Property may be donated only after it has been determined to be surplus following appropriate utilization screening. The donation of surplus property to an authorized donee is subordinate to any need for property by a Federal agency.

(b) The GSA is responsible for making necessary arrangements for donation screening of serviceable property during the last 15 days of the 90-day screening period.

(c) Items that have been selected for donation shall not be retained longer than 42 calendar days from the surplus release date. The plant clearance officer shall authorize release to the eligible donees immediately upon receipt of GSA approval and shipping instructions. If approval and shipping instructions, including provision for payment of all costs incident to donation, are not received within the 42-day period, the property shall be otherwise disposed of as surplus. All costs incident to donation that are not the responsibility of the contractor shall be borne by the donee.

(d) Agencies having a current essential requirement may withdraw

property undergoing donation screening. In all other cases, property may be withdrawn only after GSA concurrence.

45.610 Sale of surplus contractor inventory.

45.610-1 Responsibility.

(a) The Administrator, GSA, exercises general supervision and direction over the disposition of surplus personal property, including sales of surplus contractor inventory. Policy and procedures for sales of contractor inventory are contained in the Federal Property Management Regulations (FPMR) 41 CFR Part 101-45. Sales of contractor inventory under the control of the Department of Defense are conducted in accordance with the DOD Supplement to the FAR.

(b) Reportable property submitted to GSA on SF 120 for utilization screening and not otherwise transferred or donated will automatically be programmed for sale by the GSA regional office.

(c) All other property requiring sale shall be reported to GSA on SF 126, Report of Personal Property for Sale, and in accordance with any additional instructions provided by the GSA regional office cognizant of the location where the property is physically located.

45.610-2 Exemptions from sale by GSA.

(a) Agency heads may seek exemptions from the Administrator, GSA, by submitting a letter explaining the impairment or adverse effect of sale by GSA and justifying the need for the exemption.

(b) GSA regional offices may authorize sale by the reporting activity of perishable items or small lots of limited-value property at isolated locations.

45.610-3 Proceeds of sale.

Proceeds of any sale are to be credited to the Treasury of the United States as miscellaneous receipts, except where the contract or any subcontract thereunder authorizes the proceeds to be credited to the price or cost of the work (40 U.S.C. 485(a) and (e)).

45.610-4 Contractor inventory in foreign countries.

Contractor inventory located in foreign countries shall be sold or disposed of in accordance with agency procedures (see 40 U.S.C. 511-514).

45.611 Destruction or abandonment.

(a) Surplus property may be destroyed or abandoned only after every effort has been made to dispose of it by other authorized methods. Before authorizing destruction or abandonment, the plant clearance officer shall determine in writing that—

(1) The property has no commercial value and no value to the Government;

(2) The estimated cost of care and handling is greater than the probable sale price; or

(3) Because of its nature, the property constitutes a danger to public health, safety, or welfare.

(b) Unless permitted by the contract, no contractor inventory shall be abandoned on the contractor's premises without the contractor's written consent.

(c) Surplus property for which a determination has been made under subparagraph (a)(1) or (2) above may, however, be donated to public bodies in lieu of abandonment or destruction. All costs incident to donation shall be borne by the donee.

45.612 Removal and storage.

45.612-1 General.

Contractor inventory shall be removed from the contractor's premises as soon as possible to preclude storage expenses.

45.612-2 Special storage at the contractor's risk.

When the contractor finds it necessary to remove property from the premises before expiration of the plant clearance period, the contractor may, with the concurrence of the plant clearance officer, store property in a warehouse or other storage location on or off the contractor's premises. Storage shall in no way modify the contractor's responsibility for the property. The expense of storage, including any cost incident to the transportation to and from the storage area, shall normally be borne by the contractor and shall not be charged directly or indirectly to Government contracts unless the contracting officer determines that the storage is for the convenience of the Government.

45.612-3 Special storage at the Government's expense.

(a) Contractor inventory may be stored at the Government's expense only when the contracting officer determines that it should be retained in storage for anticipated use.

(b) When the plant clearance officer recommends that the contracting office execute a storage agreement with the contractor, the request shall be accompanied with adequate data to justify the agreement (e.g., property to be stored, storage period, and cost to the Government).

(c) If the contractor will not agree to storage on its premises, the plant clearance officer shall submit adequate information to permit a decision by the contracting office for storage on a Government or commercial facility (e.g., storage space required; necessary packing, crating, and shipping services; and information as to available Government or commercial storage facilities in the local area).

45.613 Property disposal determinations.

Written determinations supporting abandonment, destruction, or other appropriate disposition shall be made by the plant clearance officer and reviewed by an appropriate reviewing authority within the agency.

45.614 Subcontractor inventory.

(a) The disposal policies and procedures in this subpart are applicable to contractor inventory in the possession of subcontractors, except inventory under terminated subcontracts for which the termination contracting officer has authorized the prime contractor to conclude settlements (see 49.108).

(b) Subcontractors in all tiers shall prepare inventory schedules in accordance with the requirements of this subpart. Forms prescribed for use by prime contractors may be used by subcontractors, but their use is not required if substantially equivalent information is provided. Subcontractor inventory and any disposal recommendations (including scrap recommendations) shall be reported through the next-higher-tier subcontractor to the contractor, who is responsible for reporting property to the cognizant plant clearance officer. The prime contractor and each subcontractor are responsible for review and approval of inventory schedules submitted by their respective next-lower-tier subcontractors.

(c) In the interest of expediting disposition of termination inventory, the contracting officer cognizant of the prime contractor may authorize subcontractors to submit their next-lower-tier subcontractor's inventory schedules directly to the prime contractor for transmittal to the contracting officer for review and disposition instructions. Any rights which the prime contractor has or acquires in the inventory of first-tier or lower-tier subcontractors shall, to the extent directed by the contracting officer, be exercised for the benefit of the Government in accordance with the provisions of the prime contract.

(d) Contract administration offices should generally secure assistance from other offices for verification, screening, and plant clearance action when

property is located outside their geographic areas.

45.615 Accounting for contractor inventory.

Following disposition of all contractor inventory, and after due application of proceeds, the plant clearance officer shall prepare SF 1424, Inventory Disposal Report, accounting for all property reported by the contractor and its disposition. The report shall indicate any inventory lost, damaged, destroyed, or otherwise unaccounted for, as well as any changes in quantity or value of inventory made by the contractor after submission of the initial schedules. The report shall be transmitted to the property administrator or, for termination inventory, to the termination contracting officer.

PART 46—QUALITY ASSURANCE

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

46.000 Scope of part.

This part prescribes policies and procedures to ensure that supplies and services acquired under Government contract conform to the contract's quality and quantity requirements. Included are inspection, acceptance, warranty, and other measures associated with quality requirements.

SUBPART 46.1—GENERAL

46.101 Definitions.

"Acceptance," as used in this part, means the act of an authorized representative of the Government by which the Government, for itself or as agent of another, assumes ownership of existing identified supplies tendered or approves specific services rendered as partial or complete performance of the contract.

"Contract quality requirements," means the technical requirements in the contract relating to the quality of the product or service and those contract clauses prescribing inspection, and other quality controls incumbent on the contractor, to assure that the product or service conforms to the contractual requirements.

"Government contract quality assurance," means the various functions, including inspection, performed by the Government to determine whether a contractor has fulfilled the contract obligations pertaining to quality and quantity.

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

"Off-the-shelf item," means an item produced and placed in stock by a contractor, or stocked by a distributor, before receiving orders or contracts for its sale. The item may be commercial or produced to military or Federal specifications or description.

"Subcontractor" (see 44.101).

"Testing," means that element of inspection that determines the properties or elements, including functional operation of supplies or their components, by the application of established scientific principles and procedures.

46.102 Policy.

Agencies shall ensure that—

(a) Contracts include inspection and other quality requirements, including warranty clauses when appropriate, that are determined necessary to protect the Government's interest.

(b) Supplies or services tendered by contractors meet contract requirements;

(c) Government contract quality assurance is conducted before acceptance (except as otherwise provided in this part), by or under the direction of Government personnel;

(d) No contract precludes the Government from performing inspection;

(e) Nonconforming supplies or services are rejected, except as otherwise provided in 46.407; and

(f) The quality assurance and acceptance services of other agencies are used when this will be effective, economical, or otherwise in the Government's interest (see Subpart 42.1.)

46.103 Contracting office responsibilities.

Contracting offices are responsible for—

(a) Receiving from the activity responsible for technical requirements any specifications for inspection, testing, and other contract quality requirements essential to ensure the integrity of the supplies or services (the activity responsible for technical requirements is responsible for prescribing such inspection, testing, and other contract quality requirements);

(b) Including in solicitations and contracts the appropriate requirements for the contractor's control of quality for the supplies or services to be acquired;

(c) Issuing any necessary instructions to the cognizant contract administration office and acting on recommendations submitted by that office (see 42.301 and 46.104(f); and

(d) When contract administration is retained (see 42.203), verifying that the contractor fulfills the contract quality requirements.

46.104 Contract administration office responsibilities.

When a contract is assigned for administration to the contract administration office cognizant of the contractor's plant, that office, unless specified otherwise, shall—

(a) Develop and apply efficient procedures for performing Government contract quality assurance actions under the contract in accordance with the written direction of the contracting office;

(b) Perform all actions necessary to verify whether the supplies or services conform to contract quality requirements;

(c) Maintain, as part of the performance records of the contract, suitable records reflecting—

(1) The nature of Government contract quality assurance actions, including, when appropriate, the number of observations made and the number and type of defects; and

(2) Decisions regarding the acceptability of the products, the processes, and the requirements, as well as action to correct defects.

(d) Implement any specific written instructions from the contracting office;

(e) Report to the contracting office any defects observed in design or technical requirements, including contract quality requirements; and

(f) Recommend any changes necessary to the contract, specifications, instructions, or other requirements that will provide more effective operations or eliminate unnecessary costs (see 42.102(e) and 46.103(c)).

46.105 Contractor responsibilities.

(a) The contractor is responsible for carrying out its obligations under the contract by—

(1) Controlling the quality of supplies or services;

(2) Tendering to the Government for acceptance only those supplies or services that conform to contract requirements;

(3) Ensuring that vendors or suppliers of raw materials, parts, components, subassemblies, etc., have an acceptance quality control system; and

(4) Maintaining substantiating evidence, when required by the contract, that the supplies or services conform to contract quality requirements, and furnishing such information to the Government as required.

(b) The contractor may be required to provide and maintain an inspection system or program for the control of quality that is acceptable to the Government (see 46.202).

(c) The control of quality by the contractor may relate to, but is not limited to—

(1) Manufacturing processes, to ensure that the product is produced to, and meets, the contract's technical requirements;

(2) Drawings, specifications, and engineering changes, to ensure that manufacturing methods and operations meet the contract's technical requirements;

(3) Testing and examination, to ensure that practices and equipment provide the means for optimum evaluation of the characteristics subject to inspection;

(4) Reliability and maintainability assessment (life, endurance, and continued readiness);

(5) Fabrication and delivery of products, to ensure that only conforming products are tendered to the Government;

(6) Technical documentation, including drawings, specifications, handbooks, manuals, and other technical publications;

(7) Preservation, packaging, packing, and marking; and

(8) Procedures and processes for services to ensure that services meet contract performance requirements.

(d) The contractor is responsible for performing all inspections and test required by the contract except those specifically reserved for performance by the Government (see 46.201(c).

SUBPART 46.2—CONTRACT QUALITY REQUIREMENTS

46.201 General.

(a) The contracting officer shall include in the solicitation and contract the appropriate quality requirements. The type and extent of contract quality requirements needed depends on the particular acquisition and may range from inspection at time of acceptance to a requirement for the contractor's implementation of a comprehensive program for controlling quality.

(b) As feasible, solicitations and contracts may provide for alternative, but substantially equivalent, inspection methods to obtain wide competition and low cost. The contracting officer may also authorize contractor-recommended alternatives when in the Government's interest and approved by the activity responsible for technical requirements.

(c) Although contracts generally make contractors responsible for performing inspection before tendering supplies to the Government, there are situations in which contracts will provide for specialized inspections to be performed solely by the Government. Among situations of this kind are—

(1) Tests that require use of specialized test equipment or facilities not ordinarily available in suppliers' plants or commercial laboratories (e.g., ballistic testing of ammunition, unusual environmental tests, and simulated service tests); and

(2) Contracts that require Government testing for first article approval (see Subpart 9.3).

(d) Except as otherwise specified by the contract, required contractor testing may be performed in the contractor's or subcontractor's laboratory or testing facility, or in any other laboratory or testing facility acceptable to the Government.

46.202 Types of contract quality requirements.

Contract quality requirements fall into three general categories, depending on the extent of quality assurance needed by the Government for the acquisition involved.

46.202-1 Government reliance on inspection by contractor.

(a) Except as specified in (b) below, the Government shall rely on the contractor to accomplish all inspection and testing needed to ensure that supplies or services acquired under small purchases conform to contract quality requirements before they are tendered to the Government (see 46.301).

(b) The Government shall not rely on inspection by the contractor if the contracting officer determines that the Government has a need to test the supplies or services in advance of their tender for acceptance, or to pass upon the adequacy of the contractor's internal

work processes. In making the determination, the contracting officer shall consider—

(1) The nature of the supplies and services being purchased and their intended use (see 46.204 and Table 46-1);

(2) The potential losses in the event of defects;

(3) The likelihood of uncontested replacement or correction of defective work; and

(4) The cost of detailed Government inspection.

46.202-2 Standard inspection requirements.

(a) Standard inspection requirements are contained in the clauses prescribed in 46.302 through 46.308, and 46.310, and in the product and service specifications that are included in solicitations and contracts.

(b) The clauses referred to in (a) above—

(1) Require the contractor to provide and maintain an inspection system that is acceptable to the Government;

(2) Give the Government the right to make inspections and tests while work is in process; and

(3) Require the contractor to keep complete, and make available to the Government, records of its inspection work.

46.202-3 Higher-level contract quality requirements.

(a) Higher-level contract quality requirements are contained in the clause prescribed in 46.311. Such requirements are appropriate in solicitations and contracts for complex and critical items (see 46.203(b) and (c) or when the technical requirements of the contract are such as to require—

(1) Control of such things as work operations, in-process controls, and inspection (see 46.204 and Table 46-1); or

(2) Attention to such factors as organization, planning, work instructions, documentation control, and advanced metrology.

(b) If it is in the Government's interest to require that higher-level contract quality requirements be maintained, the contract shall require the contractor to comply with a Government-specified inspection system, quality control system, or quality program (e.g., MIL-I-45208, MIL-Q-9858, NHB 5300.4(1B), NHB 5300.4(1C), FED-STD-368, or ANSI/ASME NQA-1). The contracting officer shall consult technical personnel before including one of these specifications in a contract.

46.203 Criteria for use of contract quality requirements.

The extent of contract quality requirements, including contractor inspection, required under a contract shall usually be based upon the classification of the contract item (supply or service) as determined by its technical description, its complexity, and the criticality of its application.

(a) *Technical description.* Contract items may be technically classified as—

(1) Commercial (described in commercial catalogs, drawings, or industrial standards);

(2) Military-Federal (described in Government drawings and specifications); or

(3) Off-the-shelf (see 46.101).

(b) *Complexity.* (1) Complex items have quality characteristics, not wholly visible in the end item, for which contractual conformance must be established progressively through precise measurements, tests, and controls applied during purchasing, manufacturing, performance, assembly, and functional operation either as an individual item or in conjunction with other items.

(2) Noncomplex items have quality characteristics for which simple measurement and test of the end item are sufficient to determine conformance to contract requirements.

(c) *Criticality.* (1) A critical application of an item is one in which the failure of the item could injure personnel or jeopardize a vital agency mission. A critical item may be either peculiar, meaning it has only one application, or common, meaning it has multiple applications.

(2) A noncritical application is any other application. Noncritical items may also be either peculiar or common.

46.204 Application of criteria.

Subject to mandatory limitations contained in the clause prescriptions (see Subpart 46.3), Table 46-1 may be used as a guide in selecting the appropriate contract quality requirements. Where circumstances warrant, the contracting officer may specify a requirement different from that arrived at through use of the table, except for off-the-shelf items.

TABLE 46-1 CONTRACT QUALITY REQUIREMENTS GUIDE

Item		Type of Contract	
Technical Description	Complexity	Application	Quality Requirement
Commercial	Noncomplex	Noncritical Common	Contractor inspection (46.202-1)
Commercial	Noncomplex	Noncritical Peculiar	Contractor inspection (46.202-1)
Commercial	Noncomplex	Critical	Standard inspection (46.202-2)
Commercial	Complex	Noncritical Common	Contractor inspection (46.202-1)
Commercial	Complex	Noncritical Peculiar	Standard inspection (46.202-2)
Commercial	Complex	Critical	Higher-level (46.202-3)
Military-Federal	Noncomplex	Noncritical Common	Standard inspection (46.202-2)
Military-Federal	Noncomplex	Noncritical Peculiar	Standard inspection (46.202-2)
Military-Federal	Noncomplex	Critical	Higher-level (46.202-3)
Military-Federal	Complex	Noncritical Common	Standard inspection (46.202-2)
Military-Federal	Complex	Noncritical Peculiar	Higher-level (46.202-3)
Military-Federal	Complex	Critical	Higher-level (46.202-3)
Off-the-shelf	All	Noncritical	Contractor inspection (46.202-1)
Off-the-shelf	All	Critical	Standard inspection (46.202-2)

SUBPART 46.3—CONTRACT CLAUSES

46.301 Contractor inspection requirements.

The contracting officer shall insert the clause at 52.246-1, Contractor Inspection Requirements, in solicitations and contracts for supplies or services when the contract amount is expected to be within the small purchase limitation and (a) inclusion of the clause is necessary to ensure an explicit understanding of the contractor's inspection responsibilities, or (b) inclusion of the clause is required under agency procedures. The clause shall not be used if the contracting officer has made the determination specified in 46.202-1(b).

46.302 Fixed-price supply contracts.

The contracting officer shall insert the clause at 52.246-2, Inspection of Supplies—Fixed-Price, in solicitations and contracts for supplies, or services that involve the furnishing of supplies, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small

purchase limitation. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be within the small purchase limitation and inclusion of the clause is in the Government's interest. If a fixed-price incentive contract is contemplated, the contracting officer shall use the clause with its Alternate I. If a fixed-ceiling-price contract with retroactive price redetermination is contemplated, the contracting officer shall use the clause with its Alternate II.

46.303 Cost-reimbursement supply contracts.

The contracting officer shall insert the clause at 52.246-3, Inspection of Supplies—Cost-Reimbursement, in solicitations and contracts for supplies, or services that involve the furnishing of supplies, when a cost-reimbursement contract is contemplated.

46.304 Fixed-price service contracts.

The contracting officer shall insert the clause at 52.246-4, Inspection of Services—Fixed-Price, in solicitations and contracts for services, or supplies that involve the furnishing of services, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be within the small purchase limitation and inclusion is in the Government's interest.

46.305 Cost-reimbursement service contracts.

The contracting officer shall insert the clause at 52.246-5, Inspection of Services—Cost Reimbursement, in solicitations and contracts for services, or supplies that involve the furnishing of services, when a cost-reimbursement contract is contemplated.

46.306 Time-and-material and labor-hour contracts.

The contracting officer shall insert the clause at 52.246-6, Inspection—Time-and-Material and Labor-Hour, in solicitations and contracts when a time-and-material contract or a labor-hour contract is contemplated. If Government inspection and acceptance are to be performed at the contractor's plant, the contracting officer shall use the clause with its Alternate I. If a labor-hour contract is contemplated, and if no specific reimbursement for materials furnished is intended, the contracting officer may use the clause with its Alternate II.

46.307 Fixed-price research and development contracts.

(a) The contracting officer shall insert the clause at 52.246-7, Inspection of Research and Development—Fixed-Price, in solicitations and contracts for research and development when (1) the primary objective of the contract is the delivery of end items other than designs, drawings, or reports, (2) a fixed-price contract is contemplated, and (3) the contract amount is expected to exceed the small purchase limitation; unless use of the clause is impractical and the clause prescribed in 46.309 is considered to be more appropriate.

(b) The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be within the small purchase limitation, and its use is in the Government's interest.

46.308 Cost-reimbursement research and development contracts.

The contracting officer shall insert the clause at 52.246-8, Inspection of Research and Development—Cost-Reimbursement, in solicitations and contracts for research and development when (a) the primary objective of the contract is the delivery of end items other than designs, drawings, or reports, and (b) a cost-reimbursement contract is contemplated; unless use of the clause is impractical and the clause prescribed in 46.309 is considered to be more appropriate. If it is contemplated that the contract will be on a no-fee basis, the contracting officer shall use the clause with its Alternate I.

46.309 Research and development contracts (short form).

The contracting officer shall insert the clause at 52.246-9, Inspection of Research and Development (Short Form), in solicitations and contracts for research and development when (a) the primary objective of the contract is the delivery of end items other than designs, drawings, or reports, and (b) the clause is considered to be more appropriate than the clause prescribed in 46.307 or the clause prescribed in 46.308.

46.310 Facilities contracts.

The contracting officer shall insert the clause at 52.246-10, Inspection of Facilities, in solicitations and contracts when a facilities contract is contemplated.

46.311 Higher-level contract quality requirement.

The contracting officer shall insert the clause at 52.246-11, Higher-Level Contract Quality Requirement (Government Specification), in solicitations and contracts when the inclusion of a higher-level contract quality requirement is appropriate (see 46.202-3).

46.312 Construction contracts.

The contracting officer shall insert the clause at 52.246-12, Inspection of Construction, in solicitations and contracts for construction when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be within the small purchase limitation, and its use is in the Government's interest.

46.313 Contracts for dismantling, demolition, or removal of improvements.

The contracting officer shall insert the clause at 52.246-13, Inspection—Dismantling, Demolition, or Removal of Improvements, in solicitations and contracts for dismantling, demolition, or removal of improvements.

46.314 Transportation contracts.

The contracting officer shall insert the clause at 52.246-14, Inspection of Transportation, in solicitations and contracts for freight transportation services (including local drayage) by rail, motor (including bus), domestic freight forwarder, and domestic water carriers (including inland, coastwise, and intercoastal). The contracting officer shall not use the clause for the acquisition of transportation services by domestic or international air carriers or by international ocean carriers, or to freight services provided under bills of lading or to those negotiated for reduced rates under 49 U.S.C. 10721(b)(1). (See Part 47, Transportation.)

46.315 Certificate of conformance.

The contracting officer shall insert the clause at 52.246-15, Certificate of Conformance, in solicitations and contracts for supplies or services when the conditions in 46.504 apply.

46.316 Responsibility for supplies.

The contracting officer shall insert the clause at 52.246-16, Responsibility for Supplies, in solicitations and contracts for (a) supplies, (b) services involving the furnishing of supplies, or (c) research and development, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is not expected to exceed the small purchase limitation

and inclusion of the clause is authorized under agency procedures.

SUBPART 46.4—GOVERNMENT CONTRACT QUALITY ASSURANCE

46.401 General.

(a) Government contract quality assurance shall be performed at such times (including any stage of manufacture or performance of services) and places (including subcontractors' plants) as may be necessary to determine that the supplies or services conform to contract requirements.

(b) Each contract shall designate the place or places where the Government reserves the right to perform quality assurance.

(c) If the contract provides for performance of Government quality assurance at source, the place or places of performance may not be changed without the authorization of the contracting officer.

(d) If a contract provides for delivery and acceptance at destination and the Government inspects the supplies at a place other than destination, the supplies shall not ordinarily be reinspected at destination, but should be examined for quantity, damage in transit, and possible substitution or fraud.

(e) Government inspection shall be performed by or under the direction or supervision of Government personnel.

(f) Government inspection shall be documented on an inspection or receiving report form or commercial shipping document/packing list, under agency procedures (see Subpart 46.6).

(g) Agencies may prescribe the use of inspection approval or disapproval stamps to identify and control supplies and material that have been inspected for conformance with contract quality requirements.

46.402 Government contract quality assurance at source.

Agencies shall perform contract quality assurance, including inspection, at source if—

(a) Performance at any other place would require uneconomical disassembly or destructive testing;

(b) Considerable loss would result from the manufacture and shipment of unacceptable supplies, or from the delay in making necessary corrections;

(c) Special required instruments, gauges, or facilities are available only at source;

(d) Performance at any other place would destroy or require the replacement of costly special packing and packaging;

(e) A higher-level contract quality requirement is included in the contract (see 46.202-3);

(f) Government inspection during contract performance is essential;

(g) Supplies requiring inspection are destined for points of embarkation for overseas shipment (unless the contracting officer determines in advance that necessary inspection functions can be provided at such points); or

(h) It is determined for other reasons to be in the Government's interest.

46.403 Government contract quality assurance at destination.

(a) Government contract quality assurance that can be performed at destination is normally limited to inspection of the supplies or services. Inspection shall be performed at destination under the following circumstances—

(1) Supplies are purchased off-the-shelf and require no technical inspection;

(2) Necessary testing equipment is located only at destination;

(3) Perishable subsistence supplies purchased within the United States, except that those supplies destined for overseas shipment will normally be inspected for condition and quantity at points of embarkation;

(4) Brand name products purchased for authorized resale through commissaries or similar facilities (however, supplies destined for direct overseas shipment may be accepted by the contracting officer or an authorized representative on the basis of a tally sheet evidencing receipt of shipment signed by the port transportation officer or other designated official at the transshipment point);

(5) The products being purchased are processed under direct control of the National Institutes of Health or the Food and Drug Administration of the Department of Health and Human Services;

(6) The contract is for services performed at destination; or

(7) It is determined for other reasons to be in the Government's interest.

(b) Overseas inspection of supplies shipped from the United States shall not be required except in unusual circumstances, and then only when the contracting officer determines in advance that inspection can be performed or makes necessary arrangements for its performance.

46.404 Government contract quality assurance of small purchases.

(a) In determining the type and extent of Government contract quality assurance to be required for small purchases, the contracting officer shall consider the criticality of application of the supplies or services, the amount of possible losses, and the likelihood of uncontested replacement of defective work (see 46.202-1).

(b) When the conditions in 46.202-1(b) apply, the following policies shall govern:

(1) Unless a special situation exists, the Government shall inspect small purchases at destination and only for type and kind; quantity; damage; operability (if readily determinable); and preservation, packaging, packing, and marking, if applicable.

(2) Special situations may require more detailed quality assurance and the use of a standard inspection or higher-level contract quality requirement. These situations include those listed in 46.402 and contracts for items having critical applications. See Table 46-1 at 46.204 for other possible situations.

(3) Detailed Government inspection may be limited to those characteristics that are special or likely to cause harm to personnel or property. When repetitive purchases of the same item are made from the same manufacturer with a history of defect-free work, Government inspection may be reduced to a periodic check of occasional purchases.

46.405 Subcontracts.

(a) Government contract quality assurance on subcontracted supplies or services shall be performed only when required in the Government's interest. The primary purpose is to assist the contract administration office cognizant of the prime contractor's plant in determining the conformance of subcontracted supplies or services with contract requirements or to satisfy one or more of the factors included in (b) below. It does not relieve the prime contractor of any responsibilities under the contract. When appropriate, the prime contractor shall be requested to arrange for timely Government access to the subcontractor facility.

(b) The Government shall perform quality assurance at the subcontract level when—

(1) The item is to be shipped from the subcontractor's plant to the using activity and inspection at source is required;

(2) The conditions for quality assurance at source are applicable (see 46.402);

(3) The contract specifies that certain quality assurance functions, which can be performed only at the subcontractor's

plant, are to be performed by the Government; or

(4) It is otherwise required by the contract or determined to be in the Government's interest.

(c) Supplies or services for which certificates, records, reports, or similar evidence of quality are available at the prime contractor's plant shall not be inspected at the subcontractor's plant, except occasionally to verify this evidence or when required under (b) above.

(d) All oral and written statements and contract terms and conditions relating to Government quality assurance actions at the subcontract level shall be worded so as not to—

(1) Affect the contractual relationship between the prime contractor and the Government, or between the prime contractor and the subcontractor;

(2) Establish a contractual relationship between the Government and the subcontractor; or

(3) Constitute a waiver of the Government's right to accept or reject the supplies or services.

46.406 Foreign governments.

Government contract quality assurance performed for foreign governments or international agencies shall be administered according to the foreign policy and security objectives of the United States. Such support shall be furnished only when consistent with or required by legislation, executive orders, or agency policies concerning mutual international programs.

46.407 Nonconforming supplies or services.

(a) Contracting officers should reject supplies or services not conforming in all respects to contract requirements (see 46.102). In those instances where deviation from this policy is found to be in the Government's interest, such supplies or services may be accepted only as authorized in this section.

(b) Contractors ordinarily shall be given an opportunity to correct or replace nonconforming supplies or services when this can be accomplished within the required delivery schedule. Unless the contract specifies otherwise (as may be the case in some cost-reimbursement contracts), correction or replacement shall be without additional cost to the Government. Subparagraph (e)(2) of the clause at 52.246-2, Inspection of Supplies—Fixed-Price, reserves to the Government the right to charge the contractor the cost of Government reinspection and retests because of prior rejection.

(c) (1) In situations not covered by (b) above, the contracting officer shall ordinarily reject supplies or services when the nonconformance adversely affects safety, health, reliability, durability, performance, interchangeability of parts or assemblies, weight or appearance (where a consideration), or any other basic objective of the specification. However, there may be circumstances (e.g., reasons of economy or urgency) when acceptance of such supplies or services is determined by the contracting officer to be in the Government's interest. The contracting officer shall make this determination, based upon—

(i) Advice of the technical activity that the material is safe to use, and will perform its intended purpose;

(ii) Information regarding the nature and extent of the nonconformance;

(iii) A request from the contractor for acceptance of the supplies or services (if feasible);

(iv) A recommendation for acceptance or rejection, with supporting rationale; and

(v) The contract adjustment considered appropriate, including any adjustment offered by the contractor.

(2) The cognizant contract administration office, or other Government activity directly involved, shall furnish this data to the contracting officer in writing, except that in urgent cases it may be furnished orally and later confirmed in writing. Before making a decision to accept, the contracting officer shall obtain the concurrence of the activity responsible for the technical requirements of the contract and, where health factors are involved, of the responsible health official of the agency concerned.

(d) If the nonconformance is minor, in that it does not affect any of the factors referred to in (c) above, the cognizant contract administration office may make the determination to accept or reject, except where this authority is withheld by the contracting office of the contracting activity. To assist in making this determination, the contract administration office may establish a joint contractor-contract administrative office review group. Acceptance of nonconforming supplies that affect any of the factors referred to in (c) above is outside the scope of the review group and must be handled as specified there.

(e) Contracting officers shall discourage the repeated tender of nonconforming supplies or services, including those with only minor nonconformances, by appropriate action, such as rejection and documenting the contractor's performance record.

(f) Each contract under which nonconforming supplies or services are accepted as authorized in (c) above shall be modified to provide for an equitable price reduction or other consideration. However, when supplies or services involving minor nonconformances are accepted, the contract shall not be modified unless (1) it appears that the savings to the contractor in fabricating the nonconforming supplies or performing the nonconfomring services will exceed the cost to the Government of processing the modification, or (2) the Government's interests otherwise require a contract modification.

(g) Notices of rejection shall include the reasons for rejection and be furnished promptly to the contractor. Promptness in giving this notice is essential because, if timely nature of rejection is not furnished, acceptance may in certain cases be implied as a matter of law. The notice shall be in writing if—

(1) The supplies or services have been rejected at a place other than the contractor's plant;

(2) The contractor persists in offering nonconforming supplies or services for acceptance; or

(3) Delivery or performance was late without excusable cause.

46.408 Single-agency assignments of Government contract quality assurance.

(a) Government-wide responsibility for quality assurance support for acquisitions of certain commodities is assigned as follows:

(1) For drugs, biologics, and other medical supplies—the Food and Drug Administration;

(2) For food, except seafood—the Department of Agriculture.

(3) For seafood—the National Marine Fisheries Service of the Department of Commerce.

(b) Agencies requiring quality assurance support for acquiring these supplies should request the support directly from the cognizant office.

SUBPART 46.5—ACCEPTANCE

46.501 General.

Acceptance constitutes acknowledgment that the supplies or services conform with applicable contract quality and quantity requirements, except as provided in this subpart and subject to other terms and conditions of the contract. Acceptance may take place before delivery, at the time of delivery, or after delivery, depending on the provisions of the terms and conditions of the contract. Supplies

or services shall ordinarily not be accepted before completion of Government contract quality assurance actions (however, see 46.504). Acceptance shall ordinarily be evidenced by execution of an acceptance certificate on an inspection or receiving report form or commercial shipping document/packing list.

46.502 Responsibility for acceptance.

Acceptance of supplies or services is the responsibility of the contracting officer. When this responsibility is assigned to a cognizant contract administration office or to another agency (see 42.102(c)), acceptance by that office or agency is binding on the Government.

46.503 Place of acceptance.

Each contract shall specify the place of acceptance. Contracts that provide for Government contract quality assurance at source shall ordinarily provide for acceptance at source. Contracts that provide for Government contract quality assurance at destination shall ordinarily provide for acceptance at destination. (For transportation terms, see Subpart 47.3). Supplies accepted at a place other than destination shall not be reinspected at destination for acceptance purposes, but should be examined at destination for quantity, damage in transit, and possible substitution or fraud.

46.504 Certificate of conformance.

A certificate of conformance (see 46.315) may be used in certain instances instead of source inspection (whether the contract calls for acceptance at source or destination) at the discretion of the contracting officer if the following conditions apply:

(a) Acceptance on the basis of a contractor's certificate of conformance is in the Government's interest.

(b) (1) Small losses would be incurred in the event of a defect; or

(2) Because of the contractor's reputation or past performance, it is likely that the supplies or services furnished will be acceptable and any defective work would be replaced, corrected, or repaired without contest. In no case shall the Government's right to inspect supplies under the inspection provisions of the contract be prejudiced.

46.505 Transfer of title and risk of loss.

(a) Title to supplies shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies 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) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the contractor until cure or acceptance. After cure or acceptance, paragraph (b) above shall apply.

(d) Under paragraph (b) above, the contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

(e) The policy expressed in (a) through (d) above is specified in the clause at 52.246-16, Responsibility for Supplies, which is prescribed in 46.316.

SUBPART 46.6—MATERIAL INSPECTION AND RECEIVING REPORTS

Agencies shall prescribe procedures and instructions for the use, preparation, and distribution of material inspection and receiving reports and commercial shipping document/packing lists to evidence Government inspection (see 46.401) and acceptance (see 46.501).

SUBPART 46.7—WARRANTIES

46.701 Definitions.

"Acceptance" (see 46.101).

"Correction," as used in this subpart, means the elimination of a defect.

"Warranty," as used in this subpart, 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.

46.702 General.

(a) The principal purposes of a warranty in a Government contract are (1) to delineate the rights and obligations of the contractor and the Government for defective items and services and (2) to foster quality performance.

(b) Generally, a warranty should provide—

(1) A contractual right for the correction of defects notwithstanding any other requirement of the contract pertaining to acceptance of the supplies or services by the Government; and

(2) A stated period of time or use, or the occurrence of a specified event, after acceptance by the Government to assert a contractual right for the correction of defects.

(c) The benefits to be derived from a warranty must be commensurate with the cost of the warranty to the Government.

46.703 Criteria for use of warranties.

The use of warranties is not mandatory. In determining whether a warranty is appropriate for a specific acquisition, the contracting officer shall consider the following factors:

(a) *Nature and use of the supplies or services.* This includes such factors as—

(1) Complexity and function;

(2) Degree of development;

(3) State of the art;

(4) End use;

(5) Difficulty in detecting defects before acceptance; and

(6) Potential harm to the Government if the item is defective.

(b) *Cost.* Warranty costs arise from—

(1) The contractor's charge for accepting the deferred liability created by the warranty; and

(2) Government administration and enforcement of the warranty (see paragraph (c) below).

(c) *Administration and enforcement.* The Government's ability to enforce the warranty is essential to the effectiveness of any warranty. There must be some assurance that an adequate administrative system for reporting defects exists or can be established. The adequacy of a reporting system may depend upon such factors as the—

(1) Nature and complexity of the item;

(2) Location and proposed use of the item;

(3) Storage time for the item;

(4) Distance of the using activity from the source of the item;

(5) Difficulty in establishing existence of defects; and

(6) Difficulty in tracing responsibility for defects.

(d) *Trade practice.* In many instances an item is customarily warranted in the trade, and, as a result of that practice, the cost of an item to the Government will be the same whether or not a warranty is included. In those instances, it would be in the Government's interest to include such a warranty.

(e) *Reduced requirements.* The contractor's charge for assumption of added liability may be partially or completely offset by reducing the Government's contract quality

assurance requirements where the warranty provides adequate assurance of a satisfactory product.

46.704 Authority for use of warranties.

The use of a warranty in an acquisition shall be approved in accordance with agency procedures.

46.705 Limitations.

(a) Except for the warranties in the clauses at 52.246-3, Inspection of Supplies—Cost-Reimbursement, and 52.246-8, Inspection of Research and Development—Cost-Reimbursement, the contracting officer shall not include warranties in cost-reimbursement contracts, unless authorized in accordance with agency regulations (see 46.708).

(b) Warranty clauses shall not limit the Government's rights under an inspection clause (see Subpart 46.3) in relation to latent defects, fraud, or gross mistakes that amount to fraud.

(c) Except for warranty clauses in construction contracts, warranty clauses shall provide that the warranty applies notwithstanding inspection and acceptance or other clauses or terms of the contract.

46.706 Warranty terms and conditions.

(a) To facilitate the pricing and enforcement of warranties, the contracting officer shall ensure that warranties clearly state the—

(1) Exact nature of the item and its components and characteristics that the contractor warrants;

(2) Extent of the contractor's warranty including all of the contractor's obligations to the Government for breach of warranty;

(3) Specific remedies available to the Government; and

(4) Scope and duration of the warranty.

(b) The contracting officer shall consider the following guidelines when preparing warranty terms and conditions:

(1) *Extent of contractor obligations* (i) Generally, the contractor's obligations under warranties extend to all defects discovered during the warranty period, but do not include damage caused by the Government. When a warranty for the entire item is not advisable, a warranty may be required for a particular aspect of the item that may require special protection (e.g., installation, components, accessories, subassemblies, preservation, packaging, and packing, etc.).

(ii) If the Government specifies the design of the end item and its measurements, tolerances, materials, tests, or inspection requirements, the contractor's obligations for correction of defects shall usually be limited to defects in material and workmanship or failure to conform to specifications. If the Government does not specify the design, the warranty extends also to the usefulness of the design.

(iii) If express warranties are included in a contract (except contracts for commercial items), all implied warranties of merchantability and fitness for a particular purpose shall be negated by the use of specific language in the clause (see clauses 52.246-17, Warranty of Supplies of a Noncomplex Nature; 52.246-18, Warranty of Supplies of a Complex Nature; and 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria).

(2) *Remedies* (i) Normally, a warranty shall provide as a minimum that the Government may (A) obtain an equitable adjustment of the contract, or (B) direct the contractor to repair or replace the defective items at the contractor's expense.

(ii) If it is not practical to direct the contractor to make the repair or replacement, or, because of the nature of the item, the repair or replacement does not afford an appropriate remedy to the Government, the warranty should provide alternate remedies, such as authorizing the Government to—

(A) Retain the defective item and reduce the contract price by an amount equitable under the circumstances; or

(B) Arrange for the repair or replacement of the defective item, by the Government or by another source, at the contractor's expense.

(iii) If it can be foreseen that it will not be practical to return an item to the contractor for repair, to remove it to an alternate source for repair, or to replace the defective item, the warranty should provide that the Government may repair, or require the contractor to repair, the item in place at the contractor's expense. The contract shall provide that in the circumstance where the Government is to accomplish the repair, the contractor will furnish at the place of delivery the material or parts, and the installation instructions required to successfully accomplish the repair.

(iv) Unless provided otherwise in the warranty, the contractor's obligation to repair or replace the defective item, or to agree to an equitable adjustment of the contract, shall include responsibility for the costs of furnishing all labor and material to (A) reinspect items that the Government reasonably expected to be defective, (B) accomplish the required repair or replacement of defective items, and (C) test, inspect, package, pack, and mark repaired or replaced items.

(v) If repair or replacement of defective items is required, the contractor shall generally be required by the warranty to bear the expense of transportation for returning the defective item from the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of acceptance) to the contractor's plant and subsequent return. When defective items are returned to the contractor from other than the place of delivery specified in the contract, or when the Government exercises alternate remedies, the contractor's liability for transportation charges incurred shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in the contract and the contractor's plant and subsequent return.

(3) *Duration of the warranty.* The time period or duration of the warranty must be clearly specified and shall be established after consideration of such factors as (i) the estimated useful life of the item, (ii) the nature of the item including storage or shelf-life, and (iii) trade practice. The period specified shall not extend the contractor's liability for patent defects beyond a reasonable time after acceptance by the Government.

(4) *Notice.* The warranty shall specify a reasonable time for furnishing notice to the contractor regarding the discovery of defects. This notice period, which shall apply to all defects discovered during the warranty period, shall be long enough to assure that the Government has adequate time to give notice to the contractor. The contracting officer shall consider the following factors when establishing the notice period:

(i) The time necessary for the Government to discover the defects.

(ii) The time reasonably required for the Government to take necessary administrative steps and make a timely report of discovery of the defects to the contractor.

(iii) The time required to discover and report defective replacements.

(5) *Markings.* The packaging and preservation requirements of the contract shall require the contractor to stamp or mark the supplies delivered or otherwise furnish notice with the supplies of the existence of the warranty. The purpose of the markings or notice is to inform Government personnel who store, stock, or use the supplies that the supplies are under warranty. Markings may be brief but should include (i) a brief statement that

a warranty exists, (ii) the substance of the warranty, (iii) its duration, and (iv) who to notify if the supplies are found to be defective. For commercial items (see 46.709), the contractor's trade practice in warranty marking is acceptable if sufficient information is presented for supply personnel and users to identify warranted supplies.

(6) *Consistency.* Contracting officers shall ensure that the warranty clause and any other warranty conditions in the contract (e.g., in the specifications or an inspection clause) are consistent. To the extent practicable, all of the warranties to be contained in the contract should be expressed in the warranty clause.

46.707 Pricing aspects of fixed-price incentive contract warranties.

If a fixed-price incentive contract contains a warranty (see 46.708), the estimated cost of the warranty to the contractor should be considered in establishing the incentive target price and the ceiling price of the contract. All costs incurred, or estimated to be incurred, by the contractor in complying with the warranty shall be considered when establishing the total final price. Contractor compliance with the warranty after the establishment of the total final price shall be at no additional cost to the Government.

46.708 Warranties of data.

Warranties of data shall be developed and used in accordance with agency regulations.

46.709 Warranties of commercial items.

If a warranty of commercial items is appropriate, the contracting officer may include a warranty of supplies clause modified for commercial items (see the clause at 52.246-17, Warranty of Supplies of a Noncomplex Nature, Alternate I, and 52.246-18, Warranty of Supplies of a Complex Nature, Alternate I). More appropriate warranty language may be included if the contracting officer determines that the Government's planned usage of the item is inconsistent with the item's normal usage, or that Government specifications have substantially altered the item. The Government may adopt the contractor's standard commercial warranty if the contracting officer determines it is not inconsistent with the rights that would be afforded the Government under a warranty of supplies clause (see the clauses at 52.246-17, Warranty of Supplies of a Noncomplex Nature, and 52.246-18, Warranty of Supplies of a Complex Nature) or other terms of the contract.

46.710 Contract clauses.

The clauses and alternates prescribed in this section may be used in solicitations and contracts in which inclusion of warranty coverage is appropriate. However, because of the many situations that may influence the warranty terms and conditions appropriate to a particular acquisition, the contracting officer may vary the terms and conditions of the clauses and alternates to the extent necessary. The alternates prescribed in this section address the clauses; however, the conditions pertaining to each alternate must be considered if the terms and conditions are varied to meet a particular need.

(a) (1) The contracting officer may insert a clause substantially the same as the clause at 52.246-17, Warranty of Supplies of a Noncomplex Nature, in solicitations and contracts for noncomplex items when a fixed-price supply contract is contemplated and the use of a warranty clause has been approved under agency procedures.

(2) If commercial items are to be acquired, the contracting officer may use the clause with its Alternate I.

(3) If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), the contracting officer may use the clause with its Alternate II.

(4) If the supplies cannot be obtained from another source, the contracting officer may use the clause with its Alternate III.

(5) If a fixed-price incentive contract is contemplated, the contracting officer may use the clause with its Alternate IV.

(6) If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, the contracting officer may use the clause with its Alternate V.

(b) (1) The contracting officer may insert a clause substantially the same as the clause at 52.246-18, Warranty of Supplies of a Complex Nature, in solicitations and contracts for deliverable complex items when a fixed-price supply or research and development contract is contemplated and the use of a warranty clause has been approved under agency procedures.

(2) If commercial items are to be acquired, the contracting officer may use the clause with its Alternate I.

(3) If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), the contracting officer may use the clause with its Alternate II.

(4) If a fixed-price incentive contract is contemplated, the contracting officer may use the clause with its Alternate III.

(5) If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, the contracting officer may use the clause with its Alternate IV.

(c) (1) The contracting officer may insert a clause substantially the same as the clause at 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, in solicitations and contracts when performance specifications or design are of major importance; a fixed-price supply, service, or research and development contract for systems and equipment is contemplated; and the use of a warranty clause has been approved under agency procedures.

(2) If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), the contracting officer may use the clause with its Alternate I.

(3) If a fixed-price incentive contract is contemplated, the contracting officer may use the clause with its Alternate II.

(4) If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, the contracting officer may use the clause with its Alternate III.

(d) The contracting officer may insert a clause substantially the same as the clause at 52.246-20, Warranty of Services, in solicitations and contracts for services when a fixed-price contract for services is contemplated and the use of a warranty clause has been approved under agency procedures; unless a clause substantially the same as the clause at 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, has been used.

(e) (1) The contracting officer may insert a clause substantially the same as the clause at 52.246-21, Warranty of Construction, in solicitations and contracts when a fixed-price construction contract (see 46.705(c)) is contemplated and the use of a warranty clause has been approved under agency procedures.

(2) If the Government specifies in the contract the use of any equipment by

"brand name and model," the contracting officer may use the clause with its Alternate I.

SUBPART 46.8—CONTRACTOR LIABILITY FOR LOSS OF OR DAMAGE TO PROPERTY OF THE GOVERNMENT

46.800 Scope of subpart.

This subpart prescribes policies and procedures for limiting contractor liability for loss of or damage to property of the Government that (a) occurs after acceptance and (b) results from defects or deficiencies in the supplies delivered or services performed.

46.801 Applicability.

(a) The subpart applies to contracts other than those for (1) automatic data processing, (2) telecommunications, (3) construction, (4) architect-engineer services and (5) maintenance and rehabilitation of real property. This subpart does not apply to items priced at or based on catalog or market prices except as indicated in 46.804.

(b) See Subpart 46.7, Warranties, for policies and procedures concerning contractor liability caused by nonconforming technical data.

46.802 Definition.

"High-value item," as used in this subpart, means a contract end item that (a) has a high unit cost (normally exceeding $100,000 per unit), such as an aircraft, an aircraft engine, a communication system, a computer system, a missile, or a ship, and (b) is designated by the contracting officer as a high-value item.

46.803 Policy.

(a) *General.* The Government will generally act as a self-insurer by relieving contractors, as specified in this subpart, of liability for loss of or damage to property of the Government that (1) occurs after acceptance of supplies delivered or services performed under a contract and (2) results from defects or deficiencies in the supplies or services. However, the Government will not relieve the contractor of liability for loss of or damage to the contract end item itself, except for high-value items.

(b) *High-value items.* In contracts requiring delivery of high-value items, the Government will relieve contractors of contractual liability for loss of or damage to those items. However, this relief shall not limit the Government's rights arising under the contract to—

(1) Have any defective item or its components corrected, repaired, or replaced when the defect or deficiency is discovered before the loss of or damage to a high-value item occurs; or

(2) Obtain equitable relief when the defect or deficiency is discovered after such loss or damage occurs.

(c) *Exception.* The Government will not provide contractual relief under paragraphs (a) and (b) above when contractor liability can be preserved without increasing the contract price.

(d) *Limitations.* Subject to the specific terms of the limitation of liability clause included in the contract, the relief provided under paragraphs (a) and (b) above does not apply—

(1) To the extent that contractor liability is expressly provided under a contract clause authorized by this regulation;

(2) When a defect or deficiency in, or the Government's acceptance of, the supplies or services results from willful misconduct or lack of good faith on the part of the contractor's managerial personnel; or

(3) To the extent that any contractor insurance, or self-insurance reserve, covers liability for loss or damage suffered by the Government through purchase or use of the supplies delivered or services performed under the contract.

46.804 Items priced at or based on catalog or market prices.

Contractors generally (a) carry product liability or similar insurance, or maintain a reserve for self-insurance, covering liability arising from defective items and (b) reflect its cost in catalog or market prices. Therefore, for items being priced at or based on catalog or market prices (see 15.804-3(c)), contracting officers should not provide relief under the policy in 46.803 by including a clause prescribed in 46.805, unless they obtain an appropriate reduction from the catalog or market price to reflect reduced contractor liability.

46.805 Contract clauses.

(a) *Contracts over $25,000.* The contracting officer shall insert the appropriate clause or combination of clauses specified in subparagraphs (1) through (5) below in solicitations and contracts when the contract amount is expected to be over $25,000 and the contract is subject to the requirements of this subpart as indicated in 46.801:

(1) In contracts requiring delivery of end items that are not high-value items, insert the clause at 52.246-23, Limitation of Liability.

(2) In contracts requiring delivery of high-value items, insert the clause at 52.246-24, Limitation of Liability—High-Value Items.

(3) In contracts requiring delivery of both high-value items and other end items, insert both clauses prescribed in (1) and (2) above, Alternate I of the clause at 52.246-24, and identify clearly in the contract schedule the line items designated as high-value items.

(4) In contracts requiring the performance of services, insert the clause at 52.246-25, Limitation of Liability—Services.

(5) In contracts requiring both the performance of services and the delivery of end items, insert the clause prescribed in subparagraph (4) above and the appropriate clause or clauses prescribed in subparagraph (1), (2), or (3) above, and identify clearly in the contract schedule any high-value line items.

(b) *Contracts of $25,000 or less.* The clauses prescribed by paragraph (a) above are not required for contracts of $25,000 or less. However, in response to a contractor's specific request, the contracting officer may insert the clauses prescribed in subparagraph (1) or (4) above in a contract of $25,000 or less, obtaining any price reduction that is appropriate.

46.806 Subcontracts.

(a) The clause at 52.246-23, Limitation of Liability, and the clause at 52.246-25, Limitation of Liability—Services, each require the contractor to insert the same clause in all subcontracts.

(b) The clause at 52.246-24, Limitation of Liability—High-Value Items, and its Alternate I require the contractor to insert that clause, the clause at 52.246-23, Limitation of Liability, or both, as appropriate, in all subcontracts. However, they require the contractor to obtain the contracting officer's written approval before including the clause at 52.246-24, Limitation of Liability—High-Value Items. The contracting officer shall approve the use of this clause in a subcontract only if the clause would have been used had the subcontract been a prime contract with the Government.

PART 47—TRANSPORTATION

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

47.000 Scope of part.

(a) This part prescribes policies and procedures for—

(1) Applying transportation and traffic management considerations in the acquisition of supplies; and

(2) Acquiring transportation or transportation-related services by contract methods other than bills of lading, transportation requests, transportation warrants, and similar transportation forms. Even though the FAR does not regulate the acquisition of transportation or transportation-related services when the bill of lading is the contract, this contract method is widely used and, therefore, relevant guidance on the use of the bill of lading, particularly the Government bill of lading (GBL), is provided in this part.

(b) The definitions in this part have been condensed from statutory definitions. In case of inconsistency between the language of this part and the statutory requirements, the statute shall prevail.

47.001 Definitions.

"Carrier" or "commercial carrier" means a common carrier or a contract carrier.

"Common carrier," as used in this part, means a person holding itself out to the general public to provide transportation for compensation.

"Contract carrier" means a person providing transportation for compensation under continuing agreements with one person or a limited number of persons.

"CONUS" or "Continental United States" means the 48 contiguous states and the District of Columbia.

"F.o.b." means free on board. This term is used in conjunction with a physical point to determine (a) the responsibility and basis for payment of freight charges and (b) unless otherwise agreed, the point at which title for goods passes to the buyer or consignee.

"F.o.b. origin" means free on board at origin; i.e., the seller or consignor places the goods on the conveyance by which they are to be transported. Unless the contract provides otherwise, cost of shipping and risk of loss are borne by 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, cost of shipping and risk of loss are borne by the seller or consignor.

"Freight" means supplies, goods, and transportable property.

"Shipment," as used in this part, means freight transported or to be transported.

47.002 Applicability.

(a) All Government personnel concerned with the activities listed in subparagraphs (1) through (4) below shall follow the regulations in Part 47 as applicable:

(1) Acquisition of supplies.

(2) Acquisition of transportation and transportation-related services.

(3) Transportation assistance and traffic management.

(4) The making and administration of contracts under which payments are made from Government funds for (i) the transportation of supplies, (ii) transportation-related services, or (iii) transportation of contractor personnel and their personal belongings.

(b) Subpart 42.14, Traffic and Transportation Management, shall be used for administering transportation contracts, transportation-related contracts, and those portions of supply and other contracts that involve transportation.

SUBPART 47.1—GENERAL

47.101 Policies.

(a) The contracting officer shall obtain traffic management advice and assistance (see 47.105) in the consideration of transportation factors required for—

(1) Solicitations and awards;

(2) Contract administration, modification, and termination; and

(3) Transportation of property by the Government to and from contractors' plants.

(b) (1) The preferred method of transporting supplies for the Government is by commercial carriers. However, Government-owned, leased, or chartered vehicles, aircraft, and vessels may be used if (i) they are available and not fully utilized, (ii) their use will result in substantial economies, and (iii) their use is in accordance with all applicable statutes, agency policies and regulations.

(2) If the three circumstances listed in subparagraph (b)(1) above apply, Government vehicles may be used for purposes such as—

(i) Local transportation of supplies between Government installations;

(ii) Pickup and delivery services that commercial carriers do not perform in connection with line-haul transportation;

(iii) Transportation of supplies to meet emergencies; and

(iv) Accomplishment of program objectives that cannot be attained by using commercial carriers.

(c) Agencies shall not accord preferential treatment to any mode of transportation or to any particular carrier either in awarding or administering contracts for the acquisition of supplies or in awarding contracts for the acquisition of transportation. (See Subparts 47.2 and 47.3 for situations in which the contracting officer is permitted to use specific modes of transportation.)

(d) Agencies shall place with small business concerns purchases and contracts for transportation and transportation-related services as prescribed in Part 19.

(e) Agencies shall comply with the Fly America Act, the Cargo Preference Act, and related statutes as prescribed in Subparts 47.4, Air Transportation by U.S.-Flag Carriers, and 47.5, Ocean Transportation by U.S.-Flag Vessels.

47.102 Transportation insurance.

(a) The Government generally (1) retains the risk of loss of and/or damage to its property that is not the legal liability of commercial carriers and (2) does not buy insurance coverage for its property in the possession of commercial carriers (40 U.S.C. 726). (See Part 28, Bonds and Insurance.)

(b) Under special circumstances the Government may, if such action is considered necessary and in the Government's interest, (1) buy insurance coverage for Government property or (2) require the carrier to (i) assume full responsibility for loss of or damage to the Government property in its possession and (ii) buy insurance to cover the carrier's assumed responsibility. The cost of this insurance to the carrier shall be part of the transportation cost. (The Secretary of the Treasury prescribes regulations regarding shipments of valuables in 31 CFR 261 and 262.)

(c) (1) If special circumstances dictate the need for the Government to buy insurance coverage, the contracting officer shall ascertain that (i) there is no statutory prohibition and (ii) funds for insurance are available.

(2) The contracting officer shall document the need and authorization for insurance coverage in the contract file.

47.103 Transportation Documentation and Audit Regulation (TDA).

(a) The United States Government bill of lading (GBL) generally shall be used for the transportation of property of the United States for which the Government pays the transportation charges directly to commercial carriers.

(b) (1) Regulations and procedures governing the GBL, documentation, payment, and audit of transportation services acquired by the United States Government are prescribed in 41 CFR 101-41, Transportation Documentation and Audit. Included in this regulation, among others, is the limited authority for the use of commercial forms and procedures to acquire freight or express transportation for small shipments of a recurring nature when transportation costs do not exceed $100.

(2) For DOD shipments, corresponding guidance is in Chapter 214 of the Military Traffic Management Regulation (MTMR).

(c) Subsection 42.1403-2 prescribes regulations and procedures for the occasional use of contractor-prepaid commercial bills of lading for the transportation of supplies weighing not more than 1,000 pounds that are acquired by the Government on f.o.b. origin terms.

47.104 Government rate tenders under section 10721 of the Interstate Commerce Act.

47.104-1 Government freight.

(a) Common carriers subject to the jurisdiction of the Interstate Commerce Commission may under the provisions of 49 U.S.C. 10721 offer to transport persons or property for the account of the United States without charge or at reduced rates.

(b) Section 10721 rates are published in Government rate tenders and apply to shipments moving for the account of the Government; i.e., on—

(1) Government bills of lading;

(2) Commercial bills of lading endorsed to show that such bills of lading are to be exchanged for, or converted to, Government bills of lading at destination after delivery to the consignees; or

(3) Commercial bills of lading endorsed to show that total transportation charges are assignable to, and will be reimbursed by, the Government (see the clause at 52.247-1, Commercial Bill of Lading Notations).

(c) Government agencies ma negotiate with carriers for additional or revised section 10721 rates in appropriate situations. Only qualified transportation officers shall carry out these negotiations. (See 47.105 for transportation assistance.) The following are examples of situations in which negotiations for additional or revised section 10721 rates may be appropriate:

(1) Volume movements are expected.

(2) Shipments will be made on a recurring basis between designated places, and substantial savings in transportation costs appear possible even though a volume movement is not involved.

(3) Transit arrangements are feasible and advantageous to the Government.

47.104-2 Fixed-price contracts.

(a) *F.o.b. destination.* Section 10721 quotations do not apply to shipments under fixed-price f.o.b. destination contracts (delivered price).

(b) *F.o.b. origin.* Under fixed-price f.o.b. origin contracts, shipments normally shall be made on GBL's. However, if it is advantageous to the Government, the contracting officer may occasionally require the contractor to prepay the freight charges to a specific destination. In such cases, the contractor shall use a commercial bill of lading and be reimbursed for the direct and actual transportation cost as a separate item in the invoice. The clause at 52.247-1, Commercial Bill of Lading Notations, will ensure that the Government in this type of arrangement obtains the benefit of section 10721 rates.

47.104-3 Cost-reimbursement contracts.

(a) The Interstate Commerce Commission has ruled that section 10721 rates may be applied to shipments other than those made by the Government if the total benefit accrues to the Government; i.e., the Government must pay the charges or directly and completely reimburse the party that initially bears the freight charges. Therefore, section 10721 rates may be used for shipments moving on commercial bills of lading in cost-reimbursement contracts under which the transportation costs are direct and allowable costs under the cost principles of Part 31.

(b) Section 10721 rates may be applied to the movement of household goods and personal effects of contractor employees who are relocated for the convenience and at the direction of the Government and whose total transportation costs are reimbursed by the Government.

(c) The clause at 52.247-1, Commercial Bill of Lading Notations, will ensure that the Government receives the benefit of lower section 10721 rates in cost-reimbursement contracts as described in paragraphs (a) and (b) above.

(d) Contracting officers shall—

(1) Include in contracts a statement requiring the contractor to use carriers that offer acceptable service at reduced rates if available; and

(2) Ensure that contractors receive the name and location of the transportation officer designated to furnish support and guidance when using Government rate tenders under 47.104-5(b).

(e) Transportation officers shall—

(1) Advise and assist contracting officers and contractors; and

(2) Make available to contractors the names of carriers that provide service under section 10721 quotations, cite applicable rate tenders, and advise contractors of the statement that must be shown on the carrier's commercial bill of lading (see the clause at 52.247-1, Commercial Bill of Lading Notations).

47.104-4 Contract clause.

(a) The contracting officer, in order to ensure the application of section 10721 rates, shall insert the clause at 52.247-1, Commercial Bill of Lading Notations, in solicitations and contracts when the contracts will be—

(1) Cost-reimbursement contracts, including those that may involve the movement of household goods (see 47.104-3(b)); or

(2) Fixed-price f.o.b. origin contracts (other than small purchases under Part 13) (see 47.104-2(b) and 47.104-3).

(b) The contracting officer may insert the clause at 52.247-1, Commercial Bill of Lading Notations, in solicitations and contracts awarded under the small purchase procedures in Part 13 when it is contemplated that the delivery terms will be f.o.b. origin.

47.104-5 Citation of Government rate tenders.

When section 10721 rates apply, transportation officers or contractors, as appropriate, shall identify the applicable Government rate tender by endorsement on bills of lading, including—

(a) GBL's or commercial bills of lading to be converted to GBL's (see 41 CFR 101-41.303, Conversion of commercial bills of lading to GBL's); and

(b) Properly endorsed commercial bills of lading when transportation charges are reimbursable (see 47.104-2(b) and 47.104-3).

47.105 Transportation assistance.

(a) Civilian Government activities that do not have transportation officers, or otherwise need assistance on transportation matters, shall obtain assistance from (1) the GSA Regional Office of Transportation that provides support to the activity or (2) the transportation element of the contract administration office designated in the contract.

(b) Military installations shall obtain transportation assistance from the transportation office of the contracting activity, unless another military activity has been designated as responsible for furnishing assistance, guidance, or data. Military transportation offices shall request needed additional aid from the appropriate area headquarters of the Military Traffic Management Command (MTMC).

SUBPART 47.2—CONTRACTS FOR TRANSPORTATION OR FOR TRANSPORTATION-RELATED SERVICES

47.200 Scope of subpart.

(a) This subpart prescribes procedures for the acquisition by formally advertised or negotiated contracts of—

(1) Freight transportation (including local drayage) from rail, motor (including bus), domestic water (including inland, coastwise, and intercoastal) carriers, and from freight forwarders; and

(2) Transportation-related services including but not limited to stevedoring, storage, packing, marking, and ocean freight forwarding.

(b) Except as provided in paragraph (c) below, this subpart does not apply to—

(1) The acquisition of freight transportation from (i) domestic or international air carriers and (ii) international ocean carriers (see Subparts 47.4 and 47.5);

(2) Freight transportation acquired by bills of lading;

(3) Freight transportation for which rates are negotiated under 49 U.S.C. 10721(b)(1); or

(4) Small purchases under Part 13.

(c) With appropriate modifications, the procedures in this subpart may be applied to the acquisition of freight transportation from the carriers listed in subparagraph (b)(1) above and passenger transportation from any carrier or mode.

(d) The procedures in this subpart are applicable to the transportation of household goods and personal effects of persons being relocated at Government expense except when acquired—

(1) Under the commuted rate schedules as required in the Federal Travel Regulation (41 CFR 101-7);

(2) By U.S. Government bill of lading (GBL); or

(3) By DOD under the Personal Property Management Regulation (DOD 4500.34R).

(e) Additional guidance for DOD acquisition of freight and passenger transportation is in the Military Traffic Management Regulation.

47.201 Definitions.

"General freight," as used in this subpart, means supplies, goods, and transportable property not encompassed in the definitions of "household goods" or "office furniture."

"Household goods," as used in this subpart, means personal property that belongs to a person and that person's immediate family and includes, but is

not limited to household furnishings, equipment and appliances, furniture, clothing, books, and similar property (see 41 CFR 101-7).

"Office furniture," as used in this subpart, means furniture, equipment, fixtures, records, and other equipment and materials used in Government offices, hospitals, and similar establishments.

47.202 Presolicitation planning.

Contracting officers shall inform activities that plan to acquire transportation or transportation-related services of the applicable lead-time requirements, that is—

(a) The Service Contract Act of 1965 (SCA) requirement for submission of Standard Form 98, Notice of Intention to Make a Service Contract and Response to Notice, to the Department of Labor not less than the number of days prescribed by the Department of Labor before the issuance of an invitation for bid, request for proposal, or commencement of negotiations for any contract exceeding $2,500 that may be subject to the SCA (see Subpart 22.10);

(b) The possible requirement to provide, during the solicitation period, time for prospective offerors or contractors to inspect origin and destination locations; or

(c) The possible requirement for inspection by agency personnel of prospective contractor facilities and equipment.

47.203 Transportation term contracts.

(a) Transportation term contracts are indefinite delivery requirements contracts for transportation or for transportation-related services. They are particularly useful for local drayage and office relocations within a metropolitan area.

(b) Transportation term contracts shall contain descriptions of the services to be performed; rates and charges for these services; the geographical area of coverage; the term of the contract; and minimum or maximum order limitations by dollar amount, shipment size, or other criteria.

(c) If appropriate, the transportation term contract shall require the contractor to provide the services covered to any Government agency that issues an order for these services under the contract. If so—

(1) Agencies may place orders for transportation or for transportation-related services under existing term contracts without further consideration of competition, as these term contracts are awarded on a price-competitive basis; and

(2) Agency personnel shall ensure that the orders they place conform to the contract, including any minimum or maximum order limitations.

(d) Policies and procedures regarding the use of GSA term contracts for transportation or for transportation-related services by civilian executive agencies are prescribed in 41 CFR 101-40.109.

47.204 Single-movement contracts.

Single-movement contracts may be awarded for unique transportation services that are not otherwise available under carrier tariffs or covered by DOD or GSA contracts; e.g., special requirements at origin and/or destination.

47.205 Availability of term contracts and basic ordering agreements for transportation or for transportation-related services.

(a) All Government agencies may contract for transportation or for transportation-related services and execute basic ordering agreements (BOA's) (see Subpart 16.7) unless agency regulations prescribe otherwise. However, it is generally more economical and efficient for most agencies to make use of term contracts and basic ordering agreements that have been executed by agencies that employ personnel experienced in contracting for transportation or for transportation-related services. The Department of Defense (DOD) and the General Services Administration (GSA) contract for transportation or for transportation-related services on behalf of other activities and agencies. For instance, GSA awards term contracts for services such as local drayage, office moves, and ocean-freight forwarding (see 47.105 for assistance).

(b) Agencies may obtain transportation or transportation-related services for which the cost does not exceed the small purchase limitation under the small purchase procedures in Part 13, if term contracts or basic ordering agreements are not available.

47.206 Preparation of solicitations and contracts.

47.206-1 General.

(a) Contracting officers shall prepare solicitations and contracts for transportation or for transportation-related services as prescribed elsewhere in the FAR for fixed-price service contracts to the extent that those requirements are applicable and not inconsistent with the requirements in Subpart 47.2.

(b) In addition, the contracting officer shall include in solicitations and contracts for transportation or for transportation-related services provisions, clauses and instructions as prescribed in section 47.207.

47.206-2 Exclusion of offers.

(a) Except as specified in paragraph (b) below, solicitation specifications shall permit competition among all modes of transportation, consistent with the law and with safety regulations.

(b) Solicitations may be restricted to a particular mode or to particular modes only if the excluded mode or modes cannot reasonably meet the required service.

(c) Contracting officers shall (1) state in solicitations the types of carriers from which offers will not be accepted and (2) place in the contract file a written determination prepared by the transportation officer, supporting the need and basis for this exclusion.

47.207 Solicitation provisions, contract clauses, and special requirements.

The contracting officer shall include provisions, clauses, and special requirements in solicitations and contracts for transportation or for transportation-related services as prescribed in 47.207-1 through 47.207-9.

47.207-1 Qualifications of offerors.

(a) *Operating authorities.* The contracting officer shall insert the clause at 52.247-2, Permits, Authorities, or Franchises, when regulated transportation is involved. The clause need not be used when a Federal office move is intrastate and the contracting officer determines that it is in the Government's interest not to apply the requirement for holding or obtaining State authority to operate within the State.

(b) *Performance capability for Federal office moving contracts.* (1) The contracting officer shall insert the clause at 52.247-3, Capability to Perform a Contract for the Relocation of a Federal Office, when a Federal office is relocated, to ensure that offerors are capable to perform interstate or intrastate moving contracts involving the relocation of Federal offices.

(2) If a Federal office move is intrastate and the contracting officer determines that it is in the Government's interest not to apply the requirements for holding or obtaining State authority to operate within the State, and to maintain a facility within the State or commercial zone, the contracting officer shall use the clause with its Alternate I.

(c) *Inspection of shipping and receiving facilities.* The contracting officer shall insert the provision at

52.247-4, Inspection of Shipping and Receiving Facilities, when it is desired for offerors to inspect the shipping, receiving, or other sites to ensure realistic bids.

(d) *Familiarization with conditions.* The contracting officer shall insert the clause at 52.247-5, Familiarization with Conditions, to ensure that offerors become familiar with conditions under which and where the services will be performed.

(e) *Financial statement.* The contracting officer shall insert the provision at 52.247-6, Financial Statement, to ensure that offerors are prepared to furnish financial statements.

47.207-2 Duration of contract and time of performance.

The contracting officer shall—

(a) Establish a specific expiration date (month, day, and year) for the contract or state the length of time that the contract will remain in effect; e.g., 6 months commencing from the date of award; and

(b) Include the following items as appropriate:

(1) A statement of the time period during which the service is required when the service is a one-time job; e.g., a routine office relocation.

(2) A time schedule for the performance of segments of a major job; e.g., an office relocation for which the work phases must be coordinated to meet other needs of the agency.

(3) Statements of performance times for particular services; e.g., pickup and delivery services. Specify—

(i) On which days of the week and during which hours of the day pickup and delivery services may be required;

(ii) The maximum time allowable to the contractor for accomplishing delivery under regular or priority service; and

(iii) How much advance notice the contractor will be given for regular pickup services and, if applicable, priority pickup services.

47.207-3 Description of shipment, origin, and destination.

(a) *Origin of shipments.* The contracting officer shall include in solicitations full details regarding the location from which the freight is to be shipped. For example, if a single location is shown, furnish the shipper's name, street address, city, State, and ZIP code. If several or indefinite locations are involved, as in the case of multiple shippers or drayage contracts, describe the area of origin including boundaries and ZIP codes.

(b) *Destination of shipments.* The contracting officer shall include full details regarding delivery points. For example, if a single delivery point is shown, furnish the consignee's name, street address, city, State, and ZIP code. If several or indefinite delivery points are involved, describe the delivery area, including boundaries and ZIP codes.

(c) *Description of the freight.* The contracting officer shall include in solicitations—

(1) An inventory if the freight consists of nonbulk items; and

(2) The freight classification description, which should be obtained from the transportation office. If a freight classification description is not available, use a clear nontechnical description. Include additional details necessary to ensure that the prospective offerors have complete information about the freight; e.g., size, weight, hazardous material, whether packed for export, or unusual value.

(d) *Exclusion of freight.* The contracting officer shall (1) clearly identify any freight or types of shipments that are subject to exclusion; e.g., bulk freight, hazardous commodities, or shipments under or over specified weights; and (2) insert a clause substantially the same as the clause at 52.247-7, Freight Excluded, when any commodities or types of shipments have been identified for exclusion.

(e) *Quantity.* (1) The contracting officer shall state the actual weight of the freight or a reasonably accurate estimate. The following are examples:

(i) If the contract covers transportation services required over an extended period of time, include a schedule of actual or estimated tonnage or number of items to be transported per week, month, or other time period.

(ii) If the contract covers a group movement of household goods, give an estimate of the aggregate weights and the basis for determining the aggregate weight.

(2) The contracting officer shall insert the clause at 52.247-8, Estimated Weights or Quantities Not Guaranteed, when weights or quantities are estimates.

47.207-4 Determination of weights.

The contracting officer shall specify in the contract the method of determining the weights of shipments as appropriate for the kind of freight involved and the type of service required.

(a) *Shipments of freight other than household goods and office furniture.*

(1) The contracting officer shall insert the clause at 52.247-9, Agreed Weight—General Freight, when the shipping activity determines the weight of shipments of freight other than household goods or office furniture.

(2) The contracting officer shall insert the clause at 52.247-10, Net Weight—General Freight, when the weight of shipments of freight other than household goods or office furniture is not known at the time of shipment and the contractor is responsible for determining the net weight of the shipments.

(b) *Shipments of household goods or office furniture.* The contracting officer shall insert the clause at 52.247-11, Net Weight—Household Goods or Office Furniture, when movements of Government employees' household goods or relocations of Government offices are involved.

47.207-5 Contractor responsibilities.

Contractor responsibilities vary with the kinds of freight to be shipped and services required. The contracting officer shall specify clearly those service requirements that are not considered normal transportation or transportation-related requirements.

(a) *Type of equipment.* If appropriate, the contracting officer shall specify the type and size of equipment to be furnished by the contractor. Otherwise, state that the contractor shall furnish clean and sound closed-type equipment of sufficient size to accommodate the shipment.

(b) *Supervision, labor, or materials.* The contracting officer shall insert a clause substantially the same as the clause at 52.247-12, Supervision, Labor, or Materials, when the contractor is required to furnish supervision, labor, or materials.

(c) *Accessorial services—moving contracts.* The contracting officer shall insert a clause substantially the same as the clause at 52.247-13, Accessorial Services—Moving Contracts, in contracts for the transportation of household goods or office furniture.

(d) *Receipt of shipment.* The contracting officer shall insert the clause at 52.247-14, Contractor Responsibility for Receipt of Shipment.

(e) *Loading and unloading.* The contracting officer shall insert the clause at 52.247-15, Contractor Responsibility for Loading and Unloading, when the contractor is responsible for loading and unloading shipments.

(f) *Return of undelivered freight.* The contracting officer shall insert the clause at 52.247-16, Contractor Responsibility for Returning Undelivered Freight, when the contractor is responsible for returning undelivered freight.

47.207-6 Rates and charges.

(a) (1) The contracting officer shall include in the solicitation a statement

that the charges in the contract shall not exceed the contractor's charges for the same service that is—

(i) Available to the general public; or

(ii) Otherwise tendered to the Government.

(2) The contracting officer shall insert the clause at 52.247-17, Charges.

(b) The contracting officer shall include in the solicitation a tabulation listing each required service and the basis for the rate (price); e.g., "unit of weight" or "per work-hour," leaving sufficient space for offerors to insert the rates offered for each service.

(c) The following guidelines apply to the composition of a tabulation of transportation or of transportation-related services and their rate (price) bases:

(1) *Combination of pricing bases.* If various types of services with different bases for assessing charges are required under the same contract, show each service separately and the applicable basis for that service.

(2) *Hourly rate basis.* If charges are based on an hourly rate, state the method for charging for fractions of an hour; e.g., (i) a period of 30 minutes or less is charged at one-half the hourly rate and (ii) the hourly rate applies to any portion of an hour that exceeds 30 minutes.

(3) *Shipments of varying weights.* If charges are based on weight and shipments will vary in weight, request rates on a graduated weight basis. Include a table of graduated weights for offerors to insert rates.

(4) *Multiple origins and/or destinations.* Specify whether rates are requested for each origin and/or each destination or for specific groups of origins and/or destinations.

(5) *Multiple shipments from one origin.* If multiple shipments will be tendered at one time to the contractor for delivery to two or more consignees at the same destination, request the rate applicable to the aggregate weight. If such shipments are for delivery to various destinations along the route between origin and last destination, request the rate applicable to the aggregate weight and a stopoff charge for each intermediate destination.

(i) The contracting officer shall insert the clause at 52.247-18, Multiple Shipments, when multiple shipments are tendered at one time to the contractor for transportation from one origin to two or more consignees at the same destination.

(ii) The contracting officer shall insert the clause at 52.247-19, Stopping in Transit for Partial Unloading, when multiple shipments are tendered at one time to the contractor for transportation from one origin to two or more consignees along the route between origin and last destination.

(6) *Estimated quantities or weights.* The contracting officer shall insert in solicitations the provision at 52.247-20, Estimated Quantities or Weights for Evaluation of Offers, when quantities or weights of shipments between each origin and destination are not known, stating estimated quantity or weight for each origin/destination pair.

(7) *Additional services.* If services in addition to those covered in the basic rate are anticipated; e.g., inside delivery, state the conditions under which payment will be made for those services.

47.207-7 Liability and insurance.

(a) The contracting officer shall specify—

(1) The contractor's liability for injury to persons or damage to property other than the freight being transported;

(2) The contractor's liability for loss of and/or damage to the freight being transported; and

(3) The amount of insurance the contractor is required to maintain.

(b) When the contractor's liability for loss of and/or damage to the freight being transported is not specified, the usual measure of liability as prescribed in section 11707 of the Interstate Commerce Act (49 U.S.C. 11707) applies.

(c) The contracting officer shall insert the clause at 52.247-21, Contractor Liability for Personal Injury and/or Property Damage.

(d) The contracting officer shall insert the clause at 52.247-22, Contractor Liability for Loss of and/or Damage to Freight other than Household Goods, in solicitations and contracts for the transportation of freight other than household goods.

(e) The contracting officer shall insert the clause at 52.247-23, Contractor Liability for Loss of and/or Damage to Household Goods, in solicitations and contracts for the transportation of household goods, including the rate per pound appropriate to the situation.

(f) When freight is not shipped under rates subject to released or declared value, see 28.313(a) and the clause at 52.228-9, Cargo Insurance.

(g) When the contracting officer determines that vehicular liability and/or general public liability insurance required by law are not sufficient for a contract, see 28.313(b) and the clause at 52.228-10, Vehicular and General Public Liability Insurance.

47.207-8 Government responsibilities.

(a) The contracting officer shall state clearly the Government's responsibilities that have a direct bearing on the contractor's performance under the contract; e.g., the Government's responsibility to notify the contractor in advance when hazardous materials are included in a shipment.

(1) *Advance notification.* The contracting officer shall insert the clause at 52.247-24, Advance Notification by the Government, when the Government is responsible for notifying the contractor of specific service times or unusual shipments.

(2) *Government equipment with or without operators* (i) The contracting officer shall insert the clause at 52.247-25, Government-Furnished Equipment with or without Operators, when the Government furnishes equipment with or without operators.

(ii) Insert the kind of equipment and the locations where the equipment will be furnished.

(3) *Direction and marking.* The contracting officer shall insert the clause at 52.247-26, Government Direction and Marking, when office relocations are involved.

(b) The contracting officer shall insert the clause at 52.247-27, Contract Not Affected by Oral Agreement.

47.207-9 Annotation and distribution of shipping and billing documents.

(a) The contracting officer shall state in detail the responsibilities of the contractor, the contracting agency, and, if appropriate, the consignee for the annotation and distribution of shipping and billing documents. See 41 CFR 101-41, Transportation Documentation and Audit (TDA).

(b) In instances of mass movements of freight made available to the contractor at one time, it is particularly important that the contracting officer specifies that bills of lading be cross-referenced so that the Government benefits from applicable volume rates.

(c) The contracting officer shall insert the clause at 52.247-28, Contractor's Invoices, in drayage or other term contracts.

SUBPART 47.3—TRANSPORTATION IN SUPPLY CONTRACTS

47.300 Scope of subpart.

(a) This subpart prescribes policies and procedures for the application of transportation and traffic management considerations in the acquisition of supplies. The terms and conditions contained in this subpart are applicable to fixed-price contracts.

(b) If a special requirement exists for application of any of these terms and

conditions to other types of contracts; e.g., cost-reimbursement contracts, for which transportation arrangements are normally the responsibility of the contractor and transportation costs are allowable (see 31.205-45), the contracting officer shall use the terms and conditions prescribed in this subpart as a guide for (1) contract coverage of transportation and (2) instructions to the contractor to minimize the ultimate transportation costs to the Government.

47.301 General.

(a) Transportation and traffic management factors are important in awarding and administering contracts to ensure that (1) acquisitions are made on the basis most advantageous to the Government and (2) supplies arrive in good order and condition and on time at the required place. (See 47.104 for possible reduced transportation rates for Government shipments).

(b) The requiring activity shall—

(1) Consider all transportation factors including present and future requirements, positioning of supplies, and subsequent distribution to the extent known or ascertainable; and

(2) Provide the contracting office with information and instructions reflecting transportation factors applicable to the particular acquisition.

47.301-1 Responsibilities of contracting officers.

(a) Contracting officers shall obtain from traffic management offices transportation factors required for (1) solicitations and awards and (2) contract administration, modification, and termination, including the movement of property by the Government to and from contractors' plants.

(b) Contracting officers shall request transportation office participation especially before making an initial acquisition of supplies that are unusually large, heavy, high, wide, or long; have sensitive or dangerous characteristics; or lend themselves to containerized movements from the source. In determining total transportation charges, contracting officers shall also consider additional costs arising from factors such as the use of special equipment, excess blocking and bracing material, or circuitous routing.

47.301-2 Participation of transportation officers.

Agencies' transportation officers shall participate in the solicitation and evaluation of bids to ensure that all necessary transportation factors, such as transportation costs, transit arrangements, time in transit, and port capabilities, are considered and result in solicitations and contracts advantageous to the Government. Transportation officers shall provide traffic management assistance throughout the acquisition cycle (see 47.105 Transportation assistance).

47.301-3 Using the Defense Transportation System (DTS).

(a) All military and civilian agencies shipping, or arranging for the acquisition and shipment by Government contractors, through the use of military-controlled transport or through military transshipment facilities shall follow Department of Defense (DOD) Regulation 45.000.32-R, Military Standard Transportation and Movement Procedures (MILSTAMP). MILSTAMP establishes uniform procedures and documents for the generation, documentation, communication, and use of transportation information, thus providing the capability for control of shipments moving in the DTS. MILSTAMP has been implemented on a world-wide basis.

(b) Contracting activities are responsible for (1) ensuring that the requirements of the MILSTAMP regulation are included in appropriate contracts for all applicable shipments and (2) enforcing these requirements with regard to shipments under their control. This includes requirements relating to documentation, marking, advance notification of shipment dates, and terminal clearances.

(c) Contractual documents shall designate a contract administration office (see 42.202(d)) as the contract point to which the contractor will provide necessary information to (1) effect MILSTAMP documentation and movement control, including air or water terminal shipment clearances, and (2) obtain data necessary for shipment marking and freight routing. Contractual documents shall specify that the contractor shall not ship directly to a military air or water port terminal without authorization from the designated contract administration office (see 47.305-6(f)).

47.302 Place of delivery—f.o.b. point.

(a) The policies and procedures in 47.304-1, -2, and -3 govern the transportation of supplies from sources in the Continental United States (CONUS), except when identifiable costs, nature of the supplies (security, safety, or value), delivery requirements (premium modes of transport, escorts, transit arrangements, and tentative conditions), or other advantages, limitations, or requirements dictate otherwise. The policies and procedures in 47.304-4 govern the transportation of supplies from sources outside CONUS.

(b) Generally, the contracting officer shall solicit offers, and award contracts, with delivery terms on the basis prescribed in 47.304. The contracting officer shall document the contract file (see 4.801) with justifications for solicitations that do not specify delivery on the basis prescribed in 47.304.

(c) (1) The place of performance of Government acquisition quality assurance actions and the place of acceptance shall not control the delivery term, except that if acceptance is at destination, transportation shall be f.o.b. destination (see 47.304-1(f)).

(2) The fact that transportation is f.o.b. destination does not alone necessitate changing the place of acceptance from origin to destination; and the fact that acceptance is at origin does not necessitate an f.o.b. origin delivery term. Providing for inspection and acceptance at origin (if appropriate under 46.402), in conjunction with an f.o.b. destination term, may be advantageous to both the Government and the contractor. Acceptance of title at origin by the Government permits payment of the contractor, provided the invoice is supported either by a copy of the signed commercial bill of lading (indicating the carrier's receipt of the supplies covered by the invoice for transportation to the particular destination specified in the contract) or by other appropriate evidence of shipment to the particular destination for the contractor's account.

47.303 Standard delivery terms and contract clauses.

Standard delivery terms are listed in 47.303-1 through 47.303-16.

47.303-1 F.o.b. origin.

(a) *Explanation of delivery term.* "F.o.b. origin" means free of expense to the Government delivered—

(1) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipment will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(2) To, and placed on, the carrier's wharf (at shipside, within reach of the ship's loading tackle, when the shipping point is within a port area having water transportation service) or the carrier's freight station;

(3) To a U.S. Postal Service facility; or

(4) If stated in the solicitation, to any Government-designated point located within the same commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR 1048).

(b) *Contractor responsibilities.* The contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) (i) Order specified carrier equipment when requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the contractor) on or in the carrier's conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods—

(i) Occurring before delivery to the carrier;

(ii) Resulting from improper packing and marking; or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the contractor on or in the carrier's conveyance;

(5) Complete the Government bill of lading supplied by the ordering agency or, when a Government bill of lading is not supplied, prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show—

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance with their serial numbers or other identification;

(iii) Lengths and capacities of cars or trucks ordered and furnished;

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; e.g., (A) "to be converted to a Government bill of lading," or (B) "this shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government"; and

(vi) The signature of the carrier's agent and the date the shipment is received by the carrier; and

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-29, F.o.b. Origin, when the delivery term is f.o.b. origin.

47.303-2 F.o.b. origin, contractor's facility.

(a) *Explanation of delivery term.* "F.o.b. origin, contractor's facility" means free of expense to the Government delivered on board the indicated type of conveyance of the carrier (or of the Government if specified) at the designated facility, on the named street or highway, in the city, county, and State from which the shipment will be made.

(b) *Contractor responsibilities.* The contractor's responsibilities are the same as those listed in 47.303-1(b).

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-30, F.o.b. Origin, Contractor's Facility, when the delivery term is f.o.b. origin, contractor's facility.

47.303-3 F.o.b. origin, freight allowed.

(a) *Explanation of delivery term.* "F.o.b. origin, freight allowed" means—

(1) Free of expense to the Government delivered—

(i) On board the indicated type or conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipments will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(ii) To, and placed on, the carrier's wharf (at shipside, within reach of the ship's loading tackle, when the shipping point is within a port area having water transportation service) or the carrier's freight station;

(iii) To a U.S. Postal Service facility; or

(iv) If stated in the solicitation, to any Government-designated point located within the same commercial zone as the f.o.b origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR 1048); and

(2) An allowance for freight, based on applicable published tariff rates (or Government rate tenders) between the points specified in the contract, is deducted from the contract price.

(b) *Contractor responsibilities.* The contractor's responsibilities are the same as those listed in 47.303-1(b).

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-31, F.o.b. Origin, Freight Allowed, when the delivery term is f.o.b. origin, freight allowed.

47.303-4 F.o.b. origin, freight prepaid.

(a) *Explanation of delivery term.* "F.o.b. origin, freight prepaid" means—

(1) Free of expense to the Government delivered—

(i) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipments will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(ii) To, and placed on, the carrier's wharf (at shipside, within reach of the ship's loading tackle, when the shipping point is within a port area having water transportation service) or the carrier's freight station;

(iii) To a U.S. Postal Service facility; or

(iv) If stated in the solicitation, to any Government-designated point located within the same commercial zone as the f.o.b origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR 1048); and

(2) The cost of transportation, ultimately the Government's obligation, is prepaid by the contractor to the point specified in the contract.

(b) *Contractor responsibilities.* The contractor's responsibilities are the same as those listed in 47.303-1(b), except that the contractor shall prepare commercial bills of lading or other transportation receipts and shall prepay all freight charges to the extent specified in the contract.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-32, F.o.b. Origin, Freight Prepaid, when the delivery term is f.o.b. origin, freight prepaid.

47.303-5 F.o.b. origin, with differentials.

(a) *Explanation of delivery term.* "F.o.b. origin, with differentials" means—

(1) Free of expense to the Government delivered—

(i) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and

State from which the shipments will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(ii) To, and placed on, the carrier's wharf (at shipside, within reach of the ship's loading tackle, when the shipping point is within a port area having water transportation service) or the carrier's freight station;

(iii) To a U.S. Postal Service facility; or

(iv) If stated in the solicitation, to any Government-designated point located within the same commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR 1048); and

(2) Differentials for mode of transportation, type of vehicle, or place of delivery as indicated in contractor's offer may be added to the contract price.

(b) *Contractor responsibilities.* The contractor's responsibilities are the same as those listed in 47.303-1(b).

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-33, F.o.b. Origin, with Differentials, when it is likely that offerors may include in f.o.b. origin offers a contingency to compensate for unfavorable routing conditions by the Government at the time of shipment.

47.303-6 F.o.b. destination.

(a) *Explanation of delivery term.* "F.o.b. destination" means—

(1) Free of expense to the Government delivered, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee. If the contractor uses rail carrier or freight forwarder for less than carload shipments, the contractor shall ensure that the carrier will furnish tailgate delivery if transfer to truck is required to complete delivery to consignee.

(b) *Contractor responsibilities.* The contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

(2) Prepare and distribute commercial bills of lading;

(3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and

(6) Pay and bear all charges to the specified point of delivery.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-34, F.o.b. Destination, when the delivery term is f.o.b. destination.

47.303-7 F.o.b. destination, within consignee's premises.

(a) *Explanation of delivery term.* "F.o.b. destination, within consignee's premises" means free of expense to the Government delivered and laid down within the doors of the consignee's premises, including delivery to specific rooms within a building if so specified.

(b) *Contractor responsibilities.* The contractor's responsibilities are the same as those listed in 47.303-6(b).

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-35, F.o.b. Destination, within Consignee's Premises, when the delivery term is f.o.b. destination, within consignee's premises.

47.303-8 F.a.s. vessel, port of shipment.

(a) *Explanation of delivery term.* "F.a.s. vessel, port of shipment" means free of expense to the Government delivered alongside the ocean vessel and within reach of its loading tackle at the specified port of shipment.

(b) *Contractor responsibilities.* The contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) (i) Deliver the shipment in good order and condition alongside the ocean vessel and within reach of its loading tackle, at the point of delivery and on the date or within the period specified in the contract; and

(ii) Pay and bear all applicable charges, including transportation costs, wharfage, handling, and heavy lift charges, if necessary, up to this point;

(3) Provide a clean dock or ship's receipt;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point specified in the contract; and

(5) At the Government's request and expense, assist in obtaining the documents required for (i) exportation or (ii) importation at destination.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-36, F.a.s. Vessel, Port of Shipment, when the delivery term is f.a.s. vessel, port of shipment.

47.303-9 F.o.b. vessel, port of shipment.

(a) *Explanation of delivery term.* "F.o.b. vessel, port shipment" means free of expense to the Government loaded, stowed, and trimmed on board the ocean vessel at the specified port of shipment.

(b) *Contractor responsibilities.* The contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) (i) Deliver the shipment on board the ocean vessel in good order and condition on the date or within the period fixed; and

(ii) Pay and bear all charges incurred in placing the shipment actually on board;

(3) Provide a clean ship's receipt or on-board ocean bill of lading;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment on board the ocean vessel; and

(5) At the Government's request and expense, assist in obtaining the documents required for (i) exportation or (ii) importation at destination.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-37, F.o.b. Vessel, Port of Shipment, when the

delivery term is f.o.b. vessel, port of shipment.

47.303-10 F.o.b. inland carrier, point of exportation.

(a) *Explanation of delivery term.* "F.o.b. inland carrier, point of exportation" means free of expense to the Government, on board the conveyance of the inland carrier, delivered to the specified point of exportation.

(b) *Contractor responsibilities.* The contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) Prepare and distribute commercial bills of lading;

(3) (i) Deliver the shipment in good order and condition in or on the conveyance of the carrier on the date or within the period specified; and

(ii) Pay and bear all applicable charges, including transportation costs, to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point of delivery specified in the contract; and

(5) At the Government's request and expense, assist in obtaining the documents required for (i) exportation or (ii) importation at destination.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-38, F.o.b. Inland Carrier, Point of Exportation, when the delivery term is f.o.b. inland carrier, point of exportation.

47.303-11 F.o.b. inland point, country of importation.

(a) *Explanation of delivery term.* "F.o.b. inland point, country of importation" means free of expense to the Government, on board the indicated type of conveyance of the carrier, delivered to the specified inland point where the consignee's facility is located.

(b) *Contractor responsibilities.* The contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods;

(2) (i) Deliver, in or on the inland carrier's conveyance, the shipment in good order and condition to the specified inland point where the consignee's facility is located;

(ii) Pay and bear all applicable charges incurred up to the point of delivery, including transportation costs; export, import, or other fees or taxes; costs of landing; wharfage costs; customs duties and costs of certificates of origin; consular invoices; and other documents that may be required for importation; and

(3) Be responsible for any loss of and/or damage to the goods until their arrival on or in the carrier's conveyance at the specified inland point.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-39, F.o.b. Inland Point, Country of Importation, when the delivery term is f.o.b. inland point, country of importation.

47.303-12 Ex dock, pier, or warehouse, port of importation.

(a) *Explanation of delivery term.* "Ex dock, pier, or warehouse, port of importation" means free of expense to the Government delivered on the designated dock or pier or in the warehouse at the specified port of importation.

(b) *Contractor responsibilities.* The contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods;

(2) (i) Deliver shipment in good order and condition; and

(ii) Pay and bear all charges up to the point of delivery specified in the contract, including transportation costs; export, import, or other fees or taxes; costs of wharfage and landing, if any; customs duties; and costs of certificates of origin, consular invoices, or other documents that may be required for exportation or importation; and

(3) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point of delivery specified in the contract.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-40, Ex Dock, Pier, or Warehouse, Port of Importation, when the delivery term is ex dock, pier, or warehouse, port of importation.

47.303-13 C.& f. destination.

(a) *Explanation of delivery term.* "C.& f. destination" means free of expense to the Government delivered on board the ocean vessel to the specified point of destination, with the cost of transportation paid by the contractor.

(b) *Contractor responsibilities.* The contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements;

(2) (i) Deliver the shipment in good order and condition; and

(ii) Pay and bear all applicable charges to the point of destination specified in the contract, including transportation costs and export taxes or other fees or charges levied because of exportation;

(3) Obtain and dispatch promptly to the Government clean on-board ocean bills of lading to the specified point of destination;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery; and

(5) At the Government's request and expense, provide certificates of origin, consular invoices, or any other documents issued in the country of origin or of shipment, or both, that may be required for importation into the country of destination.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-41, C.&f. Destination, when the delivery term is c.& f. destination.

47.303-14 C.i.f. destination.

(a) *Explanation of delivery term.* "C.i.f destination" means free of expense to the Government delivered on board the ocean vessel to the specified point of destination, with the cost of transportation and marine insurance paid by the contractor.

(b) *Contractor responsibilities.* The contractor's responsibilities are the same as those listed in 47.303-13(b), except that, in addition, the contractor shall obtain and dispatch to the Government an insurance policy or certificate providing the amount and extent of marine insurance coverage specified in the contract or agreed upon by the Government contracting officer.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-42, C.i.f. Destination, when the delivery term is c.i.f. destination.

47.303-15 F.o.b. designated air carrier's terminal, point of exportation.

(a) *Explanation of delivery term.* "F.o.b. designated air carrier's terminal, point of exportation" means free of expense to the Government loaded

aboard the aircraft, or delivered to the custody of the air carrier (if only the air carrier performs the loading), at the air carrier's terminal specified in the contract.

(b) *Contractor responsibilities.* The contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for air transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) (i) Deliver the shipment in good order and condition into the conveyance of the carrier, or to the custody of the carrier (if only the carrier performs the loading), at the point of delivery and on the date or within the period specified in the contract; and

(ii) Pay and bear all applicable charges up to this point;

(3) Provide a clean Government bill of lading and/or air waybill;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the goods to the point specified in the contract; and

(5) At the Government's request and expense, assist in obtaining the documents required for the purpose of exportation.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-43, F.o.b. Designated Air Carrier's Terminal, Point of Exportation, when the delivery term is f.o.b. designated air carrier's terminal, point of exportation.

47.303-16 F.o.b. designated air carrier's terminal, point of importation.

(a) *Explanation of delivery term.* "F.o.b. designated air carrier's terminal, point of importation" means free of expense to the Government delivered to the air carrier's terminal at the point of importation specified in the contract.

(b) *Contractor responsibilities.* The contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for air transportation in conformance with carrier requirements to protect the goods;

(2) Prepare and distribute bills of lading or air waybills;

(3) (i) Deliver the shipment in good order and condition to the point of delivery specified in the contract; and

(ii) Pay and bear all charges incurred up to the point of delivery specified in the contract, including transportation costs; export, import, or other fees or taxes; cost of landing, if any; customs duties; and costs of certificates of origin, consular invoices, or other documents that may be required for exportation or importation; and

(4) Be responsible for any loss of and/or damage to the goods until delivery of the goods to the Government at the designated air carrier's terminal.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-44, F.o.b. Designated Air Carrier's Terminal, Point of Importation, when the delivery term is f.o.b. designated air carrier's terminal, point of importation.

47.304 Determination of delivery terms.

47.304-1 General.

(a) The contracting officer shall determine f.o.b. terms generally on the basis of overall costs, giving due consideration to the criteria given in 47.304.

(b) Solicitations shall specify whether offerors must submit offers f.o.b. origin, f.o.b. destination, or both; or whether offerors may choose the basis on which they make an offer. The contracting officer shall consider the most advantageous delivery point, such as (1) f.o.b. origin, carrier's equipment, wharf, or specified freight station near contractor's plant; or (2) f.o.b. destination.

(c) In determining whether f.o.b. origin or f.o.b. destination is more advantageous to the Government, the contracting officer shall consider the availability of lower freight rates (Government rate tenders) to the Government for f.o.b. origin acquisitions. F.o.b. origin contracts also present other desirable traffic management features, in that they—

(1) Permit use of transit privileges (see 47.305-13);

(2) Permit diversions to new destinations without price adjustment for transportation (see 47.305-11);

(3) Facilitate use of special routings or types of equipment (e.g., circuitous routing or oversize shipments) (see 47.305-14);

(4) Facilitate, if necessary, use of premium cost transportation and permit Government-controlled transportation;

(5) Permit negotiations for reduced freight rates (see 47.104-1(b)); and

(6) Permit use of small shipment consolidation stations.

(d) When destinations are tentative or unknown, the solicitation shall be f.o.b. origin only (see 47.305-5).

(e) When the size or quantity of supplies with confidential or higher security classification requires commercial transportation services, the contracting officer shall generally specify f.o.b. origin acquisitions.

(f) When acceptance must be at destination, solicitation shall be on an f.o.b. destination only basis.

(g) Following are examples of situations when solicitations shall normally be on an f.o.b. destination only basis because it is advantageous to the Government (see 47.305-4):

(1) Bulk supplies, such as coal, that require other than Government-owned or operated handling, storage, and loading facilities, are destined for shipment outside the continental United States.

(2) Steel or other bulk construction products are destined for shipment outside the continental United States.

(3) Supplies consist of forest products such as lumber.

(4) Perishable or medical supplies are subject to in-transit deterioration.

(5) Evaluation of f.o.b. origin offers is anticipated to result in increased administrative lead time or administrative cost that would outweigh the potential advantages of an f.o.b. origin determination.

47.304-2 Shipments within CONUS.

(a) Solicitations shall provide that offers may be submitted on the basis of either or both f.o.b origin and f.o.b. destination and that they will be evaluated on the basis of the lowest overall cost to the Government.

(b) When sufficient reasons exist not to follow this policy, the contract file shall be documented to include the reasons.

47.304-3 Shipments from CONUS for overseas delivery.

(a) When Government acquisitions involve shipments from CONUS to overseas destinations, delivery f.o.b. origin may afford not only the economies of lower freight rates available to the Government within the United States, but also flexibility for selection of (1) the port of export and (2) the ocean transportation providing the lowest overall cost to the Government.

(b) (1) Unless there are valid reasons to the contrary (see 47.304-5), acquisition of supplies originating within CONUS for ultimate delivery to destinations outside CONUS shall be made on the basis of f.o.b. origin. This policy applies to supplies and equipment to be shipped either directly to a port area for export or to a storage or holding area for subsequent forwarding to a port area for export.

(2) Justification for the solicitation of offers on other than an f.o.b. origin basis

shall be recorded and the contract file documented accordingly.

(c) Export cargo involves considerations of operational and cost factors from the point of origin within CONUS to the overseas port destination. The lowest cost of shipping can be determined only by evaluating and comparing the various prospective landed costs (including inland, terminal, and ocean costs). Also, agencies may have export licensing privileges for shipments to foreign destinations. The contracting officer shall obtain advice from the transportation officer to ensure full use of these privileges.

47.304-4 Shipments originating outside CONUS.

(a) Unless there are valid reasons to the contrary (see 47.304-5), acquisition of supplies originating outside CONUS for ultimate delivery to destinations within CONUS or elsewhere, regardless of the quantity of the shipments, shall be on the basis of f.o.b. origin or f.o.b. destination, whichever is more advantageous to the Government.

(b) The contracting officer shall request the advice of the transportation officer to determine the most appropriate place of delivery to be specified in acquisition documents, giving full consideration to the possible use of Government transportation facilities, reduced rates available, special licensing or custom requirements, and availability of U.S.-flag shipping services between the points involved (see Subpart 47.5).

47.304-5 Exceptions.

(a) Unusual conditions or circumstances may require the use of terms other than f.o.b. origin or f.o.b. destination. Such conditions or circumstances include, but are not limited to—

(1) Transportation disabilities at origin or destination;

(2) Mode of transportation required;

(3) Availability of Government or commercial loading, unloading, or transshipment facilities;

(4) Characteristics of the supplies;

(5) Trade customs related to certain supplies;

(6) Origins or destinations in Alaska and Hawaii; and

(7) Program requirements.

(b) Contracting officers shall obtain assistance from transportation officers before issuing solicitations when unusual conditions or circumstances exist that relate to f.o.b. terms.

47.305 Solicitation provisions, contract clauses, and transportation factors.

(a) The contracting officer shall coordinate transportation factors with the transportation office during the planning, solicitation, and award phases of the acquisition process (see 47.105).

(b) To the extent feasible, activities shall schedule deliveries to effect savings in transportation costs, and concomitant reductions in energy consumption by carriers (see 47.305-7 and 47.305-8 for specific possibilities).

47.305-1 Solicitation requirements.

When the acquisition of supplies is on f.o.b. origin or f.o.b. destination delivery terms, the contracting officer shall include in solicitations a requirement that the offeror furnish the Government as much of the following data as is applicable to the particular acquisition:

(a) Modes of transportation and, if rail transportation is used, names of rail carriers serving the offeror's facility.

(b) The number of railroad cars, motor trucks, or other conveyances that can be loaded per day.

(c) Type of packaging; e.g., box, carton, crate, drum, bundle, skids, and when applicable, package number from the governing freight classification.

(d) Number of units packed in one container.

(e) Guaranteed maximum shipping weight; cubic measurement; and length, width, and height of each container.

(f) Minimum size of each shipment.

(g) Number of containers or units that can be loaded in a car, truck, or other conveyance of the size normally used (specify type and size) for the commodity.

(h) Description of material in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable.

(i) Benefits available to the Government under transit arrangements made by the offeror.

(j) Other requirements as stated under specific section headings.

47.305-2 Solicitations f.o.b. origin and f.o.b. destination—lowest overall cost.

(a) Solicitations, when appropriate, shall specify that offers may be f.o.b. origin, f.o.b. destination, or both; and that they will be evaluated on the basis of the lowest overall cost to the Government.

(b) When offers are solicited on the basis of both f.o.b. origin and f.o.b. destination, the contracting officer shall insert in solicitations the provision at 52.247-45, F.o.b. Origin and/or F.o.b. Destination Evaluation.

47.305-3 F.o.b. origin solicitations.

When preparing f.o.b. origin solicitations, the contracting officer shall refer to 47.303, where f.o.b. origin clauses relating to standard delivery terms are prescribed, and to 42.1404-2, where the use of bills of lading, parcel post, and indicia mail is prescribed. Supply solicitations that will or may result in f.o.b. origin contracts shall also contain requirements, information, provisions, and clauses concerning the following items:

(a) Delivery in carload or truckload lots f.o.b. carrier's equipment, wharf, or freight station.

(b) The requirement that the offeror furnish the following information with the offer:

(1) Location of the offeror's actual shipping point(s) (street address, city, State, and ZIP code) from which supplies will be delivered to the Government.

(2) Whether the offeror's shipping point has a private railroad siding, and the name of the rail carrier serving it.

(3) When the offeror's shipping point does not have a private siding, the names and addresses of the nearest public rail siding and of the carrier serving it. (This will enable transportation officers, when issuing routing instructions, to select the mode of transportation that will provide the required service at the lowest possible overall cost.)

(4) (i) The quantity of supplies to be shipped from each shipping point.

(ii) The contracting officer shall insert in f.o.b. origin solicitations the provision at 52.247-46, Shipping Point(s) Used in Evaluation of F.o.b. Origin Offers, when price evaluation for shipments from various shipping points is contemplated.

(c) When delivery is "f.o.b. origin, contractor's facility," and the designated facility is not covered by the line-haul transportation rate, the charges required to deliver the shipment to the point where the line-haul rate is applicable.

(d) When delivery is "f.o.b. origin, freight allowed," the basis on which transportation charges will be allowed, including the origin and destination from and to which transportation charges will be allowed.

(e) If f.o.b. origin offers only are desired, a statement that offers submitted on any other basis will be rejected as nonresponsive.

(f) (1) The methods of transportation used in evaluating offers. The Government normally uses land transportation by regulated common carriers between points in the 48 contiguous United States and the District of Columbia.

(2) The contracting officer shall insert the provision at 52.247-47, Evaluation—F.o.b. Origin, in solicitations that require prices f.o.b. origin for the purpose of

establishing the basis on which offers will be evaluated. Transportation methods other than land may be substituted when evaluating offers; e.g., air, pipeline, barge, or ocean tanker.

(g) (1) When it is believed that prospective contractors are likely to include in f.o.b. origin offers a contingency to compensate for what may be an unfavorable routing condition by the Government at the time of shipment, the contracting officer may permit prospective contractors to state in offers a reimbursable differential that represents the cost of bringing the supplies to any f.o.b. origin place of delivery specified by the Government at the time of shipment (see the clause at 52.247-33, F.o.b. Origin, with Differentials).

(2) Following are situations that might impose on the contractor a substantial cost above "at plant" or "commercial shipping point" prices because of Government-required routings:

(i) The loading nature of the supplies; e.g., wheeled vehicles.

(ii) The different methods of shipment specified by the Government; e.g., towaway, driveaway, tri-level vehicle, or rail car, that may increase the contractor's cost in varying amounts for bringing the supplies to, or loading and bracing the supplies at, the specified place of delivery.

(iii) The contractor's f.o.b. origin shipping point is a port city served by United States inland, coastwise, or intercoastal water transportation, and the contractor would incur additional costs to make delivery f.o.b. a wharf in that city to accommodate water routing specified by the Government.

(iv) The contractor's plant does not have a private rail siding and in order to ship by Government-specified rail routing, the contractor would be required to deliver the supplies to a public siding or freight terminal and to load, brace, and install dunnage in rail cars.

47.305-4 F.o.b. destination solicitations.

(a) When preparing f.o.b destination solicitations, the contracting officer shall refer to 47.303 for the prescription of f.o.b. destination clauses relating to standard delivery terms.

(b) If f.o.b. destination only offers are desired, the solicitation shall state that offers submitted on a basis other than f.o.b. destination will be rejected as nonresponsive.

(c) When supplies will or may be purchased f.o.b. destination but inspection and acceptance will be at origin, the contracting officer shall insert in solicitations and contracts the clause at 52.247-48, F.o.b. Destination—Evidence of Shipment.

47.305-5 Destination unknown.

(a) (1) When destinations are unknown, solicitations shall be f.o.b. origin only.

(2) The contracting officer shall include in the contract file justifications for such solicitations.

(b) (1) When the exact destination of the supplies to be acquired is not known, but the general location of the users can be reasonably established, the acquiring activity shall designate tentative destinations for the purpose of computing transportation costs, showing estimated quantities for each tentative destination.

(2) The contracting officer shall insert in solicitations the provision at 52.247-49, Destination Unknown, when destinations are tentative and only for the purpose of evaluating offers.

(3) If it is necessary to control subsequent shipping weights, the solicitation shall state that subsequent shipments shall be made in carloads or truckloads (see the clause at 52.247-59, F.o.b. Origin—Carload and Truckload Shipments).

(c) (1) When exact destinations are not known and it is impracticable to establish tentative or general delivery places for the purpose of evaluating transportation costs, the contracting officer shall insert in solicitations the provision at 52.247-50, No Evaluation of Transportation Costs.

(2) The solicitation shall also state that the transportation costs of subsequent shipments must be controlled (see, for example, the clause at 52.247-61, F.o.b. Origin—Minimum Size of Shipments).

47.305-6 Shipments to ports and air terminals.

(a) When supplies are acquired on the basis of the delivery terms in 47.303-8 through 47.303-16, the solicitation shall include a requirement that the offeror furnish the Government the following information:

(1) When the delivery term is "f.a.s. vessel, port of shipment," "f.o.b. vessel, port of shipment," or "f.o.b. inland carrier, point of exportation," the required data shall include—

(i) A delivery schedule in number of units and/or long or short tons;

(ii) Maximum quantities available per shipment;

(iii) The quantity that can be made available for loading to vessel per running day of 24 hours (if acquisition involves a commodity to be shipped in bulk);

(iv) The minimum leadtime required to make supplies available for loading to vessel; and

(v) The port and pier or other designation and, when applicable, the maximum draft of vessel (in feet) that can be accommodated.

(2) When the delivery term is "f.o.b. inland point, country of importation" or "f.o.b. designated air carrier's terminal, point of importation," the required data shall include—

(i) A delivery schedule in number of units and/or long or short tons;

(ii) Maximum quantities available per shipment; and

(iii) Other data appropriate to shipment by air carrier.

(3) When the delivery term is "ex dock, pier, or warehouse, port of importation" or "c.& f. destination," the required data shall include—

(i) A delivery schedule in number of units and/or long or short tons;

(ii) Maximum quantities available per shipment; and

(iii) The number of containers or units that can be loaded in a car, truck, or other conveyance of the size normally used (specify type and size) for the commodity.

(4) When the delivery term is "c.i.f. destination," the required data shall include—

(i) The same as specified in 47.305-6(a)(3); and

(ii) The amount and type of marine insurance coverage; e.g., whether the coverage is "With Average" or "Free of Particular Average" and whether it covers any special risks or excludes any of the usual risks associated with the specific commodity involved.

(5) When the delivery term is "f.o.b. designated air carrier's terminal, point of exportation," the required data shall include—

(i) A delivery schedule in number of units, type of package, and individual weight and dimensions of each package;

(ii) Minimum leadtime required to make supplies available for loading into aircraft;

(iii) Name of airport and location to which shipment will be delivered; and

(iv) Other data appropriate to shipment by air carrier.

(b) When supplies are acquired for known destinations outside CONUS and originate within CONUS, the contracting officer shall, for transportation evaluation purposes, note in the solicitation the CONUS port of loading or point of exit (aerial or water) and the water port of debarkation that serves the overseas destination.

(c) The contracting officer may also, for evaluation purposes, list in the

solicitation other CONUS ports that meet the eligibility criteria compatible with the nature and quantity of the supplies, their destination, type of carrier required, and specified overseas delivery dates. This permits offerors that are geographically remote from the port that normally serves the overseas destination to be competitive as far as transportation costs are concerned.

(d) Unless logistics requirements limit the ports of loading to the ports listed in the solicitation, the solicitation shall state that—

(1) Offerors may nominate additional ports (including ports in Alaska and Hawaii) more favorably located to their shipping points; and

(2) These ports will be considered in the evaluation of offers if they possess all requisite capabilities of the listed ports in relation to the supplies being acquired.

(e) When supplies are to be exported through CONUS ports and offers are solicited on an f.o.b. origin or f.o.b. destination basis, the contracting officer shall insert in solicitations the provision at 52.247-51, Evaluation of Export Offers. The contracting officer shall use the provision with its—

(1) Alternate I, when the CONUS ports of export are DOD water terminals;

(2) Alternate II, when offers are solicited on an f.o.b. origin only basis; or

(3) Alternate III, when offers are solicited on an f.o.b. destination only basis.

(f) (1) When the supplies are to move in the Defense Transportation System (DTS) (see 47.301-3), the contract shall specify that—

(i) A Transportation Control Movement Document (TCMD) must be dispatched to the appropriate DOD air or water clearance authority in accordance with MILSTAMP procedures for all shipments consigned to DOD air or water terminal transshipment points; and

(ii) An Export Release must be obtained for supplies to be transshipped via a water port of loading to overseas destinations, except for shipments for which an Export Release is not required, generally shipments of less than 10,000 pounds, (see paragraph 202024 of the Military Traffic Management Regulation (MTMR) (AR 55-355, NAVSUP 4600.70, MCO 4600.14A, AFM 75-2, DLAR 4500.3).

(2) When shipments will be consigned to DOD air or water terminal transshipment points, the contracting officer shall insert in solicitations and contracts the clause at 52.247-52, Clearance and Documentation Requirements—Shipments to DOD Air or Water Terminal Transshipment Points.

(g) When a contract will not generate any shipments that require an Export Release, only the DOD CONUS ports that serve the overseas destination shall be listed in the solicitation (see MILSTAMP at 47.301-3), except that the responsible contracting officer may limit the water ports listed when such limitation is considered necessary to meet delivery or other requirements.

(h) The award shall specify the United States ports of loading that afford the lowest overall cost to the overseas destination.

(i) When supplies will be from origins outside CONUS to destinations either within or outside CONUS, the contracting officer shall use the appropriate f.o.b. term and include evaluation-of-offers information.

(j) In furtherance of the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)), to encourage and foster the American Merchant Marine, the port of delivery of supplies originating outside the United States and shipped by ocean vessel shall be based on the availability of United States-flag vessels between the ports involved, unless the acquiring activity has given other specific instructions. (See Subpart 47.5—Ocean Transportation by U.S.-Flag Vessels.)

(k) For application of the Fly America Act to the transportation of supplies and personnel when the Government is responsible for the transportation costs, see Subpart 47.4—Air Transportation by U.S.-Flag Carriers.

(l) Military and civilian agencies shall obtain assistance from transportation offices in connection with all export shipments (see 47.105).

47.305-7 Quantity analysis, direct delivery, and reduction of crosshauling and backhauling.

(a) *Quantity analysis.* (1) The requiring activity shall consider the acquisition of carload or truckload quantities.

(2) When additional quantities of the supplies being acquired can be transported at lower unit transportation costs or with a relatively small increase in total transportation costs, with no impairment to the program schedule, the contracting officer shall ascertain from the requiring activity whether there is a known requirement for additional quantities. This may be the case, for example, when the additional quantity could profitably be stored by the activity for future use, or could be distributed advantageously to several using activities on the same transportation route or in the same geographical area.

(b) *Direct delivery.* When it is the usual practice of a requiring activity to acquire supplies in large quantities for shipment to a central point and subsequent distribution to using activities, as needed, consideration shall be given, if sufficient quantities are involved to warrant scheduling direct delivery, to the feasibility of providing for direct delivery from the contractor to the using activity, thereby reducing the cost of transportation and handling.

(c) *Crosshauling and backhauling.* The contracting officer shall select distribution and transshipment facilities intermediate to origins and ultimate destinations to reduce crosshauling and backhauling; i.e., the transportation of personal property of the same kind in opposite directions or the return of the property to or through areas previously traversed in shipment.

47.305-8 Consolidation of small shipments and the use of stopoff privileges.

(a) *Consolidation of small shipments.* Consolidation of small shipments into larger lots frequently results in lower transportation costs. Therefore, the contracting officer, after consultation with the transportation office and the activity requiring the supplies, may revise the delivery schedules to provide for deliveries in larger quantities.

(b) *Stopping for partial unloading.* When feasible, schedules for delivery of supplies to multiple destinations shall be consolidated and the stopoff privileges permitted under carrier tariffs shall be used for partial unloading at one or more points directly en route between the point of origin and the last destination.

47.305-9 Commodity description and freight classification.

(a) Generally, the freight rate for supplies is based on the rating applicable to the freight classification description published in tariffs filed with Federal and State regulatory bodies. Therefore, the contracting officer shall show in the solicitation a complete description of the commodity to be acquired and of packing requirements to determine proper transportation charges for the evaluation of offers. If supplies cannot be properly classified through reference to freight classification tariffs or if doubt exists, the contracting officer shall obtain the applicable freight classification from the transportation office. In some situations prospective contractors have established an official freight classification description that can be applied.

(b) (1) When the supplies being acquired are new to the supply system, nonstandard, or modifications of previously shipped items, and different freight classifications may apply, the contracting officer shall insert in solicitations the provision at 52.247-53, Freight Classification Description.

(2) The contracting officer shall alert the transportation officer to the possibility of negotiations for appropriate freight classification ratings and reasonable transportation rates.

(c) The solicitation shall contain adequate descriptions of explosives and other dangerous supplies according to (1) the regular freight classification and (2) the hazardous material description and hazard class as shown in 49 CFR 172.101.

(d) The contracting officer shall furnish the freight classification information developed in 47.305-9(a), (b), and (c) above to the contract administration office.

47.305-10 Packing, marking, and consignment instructions.

(a) Acquisition documents shall include packing and marking requirements necessary to prevent deterioration of supplies and damages due to the hazards of shipping, handling, and storage, and, when appropriate, marking in accordance with the requirements of 49 CFR 172.300.

(b) Contracts shall include complete consignment and marking instructions at the time the contract is awarded to ensure that supplies are delivered to proper destinations without delay. If complete consignment information is not initially known, the contracting officer shall issue amended delivery instructions under the Changes clause of the contract (see 43.205) as soon as the information becomes known.

(c) If necessary to meet required delivery schedules, the contracting officer may issue instructions by telephone, teletype, or telegram. The contracting officer shall confirm these instructions in writing.

(d) Marking and consignment instructions for military shipments shall conform to the current issue of MIL-STD-129 (Military Standard Marking for Shipment and Storage) and other applicable DOD regulations. Shipments for civilian agencies shall be marked as specified in Federal Standard 123, Marking for Domestic Shipment (Civil Agencies).

47.305-11 Options in shipment and delivery.

Although the clauses prescribed in Subpart 43.2 allow certain changes to be made in regard to shipment and delivery, it may be desirable to provide specifically for certain options in the solicitation.

(a) The Government may reserve the right to—

(1) Direct deliveries of all or part of the contract quantity to destinations or to consignees other than those specified in the solicitation and in the contract;

(2) Direct shipments in quantities that may require transportation rates different from those on which the contract price is based; and

(3) Direct shipments by a mode of transportation other than that stipulated in the solicitation and in the contract.

(b) (1) When the transportation charges are for the account of the contractor, and changes in transportation requirements directed by the Government result in an increase or a decrease in transportation costs, an appropriate equitable adjustment shall be made.

(2) The contracting officer shall insert in solicitations and contracts the clause at 52.247-54, Diversion of Shipment under F.o.b. Destination Contracts, when transportation charges are for the account of the contractor and may need adjustments because of diversion of shipments.

47.305-12 Delivery of Government-furnished property.

(a) (1) When Government property is furnished to a contractor and transportation costs to the Government are a factor in the evaluation of offers, the contracting officer shall include in the solicitation a clear description of the property, its location, and other information necessary for the preparation of cost estimates.

(2) The contracting officer shall insert in solicitations and contracts the clause at 52.247-55, F.o.b. Point for Delivery of Government-Furnished Property, when Government property is to be furnished under a contract and the Government will be responsible for transportation arrangements and costs.

(b) The contracting officer shall describe explosive and dangerous material according to (1) the regular freight classification and (2) the hazardous material description and hazard class as shown in 49 CFR 172.101.

47.305-13 Transit arrangements.

(a) *Transit privileges.* (1) Transit arrangements permit the stopping of a carload or truckload shipment at a specific intermediate point en route to the final destination for storage, processing, or other purposes, as specified in carrier tariffs or rate tenders. A single through rate is charged from origin to final destination plus a transit or other related charge, rather than a more expensive combination of rates to and from the transit point.

(2) The contracting officer shall consider possible benefits available to the Government through the use of existing transit arrangements or through efforts to obtain additional transit privileges from the carriers. Solicitations incorporating transit arrangements shall be restricted to f.o.b. origin offers, as f.o.b. destination offers can only quote fixed overall delivered prices at first destination.

(3) (i) Traffic management personnel shall furnish information and analyses of situations in which transit arrangements may be beneficial. The quantity to be awarded must be of sufficient tonnage to ensure that carload/truckload shipments can be made by the contractor, and there should be reasonable certainty that shipments out of the transit point will be requested in carload/truckload quantities.

(ii) The contracting officer shall insert in solicitations the provision at 52.247-56, Transit Arrangements, when benefits may accrue to the Government because transit arrangements may apply.

(b) *Transit credits.* (1) In evaluations of f.o.b. origin offers for large quantities of supplies that contractors normally have in process or storage at intermediate points, contracting officers shall make use of contractors' earned commercial transit credits, which are recorded with the carriers. A transit credit represents the transportation costs for a recorded tonnage from the initial point to an intermediate point. The remaining transportation charges from the intermediate point to the Government destination, because they are based on through rates, are frequently lower than the transportation charges that would apply for the same tonnage if the intermediate point were the initial origin point.

(2) If transit credits apply, the contract shall state that the contractor shall ship the goods on prepaid commercial bills of lading, subject to reimbursement by the Government. The contracting officer shall ensure that this does not preclude a proper change in delivery terms under the Changes clause. The shipments move for the account and at the risk of the Government, as they become Government property at origin.

(3) The contractor shall show the transportation and transit charges as separate amounts on the invoice for each individual shipment. The amount to be reimbursed by the Government shall not exceed the amount quoted in

the offer. Regulations and procedures regarding contractor prepaid transportation charges are prescribed in 42.1403-2.

(4) The contracting officer shall insert in solicitations and contracts the clause at 52.247-57, Transportation Transit Privilege Credits, when supplies are of such a nature, or when it is the custom of the trade, that offerors may have potential transit credits available and the Government may reduce transportation costs through the use of transit credits.

47.305-14 Mode of transportation.

Generally, solicitations shall not specify a particular mode of transportation or a particular carrier. If the use of particular types of carriers is necessary to meet program requirements, the solicitation shall provide that only offers involving the specified types of carriers will be considered. The contracting officer shall obtain all specifications for mode, route, delivery, etc., from the transportation office.

47.305-15 Loading responsibilities of contractors.

(a) (1) Contractors are responsible for loading, blocking, and bracing carload shipments as specified in standards published by the Association of American Railroads.

(2) The contracting officer shall insert in solicitations and contracts the clause at 52.247-58, Loading, Blocking, and Bracing of Freight Car Shipments, when supplies may be shipped in carload lots by rail.

(b) If the nature of the supplies or safety, environmental, or transportability factors require special methods for securing the supplies on the carrier's equipment, or if only a special mode of transportation or type vehicle is appropriate, the contracting officer shall include in solicitations detailed specifications that have been coordinated with the transportation office.

47.305-16 Shipping weights and dimensions.

(a) *Required shipping weights.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-59, F.o.b. Origin—Carload and Truckload Shipments, when it is contemplated that they may result in f.o.b. origin contracts with shipments in carloads or truckloads. This will facilitate realistic freight cost evaluations of offers and ensure that contractors produce economical shipments of agreed size.

(b) *Guaranteed shipping weights and dimensions.* (1) The contracting officer shall insert in solicitations and contracts the clause at 52.247-60, Guaranteed Maximum Shipping Weights and Dimensions, when maximum shipping weights and dimensions of the supplies are required to evaluate offers as to transportation costs. The contracting officer shall use the clause with its Alternate I, when the contracting officer determines that offers not containing guaranteed maximum weights and dimensions will be considered.

(2) The award document shall show the weights and dimensions used in the evaluation.

(c) *Minimum size of shipments.* When volume rates may apply, the contracting officer shall insert in solicitations and contracts the clause at 52.247-61, F.o.b. Origin—Minimum Size of Shipments.

(d) *Specific quantities unknown.*. (1) When total requirements and destinations to which shipments will be made are known, but the specific quantity to be shipped to each destination cannot be predetermined, solicitations shall state that offers are to be submitted on the basis of delivery "f.o.b. origin" and/or "f.o.b. destination" and that offers will be evaluated on both bases.

(2) The contracting officer shall insert in solicitations and contracts the clause at 52.247-62, Specific Quantities Unknown, when total requirements and destinations to which shipments will be made are known, but the specific quantity to be shipped to each destination cannot be predetermined. This clause protects the interests of both the Government and the contractor during the course of the performance of the contract.

47.306 Transportation factors in the evaluation of offers.

When evaluating offers, contracting officers shall consider transportation and transportation-related costs as well as the offerors' shipping and receiving facilities.

47.306-1 Transportation cost determinations.

When requesting the transportation officer to assist in evaluating offers, the contracting officer shall give the transportation officer all pertinent data, including the following information:

(a) A complete description of the commodity being acquired including packaging instructions.

(b) Planned date of award.

(c) Date of initial shipment.

(d) Total quantity to be shipped (including weight and cubic content, when appropriate).

(e) Delivery schedule.

(f) Contract period.

(g) Possible use of transit privileges, including stopoffs for partial loading or unloading, or both.

47.306-2 Lowest overall transportation costs.

(a) For the evaluation of offers, the transportation officer shall give to the contracting officer, and the contracting officer shall use, the lowest available freight rates and related accessorial and incidental charges that (1) are in effect on, or become effective before, the expected date of the initial shipment and (2) are on file or published on the date of the bid opening.

(b) If rates or related charges become available after the bid opening or the due date of offers, they shall not be used in the evaluation unless they cover transportation for which no applicable rates or accessorial or incidental costs were in existence at the time of bid opening or due date of the offers.

47.306-3 Adequacy of loading and unloading facilities.

(a) When determining the transportation capabilities of an offeror, the contracting officer shall consider the type and adequacy of the offeror's shipping facilities, including the ability to consolidate and ship in carload or truckload lots.

(b) The contracting officer shall consider the type and adequacy of the consignee's receiving facilities to avoid shipping schedules that cannot be properly accommodated.

SUBPART 47.4—AIR TRANSPORTATION BY U.S.-FLAG CARRIERS

47.401 Definitions.

"Air freight forwarder" means an indirect air carrier that is responsible for the transportation of property from the point of receipt to the point of destination, and utilizes for the whole or any part of such transportation the services of a direct air carrier or its agent, or of another air freight forwarder.

"Gateway airport abroad" means the airport from which the traveler last embarks en route to the United States or at which the traveler first debarks incident to travel from the United States.

"Gateway airport in the United States" means the last U.S. airport from which the traveler's flight departs or the first U.S. airport at which the traveler's flight arrives.

"International air transportation" means transportation by air between a place in the United States and a place

outside the United States or between two places both of which are outside the United States.

"United States," as used in this subpart, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier" means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).

47.402 Policy.

Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that Federal employees and their dependents, consultants, contractors, grantees, and others use U.S.-flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent service by these carriers is available.

47.403 Guidelines for implementation of the Fly America Act.

This section 47.403 is based on the Guidelines for Implementation of the Fly America Act (case number B-138942), issued by the Comptroller General of the United States on March 31, 1981.

47.403-1 Availability and unavailability of U.S.-flag air carrier service.

(a) If a U.S.-flag air carrier cannot provide the international air transportation needed or if the use of U.S.-flag air carrier service would not accomplish an agency's mission, foreign-flag air carrier service may be deemed necessary.

(b) U.S.-flag air carrier service is considered available even though—

(1) Comparable or a different kind of service can be provided at less cost by a foreign-flag air carrier;

(2) Foreign-flag air carrier service is preferred by, or is more convenient for, the agency or traveler; or

(3) Service by a foreign-flag air carrier can be paid for in excess foreign currency (unless U.S.-flag air carriers decline to accept excess or near excess foreign currencies for transportation payable only out of such monies).

(c) Except as provided in paragraph 47.403-1(a), U.S.-flag air carrier service shall be used for U.S. Government-financed commercial foreign air travel if service provided by U.S.-flag air carriers is available. In determining availability of a U.S.-flag air carrier, the following scheduling principles shall be followed unless their application would result in the last or first leg of travel to or from the United States being performed by a foreign-flag air carrier:

(1) U.S.-flag air carrier service available at point of origin shall be used to destination or, in the absence of direct or through service, to the farthest interchange point on a usually traveled route.

(2) When an origin or interchange point is not served by a U.S.-flag air carrier, foreign-flag air carrier service shall be used only to the nearest interchange point on a usually traveled route to connect with U.S.-flag air carrier service.

(3) When a U.S.-flag air carrier involuntarily reroutes the traveler via a foreign-flag air carrier, the foreign-flag air carrier may be used notwithstanding the availability of alternative U.S.-flag air carrier service.

(d) For travel between a gateway airport in the United States and a gateway airport abroad, passenger service by U.S.-flag air carrier shall not be considered available if—

(1) The gateway airport abroad is the traveler's origin or destination airport and the use of U.S.-flag air carrier service would extend the time in a travel status, including delay at origin and accelerated arrival at destination, by at least 24 hours more than travel by a foreign-flag air carrier; or

(2) The gateway airport abroad is an interchange point and the use of U.S.-flag air carrier service would require the traveler to wait 6 hours or more to make connections at that point, or if delayed departure from, or accelerated arrival at, the gateway airport in the United States would extend time in a travel status by at least 6 hours more than travel by a foreign-flag air carrier.

(e) For travel between two points outside the United States, the rules in paragraphs 47.403-1(a), (b), and (c) shall be applicable, but passenger service by a U.S.-flag air carrier shall not be considered to be reasonably available if—

(1) Travel by a foreign-flag air carrier would eliminate two or more aircraft changes en route;

(2) One of the two points abroad is the gateway airport en route to or from the United States and the use of a U.S.-flag air carrier would extend the time in a travel status by at least 6 hours more than travel by a foreign-flag air carrier including delay at origin, delay en route, and accelerated arrival at destination.

(f) For all short-distance travel under either paragraph (d) or paragraph (e) of 47.403-1, U.S. air carrier service shall not be considered available when the elapsed traveltime on a scheduled flight from origin to destination airport by foreign-flag air carrier is 3 hours or less and service by a U.S.-flag air carrier would involve twice such traveltime.

47.403-2 Air transport agreements between the United States and foreign governments.

Nothing in the guidelines of the Comptroller General (see 47.403) shall preclude, and no penalty shall attend, the use of a foreign-flag air carrier that provides transportation under an air transport agreement between the United States and a foreign government, the terms of which are consistent with the international aviation policy goals at 49 U.S.C. 1502(b) and provide reciprocal rights and benefits.

47.403-3 Disallowance of expenditures.

(a) Agencies shall disallow expenditures for U.S. Government-financed commercial international air transportation on foreign-flag air carriers unless there is attached to the appropriate voucher a certificate or memorandum adequately explaining why service by U.S.-flag air carriers was not available, or why it was necessary to use foreign-flag air carriers.

(b) When the travel is by indirect route or the traveler otherwise fails to use available U.S.-flag air carrier service, the amount to be disallowed against the traveler is based on the loss of revenues suffered by U.S.-flag air carriers as determined under the following formula, which is prescribed and more fully explained in 56 Comp. Gen. 209 (1977):

$$\left(\frac{\text{Sum of U.S.-flag carrier segment mileage, authorized}}{\text{Sum of all segment mileage, authorized}} \times \text{Fare payable by Government}\right) \text{ MINUS } \left(\frac{\text{Sum of U.S.-flag carrier segment mileage, traveled}}{\text{Sum of all segment mileage, traveled}} \times \text{Through fare paid}\right)$$

(c) The justification requirement is satisfied by the contractor's use of the certification contained in the clause at 52.247-63, Preference for U.S.-Flag Air Carriers. (See 47.405.)

47.404 Air freight forwarders.

(a) Agencies may use air freight forwarders that are engaged in international air transportation (49 U.S.C. 1301(24)(c)) for U.S. Government-financed movements of property. The rule on disallowance of expenditures in 47.403-3(a) applies also to the air carriers used by these international air freight forwarders.

(b) Agency personnel shall inform international air freight forwarders that to facilitate prompt payments of their bills, they shall submit with their bills (1) a copy of the airway bill or manifest showing the air carriers used and (2) justification certifications for the use of foreign-flag air carriers. A certification similar to the one shown in the clause at 52.247-63, Preference for U.S.-Flag Air Carriers, satisfies the justification requirement.

47.405 Contract clause.

The contracting officer shall insert the clause at 52.247-63, Preference for U.S.-Flag Air Carriers, in solicitations and contracts whenever it is possible that U.S. Government-financed international air transportation of personnel (and their personal effects) or property will be required in the performance of the contract. This clause does not apply to small purchases made under Part 13.

SUBPART 47.5—OCEAN TRANSPORTATION BY U.S.-FLAG VESSELS

47.500 Scope of subpart.

This subpart prescribes policy and procedures for giving preference to U.S.-flag vessels when transportation of supplies by ocean vessel is required.

47.501 Definitions.

"Dry bulk carrier" means a vessel used primarily for the carriage of shipload lots of homogeneous unmarked nonliquid cargoes such as grain, coal, cement, and lumber.

"Dry cargo liner" means a vessel used for the carriage of heterogeneous marked cargoes in parcel lots. However, any cargo may be carried in these vessels, including part cargoes of dry bulk items or, when carried in deep tanks, bulk liquids such as petroleum and vegetable oils.

"Foreign-flag vessel" means any vessel of foreign registry including vessels owned by U.S. citizens but registered in a nation other than the United States.

"Government vessel," as used in this subpart, means a vessel owned by the U.S. Government and operated directly by the Government or for the Government by an agent or contractor, including a privately owned U.S.-flag vessel under bareboat charter to the Government.

"Privately owned U.S.-flag commercial vessel," as used in this subpart, means a vessel (a) registered and operated under the laws of the United States, (b) used in commercial trade of the United States, (c) owned and operated by U.S. citizens, including a vessel under voyage or time charter to the Government, and (d) a Government-owned vessel under bareboat charter to, and operated by, U.S. citizens.

"Tanker" means a vessel used primarily for the carriage of bulk liquid cargoes such as liquid petroleum products, vegetable oils, and molasses.

"U.S.-flag vessel," as used in this subpart, when used independently means either a Government vessel or a privately owned U.S.-flag commercial vessel.

47.502 Policy.

(a) The policy of the United States regarding the use of U.S.-flag vessels is stated in the following acts:

(1) The Cargo Preference Act of 1904 (10 U.S.C. 2631), which requires the Department of Defense to use only U.S.-flag vessels for ocean transportation of supplies for the Army, Navy, Air Force, or Marine Corps unless those vessels are not available at fair and reasonable rates.

(2) The Merchant Marine Act of 1936 (46 U.S.C. 1101), which declares it is the policy of the United States to foster the development and encourage the maintenance of its merchant marine.

(3) The Cargo Preference Act of 1954 (46 U.S.C. 1241(b), which is Section 901(b) of the Merchant Marine Act). Under this Act, Government agencies acquiring, either within or outside the United States, supplies that may require ocean transportation shall ensure that at least 50 percent of the gross tonnage of these supplies (computed separately for dry bulk carriers, dry cargo liners, and tankers) is transported on privately owned U.S.-flag commercial vessels to the extent that such vessels are available at rates that are fair and reasonable for U.S.-flag commercial vessels. This applies when the supplies are—

(i) Acquired for the account of the United States;

(ii) Furnished to, or for the account of, a foreign nation without provision for reimbursement;

(iii) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(iv) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) Additional policies providing preference for the use of U.S.-flag vessels are contained in—

(1) 10 U.S.C. 2634 for the transporation of privately-owned vehicles belonging to service members when making permanent change of station moves;

(2) 46 U.S.C. 1241(a) for official business travel by officers and employees of the United States and for the transportation of their personal effects; and

(3) 46 U.S.C. 1241(e) for the transportation of motor vehicles owned by Government personnel when transportation is at Government expense or otherwise authorized by law.

(c) The provisions of the Cargo Preference Act of 1954 may be temporarily waived when the Congress, the President, or the Secretary of Defense declares that an emergency justifying a temporary waiver exists and so notifies the appropriate agency or agencies.

47.503 Applicability.

(a) Except as stated in paragraph (b) below and in 47.504, the Cargo Preference Acts of 1904 and 1954 described in 47.502(a) apply to the following cargoes:

(1) Supplies owned by the Government and in the possession of—

(i) The Government;

(ii) A contractor; or

(iii) A subcontractor at any tier.

(2) Supplies for use of the Government that are contracted for and require subsequent delivery to a Government activity but are not owned by the Government at the time of shipment.

(3) Supplies not owned by the Government at the time of shipment that are to be transported for distribution to foreign assistance programs, but only if these supplies are not acquired or contracted for with local currency funds (see 47.504(b)).

(b) Government-owned supplies to be shipped commercially that are (1) in the possession of a department, a contractor, or a subcontractor at any tier and (2) for use of military departments shall be transported exclusively in privately owned U.S.-flag commercial vessels if such vessels are available at rates that are fair and reasonable for U.S.-flag commercial vessels.

(c) The 50-percent requirement shall not prevent the use of privately owned U.S.-flag commercial vessels for transportation of up to 100 percent of the cargo subject to the Cargo Preference Act of 1954.

47.504 Exceptions.

The policy and procedures in this subpart do not apply to the following:

(a) Shipments aboard vessels of the Panama Canal Commission or as required or authorized by law or treaty.

(b) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353).

(c) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(d) Small purchases under Part 13.

47.505 Construction contracts.

(a) Except as stated in paragraph (b) below, construction contractors, including subcontractors and suppliers, engaged in overseas work shall comply with the policies and regulations in this subpart.

(b) These requirements shall not apply to military assistance, foreign aid, or similar projects under the auspices of the U.S. Government when the recipient nation furnishes, or pays for, at least 50 percent of the transportation, in which event foreign-flag vessels may be used for a portion not to exceed 50 percent of the gross tonnage for the project.

47.506 Procedures.

(a) The contracting officer shall obtain assistance from the transportation activity (see 47.105) in developing appropriate shipping instructions and delivery terms for inclusion in solicitations and contracts that may involve ocean transportation of supplies subject to the requirements of the Cargo Preference Act of 1954 (see 47.502(a)(3)).

(b) When the contractor notifies the contracting officer that a privately owned U.S.-flag commercial vessel is not available, the contracting officer shall seek assistance from the transportation activity.

(c) For purposes of determining the availability of privately owned U.S.-flag commercial vessels at fair and reasonable rates, rates filed and published in accordance with the requirements of the Federal Maritime Commission may be accepted as fair and reasonable. When applicable rates for charter cargoes are not in published tariffs, a determination as to whether the rates are fair and reasonable shall be obtained from the Maritime Administration.

(d) The Maritime Administration has issued regulations (46 CFR 381) that require agencies to submit reports regarding ocean shipments. Contracting officers shall follow agency regulations when preparing, or furnishing information for, these reports.

47.507 Contract clauses.

(a) The contracting officer shall insert the clause at 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels, in solicitations and contracts that may involve ocean transportation of supplies subject to the Cargo Preference Act of 1954. (For application of the Cargo Preference Act of 1954, see 47.502(a)(3), 47.503(a), and 47.504.)

(b) If an applicable statute requires, or if it has been determined under agency procedures, that the supplies to be furnished under contracts shall be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.502(a)(1) and 47.503(b)), use the basic clause with its Alternate I.

(c) If an applicable statute requires, or it has been determined under agency procedures, that supplies, materials, or equipment to be shipped under construction contracts shall be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.505), use the basic clause with its Alternate II.

(d) The contracting officer may insert in solicitations and contracts, under agency procedures, additional appropriate clauses concerning the vessels to be used.

PART 48—VALUE ENGINEERING

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

48.000 Scope of part.

This part prescribes policies and procedures for using and administering value engineering techniques in contracts.

48.001 Definitions.

"Acquisition savings," as used in this part, means saving resulting from the application of a value engineering change proposal (VECP) to contracts awarded by the same contracting office or its successor (and by other contracting offices if included in an extended sharing base under 48.102(e)) for essentially the same unit. Acquisition savings include—

(a) Instant contract savings, which are the net cost reductions on the contract under which the VECP is submitted and accepted, and which are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the contractor's allowable development and implementation costs;

(b) Concurrent contract savings, which are measurable net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and

(c) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units scheduled for delivery during the sharing period (but see 48.102(f)). If the instant contract is a multiyear contract, future contract savings include savings on all quantities funded after VECP acceptance.

"Collateral costs," as used in this part, means agency costs of operation, maintenance logistic support, or Government-furnished property.

"Collateral savings," as used in this part, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contracting office," as used in this part, includes any contracting office that the acquisition is transferred to, such as another branch of the agency or another agency's office that is performing a joint acquisition action.

"Contractor's development and implementation costs," as used in this part, means those costs the contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Future unit cost reduction," as used in this part, means the instant unit cost reduction adjusted as the contracting officer considers necessary for projected learning or changes in quantity during the sharing period. It is calculated at the time the VECP is accepted and applies either (a) throughout the sharing period, unless the contracting officer decides that recalculation is necessary because conditions are significantly different from those previously anticipated or (b)

to the calculation of a lump-sum payment, which cannot later be revised.

"Government costs," as used in this part, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in instant contract cost or price resulting from negative instant contract savings.

"Instant contract," as used in this part, means the contract under which the VECP is submitted. It does not include increases in quantities after acceptance of the VECP that are due to contract modifications, exercise of options, or additional orders. If the contract is a multiyear contract, the term does not include quantities funded after VECP acceptance. In a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

"Instant unit cost reduction" means the amount of the decrease in unit cost of performance (without deducting any contractor's development or implementation costs) resulting from using the VECP on the instant contract. In service contracts, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on the instant contract, multiplied by the appropriate contract labor rate.

"Negative instant contract savings" means the increase in the instant contract cost or price when the acceptance of a VECP results in an excess of the contractor's allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

"Net acquisition savings" means total acquisition savings, including instant, concurrent, and future contract savings, less Government costs.

"Sharing base," as used in this part, means the number of affected end items on contracts of the contracting office accepting the VECP or, if the sharing base has been extended under 48.102(e), the number of affected end items on contracts of the contracting offices within the extended base.

"Sharing period," as used in this part, means the period beginning with acceptance of the first unit incorporating the VECP and ending at the later of (a) 3 years after the first unit affected by the VECP is accepted or (b) the last scheduled delivery date of an item affected by the VECP under the instant contract delivery schedule in effect at the time the VECP is accepted (but see 48.102(f)).

"Unit," as used in this part, means the item or task to which the contracting officer and the contractor agree the VECP applies.

"Value engineering change proposal (VECP)" means a proposal that—

(a) Requires a change to the instant contract to implement; and

(b) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics; *provided*, that it does not involve a change—

(1) In deliverable end item quantities only;

(2) 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

(3) To the contract type only.

SUBPART 48.1—POLICIES AND PROCEDURES

48.101 General.

(a) Value engineering is the formal technique by which contractors may (1) voluntarily suggest methods for performing more economically and share in any resulting savings or (2) be required to establish a program to identify and submit to the Government methods for performing more economically. Value engineering attempts to eliminate, without impairing essential functions or characteristics, anything that increases acquisition, operation, or support costs.

(b) There are two value engineering approaches:

(1) The first is an incentive approach in which contractor participation is voluntary and the contractor uses its own resources to develop and submit any value engineering change proposals (VECP's). The contract provides for sharing of savings and for payment of the contractor's allowable development and implementation costs only if a VECP is accepted. This voluntary approach should not in itself increase costs to the Government.

(2) The second approach is a mandatory program in which the Government requires and pays for a specific value engineering program effort. The contractor must perform value engineering of the scope and level of effort required by the Government's program plan and included as a separately priced item of work in the contract Schedule. Except in architect-engineer contracts, the contractor shares in savings on accepted VECP's, but at a lower percentage rate than under the voluntary approach. The objective of this value engineering program requirement is to ensure that the contractor's value engineering effort is applied to areas of the contract that offer opportunities for considerable savings consistent with the functional requirements of the end item of the contract.

48.102 Policies.

(a) Agencies shall provide contractors a substantial financial incentive to develop and submit VECP's. However, the agency head may elect to exempt the agency completely (or exempt a category of contracts) from the requirements of this Part 48.

(b) Agencies shall provide contractors (1) objective and expeditious processing of VECP's submitted and (2) a fair share of the savings on accepted VECP's.

(c) By requiring incorporation of value engineering clauses in appropriate subcontracts, agencies shall encourage subcontractors to submit VECP's.

(d) Value engineering incentive payments do not constitute profit or fee within the limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b) (see 15.903(e)).

(e) The agency head or a designee shall, to the maximum extent feasible, extend the sharing base to include affected end items on contracts of the entire agency or any part of it by determining in writing that to do so would be more equitable or would significantly increase contractor participation. The agency head or a designee may delegate to the head of a contracting activity authority to extend the sharing base to include the entire contracting activity or any part of it.

(f) In the case of contracts for items requiring an extended period for production (e.g., ship construction, major system acquisition), agencies may prescribe sharing of future contract savings on all future contract units to be delivered under contracts awarded for essentially the same item during the sharing period, even if the scheduled delivery date is outside the sharing period. For engineering-development and low-rate-initial-production contracts, the future sharing shall be on scheduled deliveries equal in number to the quantity required over the highest 36 consecutive months of planned production, based on planning or production documentation at the time the VECP is accepted.

(g) Agencies shall establish procedures for funding and payment of the contractor's share of collateral savings and future contract savings.

48.103 Processing value engineering change proposals.

(a) Instructions to the contractor for preparing a VECP and submitting it to the Government are included in paragraphs (c) and (d) of the value engineering clauses prescribed in Subpart 48.2. Upon receiving a VECP, the contracting officer or other designated official shall promptly process and objectively evaluate the VECP in accordance with agency procedures.

(b) The contracting officer is responsible for accepting or rejecting the VECP within 45 days from its receipt by the Government. If the Government will need more time to evaluate the VECP, the contracting officer shall notify the contractor promptly in writing, giving the reasons and the anticipated decision date. If the VECP is rejected, the contracting officer shall notify the contractor promptly in writing, giving the reasons. A VECP is accepted by a contract modification. The contracting officer shall cite the contract's value engineering clause when modifying the contract to incorporate a VECP or when making any value-engineering-related change.

(c) The following Government decisions are not subject to the Disputes clause or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613):

(1) The decision to accept or reject a VECP.

(2) The determination of collateral costs or collateral savings.

(3) The decision as to which of the sharing rates applies when Alternate II of the clause at 52.248-1, Value Engineering, is used.

48.104 Sharing arrangements.

48.104-1 Sharing acquisition savings.

(a) *Supply or service contracts.* (1) The sharing base for acquisition savings is normally the number of affected end items on contracts of the contracting office accepting the VECP. When the agency head or designee has extended the sharing base under 48.102(e), the contracting officer shall specify the scope of the extended sharing base in the contract Schedule. The sharing rates (Government/contractor) for net acquisition savings for supplies and services are based on the type of contract, the value engineering clause or alternate used, and the type of savings, as follows:

GOVERNMENT/CONTRACTOR SHARES OF NET ACQUISITION SAVINGS

(figures in percent)

Contract Type	Sharing Arrangement			
	Incentive (voluntary)		Program requirement (mandatory)	
	Instant contract rate	Concurrent and future rate	Instant contract rate	Concurrent and future contract rate
Fixed-price (other than incentive)	50/50	50/50	75/25	75/25
Incentive (fixed-price or cost)	*	50/50	*	75/25
Cost- reimbursement (other than incentive)**	75/25	75/25	85/15	85/15

*Same sharing arrangement as the contract's profit or fee adjustment formula.

**Includes cost-plus-award-fee contracts.

(2) Acquisition savings may be realized on the instant contract, concurrent contracts, and future contracts. The contractor is entitled to a percentage share (see subparagraph (1) above) of any net acquisition savings. Net acquisition savings result when the total of acquisition savings becomes greater than the total of Government costs and any negative instant contract savings. This may occur on the instant contract or it may not occur until reductions have been negotiated on concurrent contracts or until future contract savings are calculated, either through lump-sum payment or as each future contract is awarded. The contractor's profit or fee shall be excluded when calculating instant and future contract savings.

(i) When the instant contract is not an incentive contract, the contractor's share of new acquisition savings is calculated and paid each time such savings are realized. This may occur once, several times, or, in rare cases, not at all.

(ii) When the instant contract is an incentive contract, the contractor shares in instant contract savings through the contract's incentive structure. In calculating acquisition savings under incentive contracts, the contracting officer shall add any negative instant contract savings to the target cost or to the target price and ceiling price and then offset these negative instant contract savings and any Government costs against concurrent and future contract savings.

(3) The contractor shares in the savings on all affected units scheduled for delivery during the sharing period (but see 48.102(f)). The contractor is responsible for maintaining, for 3 years after final payment on the contract under which the VECP was accepted, records adequate to identify the first delivered unit incorporating the applicable VECP.

(4) Contractor shares of savings are paid through the contract under which the VECP was accepted. On incentive contracts, the contractor's share of concurrent and future contract savings and of collateral savings shall be paid as a separate firm-fixed-price contract line item on the instant contract.

(5) Within 3 months after concurrent contracts have been modified to reflect price reductions attributable to use of the VECP, the contracting officer shall modify the instant contract to provide the contractor's share of savings.

(6) The contractor's share of future contract savings may be paid as subsequent contracts are awarded or in a lump-sum payment at the time the VECP is accepted. The lump-sum method may be used only if the contracting officer has established that this is the best way to proceed and the contractor agrees. The contracting officer ordinarily shall make calculations as future contracts are awarded and, within 3 months after their award, modify the instant contract to provide the contractor's share of savings. For future contract savings calculated under the optional lump-sum method, the sharing base is an estimate of the number of items that the contracting office (but see 48.102(e) and subparagraph (1) above) will purchase for delivery during the sharing period. In deciding whether or not to use the more convenient lump-sum method for an individual VECP, the contracting officer shall consider—

(i) The accuracy with which the number of items to be delivered during the sharing period can be estimated and the probability of actual production of the projected quantity;

(ii) The availability of funds for a lump-sum payment; and

(iii) The administrative expense of amending the instant contract as future contracts are awarded.

(b) *Construction contracts.* Sharing on construction contracts applies only to savings on the instant contract and to collateral savings. The contractor's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by (1) 55 percent for fixed-price contracts or (2) 25 percent for cost-reimbursement contracts. Value engineering sharing does not apply to incentive construction contracts.

48.104-2 Sharing collateral savings.

(a) The Government shares collateral savings with the contractor, unless the

head of the contracting activity has determined that the cost of calculating and tracking collateral savings will exceed the benefits to be derived (see 48.201(e)).

(b) The contractor's share of collateral savings is 20 percent of the estimated savings to be realized during an average year of use but shall not exceed (1) the contract's firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted, or (2) $100,000, whichever is greater. In determining collateral savings, the contracting officer shall consider any degradation of performance, service life, or capability. (See 48.104-1(a)(4) for payment of collateral savings through the instant contract.)

48.104-3 Sharing alternative—no-cost settlement method.

To minimize the administrative costs for both parties when there is a known continuing requirement for the unit, consideration should be given to the settlement of a VECP submitted against the VE Incentive clause of the contract at no cost to either party. Under this method of settlement, the contractor would keep all of the savings on the instant contract, and all savings on its concurrent contracts only. The Government would keep all savings resulting from concurrent contracts placed on other sources, savings from all future contracts and all collateral savings. Use of this method must be by mutual agreement of both parties for individual VECPs.

48.105 Relationship to other incentives.

Contractors should be offered the fullest possible range of motivation, yet the benefits of an accepted VECP should not be rewarded both as value engineering shares and under performance, design-to-cost, or similar incentives of the contract. To that end, when performance, design-to-cost, or similar targets are set and incentivized, the targets of such incentives affected by the VECP are not adjusted because of the acceptance of the VECP. Only those benefits of an accepted VECP not rewardable under other incentives are rewarded under a value engineering clause.

SUBPART 48.2—CONTRACT CLAUSES

48.201 Clauses for supply or service contracts.

(a) *General.* The contracting officer shall insert a value engineering clause in solicitations and contracts when the contract amount is expected to be $100,000 or more, except as specified in subparagraphs (1) through (5) and in paragraph (f) below. A value engineering clause may be included in contracts of lesser value if the contracting officer sees a potential for significant savings. Unless the chief of the contracting office authorizes its inclusion, the contracting officer shall *not* include a value engineering clause in solicitations and contracts—

(1) For research and development other than full-scale development;

(2) For engineering services from not-for-profit or nonprofit organizations;

(3) For personal services (see Subpart 37.1);

(4) Providing for product or component improvement, unless the value engineering incentive application is restricted to areas not covered by provisions for product or component improvement;

(5) For commercial products (see Part 11) that do not involve packaging specifications or other special requirements or specifications; or

(6) When the agency head has elected to exempt the agency (or a category of contracts) from the requirements of this Part 48.

(b) *Value engineering incentive.* To provide a value engineering incentive, the contracting officer shall insert the clause at 52.248-1, Value Engineering, in solicitations and contracts except as provided in paragraph (a) above (but see subparagraph (e)(1) below).

(c) *Value engineering program requirement.* (1) If a mandatory value engineering effort is appropriate (i.e., if the contracting officer considers that substantial savings to the Government may result from a sustained value engineering effort of a specified level), the contracting officer shall use the clause with its Alternate I (but see subparagraph (e)(2) below).

(2) The value engineering program requirement may be specified by the Government in the solicitation or, in the case of negotiated contracting, proposed by the contractor as part of its offer and included as a subject for negotiation. The program requirement shall be shown as a separately priced line item in the contract Schedule.

(d) *Value engineering incentive and program requirement.* (1) If both a value engineering incentive and a mandatory program requirement are appropriate, the contracting officer shall use the clause with its Alternate II (but see subparagraph (e)(3) below).

(2) The contract shall restrict the value engineering program requirement to well-defined areas of performance designated by line item in the contract Schedule. Alternate II applies a value engineering program to the specified areas and a value engineering incentive to the remaining areas of the contract.

(e) *Collateral savings computation not cost-effective.* If the head of the contracting activity determines for a contract or class of contracts that the cost of computing and tracking collateral savings will exceed the benefits to be derived, the contracting officer shall use the clause with its—

(1) Alternate III if a value engineering incentive is involved;

(2) Alternate III and Alternate I if a value engineering program requirement is involved; or

(3) Alternate III and Alternate II if *both* an incentive and a program requirement are involved.

(f) *Architect-engineer contracts.* (1) The clause at 52.248-1, Value Engineering, with or without its Alternate III, both of which provide incentive sharing, may be used in solicitations and contracts for architect-engineer services only when specifically authorized by agency acquisition regulations. Alternates I and II, which require a mandatory value engineering effort and provide sharing on accepted VECP's, shall not be used in architect-engineer contracts.

(2) The contracting officer shall insert the clause at 52.248-2, Value Engineering Program—Architect-Engineer, in architect-engineer contracts when a mandatory value engineering program requirement is appropriate (see paragraph (c) above).

(3) When the clause at 52.248-2, Value Engineering Program—Architect-Engineer, is used, the contract schedule shall show the program requirement as a separately priced line item (this clause makes no provision for sharing of savings on accepted VECP's resulting from the program effort).

(g) In no event shall the clause at 52.248-1, Value Engineering, and 52.248-2, Value Engineering Program—Architect Engineer, be used in the same contract.

48.202 Clause for construction contracts.

The contracting officer shall insert the clause at 52.248-3, Value Engineering—Construction, in construction solicitations and contracts when the contract amount is estimated to be $100,000 or more, unless an incentive contract is contemplated. The contracting officer may include the clause in contracts of lesser value if the contracting officer sees a potential for significant savings. The contracting officer shall not include the clause in incentive-type construction contracts. If the head of the contracting activity determines that the cost of computing and tracking collateral savings for a contract will exceed the benefits to be

derived, the contracting officer shall use the clause with its Alternate I.

PART 49—TERMINATION OF CONTRACTS

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

49.000 Scope of part.

This part establishes policies and procedures relating to the complete or partial termination of contracts for the convenience of the Government or for default. It prescribes contract clauses relating to termination and excusable delay and includes instructions for using termination and settlement forms.

49.001 Definitions.

"Claim," as used in this part, means the same as the language in 33.001.

"Continued portion of the contract," as used in this part, means the portion of a partially terminated contract that the contractor must continue to perform.

"Effective date of termination" means the date on which the notice of termination requires the contractor to stop performance under the contract. If the termination notice is received by the contractor subsequent to the date fixed for termination, then the effective date of termination means the date the notice is received.

"Other work," as used in this part, means any current or scheduled work of the contractor, whether Goverment or commercial, other than work related to the terminated contract.

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

"Settlement agreement," as used in this part, means a written agreement in the form of an amendment to a contract

settling all or a severable portion of a settlement proposal.

"Settlement proposal," as used in this part, means a proposal for effecting settlement of a contract terminated in whole or in part, submitted by a contractor or subcontractor in the form, and supported by the data, required by this part. A settlement proposal is included within the generic meaning of the word "claim" under false claims acts (see 18 U.S.C. 287 and 31 U.S.C. 231).

"Terminated portion of the contract" means the portion of a terminated contract that relates to work or end items not completed and accepted before the effective date of termination that the contractor is not to continue to perform. 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.

"Termination contracting officer" means a contracting officer who is settling terminated contracts (see "Contracting officer" in 2.1).

"Termination inventory" means the same as the language in 45.601.

"Unsettled contract change" means any contract change or contract term for which a definitive modification is required but has not been executed.

49.002 Applicability.

(a) This part applies to contracts that provide for termination for the convenience of the Government or for the default of the contractor (see also 13.504(b)).

(b) Contractors shall use this part, unless inappropriate, to settle subcontracts terminated as a result of modification of prime contracts. The contracting officer shall use this part as a guide in evaluating settlements of subcontracts terminated for the convenience of a contractor whenever the settlement will be the basis of a proposal for reimbursement from the Government under a cost-reimbursement contract.

(c) The contracting officer may use this part in determining an equitable adjustment resulting from a modification under the Changes clause of any contract, except cost-reimbursement contracts.

(d) When action to be taken or authority to be exercised under this part depends upon the "amount" of the settlement proposal, that amount shall be determined by deducting from the gross settlement proposed the amounts payable for completed articles or work at the contract price and amounts for the settlement of subcontractor settlement proposals. Credits for retention or other disposal of termination inventory and amounts for advance or partial payments shall not be deducted.

SUBPART 49.1—GENERAL PRINCIPLES

49.100 Scope of subpart.

(a) This subpart deals with—

(1) The authority and responsibility of contracting officers to terminate contracts in whole or in part for the convenience of the Government or for default;

(2) Duties of the contractor and the contracting officer after issuance of the notice of termination;

(3) General procedures for the settlement of terminated contracts; and

(4) Settlement agreements.

(b) Additional principles applicable to the termination for convenience and settlement of fixed-price and cost-reimbursement contracts are included in Subparts 49.2 and 49.3. Additional principles applicable to the termination of contracts for default are included in Subpart 49.4.

49.101 Authorities and responsibilities.

(a) The termination clauses or other contract clauses authorize contracting officers to terminate contracts for convenience, or for default, and to enter into settlement agreements under this regulation.

(b) The contracting officer shall terminate contracts, whether for default or convenience, only when it is in the Government's interest. The contracting officer shall effect a no-cost settlement instead of issuing a termination notice when (1) it is known that the contractor will accept one, (2) Government property was not furnished, and (3) there are no outstanding payments, debts due the Government, or other contractor obligations.

(c) When the price of the undelivered balance of the contract is less than $2,000, the contract should not normally be terminated for convenience but should be permitted to run to completion.

(d) After the contracting officer issues a notice of termination, the termination contracting officer (TCO) is responsible for negotiating any settlement with the contractor, including a no-cost settlement if appropriate. Auditors and TCO's shall promptly schedule and complete audit reviews and negotiations, giving particular attention to the need for timely action on settlements estimated at less than $100,000 involving small business concerns.

(e) If the same item is under contract with both large and small business concerns and it is necessary to terminate for convenience part of the units still to be delivered, preference shall be given to the continuing performance of small business contracts over large business contracts unless the chief of the contracting office determines that this is not in the Government's interest.

49.102 Notice of termination.

(a) *General.* The contracting officer shall terminate contracts for convenience or default only by a written notice to the contractor (see 49.601). When the notice is mailed, it shall be sent by certified mail, return receipt requested. When the contracting office arranges for hand delivery of the notice, a written acknowledgement shall be obtained from the contractor. The notice shall state—

(1) That the contract is being terminated for the convenience of the Government (or for default) under the contract clause authorizing the termination;

(2) The effective date of termination;

(3) The extent of termination;

(4) Any special instructions; and

(5) The steps the contractor should take to minimize the impact on personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor's work force (see paragraph (g) of the notice in 49.601-2). If the termination notice is by telegram, include these "steps" in the confirming letter or modification.

(b) *Distribution of copies.* The contracting officer shall simultaneously send the termination notice to the contractor, and a copy to the contract administration office and to any known assignee, guarantor, or surety of the contractor.

(c) *Amendment of termination notice.* The contracting officer may amend a termination notice to—

(1) Correct nonsubstantive mistakes in the notice;

(2) Add supplemental data or instructions; or

(3) Rescind the notice if it is determined that items terminated had been completed or shipped before the contractor's receipt of the notice.

(d) *Reinstatement of terminated contracts.* Upon written consent of the contractor, the contracting office may reinstate the terminated portion of a contract in whole or in part by amending the notice of termination if it has been determined in writing that—

(1) Circumstances clearly indicate a requirement for the terminated items; and

(2) Reinstatement is advantageous to the Government.

49.103 Methods of settlement.

Settlement of terminated cost-reimbursement contracts and fixed-price contracts terminated for convenience may be effected by (a) negotiated agreement, (b) determination by the TCO, (c) costing-out under vouchers using SF 1034, Public Voucher for Purchases and Services Other Than Personal, for cost-reimbursement contracts (as prescribed in Subpart 49.3), or (d) a combination of these methods. When possible, the TCO should negotiate a fair and prompt settlement with the contractor. The TCO shall settle a settlement proposal by determination only when it cannot be settled by agreement.

49.104 Duties of prime contractor after receipt of notice of termination.

After receipt of the notice of termination, the contractor shall comply with the notice and the termination clause of the contract, except as otherwise directed by the TCO. The notice and clause applicable to convenience terminations generally require that the contractor—

(a) Stop work immediately on the terminated portion of the contract and stop placing subcontracts thereunder;

(b) Terminate all subcontracts related to the terminated portion of the prime contract;

(c) Immediately advise the TCO of any special circumstances precluding the stoppage of work;

(d) Perform the continued portion of the contract and submit promptly any request for an equitable adjustment of price for the continued portion, supported by evidence of any increase in the cost, if the termination is partial;

(e) Take necessary or directed action to protect and preserve property in the contractor's possession in which the Government has or may acquire an interest and, as directed by the TCO, deliver the property to the Government;

(f) Promptly notify the TCO in writing of any legal proceedings growing out of any subcontract or other commitment related to the terminated portion of the contract;

(g) Settle outstanding liabilities and proposals arising out of termination of subcontracts, obtaining any approvals or ratifications required by the TCO;

(h) Promptly submit the contractor's own settlement proposal, supported by appropriate schedules; and

(i) Dispose of termination inventory, as directed or authorized by the TCO.

49.105 Duties of termination contracting officer after issuance of notice of termination.

(a) Consistent with the termination clause and the notice of termination, the TCO shall—

(1) Direct the action required of the prime contractor;

(2) Examine the settlement proposal of the prime contractor and, when appropriate, the settlement proposals of subcontractors;

(3) Promptly negotiate settlement with the contractor and enter into a settlement agreement; and

(4) Promptly settle the contractor's settlement proposal by determination for the elements that cannot be agreed on, if unable to negotiate a complete settlement.

(b) To expedite settlement, the TCO may request specially qualified personnel to—

(1) Assist in dealings with the contractor;

(2) Advise on legal and contractual matters;

(3) Conduct accounting reviews and advise and assist on accounting matters; and

(4) Perform the following functions regarding termination inventory (see Subpart 45.6):

(i) Verify its existence.

(ii) Determine qualitative and quantitative allocability.

(iii) Make recommendations concerning serviceability.

(iv) Undertake necessary screening and redistribution.

(v) Assist the contractor in accomplishing other disposition.

(c) The TCO should promptly hold a conference with the contractor to develop a definite program for effecting the settlement. When appropriate in the judgment of the TCO, after consulting with the contractor, principal subcontractors should be requested to attend. Topics that should be discussed at the conference and documented include—

(1) General principles relating to the settlement of any settlement proposal, including obligations of the contractor under the termination clause of the contract;

(2) Extent of the termination, point at which work is stopped, and status of any plans, drawings, and information that would have been delivered had the contract been completed;

(3) Status of any continuing work;

(4) Obligation of the contractor to terminate subcontracts and general principles to be followed in settling subcontractor settlement proposals;

(5) Names of subcontractors involved and the dates termination notices were issued to them;

(6) Contractor personnel handling review and settlement of subcontractor settlement proposals and the methods being used;

(7) Arrangements for transfer of title and delivery to the Government of any material required by the Government;

(8) General principles and procedures to be followed in the protection, preservation, and disposition of the contractor's and subcontractors' termination inventories, including the preparation of termination inventory schedules;

(9) Contractor accounting practices and preparation of SF 1439 (Schedule of Accounting Information (49.602-3);

(10) Form in which to submit settlement proposals;

(11) Accounting review of settlement proposals;

(12) Any requirement for interim financing in the nature of partial payments;

(13) Tentative time schedule for negotiation of the settlement, including submission by the contractor and subcontractors of settlement proposals, termination inventory schedules, and accounting information schedules;

(14) Actions taken by the contractor to minimize impact upon employees affected adversely by the termination (see paragraph (g) of the letter notice in 49.601-2); and

(15) Obligation of the contractor to furnish accurate, complete, and current cost or pricing data, and to certify to that effect in accordance with 15.804-4(h) when the amount of a termination settlement agreement, or a partial termination settlement agreement plus the estimate to complete the continued portion of the contract exceeds the threshold in 15.804.

49.105-1 Termination status reports.

When the TCO and contracting officer are in different activities, the TCO will furnish periodic status reports on termination actions to the contracting office upon request. The contracting office shall specify the information required.

49.105-2 Release of excess funds.

(a) The TCO shall estimate the funds required to settle the termination at the earliest practical date. Based on this estimate, the TCO shall recommend the release of excess funds to the contracting office within 30 days after receipt of the termination notice.

However, unless requested by the contracting office, the TCO shall not recommend amounts under $1,000.

(b) The TCO shall maintain continuous surveillance of required funds to permit timely release of any additional excess funds (a recommended format for release of excess funds is in 49.604). If previous releases of excess funds result in a shortage of the amount required for settlement, the TCO shall inform the contracting office, which shall reinstate the funds within 30 days.

49.105-3 Termination case file.

The TCO responsible for negotiating the final settlement shall establish a separate case file for each termination. This file will include memoranda and records of all actions relative to the settlement (see 4.801).

49.105-4 Cleanup of construction site.

In the case of terminated construction contracts, the contracting officer shall direct action to ensure the cleanup of the site, protection of serviceable materials, removal of hazards, and other action necessary to leave a safe and healthful site.

49.106 Fraud or other criminal conduct.

If the TCO suspects fraud or other criminal conduct related to the settlement of a terminated contract, the TCO shall discontinue negotiations and report the facts under agency procedures.

49.107 Audit of prime contract settlement proposals and subcontract settlements.

(a) The TCO shall refer each prime contractor settlement proposal of $25,000 or more to the appropriate audit agency for review and recommendations. The TCO may submit settlement proposals of less than $25,000 to the audit agency. Referrals shall indicate any specific information or data that the TCO desires and shall include facts and circumstances that will assist the audit agency in performing its function. The audit agency shall develop requested information and may make any further accounting reviews it considers appropriate. After its review, the audit agency shall submit written comments and recommendations to the TCO. When a formal examination of settlement proposals under $25,000 is not warranted, the TCO will perform or have performed a desk review and include a written summary of the review in the termination case file.

(b) The TCO shall refer subcontract settlements received for approval or ratification to the appropriate audit agency for review and recommendations when (1) the amount exceeds $50,000 or (2) the TCO wants a complete or partial accounting review. The audit agency shall submit written comments and recommendations to the TCO. The review by the audit agency does not relieve the prime contractor or higher tier subcontractor of the responsibility for performing an accounting review.

(c) (1) The responsibility of the prime contractor and of each subcontractor (see 49.108) includes performance of accounting reviews and any necessary field audits. However, the TCO should request the Government audit agency to perform the accounting review of a subcontractor's settlement proposal when—

(i) A subcontractor objects, for competitive reasons, to an accounting review of its records by an upper tier contractor;

(ii) The Government audit agency is currently performing audit work at the subcontractor's plant, or can perform the audit more economically or efficiently;

(iii) Audit by the Government is necessary for consistent audit treatment and orderly administration; or

(iv) The contractor has a substantial or controlling financial interest in the subcontractor.

(2) The audit agency should avoid duplication of accounting reviews performed by the upper tier contractor on subcontractor settlement proposals. However, this should not preclude the Government from making additional reviews when appropriate. When the contractor is performing accounting reviews according to this section, the TCO should request the audit agency to periodically examine the contractor's accounting review procedures and performance, and to make appropriate comments and recommendations to the TCO.

(d) The audit report is advisory only, and is for the TCO to use in negotiating a settlement or issuing a unilateral determination. Government personnel handling audit reports must be careful not to reveal privileged information or information that will jeopardize the negotiation position of the Government, the prime contractor, or a higher tier subcontractor. Consistent with this, and when in the Government's interest, the TCO may furnish audit reports under paragraph (c) above to prime and higher tier subcontractors for their use in settling subcontract settlement proposals.

49.108 Settlement of subcontract settlement proposals.

49.108-1 Subcontractor's rights.

A subcontractor has no contractual rights against the Government upon the termination of a prime contract. A subcontractor may have rights against the prime contractor or intermediate subcontractor with whom it has contracted. Upon termination of a prime contract, the prime contractor and each subcontractor are responsible for the prompt settlement of the settlement proposals of their immediate subcontractors.

49.108-2 Prime contractor's rights and obligations.

(a) Termination for convenience clauses provide that after receipt of a termination notice the prime contractor shall, unless directed otherwise by the TCO, terminate all subcontracts to the extent that they relate to the performance of prime work terminated. Therefore, prime contractors should include a termination clause in their subcontracts for their own protection. Suggestions regarding use of subcontract termination clauses are in Subpart 49.5.

(b) The failure of a prime contractor to include an appropriate termination clause in any subcontract, or to exercise the clause rights, shall not—

(1) Affect the Government's right to require the termination of the subcontract; or

(2) Increase the obligation of the Government beyond what it would have been if the subcontract had contained an appropriate clause.

(c) In any case, the reasonableness of the prime contractor's settlement with the subcontractor should normally be measured by the aggregate amount due under paragraph (f) of the subcontract termination clause suggested in 49.502(e). The TCO shall allow reimbursement in excess of that amount only in unusual cases and then only to the extent that the terms of the subcontract did not unreasonably increase the rights of the subcontractor.

49.108-3 Settlement procedure.

(a) Contractors shall settle with subcontractors in general conformity with the policies and principles relating to settlement of prime contracts in this subpart and Subparts 49.2 or 49.3. However, the basis and form of the subcontractor's settlement proposal must be acceptable to the prime contractor or the next higher tier subcontractor. Each settlement must be supported by accounting data and other information sufficient for adequate review by the Government. In no event

will the Government pay the prime contractor any amount for loss of anticipatory profits or consequential damages resulting from the termination of any subcontract (but see 49.108-5).

(b) Except as provided in 49.108-4, the TCO shall require that (1) all subcontractor termination inventory be disposed of and accounted for in accordance with Part 45 and (2) the prime contractor submit, for approval or ratification, all termination settlements with subcontractors. The prime contractor shall certify that the subcontractor settlement proposals have been examined, that they are allocable to the terminated portion of the prime contract, and that the settlements are fair and reasonable, were negotiated in good faith, and are not more favorable to the subcontractors than if the Government were not involved. The contractor shall also certify that all immediate subcontractors have submitted substantially the same certification. For settlements with lower tier subcontractors, the contractor shall certify that there is no information known to the contractor that causes doubt about the reasonableness or allocability of the settlements to the terminated portion of the prime contract.

(c) The TCO shall promptly examine each subcontract settlement received to determine that the subcontract termination was made necessary by the termination of the prime contract (or by issuance of a change order—see 49.002(b)). The TCO will also determine if the settlement was arrived at in good faith, is reasonable in amount, and is allocable to the terminated portion of the contract (or, if allocable only in part, that the proposed allocation is reasonable). In considering the reasonableness of any subcontract settlement, the TCO shall generally be guided by the provisions of this part relating to the settlement of prime contracts, and shall comply with any applicable requirements of 49.107 and 49.111 relating to accounting and other reviews. After the examination, the TCO shall notify the contractor in writing of (1) approval or ratification, or (2) the reasons for disapproval.

49.108-4 Authorization for subcontract settlements without approval or ratification.

(a) (1) The TCO may, upon written request, give written authorization to the prime contractor to conclude settlements of subcontracts terminated in whole or in part without approval or ratification when the amount of settlement (see 49.002(d)) is $25,000 or less, if—

(i) The TCO is satisfied with the adequacy of the procedures used by the contractor in settling settlement proposals, including proposals for retention, sale, or other disposal of termination inventory of the immediate and lower tier subcontractors (the TCO shall obtain the advice and recommendations of (A) the appropriate audit agency relating to the adequacy of the contractor's audit administration, including personnel, and (B) the cognizant plant clearance officer relating to the adequacy of the contractor's procedures and personnel for the administration of property disposal matters);

(ii) Any termination inventory included in determining the amount of the settlement will be disposed of as directed by the prime contractor, generally using the requirements of 45.614, except that the disposition of the inventory shall not (A) be subject to review by the TCO under 49.108-3(c) or 45.607, or (B) be subject to the screening requirements in 45.608; and

(iii) A certificate similar to the certificate in the settlement proposal form in 49.602-1(a) will accompany the settlement.

(2) Except as provided in subparagraph (4) below, authority granted to a prime contractor under subparagraph (1) above by any TCO shall apply to all Executive agencies' prime contracts that are terminated, or modified by change orders.

(3) Except as provided in subparagraph (4) below, the TCO shall accept, as part of the prime contractor's settlement proposal, settlements of terminated lower tier subcontracts concluded by any of the prime contractor's immediate or lower tier subcontractors who have been granted authority as prime contractors to settle subcontracts; *provided*, that the settlement is within the limit of the authority. Authorization to settle proposals of lower tier subcontractors shall not be granted directly to subcontractors. However, a prime contractor authorized to approve subcontractor settlements may also exercise this authority in its capacity as a subcontractor, with respect to its terminated subcontracts and orders. When exercising this authority as a subcontractor, the contractor shall notify the purchaser.

(4) The provisions of subparagraphs (1), (2), and (3) above shall not apply to contracts under the administration of any contracting officer if the contracting officer so notifies the prime contractor concerned. This notice shall (i) be in writing, and (ii) if subparagraph (3) above is involved, specify any subcontractor affected.

(b) Section 45.614 shall apply to disposal of completed end items allocable to the terminated subcontract. However, these items may be disposed of without review by the TCO under 49.108-3 or 45.607, and without screening under 45.608, if the total amount (at the subcontract price) when added to the amount of the settlement does not exceed the amount authorized under this subsection.

(c) A TCO granting the authorization in subparagraph (a)(1) above shall periodically (at least annually) make a selective review of settlements and settlement procedures to determine if the contractor is making adequate reviews and fair settlements, and whether the authorization should remain in effect. The TCO shall obtain the advice and recommendations of the appropriate audit agency and the cognizant plant clearance officer. When it is determined that the contractor's procedures are not adequate, or that improper settlements are being made, or when the authority has not been used in the preceding 2 years, the TCO shall revoke the authorization by written notice to the contractor, effective on the date of receipt.

(d) The contractor may make any number of separate settlements with a single subcontractor but shall not divide settlement proposals solely to bring them under an authorization limit. Separate settlement proposals that would normally be included in a single proposal, such as those based on a series of separate orders for the same item under one contract, shall be consolidated whenever possible.

(e) Upon written request of the contractor, the TCO may increase an authorization granted under subparagraph (a)(1) above to authorize the contractor to conclude settlements between $25,000 and $50,000 under a particular prime contract. The TCO may limit the increased authorization to specific subcontracts or classes of subcontracts.

(f) Authorizations granted under this 49.108-4 shall not authorize the settlement of requisitions or orders placed with any unit within the contractor's corporate entity.

(g) Recommended formats for a request to settle subcontractor settlement proposals and the TCO's letter of authorization to the contractor are in 49.605 and 49.606, respectively.

49.108-5 Recognition of judgments and arbitration awards.

(a) When a subcontractor obtains a final judgment against a prime contractor, the TCO shall, for the purposes of settling the prime contract, treat the amount of the judgment as a cost of settling with the contractor, to the extent the judgment is properly allocable to the terminated portion of the prime contract, if—

(1) The prime contractor has made reasonable efforts to include in the subcontract a termination clause described in 49.502(e), 49.503(c), or a similar clause excluding payment of anticipatory profits or consequential damages;

(2) The provisions of the subcontract relating to the rights of the parties upon its termination are fair and reasonable and do not unreasonably increase the common law rights of the subcontractor;

(3) The contractor made reasonable efforts to settle the settlement proposal of the subcontractor;

(4) The contractor gave prompt notice to the contracting officer of the initiation of the proceedings in which the judgment was rendered and did not refuse to give the Government control of the defense of the proceedings; and

(5) The contractor diligently defended the suit or, if the Government assumed control of the defense of the proceedings, rendered reasonable assistance requested by the Government.

(b) If the conditions in subparagraphs (a)(1) through (5) above are not all met, the TCO may allow the contractor the part of the judgment considered fair for settling the subcontract settlement proposal, giving due regard to the policies in this part for settlement of proposals.

(c) When a contractor and a subcontractor submit the subcontractor's settlement proposal to arbitration under any applicable law or contract provision; the TCO shall recognize the arbitration award as the cost of settling the proposal of the contractor to the same extent and under the same conditions as in paragraphs (a) and (b) above.

49.108-6 Delay in settling subcontractor settlement proposals.

When a prime contractor's inability to settle with a subcontractor delays the settlement of the prime contract, the TCO may settle with the prime contractor. The TCO shall except the subcontractor settlement proposal from the settlement in whole or part and reserve the rights of the Government and the prime contractor with respect to the subcontractor proposal.

49.108-7 Government assistance in settling subcontracts.

In unusual cases the TCO may determine, with the consent of the prime contractor, that it is in the Government's interest to provide assistance to the prime contractor in the settlement of a particular subcontract. In these situations, the Government, the prime contractor, and a subcontractor may enter into an agreement covering the settlement of one or more subcontracts. In these settlements, the subcontractor shall be paid through the prime contractor as part of the overall settlement with the prime contractor.

49.108-8 Assignment of rights under subcontracts.

(a) The termination for convenience clauses in 52.249, except the short-form clauses, obligate the prime contractor to assign to the Government, as directed by the TCO, all rights, titles, and interest under any subcontract terminated because of termination of the prime contract. The TCO shall not require the assignment unless it is in the Government's interest.

(b) The termination for convenience clauses (except the short-form clauses) also provide the Government the right, in its discretion, to settle and pay any settlement proposal arising out of the termination of subcontracts. This right does not obligate the Government to settle and pay settlement proposals of subcontractors. As a general rule, the prime contractor is obligated to settle and pay these proposals. However, when the TCO determines that it is in the Government's interest, the TCO shall, after notifying the contractor, settle the subcontractor's proposal using the procedures for settlement of prime contracts. An example in which the Government's interest would be served is when a subcontractor is a sole source and it appears that a delay by the prime contractor in settlement or payment of the subcontractor's proposal will jeopardize the financial position of the subcontractor. Direct settlements with subcontractors are not encouraged.

49.109 Settlement agreements.

49.109-1 General.

When a termination settlement has been negotiated and all required reviews have been obtained, the contractor and the TCO shall execute a settlement agreement on Standard Form 30 (Amendment of Solicitation/Modification of Contract) (see 49.603). The settlement shall cover (a) any setoffs that the Government has against the contractor that may be applied against the terminated contract and (b) all settlement proposals of subcontractors, except proposals that are specifically excepted from the agreement and reserved for separate settlement.

49.109-2 Reservations.

(a) The TCO shall—

(1) Reserve in the settlement agreement any rights or demands of the parties that are excepted from the settlement;

(2) Ensure that the wording of the reservation does not create any rights for the parties beyond those in existence before execution of the settlement agreement;

(3) Mark each applicable settlement agreement with "This settlement agreement contains a reservation" and retain the contract file until the reservation is removed;

(4) Ensure that sufficient funds are retained to cover complete settlement of the reserved items; and

(5) At the appropriate time, prepare a separate settlement of reserved items and include it in a separate settlement agreement.

(b) A recommended format for settlement of reservations appears in 49.603-9.

49.109-3 Government property.

Before execution of a settlement agreement, the TCO shall determine the accuracy of the Government property account for the terminated contract. If an audit discloses property for which the contractor cannot account, the TCO shall reserve in the settlement agreement the rights of the Government regarding that property or make an appropriate deduction from the amount otherwise due the contractor.

49.109-4 No-cost settlement.

The TCO shall execute a no-cost settlement agreement (see 49.603-6 or 49.603-7, as applicable) if (a) the contractor has not incurred costs for the terminated portion of the contract or (b) the contractor is willing to waive the costs incurred and (c) no amounts are due the Government under the contract.

49.109-5 Partial settlements.

The TCO should attempt to settle in one agreement all rights and liabilities of the parties under the contract except those arising from any continued portion of the contract. Generally, the TCO shall not attempt to make partial settlements covering particular items of the prime contractor's settlement proposal. However, when a TCO cannot promptly complete settlement under the terminated contract, a partial settlement may be entered into if (a) the issues on which agreement has been reached are

clearly severable from other issues and (b) the partial settlement will not prejudice the Government's or contractor's interests in disposing of the unsettled part of the settlement proposal.

49.109-6 Joint settlement of two or more settlement proposals.

(a) With the consent of the contractor, the TCO or TCO's concerned may negotiate jointly two or more termination settlement proposals of the same contractor under different contracts, even though the contracts are with different contracting offices or agencies. In such cases, accounting work shall be consolidated to the greatest extent practical. The resulting settlement may be evidenced by one settlement agreement covering all contracts involved or by a separate agreement for each contract involved.

(b) When the settlement agreement covers more than one contract, it shall (1) clearly identify the contracts involved, (2) assign an amendment modification number to each contract, (3) apportion the total amount of the settlement among the several contracts on some reasonable basis, (4) have attached or incorporated a schedule showing the apportionment, and (5) be distributed and attached to each contract involved in the same manner as other contract modifications.

49.109-7 Settlement by determination.

(a) *General.* If the contractor and TCO cannot agree on a termination settlement, or if a settlement proposal is not submitted within the period required by the termination clause, the TCO shall issue a determination of the amount due consistent with the termination clause, including any cost principles incorporated by reference. The TCO shall comply with 49.109-1 through 49.109-6 in making a settlement by determination and with 49.203 in making an adjustment for loss, if any. Copies of determinations shall receive the same distribution as other contract modifications.

(b) *Notice to contractor.* Before issuing a determination of the amount due the contractor, the TCO shall give the contractor at least 15 days notice by certified mail (return receipt requested) to submit written evidence, so as to reach the TCO on or before a stated date, substantiating the amount previously proposed.

(c) *Justification of settlement proposal.* (1) The contractor has the burden of establishing, by proof satisfactory to the TCO, the amount proposed.

(2) The contractor may submit vouchers, verified transcripts of books of account, affidavits, audit reports, and other documents as desired. The TCO may request the contractor to submit additional documents and data, and may request appropriate accountings, investigations, and audits.

(3) The TCO may accept copies of documents and records without requiring original documents unless there is a question of authenticity.

(4) The TCO may hold any conferences considered appropriate (i) to confer with the contractor, (ii) to obtain additional information from Government personnel or from independent experts, or (iii) to consult persons who have submitted affidavits or reports.

(d) *Determinations.* After reviewing the information available, the TCO shall determine the amount due and shall transmit a copy of the determination to the contractor by certified mail (return receipt requested), or by any other method that provides evidence of receipt. The transmittal letter shall advise the contractor that the determination is a final decision from which the contractor may appeal under the Disputes clause, except as shown in paragraph (f) below. The determination shall specify the amount due the contractor and will be supported by detailed schedules conforming generally to the forms for settlement proposals prescribed in 49.602-1 and by additional information, schedules, and analyses as appropriate. The TCO shall explain each major item of disallowance. The TCO need not reconsider any other action relating to the terminated portion of the contract that was ratified or approved by the TCO or another contracting officer.

(e) *Preservation of evidence.* The TCO shall retain all written evidence and other data relied upon in making a determination, except that copies of original books of account need not be made. The TCO shall return books of account, together with other original papers and documents, to the contractor within a reasonable time.

(f) *Appeals.* The contractor may appeal, under the Disputes clause, any settlement by determination, except when the contractor has failed to submit the settlement proposal within the time provided in the contract and failed to request an extension of time. The pendency of an appeal shall not affect the authority of the TCO to settle the settlement proposal or any part by negotiation with the contractor at any time before the appeal is decided.

(g) *Decision on the contractor's appeal.* The TCO shall give effect to a decision of the Court of Claims or a board of contract appeals, when necessary, by an appropriate modification to the contract. When appropriate, the TCO should obtain a release from the contractor. TCO's are authorized to modify the formats of settlement agreements in 49.603 to agree with this provision.

49.110 Negotiation memorandum.

(a) The TCO shall, at the conclusion of negotiations, prepare a memorandum containing the principal elements of the settlement for inclusion in the termination case file and for use by reviewing authorities.

(b) If the settlement was negotiated on the basis of individual items, the TCO shall specify the factors considered for each item. If the settlement was negotiated on an overall lump-sum basis, the TCO need not evaluate each item or group of items individually, but shall support the total amount of the recommended settlement in reasonable detail. The memorandum shall include explanations of matters involving differences and doubtful questions settled by agreement, and the factors considered. The TCO should include any other matters that will assist reviewing authorities in understanding the basis for the settlement.

49.111 Review of proposed settlements.

Each agency shall establish procedures, when necessary, for the administrative review of proposed termination settlements. When one agency provides termination settlement services for another agency, the agency providing the services shall also perform the settlement review function.

49.112 Payment.

49.112-1 Partial payments.

(a) *General.* If the contract authorizes partial payments on settlement proposals before settlement, a prime contractor may request them on the form prescribed in 49.602-4 at any time after submission of interim or final settlement proposals. The Government will process applications for partial payments promptly. A subcontractor shall submit its application through the prime contractor which shall attach its own invoice and recommendations to the subcontractor's application. Partial payments to a subcontractor shall be made only through the prime contractor and only after the prime contractor has submitted its interim or final settlement proposal. Except for undelivered acceptable finished products, partial payments shall not be made for profit or fee claimed under the terminated

portion of the contract. In exercising discretion on the extent of partial payments to be made, the TCO shall consider the diligence of the contractor in settling with subcontractors and in preparing its own settlement proposal.

(b) *Amount of partial payment.* Before approving any partial payment, the TCO shall obtain any desired accounting, engineering, or other specialized reviews of the data submitted in support of the contractor's settlement proposal. If the reviews and the TCO's examination of the data indicate that the requested partial payment is proper, reasonable payments may be authorized in the discretion of the TCO up to—

(1) 100 percent of the contract price, adjusted for undelivered acceptable items completed before the termination date, or later completed with the approval of the TCO (see 49.205);

(2) 100 percent of the amount of any subcontract settlement paid by the prime contractor if the settlement was approved or ratified by the TCO under 49.108-3(c) or was authorized under 49.108-4;

(3) 90 percent of the direct cost of termination inventory, including costs of raw materials, purchased parts, supplies, and direct labor;

(4) 90 percent of other allowable costs (including settlement expense and manufacturing and administrative indirect costs) allocable to the terminated portion of the contract and not included in subparagraphs (1), (2), or (3) above; and

(5) 100 percent of partial payments made to subcontractors under this section.

(c) *Recognition of assignments.* When an assignment of claims has been made under the contract, the Government shall not make partial payments to other than the assignee unless the parties to the assignment consent in writing (see 32.805(e)).

(d) *Security for partial payments.* If any partial payment is made for completed end items or for costs of termination inventory, the TCO shall protect the Government's interest. This shall be done by obtaining title to the completed end items or termination inventory, or by the creation of a lien in favor of the Government, paramount to all other liens, on the completed end items or termination inventory, or by other appropriate means.

(e) *Deductions in computing amount of partial payments.* The TCO shall deduct from the gross amount of any partial payment otherwise payable under 49.112-1(b)—

(1) All unliquidated balances of progress and advance payments (including interest) made to the contractor, which are allocable to the terminated portion of the contract; and

(2) The amounts of all credits arising from the purchase, retention, or sale of property, the costs of which are included in the application for payment.

(f) *Limitation on total amount.* The total amount of all partial payments shall not exceed the amount that will, in the opinion of the TCO, become due to the contractor because of the termination.

(g) *Effect of overpayment.* If the total of partial payments exceeds the amount finally determined due on the settlement proposal, the contractor shall repay the excess to the Government on demand, together with interest. The interest shall be computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2) from the date the excess payment was received by the contractor to the date of repayment. However, interest will not be charged for any (1) excess payment attributable to a reduction in the settlement proposal because of retention or other disposition of termination inventory, until 10 days after the date of the retention or disposition, or a later date determined by the TCO, or (2) overpayment under cost-reimbursement research and development contracts without profit or fee if the overpayments are repaid to the Government within 30 days after demand.

(h) *Certification and approval of partial payments.* (1) The contractor shall place the following certification on vouchers or invoices for partial payments:

The payment covered by this voucher is a partial payment on the Contractor's settlement proposal under contract No. ..... made under Part 49 of the Federal Acquisition Regulation.

(2) The TCO shall approve the invoice or voucher by noting on it the following:

Payment of $..... is approved.

49.112-2 Final payment.

(a) *Negotiated settlement.* After execution of a settlement agreement, the contractor shall submit a voucher or invoice showing the amount agreed upon, less any portion previously paid. The TCO shall attach a copy of the settlement agreement to the voucher or invoice and forward the documents to the disbursing officer for payment.

(b) *Settlement by determination.* If the settlement is by determination and—

(1) There is no appeal within the allowed time, the contractor shall submit a voucher or invoice showing the amount determined due, less any portion previously paid; or

(2) There is an appeal, the contractor shall submit a voucher or invoice showing the amount finally determined due on the appeal, less any portion previously paid. Pending determination of any appeal, the contractor may submit vouchers or invoices for charges that are not directly involved with the portion being appealed, without prejudice to the rights of either party on the appeal.

(c) *Construction contracts.* In the case of construction contracts, before forwarding the final payment voucher, the contracting officer shall ascertain whether there are any outstanding labor violations. If so, the contracting officer shall determine the amount to be withheld from the final payment (see Subpart 22.4).

(d) *Interest.* The Government shall not pay interest on the amount due under a settlement agreement or a settlement by determination. The Government may, however, pay interest on a successful contractor appeal from a contracting officer's determination under the Disputes clause at 52.233-1.

49.113 Cost principles.

The cost principles and procedures in the applicable subpart of Part 31 shall, subject to the general principles in 49.201, (a) be used in asserting, negotiating, or determining costs relevant to termination settlements under contracts with other than educational institutions, and (b) be a guide for the negotiation of settlements under contracts for experimental, developmental, or research work with educational institutions (but see 31.104).

49.114 Unsettled contract changes.

(a) Before settlement of a completely terminated contract, the TCO shall obtain from the contracting office a list of all related unsettled contract changes. The TCO shall settle, as part of final settlement, all unsettled contract changes after obtaining the recommendations of the contracting office concerning the changes.

(b) When the contract has been partially terminated, any outstanding unsettled contract changes will usually be handled by the contracting officer. However, the contracting officer may delegate this function to the TCO.

49.115 Settlement of terminated incentive contracts.

(a) *Fixed-price incentive contracts.* The TCO shall settle terminated fixed-price incentive (FPI) contracts under the provisions of paragraph (j) of the clause at 52.216-16, Incentive Price Revision—Firm Target, and 52.249-2, Termination for Convenience of the Government (Fixed-Price).

(1) *Partial termination.* Under a partially terminated contract, the TCO shall negotiate a settlement as provided in the termination clause of the contract, and paragraph (j) of the clause at 52.216-16, Incentive Price Revision—Firm Target, or paragraph (1) of the clause at 52.216-17, Incentive Price Revision—Successive Targets. The contracting officer shall apply the incentive price revision provisions to completed items accepted by the Government, including any for which the contractor may request reimbursement in the settlement proposal. The TCO shall reimburse the contractor at target price for completed articles included in the settlement proposal for which a final price has not been established. The TCO shall incorporate in the settlement agreement an appropriate reservation as to final price for these completed articles.

(2) *Complete termination.* If any items were delivered and accepted by the Government, the contracting officer shall establish prices under the incentive provisions of the contract. On the terminated portion of the contract, the provisions of the termination clause (see 52.249-2, Termination for Convenience of the Government (Fixed-Price)) shall govern and the provisions of the incentive clause shall not apply. The TCO responsible for the termination settlement will ensure, on the basis of evidence considered proper (including coordination with the contracting officer), that no portion of the costs considered in the negotiations under the incentive provisions are included in the termination settlement.

(b) *Cost-plus-incentive-fee contracts.* The TCO shall settle terminated cost-plus-incentive-fee contracts under the clause at 52.249-6, Termination (Cost-Reimbursement).

(1) *Partial termination.* Under a partial termination, the TCO shall limit the settlement to an adjustment of target fee as provided in paragraph (e) of the clause at 52.216-10, Incentive Fee. The settlement agreement shall include a reservation regarding any adjustment of target cost resulting from the partial termination. The contracting officer shall adjust the target cost, if required.

(2) *Complete termination.* The parties shall negotiate the settlement under the provisions of Subpart 49.3 and the clause at 52.249-6, Termination (Cost-Reimbursement). The fee shall be adjusted on the basis of the target fee, and the incentive provisions shall not be applied or considered.

SUBPART 49.2—ADDITIONAL PRINCIPLES FOR FIXED-PRICE CONTRACTS TERMINATED FOR CONVENIENCE

49.201 General.

(a) A settlement should compensate the contractor fairly for the work done and the preparations made for the terminated portions of the contract, including a reasonable allowance for profit. Fair compensation is a matter of judgment and cannot be measured exactly. In a given case, various methods may be equally appropriate for arriving at fair compensation. The use of business judgment, as distinguished from strict accounting principles, is the heart of a settlement.

(b) The primary objective is to negotiate a settlement by agreement. The parties may agree upon a total amount to be paid the contractor without agreeing on or segregating the particular elements of costs or profit comprising this amount.

(c) Cost and accounting data may provide guides, but are not rigid measures, for ascertaining fair compensation. In appropriate cases, costs may be estimated, differences compromised, and doubtful questions settled by agreement. Other types of data, criteria, or standards may furnish equally reliable guides to fair compensation. The amount of recordkeeping, reporting, and accounting related to the settlement of terminated contracts should be kept to a minimum compatible with the reasonable protection of the public interest.

49.202 Profit.

(a) The TCO shall allow profit on preparations made and work done by the contractor for the terminated portion of the contract but not on the settlement expenses. Anticipatory profits and consequential damages shall not be allowed (but see 49.108-5). Profit for the contractor's efforts in settling subcontractor proposals shall not be based on the dollar amount of the subcontract settlement agreements but the contractor's efforts will be considered in determining the overall rate of profit allowed the contractor. Profit shall not be allowed the contractor for material or services that, as of the effective date of termination, have not been delivered by a subcontractor, regardless of the percentage of completion. The TCO may use any reasonable method to arrive at a fair profit.

(b) In negotiating or determining profit, factors to be considered include—

(1) Extent and difficulty of the work done by the contractor as compared with the total work required by the contract (engineering estimates of the percentage of completion ordinarily should not be required, but if available should be considered);

(2) Engineering work, production scheduling, planning, technical study and supervision, and other necessary services;

(3) Efficiency of the contractor, with particular regard to—

(i) Attainment of quantity and quality production;

(ii) Reduction of costs;

(iii) Economic use of materials, facilities, and manpower; and

(iv) Disposition of termination inventory;

(4) Amount and source of capital and extent of risk assumed;

(5) Inventive and developmental contributions, and cooperation with the Government and other contractors in supplying technical assistance;

(6) Character of the business, including the source and nature of materials and the complexity of manufacturing techniques;

(7) The rate of profit that the contractor would have earned had the contract been completed;

(8) The rate of profit both parties contemplated at the time the contract was negotiated; and

(9) Character and difficulty of subcontracting, including selection, placement, and management of subcontracts, and effort in negotiating settlements of terminated subcontracts.

(c) When computing profit on the terminated portion of a construction contract, the contracting officer shall—

(1) Comply with paragraphs (a) and (b) above;

(2) Allow profit on the prime contractor's settlements with construction subcontractors for actual work in place at the job site; and

(3) Exclude profit on the prime contractor's settlements with construction subcontractors for materials on hand and for preparations made to complete the work.

49.203 Adjustment for loss.

(a) In the negotiation or determination of any settlement, the TCO shall not allow profit if it appears that the contractor would have incurred a loss had the entire contract been completed. The TCO shall negotiate or determine the amount of loss and make an adjustment in the amount of settlement as specified in paragraph (b) or (c) below. In estimating the cost to complete, the TCO shall consider

expected production efficiencies and other factors affecting the cost to complete.

(b) If the settlement is on an inventory basis (see 49.206-2(a)), the contractor shall not be paid more than the total of the amounts in subparagraphs (1), (2), and (3) below, less all disposal credits and all unliquidated advance and progress payments previously made under the contract:

(1) The amount negotiated or determined for settlement expenses.

(2) The contract price, as adjusted, for acceptable completed end items (see 49.205).

(3) The remainder of the settlement amount otherwise agreed upon or determined (including the allocable portion of initial costs (see 31.205-42(c)), reduced by multiplying the remainder by the ratio of (i) the total contract price to (ii) the total cost incurred before termination plus the estimated cost to complete the entire contract.

(c) If the settlement is on a total cost basis (see 49.206-2(b)), the contractor shall not be paid more than the total of the amounts in subparagraphs (1) and (2) below, less all disposal and other credits, all advance and progress payments, and all other amounts previously paid under the contract:

(1) The amount negotiated or determined for settlement expenses.

(2) The remainder of the total settlement amount otherwise agreed upon or determined (lines 7 and 14 of SF 1436, Settlement Proposal (Total Cost Basis)) reduced by multiplying the remainder by the ratio of (i) the total contract price to (ii) the remainder plus the estimated cost to complete the entire contract.

49.204 Deductions.

From the amount payable to the contractor under a settlement, the TCO shall deduct—

(a) The agreed price for any part of the termination inventory purchased or retained by the contractor, and the proceeds from any materials sold that have not been paid or credited to the Government;

(b) The fair value, as determined by the TCO, of any part of the termination inventory that, before transfer of title to the Government or to a buyer under Part 45, is destroyed, lost, stolen, or so damaged as to become undeliverable (normal spoilage is excepted, as is inventory for which the Government has expressly assumed the risk of loss); and

(c) Any other amounts as appropriate in the particular case.

49.205 Completed end items.

(a) Promptly after the effective date of termination, the TCO shall (1) have all undelivered completed end items inspected and accepted if they comply with the contract requirements, and (2) determine which accepted end items are to be delivered under the contract. The contractor shall invoice accepted and delivered end items at the contract price in the usual manner and shall not include them in the settlement proposal. When completed end items, though accepted, are not to be delivered under the contract, the contractor shall include them in the settlement proposal at the contract price, adjusted for any saving of freight or other charges, together with any credits for their purchase, retention, or sale.

(b) Work in place accepted by the Government under a construction contract is not considered a completed item even though that work may have been paid for at unit prices specified in the contract.

49.206 Settlement proposals.

49.206-1 Submission of settlement proposals.

(a) Subject to the provisions of the termination clause, the contractor should promptly submit to the TCO a settlement proposal for the amount claimed because of the termination. The final settlement proposal must be submitted within one year from the effective date of the termination, unless the period is extended by the TCO. Termination charges under a single prime contract involving two or more divisions or units of the prime contractor may be consolidated and included in a single settlement proposal.

(b) The settlement proposal must cover all cost elements including settlements with subcontractors and any proposed profit. With the consent of the TCO, proposals may be filed in successive steps covering separate portions of the contractor's costs. Such interim proposals shall include all costs of a particular type, except as the TCO may authorize otherwise.

(c) Settlement proposals must be on the forms prescribed in 49.602 unless the forms are inadequate for a particular contract. Settlement proposals must be in reasonable detail supported by adequate accounting data. Actual, standard (appropriately adjusted), or average costs may be used in preparing settlement proposals if they are determined under generally recognized accounting principles consistently followed by the contractor. When actual, standard, or average costs are not reasonably available, estimated costs may be used if the method of arriving at the estimates is approved by the TCO. Contractors shall not be required to maintain unduly elaborate cost accounting systems merely because their contracts may subsequently be terminated.

(d) The contractor may use the Settlement Proposal (Short Form), SF 1438 (see 49.602-1(d) and 53.249), when the total proposal is less than $10,000, unless otherwise instructed by the TCO. Settlement proposals that would normally be included in a single settlement proposal; e.g., those based on a series of separate orders for the same item under one contract, should be consolidated whenever possible and not divided to bring them below $10,000.

(e) The Schedule of Accounting Information, SF 1439, must be submitted for each termination under a contract for which a settlement proposal is submitted, except when the Standard Form 1438 is used. Although several interim proposals may be submitted, SF 1439 need be submitted only once unless, subsequent to filing the original form, major changes occur in the information submitted.

49.206-2 Bases for settlement proposals.

(a) *Inventory basis.* (1) Use of the inventory basis for settlement proposals is preferred. Under this basis, the contractor may propose only costs allocable to the terminated portion of the contract, and the settlement proposal must itemize separately—

(i) Metals, raw materials, purchased parts, work in process, finished parts, components, dies, jigs, fixtures, and tooling, at purchase or manufacturing cost;

(ii) Charges such as engineering costs, initial costs, and general administrative costs;

(iii) Costs of settlements with subcontractors;

(iv) Settlement expenses; and

(v) Other proper charges.

(2) An allowance for profit (49.202) or adjustment for loss (49.203(b)) must be made to complete the gross settlement proposal. All unliquidated advance and progress payments and all disposal and other credits known when the proposal is submitted must then be deducted.

(3) This inventory basis is also appropriate for use under the following circumstances:

(i) The partial termination of a construction or related professional services contract.

(ii) The partial or complete termination of supply orders under any terminated construction contract.

(iii) The complete termination of a unit-price (as distinguished from a lump-sum) professional services contract.

(b) *Total cost basis.* (1) When use of the inventory basis is not practicable or will unduly delay settlement, the total-cost basis (SF-1436) may be used if approved in advance by the TCO as in the following examples:

(i) If production has not commenced and the accumulated costs represent planning and preproduction or "get ready" expenses.

(ii) If, under the contractor's accounting system, unit costs for work in process and finished products cannot readily be established.

(iii) If the contract does not specify unit prices.

(iv) If the termination is complete and involves a letter contract.

(2) When the total-cost basis is used under a complete termination, the contractor must itemize all costs incurred under the contract up to the effective date of termination. The costs of settlements with subcontractors and applicable settlement expenses must also be added. An allowance for profit (49.202) or adjustment for loss (49.203(c)) must be made. The contract price for all end items delivered or to be delivered and accepted must be deducted. All unliquidated advance and progress payments and disposal and other credits known when the proposal is submitted must also be deducted.

(3) When the total-cost basis is used under a partial termination, the settlement proposal shall not be submitted until completion of the continued portion of the contract. The settlement proposal must be prepared as in subparagraph (2) above, except that all costs incurred to the date of completion of the continued portion of the contract must be included.

(4) If a construction contract or a lump-sum professional services contract is completely terminated, the contractor shall—

(i) Use the total cost basis of settlement;

(ii) Omit Line 10 "Deduct-Finished Product Invoiced or to be Invoiced" from Section II of Standard Form-1436) Settlement Proposal (Total Cost Basis); and

(iii) Reduce the gross amount of the settlement by the total of all progress and other payments.

(c) *Other basis.* Settlement proposals may not be submitted on any basis other than paragraph (a) or (b) above without the prior approval of the chief of the contracting or contract administration office

49.207 Limitation on settlements.

The total amount payable to the contractor for a settlement, before deducting disposal or other credits and exclusive of settlement costs, must not exceed the contract price less payments otherwise made or to be made under the contract.

49.208 Equitable adjustment after partial termination.

Under the termination clause, after partial termination, a contractor may request an equitable adjustment in the price or prices of the continued portion of a fixed-price contract. The TCO shall forward the proposal to the contracting officer except when negotiation authority is delegated to the TCO. The contractor shall submit the proposal on SF-1411, Contract Pricing Proposal Cover Sheet.

(a) When the contracting officer retains responsibility for negotiating the equitable adjustment and executing a supplemental agreement, the contracting officer shall ensure that no portion of an increase in price is included in a termination settlement made or in process.

(b) The TCO shall also ensure that no portion of the costs included in the equitable adjustment are included in the termination settlement.

SUBPART 49.3—ADDITIONAL PRINCIPLES FOR COST-REIMBURSEMENT CONTRACTS TERMINATED FOR CONVENIENCE

49.301 General.

Termination clauses for cost-reimbursement contracts (see 49.503(a)) provide for the settlement of costs and fee, if any. The contract clauses governing costs shall determine what costs are allowable.

49.302 Discontinuance of vouchers.

(a) When the contract has been completely terminated, the contractor shall not use Standard Form 1034 (Public Voucher for Purchases and Services Other than Personal) after the last day of the sixth month following the month in which the termination is effective. The contractor may elect to stop using vouchers at any time during the 6-month period. When the contractor has vouchered out all costs within the 6-month period, a proposal for fee, if any, may be submitted on SF 1437 (see 49.602-1) or by letter appropriately certified. The contractor must submit a substantiated proposal for fee to the TCO within 1 year from the effective date of termination, unless the period is extended by the TCO. When the use of vouchers is discontinued, the contractor shall submit all unvouchered costs and the proposed fee, if any, as specified in 49.303.

(b) When the contract is partially terminated, 49.304 shall apply.

49.303 Procedure after discontinuing vouchers.

49.303-1 Submission of settlement proposal.

The contractor shall submit a final settlement proposal covering unvouchered costs and any proposed fee to the TCO within 1 year from the effective date of termination, unless the period is extended by the TCO. The contractor shall use the form prescribed in 49.602-1, unless the TCO authorizes otherwise. The proposal shall not include costs that have been—

(a) Finally disallowed by the contracting officer; or

(b) Previously vouchered and formally questioned by the Government but not yet decided as to allowability.

49.303-2 Audit of settlement proposal.

The TCO shall submit the settlement proposal to the appropriate audit agency for review (see 49.107). However, if the settlement proposal is limited to an adjustment of fee, no referral to the audit agency is required.

49.303-3 Adjustment of indirect costs.

(a) If the contract contains the clause at 52.216-7, Allowable Cost and Payment, and it appears that adjustment of indirect costs will unduly delay final settlement, the TCO, after obtaining information from the appropriate audit agency, may agree with the contractor to—

(1) Negotiate the amount of indirect costs for the contract period for which final indirect cost rates have not been negotiated, or to use billing rates as final rates for this period if the billing rates appear reasonable; or

(2) Reserve any indirect cost adjustment in the final settlement agreement, pending establishment of negotiated rates under Subpart 42.7.

(b) When an amount of indirect cost is negotiated under subparagraph (a)(1) above, the contractor shall eliminate the indirect cost and the related direct costs on which it was based from the total pool and base used to compute indirect costs for other contracts performed during the applicable accounting period.

49.303-4 Final settlement.

(a) The TCO shall proceed with the settlement and execution of a settlement agreement upon receipt of the audit report, if applicable, and the contract

audit closing statement covering vouchered costs.

(b) The TCO shall adjust the fee as provided in 49.305.

(c) The final settlement agreement may include all demands of the Government and proposals of the contractor under the terminated contract. However, no amount shall be allowed for any item of cost disallowed by the Government, nor for any other item of cost of the same nature.

(d) If an overall settlement of costs is agreed upon, agreement on each element of cost is not necessary. If appropriate, differences may be compromised and doubtful questions settled by agreement. An overall settlement shall not include costs that are clearly not allowable under the terms of the contract.

49.304 Procedure for partial termination.

49.304-1 General.

(a) In a partial termination, the TCO shall limit the settlement to an adjustment of the fee, if any, and with the concurrence of the contracting office, to a reduction in the estimated cost. The TCO shall adjust the fee as provided in 49.304-2 and 49.305, unless—

(1) The terminated portion is clearly severable from the balance of the contract; or

(2) Performance of the contract is virtually complete, or performance of any continued portion is only on subsidiary items or spare parts, or is otherwise not substantial.

(b) In the case of the exceptions in paragraph (a), the procedures in 49.302 and 49.303 apply.

49.304-2 Submission of settlement proposal (fee only).

The contractor shall limit the settlement proposal to a proposed reduction in the amount of fee. The final settlement proposal shall be submitted to the TCO within one year from the effective date of termination, unless the period is extended by the TCO. The proposal may be submitted in the form prescribed in 49.602-1 or by letter appropriately certified. The contractor shall substantiate the amount of fee claimed (see 49.305).

49.304-3 Submission of vouchers.

When a partial termination settlement is limited to adjustment of fee, the contractor shall continue to submit the SF 1034, Public Voucher for Purchases and Services Other than Personal, for costs reimbursable under the contract. The contractor shall not be reimbursed for costs of settlements with subcontractors unless required approvals or ratifications have been obtained (see 49.108).

49.305 Adjustment of fee.

49.305-1 General.

(a) The TCO shall determine the adjusted fee to be paid, if any, in the manner provided by the contract. The determination is generally based on a percentage of completion of the contract or of the terminated portion. When this basis is used, factors such as the extent and difficulty of the work performed by the contractor (e.g., planning, scheduling, technical study, engineering work production and supervision, placing and supervising subcontracts, and work performed by the contractor in (1) stopping performance, (2) settling terminated subcontracts, and (3) disposing of termination inventory) shall be compared with the total work required by the contract or by the terminated portion. The contractor's adjusted fee shall not include an allowance for fee for subcontract effort included in subcontractors' settlement proposals.

(b) The ratio of costs incurred to the total estimated cost of performing the contract or the terminated portion is only one factor in computing the percentage of completion. This percentage may be either greater or less than that indicated by the ratio of costs incurred, depending upon the evaluation by the TCO of other pertinent factors.

49.305-2 Construction contracts.

(a) The percentage of completion basis refers to the contractor's total effort and not solely to the actual construction work. Generally, the effort of a contractor under a cost-reimbursement construction or professional services contract can be segregated into factors such as (1) mobilization including organization, (2) use of finances, (3) contracting for and receipt of materials, (4) placement of subcontracts, (5) preparation of shop drawings, (6) work in place performed by own forces, (7) supervision of subcontractors' work (8) job administration, and (9) demobilization.

(b) Each of the applicable factors in paragraph (a) above shall be assigned a weighted value depending on its importance and difficulty. The total weight value of all factors should be easily divisible (e.g., by 100) to determine percentages. The percentage of completion of each factor must be established based upon the specific facts of each contract. When totaled, the percentage of completion of each factor applied to the weighted value of each factor results in the overall percentage of contract completion. The percentage of completion is then applied to the total contract fee or to the fee applicable to the terminated portion of the contract to arrive at an equitable adjustment.

SUBPART 49.4—TERMINATION FOR DEFAULT

49.401 General.

(a) Termination for default is generally the exercise of the Government's contractual right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations.

(b) If the contractor can establish, or it is otherwise determined that the contractor was not in default or that the failure to perform is excusable; i.e., arose out of causes beyond the control and without the fault or negligence of the contractor, the default clauses prescribed in 49.503 and located at 52.249 provide that a termination for default will be considered to have been a termination for the convenience of the Government, and the rights and obligations of the parties governed accordingly.

(c) The Government may, in appropriate cases, exercise termination or cancellation rights in addition to those in the contract clauses (see for example, paragraph (h) of the Default clause at 52.249-8).

(d) For default terminations of orders under Federal Supply Schedule contracts, see Subpart 8.4.

(e) Notwithstanding the provisions of this 49.401, the contracting officer may, with the written consent of the contractor, reinstate the terminated contract by amending the notice of termination, after a written determination is made that the supplies or services are still required and reinstatement is advantageous to the Government.

49.402 Termination of fixed-price contracts for default.

49.402-1 The Government's right.

Under contracts containing the Default clause at 52.249-8, the Government has the right, subject to the notice requirements of the clause, to terminate the contract completely or partially for default if the contractor fails to (a) make delivery of the supplies or perform the services within the time specified in the contract, (b) perform any other provision of the contract, or (c) make progress and that failure endangers performance of the contract.

49.402-2 Effect of termination for default.

(a) Under a termination for default, the Government is not liable for the contractor's costs on undelivered work

and is entitled to the repayment of advance and progress payments, if any, applicable to that work. The Government may elect, under the Default clause, to require the contractor to transfer title and deliver to the Government completed supplies and manufacturing materials, as directed by the contracting officer.

(b) The contracting officer shall not use the Default clause as authority to acquire any completed supplies or manufacturing materials unless it has been ascertained that the Government does not already have title under some other provision of the contract. The contracting officer shall acquire manufacturing materials under the Default clause for furnishing to another contractor only after considering the difficulties the other contractor may have in using the materials.

(c) Subject to paragraph (d) below, the Government shall pay the contractor the contract price for any completed supplies, and the amount agreed upon by the contracting officer and the contractor for any manufacturing materials, acquired by the Government under the Default clause.

(d) The Government must be protected from overpayment that might result from failure to provide for the Government's potential liability to laborers and material suppliers for lien rights outstanding against the completed supplies or materials after the Government has paid the contractor for them. To accomplish this, before paying for supplies or materials, the contracting officer shall take one or more of the following measures:

(1) Ascertain whether the payment bonds, if any, furnished by the contractor are adequate to satisfy all lienors' claims or whether it is feasible to obtain similar bonds to cover outstanding liens.

(2) Require the contractor to furnish appropriate statements from laborers and material suppliers disclaiming any lien rights they may have to the supplies and materials.

(3) Obtain appropriate agreement by the Government, the contractor, and lienors ensuring release of the Government from any potential liability to the contractor or lienors.

(4) Withhold from the amount due for the supplies or materials any amount the contracting officer determines necessary to protect the Government's interest, but only if the measures in subparagraphs (d)(1), (2), and (3) above cannot be accomplished or are considered inadequate.

(5) Take other appropriate action considering the circumstances and the degree of the contractor's solvency.

(e) The contractor is liable to the Government for any excess costs incurred in acquiring supplies and services similar to those terminated for default (see 49.402-6), and for any other damages, whether or not repurchase is effected (see 49.402-7).

49.402-3 Procedure for default.

(a) When a default termination is being considered, the Government shall decide which type of termination action to take (i.e., default, convenience, or no-cost cancellation) only after review by contracting and technical personnel, and by counsel, to ensure the propriety of the proposed action.

(b) The administrative contracting officer shall not issue a show cause notice or cure notice without the prior approval of the contracting office, which should be obtained by the most expeditious means.

(c) Subdivision (a)(1)(i) of the Default clause covers situations when the contractor has defaulted by failure to make delivery of the supplies or to perform the services within the specified time. In these situations, no notice of failure or of the possibility of termination for default is required to be sent to the contractor before the actual notice of termination (but see paragraph (e) below). However, if the Government has taken any action that might be construed as a waiver of the contract delivery or performance date, the contracting officer shall send a notice to the contractor setting a new date for the contractor to make delivery or complete performance. The notice shall reserve the Government's rights under the Default clause.

(d) Subdivisions (a)(1)(ii) and (a)(1)(iii) of the Default clause cover situations when the contractor fails to perform some of the other provisions of the contract (such as not furnishing a required performance bond) or so fails to make progress as to endanger performance of the contract. If the termination is predicated upon this type of failure, the contracting officer shall give the contractor written notice specifying the failure and providing a period of 10 days (or longer period as necessary) in which to cure the failure. When appropriate, this notice may be made a part of the notice described in subparagraph (e)(1) below. Upon expiration of the 10 days (or longer period), the contracting officer may issue a notice of termination for default unless it is determined that the failure to perform has been cured. A format for a cure notice is in 49.607.

(e) (1) If termination for default appears appropriate, the contracting officer should, if practicable, notify the contractor in writing of the possibility of the termination. This notice shall call the contractor's attention to the contractual liabilities if the contract is terminated for default, and request the contractor to show cause why the contract should not be terminated for default. The notice may further state that failure of the contractor to present an explanation may be taken as an admission that no valid explanation exists. When appropriate, the notice may invite the contractor to discuss the matter at a conference. A format for a show cause notice is in 49.607.

(2) When a termination for default appears imminent, the contracting officer may provide a written notification of that fact (not an actual notice of default) to the surety.

(3) If requested by the surety, and agreed to by the contractor and any assignees, arrangements may be made to have future checks mailed to the contractor in care of the surety. In this case, the contractor must forward a written request to the designated disbursing officer specifically directing a change in address for mailing checks.

(4) If the contractor is a small business firm, the contracting officer shall immediately provide a copy of any cure notice or show cause notice to the contracting office's small business specialist and the Small Business Administration Regional Office nearest the contractor. The contracting officer should, whenever practicable, consult with the small business specialist before proceeding with a default termination (see also 49.402-4).

(f) The contracting officer shall consider the following factors in determining whether to terminate a contract for default:

(1) The terms of the contract and applicable laws and regulations.

(2) The specific failure of the contractor and the excuses for the failure.

(3) The availability of the supplies or services from other sources.

(4) The urgency of the need for the supplies or services and the period of time required to obtain them from other sources, as compared with the time delivery could be obtained from the delinquent contractor.

(5) The degree of essentiality of the contractor in the Government acquisition program and the effect of a termination for default upon the contractor's capability as a supplier under other contracts.

(6) The effect of a termination for default on the ability of the contractor to liquidate guaranteed loans, progress payments, or advance payments.

(7) Any other pertinent facts and circumstances.

(g) If, after compliance with the procedures in paragraphs (a) through (f) of this 49.402-3, the contracting officer determines that a termination for default is proper, the contracting officer shall issue a notice of termination stating—

(1) The contract number and date;

(2) The acts or omissions constituting the default;

(3) That the contractor's right to proceed further under the contract (or a specified portion of the contract) is terminated;

(4) That the supplies or services terminated may be purchased against the contractor's account, and that the contractor will be held liable for any excess costs;

(5) If the contracting officer has determined that the failure to perform is not excusable, that the notice of termination constitutes such decision, and that the contractor has the right to appeal such decision under the Disputes clause;

(6) That the Government reserves all rights and remedies provided by law or under the contract, in addition to charging excess costs; and

(7) That the notice constitutes a decision that the contractor is in default as specified and that the contractor has the right to appeal under the Disputes clause.

(h) The contracting officer shall make the same distribution of the termination notice as was made of the contract. A copy shall also be furnished to the contractor's surety, if any, when the notice is furnished to the contractor. The surety should be requested to advise if it desires to arrange for completion of the work. In addition, the contracting officer shall notify the disbursing officer to withhold further payments under the terminated contract, pending further advice, which should be furnished at the earliest practicable time.

(i) In the case of a construction contract, promptly after issuance of the termination notice, the contracting officer shall determine the manner in which the work is to be completed and whether the materials, appliances, and plant that are on the site will be needed.

(j) If the contracting officer determines before issuing the termination notice that the failure to perform is excusable, the contract shall not be terminated for default. If termination is in the Government's interest, the contracting officer may terminate the contract for the convenience of the Government.

(k) If the contracting officer has not been able to determine, before issuance of the notice of termination whether the contractor's failure to perform is excusable, the contracting officer shall make a written decision on that point as soon as practicable after issuance of the notice of termination. The decision shall be delivered promptly to the contractor with a notification that the contractor has the right to appeal as specified in the Disputes clause.

49.402-4 Procedure in lieu of termination for default.

The following courses of action, among others, are available to the contracting officer in lieu of termination for default when in the Government's interest:

(a) Permit the contractor, the surety, or the guarantor, to continue performance of the contract under a revised delivery schedule.

(b) Permit the contractor to continue performance of the contract by means of a subcontract or other business arrangement with an acceptable third party, provided the rights of the Government are adequately preserved.

(c) If the requirement for the supplies and services in the contract no longer exists, and the contractor is not liable to the Government for damages as provided in 49.402-7, execute a no-cost termination settlement agreement using the formats in 49.603-6 and 49.603-7 as a guide.

49.402-5 Memorandum by the contracting officer.

When a contract is terminated for default or a procedure authorized by 49.402-4 is followed, the contracting officer shall prepare a memorandum for the contract file explaining the reasons for the action taken.

49.402-6 Repurchase against contractor's account.

(a) When the supplies or services are still required after termination, the contracting officer shall repurchase the same or similar supplies or services against the contractor's account as soon as practicable. The contracting officer shall repurchase at as reasonable a price as practicable, considering the quality and delivery requirements. The contracting officer may repurchase a quantity in excess of the undelivered quantity terminated for default when the excess quantity is needed, but excess cost may not be charged against the defaulting contractor for more than the undelivered quantity terminated for default (including variations in quantity permitted by the terminated contract). Generally, the contracting officer will make a decision whether or not to repurchase before issuing the termination notice.

(b) If the repurchase is for a quantity not over the undelivered quantity terminated for default, the statutory requirements for formal advertising are inapplicable. However, the contracting officer shall use formal advertising procedures unless there is a good reason to negotiate. If the contracting officer decides to negotiate the repurchase contract, any appropriate negotiation authority in Subpart 15.2 may be used. If none of the negotiation authorities is used, the contracting officer shall cite the Default clause as the authority. If the repurchase is for a quantity over the undelivered quantity terminated for default, the contracting officer shall treat the entire quantity as a new acquisition.

(c) If repurchase is made at a price over the price of the supplies or services terminated, the contracting officer shall, after completion and final payment of the repurchase contract, make a written demand on the contractor for the total amount of the excess, giving consideration to any increases or decreases in other costs such as transportation, discounts, etc. If the contractor fails to make payment, the contracting officer shall follow the procedures in Subpart 32.6 for collecting contract debts due the Government.

49.402-7 Other damages.

(a) If a contract is terminated for default or if a course of action in lieu of termination for default is followed (see 49.402-4), the contracting officer shall promptly ascertain and make demand for any liquidated damages to which the Government is entitled under the contract. Under the contract clauses for liquidated damages at 52.212-4, these damages are in addition to any excess repurchase costs.

(b) If the Government has suffered any other ascertainable damages as a result of the contractor's default, the contracting officer shall, on the basis of legal advice, take appropriate action as prescribed in Subpart 32.6 to assert the Government's demand for the damages.

49.403 Termination of cost-reimbursement contracts for default.

(a) The right to terminate a cost-reimbursement contract for default is provided for in the Termination for Default or for Convenience of the Government clause at 52.249-6. A 10-day notice to the contractor before termination for default is required in every case by the clause.

(b) Settlement of a cost-reimbursement contract terminated for default is subject to the principles in Subparts 49.1 and 49.3 the same as when a contract is terminated for convenience, except that—

(1) The costs of preparing the contractor's settlement proposal are not allowable (see subparagraph (g)(3) of the clause); and

(2) The contractor is reimbursed the allowable costs, and an appropriate reduction is made in the total fee, if any, (see subparagraph (g)(4) of the clause).

(c) The contracting officer shall use the procedures in 49.402 to the extent appropriate in considering the termination for default of a cost-reimbursement contract. However, a cost-reimbursement contract does not contain any provision for recovery of excess repurchase costs after termination for default (but see paragraph (g) of the clause at 52.246-3 with respect to failure of the contractor to replace or correct defective supplies).

49.404 Surety-takeover agreements.

(a) The procedures in this section apply primarily, but not solely, to fixed-price construction contracts terminated for default.

(b) Because of the surety's liability for damages resulting from the contractor's default, the surety has certain rights and interests in the completion of the contract work and application of any undisbursed funds. Accordingly, the contracting officer shall carefully consider proposals by the surety concerning completion of the work. The contracting officer shall take action on the basis of the Government's interest, including the possible effect of the action upon the Government's rights against the surety.

(c) If the surety offers to complete the contract work, this should normally be permitted unless the contracting officer has reason to believe that the persons or firms proposed by the surety to complete the work are not competent and qualified and the interests of the Government would be substantially prejudiced.

(d) Because of the possibility of conflicting demands for unpaid prior earnings (retained percentages and unpaid progress estimates) of the defaulting contractor, the surety may condition its offer of completion upon the execution by the Government of a "takeover" agreement fixing the surety's rights to payment from those funds. In that event, the contracting officer may (but not before the effective date of termination) enter into a written agreement with the surety. The contracting officer should consider including in the agreement both the surety and the defaulting contractor in order to eliminate any disagreement concerning the contractor's residual rights, including assertions to unpaid prior earnings.

(e) The agreement shall provide for the surety to complete the work according to all the terms and conditions of the contract and for the Government to pay the surety the balance of the contract price unpaid at the time of default, but not in excess of the surety's costs and expenses, in the manner provided by the contract subject to the following conditions:

(1) Any unpaid earnings of the defaulting contractor, including retained percentages and progress estimates for work accomplished before termination, shall be subject to debts due the Government by the contractor, except to the extent that such unpaid earnings may be required to permit payment to the completing surety of its actual costs and expenses incurred in the completion of the work, exclusive of its payments and obligations under the payment bond given in connection with the contract.

(2) The agreement shall not waive or release the Government's right to liquidated damages for delays in completion of the work, except to the extent that they are excusable under the contract.

(3) If the contract proceeds have been assigned to a financing institution, the surety may not be paid from unpaid earnings, unless the assignee consents to the payment in writing.

(4) The surety shall not be paid any amount in excess of its total expenditures necessarily made in completing the work and discharging its liabilities under the payment bond of the defaulting contractor. Furthermore, payments to the surety to reimburse it for discharging its liabilities under the payment bond of the defaulting contractor shall be only on authority of—

(i) Mutual agreement between the Government, the defaulting contractor, and the surety;

(ii) Determination of the Comptroller General as to payee and amount; or

(iii) Order of a court of competent jurisdiction.

49.405 Completion by another contractor.

If the surety does not arrange for completion of the contract, the contracting officer normally will arrange for completion of the work by awarding a new contract based on the same plans and specifications. The new contract may be the result of formal advertising or negotiation, as appropriate under the circumstances. The contracting officer shall exercise reasonable diligence to obtain the lowest price available for completion.

49.406 Liquidation of liability.

The contract provides that the contractor and the surety are liable to the Government for resultant damages. The contracting officer shall use all retained percentages of progress payments previously made to the contractor and any progress payments due for work completed before the termination to liquidate the contractor's and the surety's liability to the Government. If the retained and unpaid amounts are insufficient, the contracting officer shall take steps to recover the additional sum from the contractor and the surety.

SUBPART 49.5—CONTRACT TERMINATION CLAUSES

49.501 General.

This subpart prescribes the principal contract termination clauses. In appropriate cases, agencies may authorize the use of special purpose clauses, if consistent with this regulation.

49.502 Termination for convenience of the Government.

(a) *Fixed-price contracts of $100,000 or less (short form).*

(1) *General use.* The contracting officer shall insert the clause at 52.249-1, Termination for Convenience of the Government (Fixed-Price) (Short Form), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to be $100,000 or less, except (i) if use of the clause at 52.249-4, Termination for Convenience of the Government (Services) (Short Form) is appropriate, (ii) in contracts for research and development work with an educational or nonprofit institution on a no-profit basis, (iii) in contracts for architect-engineer services, or (iv) if one of the clauses prescribed or cited at 49.505(a), (b), or (e), is appropriate.

(2) *Dismantling and demolition.* If the contract is for dismantling, demolition, or removal of improvements, the contracting officer shall use the clause with its Alternate I.

(b) *Fixed-price contracts over $100,000.*

(1) (i) *General use.* The contracting officer shall insert the clause at 52.249-2, Termination for Convenience of the Government (Fixed-Price), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to be over $100,000, except in contracts for (i) dismantling and demolition, (ii) research and development work with an educational or nonprofit institution on a

no-profit basis, or (iii) architect-engineer services; it shall not be used if the clause at 52.249-4, Termination for Convenience of the Government (Services) (Short Form), is appropriate (see 49.502(c)), or one of the clauses prescribed or cited at 49.505(a), (b), or (e), is appropriate.

(ii) *Construction.* If the contract is for construction, the contracting officer shall use the clause with its Alternate I.

(iii) *Partial payments.* If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, the contracting officer shall use the clause with its Alternate II. In such contracts for construction, the contracting officer shall use the clause with its Alternate III.

(2) *Dismantling and demolition.* The contracting officer shall insert the clause at 52.249-3, Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements) in solicitations and contracts for dismantling, demolition, or removal of improvements, when a fixed-price contract is contemplated and the contract amount is expected to be over $100,000. If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, the contracting officer shall use the clause with its Alternate I.

(c) *Service contracts (short form).* The contracting officer shall insert the clause at 52.249-4, Termination for Convenience of the Government (Services) (Short Form), in solicitations and contracts for services, regardless of value, when a fixed-price contract is contemplated and the contracting officer determines that because of the kind of services required, the successful offeror will not incur substantial charges in preparation for and in carrying out the contract, and would, if terminated for the convenience of the Government, limit termination settlement charges to services rendered before the date of termination. Examples of services where this clause may be appropriate are contracts for rental of unreserved parking space, laundry and drycleaning, etc.

(d) *Research and development contracts.* The contracting officer shall insert the clause at 52.249-5, Termination for the Convenience of the Government (Educational and Other Nonprofit Institutions), in solicitations and contracts when either a fixed-price or cost-reimbursement contract is contemplated for research and development work with an educational or nonprofit institution on a no-profit or no-fee basis.

(e) *Subcontracts.* (1) *General use.* The prime contractor may find the clause at 52.249-1, Termination for Convenience of the Government (Fixed-Price) (Short Form), or at 52.249-2, Termination for Convenience of the Government (Fixed-Price), as appropriate, suitable for use in fixed-price subcontracts, except as noted in subparagraph (2) below; *provided*, that the relationship between the contractor and subcontractor is clearly indicated. Inapplicable conditions (e.g., paragraph (c)) in 52.249-2 should be deleted and the periods reduced for submitting the subcontractor's termination settlement proposal (e.g., 6 months), and for requesting an equitable price adjustment (e.g., 45 days).

(2) *Research and development.* The prime contractor may find the clause at 52.249-5, Termination for the Convenience of the Government (Educational and Other Nonprofit Institutions), suitable for use in subcontracts placed with educational or nonprofit institutions on a no-profit or no-fee basis; *provided*, that the relationship between the contractor and subcontractor is clearly indicated. Inapplicable conditions (e.g., paragraph (g)) should be deleted, the period for submitting the subcontractor's termination settlement proposal should be reduced (e.g., 6 months), the subcontract should be placed on a no-profit or no-fee basis, and the subcontract should incorporate or be negotiated on the basis of the cost principles in Part 31 of the Federal Acquisition Regulation.

49.503 Termination for convenience of the Government and default.

(a) *Cost-reimbursement contracts.*

(1) *General use.* The contracting officer shall insert the clause at 52.249-6, Termination (Cost-Reimbursement), in solicitations and contracts when a cost-reimbursement contract is contemplated, except in contracts for architect-engineer services and for research and development with an educational or nonprofit institution on a no-fee basis.

(2) *Construction.* If the contract is for construction, the contracting officer shall use the clause with its Alternate I.

(3) *Partial payments.* If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, the contracting officer shall use the clause with its Alternate II. In such contracts for construction, the contracting officer shall use the clause with its Alternate III.

(4) *Time-and-material and labor-hour contracts.* If the contract is a time-and-material or labor-hour contract, the contracting officer shall use the clause with its Alternate IV. If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, the contracting officer shall use the clause with its Alternate V.

(b) *Fixed-price contracts.* The contracting officer shall insert the clause at 52.249-7, Termination (Fixed-Price Architect-Engineer), in solicitations and contracts for architect-engineer services, when a fixed-price contract is contemplated.

(c) *Subcontracts.* The prime contractor may find the clause at 52.249-6, Termination (Cost-Reimbursement), suitable for use in cost-reimbursement subcontracts; *provided*, that the relationship between the contractor and subcontractor is clearly indicated. Inapplicable conditions (e.g., paragraphs (d), (i) and (m)) should be deleted and the period for submitting the subcontractor's termination settlement proposal should be reduced (e.g., 6 months).

49.504 Termination of fixed-price contracts for default.

(a) (1) *Supplies and services.* The contracting officer shall insert the clause at 52.249-8, Default (Fixed-Price Supply and Service), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may use the clause when the contract amount is not expected to exceed the small purchase limitation, if appropriate (e.g., if the acquisition involves items with a history of unsatisfactory quality).

(2) *Transportation.* If the contract is for transportation or transportation-related services, the contracting officer shall use the clause with its Alternate I.

(b) *Research and development.* The contracting officer shall insert the clause at 52.249-9, Default (Fixed-Price Research and Development), in solicitations and contracts for research and development when a fixed-price contract is contemplated and the

contract amount is expected to exceed the small purchase limitation, except those with educational or nonprofit institutions on a no-profit basis. The contracting officer may use the clause when the contract amount is not expected to exceed the small purchase limitation, if appropriate (e.g., if the contracting officer believes that key personnel essential to the work may be devoted to other programs).

(c) (1) *Construction.* The contracting officer shall insert the clause at 52.249-10, Default (Fixed-Price Construction), in solicitations and contracts for construction, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may use the clause when the contract amount is not expected to exceed the small purchase limitation, if appropriate (e.g., if completion dates are essential).

(2) *Dismantling and demolition.* If the contract is for dismantling, demolition, or removal of improvements, the contracting officer shall use the clause with its Alternate I.

(3) *National emergencies.* If the contract is to be awarded during a period of national emergency, the contracting officer may use the clause (i) with its Alternate II when a fixed-price contract for construction is contemplated, or (ii) with its Alternate III when a contract for dismantling, demolition, or removal of improvements is contemplated.

49.505 Other termination clauses.

(a) *Facilities.* The contracting officer shall insert the clause at 52.249-11, Termination of Work (Consolidated Facilities or Facilities Acquisition), in consolidated facilities contracts and facilities acquisition contracts. If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, the contracting officer shall use the clause with its Alternate I.

(b) *Personal service contracts.* The contracting officer shall insert the clause at 52.249-12, Termination (Personal Services), in solicitations and contracts for personal services (see Part 37).

(c) *Failure to perform.* The contracting officer shall insert the clause at 52.249-13, Failure to Perform, in facilities contracts, except facilities use contracts with nonprofit educational institutions.

(d) *Excusable delays.* The contracting officer shall insert the clause at 52.249-14, Excusable Delays, in solicitations and contracts for supplies, services, construction, and research and development on a fee basis, when a cost-reimbursement contract is contemplated. The contracting officer shall also insert the clause in time-and-material contracts, labor-hour contracts, consolidated facilities contracts, and facilities acquisition contracts.

(e) *Communication service contracts.* This regulation does not prescribe a clause for the cancellation or termination of orders under communication service contracts with common carriers because of special agency requirements that apply to these services. An appropriate clause, however, shall be prescribed at agency level, within those agencies contracting for these services.

SUBPART 49.6—CONTRACT TERMINATION FORMS AND FORMATS

49.601 Notice of termination for convenience.

(See 49.402-3(g) for notice of termination for default.)

49.601-1 Telegraphic notice.

(a) *Complete termination.* The following telegraphic notice is suggested for use if a supply contract is being completely terminated for convenience. If appropriately modified, the notice may be used for other than supply contracts.

DATE.....
XYZ Corporation
New York, NY 12345

Contract No. ..... is completely terminated under clause ....., effective ..... [*insert* "immediately" *or* "on ..... 19..", *or* "as soon as you have delivered, including prior deliveries, the following items:" (*list*)]. Immediately stop all work, terminate subcontracts, and place no further orders except to the extent [*insert if applicable* "necessary to complete items not terminated or"] that you or a subcontractor wish to retain and continue for your own account any work-in-process or other materials. Telegraph similar instructions to all subcontractors and suppliers. Detailed instructions follow.

.....
Contracting Officer

(b) *Partial termination.* The following telegraphic notice is suggested for use if a supply contract is being partially terminated for convenience. If appropriately modified, the notice may be used for other than supply contracts.

DATE.....
XYZ Corporation
New York, NY 12345

Contract No. ..... is partially terminated under clause ..... effective ..... [*insert* "immediately" *or* "on ....., 19.."]. Reduce items to be delivered as follows: [*insert instructions*]. Immediately stop all work, terminate subcontracts, and place no further orders except as necessary to perform the portion not terminated or that you or a subcontractor wish to retain and continue for your account any work-in-process or other materials. Telegraph similar instructions to all subcontractors and suppliers. Detailed instructions follow.

.....
Contracting Officer

49.601-2 Letter notice.

The following letter notice of termination is suggested for use if a contract for supplies is being terminated for convenience. With appropriate modifications, it may be used in terminating contracts for other than supplies and in terminating subcontracts. This notice shall be sent by certified mail, return receipt requested. If no prior telegraphic notice was issued, use the alternate notice that follows this notice.

NOTICE OF TERMINATION TO PRIME CONTRACTORS

[*At the top of the notice, set out all special details relating to the particular termination; e.g., name and address of company, contract number of terminated contract, items, etc.*]

(a) *Effective date of termination.* This confirms the Government's telegram to you dated ....., 19....., terminating ..... [*insert* "completely" *or* "in part"] Contract No. ..... (referred to as "the contract") for the Government's convenience under the clause entitled ..... [*insert title of appropriate termination clause*]. The termination is effective on the date and in the manner stated in the telegram.

(b) *Cessation of work and notification to immediate subcontractors.* You shall take the following steps:

(1) Stop all work, make no further shipments, and place no further orders relating to the contract, except for—

(i) The continued portion of the contract, if any;

(ii) Work-in-process or other materials that you may wish to retain for your own account; or

(iii) Work-in-process that the Contracting Officer authorizes you to continue (A) for safety precautions, (B) to clear or avoid damage to equipment, (C) to avoid immediate complete spoilage of work-in-process having a definite commercial value, or (D) to prevent any other undue loss to the Government. (If you believe this authorization is necessary or advisable, immediately notify the Contracting Officer by telephone or personal conference and obtain instructions.)

(2) Keep adequate records of your compliance with subparagraph (1) above showing the—

(i) Date you received the Notice of Termination;

(ii) Effective date of the termination; and

(iii) Extent of completion of performance on the effective date.

(3) Furnish notice of termination to each immediate subcontractor and supplier that will be affected by this termination. In the notice—

(i) Specify your Government contract number;

(ii) State whether the contract has been terminated completely or partially;

(iii) Provide instructions to stop all work, make no further shipments, place no further orders, and terminate all subcontracts under the contract, subject to the exceptions in subparagraph (1) above;

(iv) Provide instructions to submit any settlement proposal promptly; and

(v) Request that similar notices and instructions be given to its immediate subcontractors.

(4) Notify the Contracting Officer of all pending legal proceedings that are based on subcontracts or purchase orders under the contract, or in which a lien has been or may be placed against termination inventory to be reported to the Government. Also, promptly notify the Contracting Officer of any such proceedings that are filed after receipt of this Notice.

(5) Take any other action required by the Contracting Officer or under the Termination clause in the contract.

(c) *Termination inventory.* (1) As instructed by the Contracting Officer, transfer title and deliver to the Government all termination inventory of the following types or classes, including subcontractor termination inventory that you have the right to take: [*Contracting Officer insert proper identification or* "None"].

(2) To settle your proposal, it will be necessary to establish that all prime and subcontractor termination inventory has been properly accounted for. For detailed information, see Part 45.

(d) *Settlements with subcontractors.* You remain liable to your subcontractors and suppliers for proposals arising because of the termination of their subcontracts or orders. You are requested to settle these settlement proposals as promptly as possible. For purposes of reimbursement by the Government, settlements will be governed by the provisions of Part 49.

(e) *Completed end items.* (1) Notify the Contracting Officer of the number of items completed under the contract and still on hand and arrange for their delivery or other disposal (see 49.205).

(2) Invoice acceptable completed end items under the contract in the usual way and do not include them in the settlement proposal.

(f) *Patents.* If required by the contract, promptly forward the following to the Contracting Officer:

(1) Disclosure of all inventions, discoveries, and patent applications made in the performance of the contract.

(2) Instruments of license or assignment on all inventions, discoveries, and patent applications made in the performance of the contract.

(g) *Employees affected.* (1) If this termination, together with other outstanding terminations, will necessitate a significant reduction in your work force, you are urged to—

(i) Promptly inform the local State Employment Service of your reduction-in-force schedule in numbers and occupations, so that the Service can take timely action in assisting displaced workers;

(ii) Give affected employees maximum practical advance notice of the employment reduction and inform them of the facilities and services available to them through the local State Employment Service offices;

(iii) Advise affected employees to file applications with the State Employment Service to qualify for unemployment insurance, if necessary;

(iv) Inform officials of local unions having agreements with you of the impending reduction-in-force; and

(v) Inform the local Chamber of Commerce and other appropriate organizations which are prepared to offer practical assistance in finding employment for displaced workers of the impending reduction-in-force.

(2) If practicable, urge subcontractors to take similar actions to those described in subparagraph (1) above.

(h) *Administrative.* The contract administration office named in the contract will identify the Contracting Officer who will be in charge of the settlement of this termination and who will, upon request, provide the necessary settlement forms. Matters not covered by this notice should be brought to the attention of the undersigned.

(i) Please acknowledge receipt of this notice as provided below.

.....

(Contracting Officer)

.....

.....

(Name of Office)

.....

(Address)

Acknowledgment of Notice

The undersigned acknowledges receipt of a signed copy of this notice on ....., 19..... Two signed copies of this notice are returned.

.....

(Name of Contractor)

By.....

(Name)

.....

(Title)

(End of notice)

Alternate notice. If no prior telegraphic notice was issued, substitute the following paragraph (a) for paragraph (a) of the notice above:

(a) *Effective date of termination.* You are notified that Contract No. ..... (referred to as "the contract") is terminated ..... [*insert* "completely" *or* "in part"] for the Government's convenience under the clause entitled ..... [*insert title of appropriate termination clause*]. The termination is effective ..... [*insert either* "immediately upon receipt of this Notice" *or* "on ....., 19...," *or* "as soon as you have delivered, including prior deliveries, the following items:" (*list*)]. Reduce items to be delivered as follows: [*insert instructions*].

49.602 Forms for settlement of terminated contracts.

The standard forms listed below shall be used for settling terminated prime contracts. The forms at 49.602-1 and 49.602-2 may also be used for settling terminated subcontracts. Standard forms are illustrated in Subpart 53.3.

49.602-1 Termination settlement proposal forms.

(a) Standard Form 1435, Settlement Proposal (Inventory Basis), shall be used to submit settlement proposals resulting from the termination of fixed-price contracts if the proposals are computed on an inventory basis (see 49.206-2(a)).

(b) Standard Form 1436, Settlement Proposal (Total Cost Basis), shall be used to submit settlement proposals resulting from the termination of fixed-price contracts if the proposals are computed on a total cost basis (see 49.206-2(b)).

(c) Standard Form 1437, Settlement Proposal for Cost-Reimbursement Type Contracts, shall be used to submit settlement proposals resulting from the termination of cost-reimbursement contracts (see 49.302).

(d) Standard Form 1438, Settlement Proposal (Short Form), shall be used to submit settlement proposals resulting from the termination of fixed-price contracts if the total proposal is less than $10,000 (see 49.206-1(d)).

49.602-2 Inventory schedule forms.

The following forms shall be used to support settlement proposals submitted on the forms specified in 49.602-1(a), (b), and (c) (see 45.606):

(a) Standard Form 1426, Inventory Schedule A (Metals in Mill Product Form), and Standard Form 1427, Inventory Schedule A - Continuation Sheet (Metals in Mill Product Form).

(b) Standard Form 1428, Inventory Schedule B, and Standard Form 1429, Inventory Schedule B - Continuation Sheet (used for reporting raw materials, purchased parts, finished components, finished product, plant equipment, and miscellaneous inventory).

(c) Standard Form 1430, Inventory Schedule C - (Work-in-Process), and

Standard Form 1431, Inventory Schedule C - Continuation Sheet (Work-in-Process).

(d) Standard Form 1432, Inventory Schedule D (Special Tooling and Special Test Equipment), and Standard Form 1433, Inventory Schedule D - Continuation Sheet (Special Tooling and Special Test Equipment).

(e) Standard Form 1434, Termination Inventory Schedule E (Short Form for use with SF 1438 Only).

49.602-3 Schedule of accounting information.

Standard Form 1439, Schedule of Accounting Information, shall be filed in support of a settlement proposal unless the proposal is filed on Standard Form 1438, Settlement Proposal (Short Form) (see 49.206-1(e)).

49.602-4 Partial payments.

Standard Form 1440, Application for Partial Payment, shall be used to apply for partial payments (see 49.112-1).

49.602-5 Settlement agreement.

Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, shall be used to execute a settlement agreement (see 49.109-1).

49.603 Formats for termination for convenience settlement agreements.

The formats to be used for termination for convenience settlement agreements should be substantially as shown in this section (see 49.109). Termination contracting officers (TCO's) may, however, modify the contents of these agreements to conform with special termination clauses prescribed or authorized by their agencies (e.g., see 49.501 and 49.505(e)).

49.603-1 Fixed-price contracts—complete termination.

[*Insert the following in Block 14 of SF 30 for settlements of fixed-price contracts completely terminated.*]

(a) This supplemental agreement settles the settlement proposal resulting from the Notice of Termination dated ..... .

(b) The parties agree to the following:

(1) The Contractor certifies that all contract termination inventory (including scrap) has been retained or acquired by the Contractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits have been used in arriving at this agreement.

(2) The Contractor certifies that each immediate subcontractor, whose settlement proposal is included in the proposal settled by this agreement, has furnished the Contractor a certificate stating (i) that all subcontract termination inventory (including scrap) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract, and (ii) that the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.

(3) The Contractor certifies that all items of termination inventory, the costs of which were used in arriving at the amount of this settlement or the settlement of any subcontract settlement proposal included in this settlement, (i) are properly allocable to the terminated portion of the contract, (ii) do not exceed the reasonable quantitative requirements of the terminated portion of the contract, and (iii) do not include any items reasonably usable without loss to the Contractor on its other work. The Contractor further certifies that the Contracting Officer has been informed of any substantial change in the status of the items between the dates of the termination inventory schedules and the date of this agreement.

(4) The Contractor transfers, conveys, and assigns to the Government all the right, title, and interest, if any, that the Contractor has received, or is entitled to receive, in and to subcontract termination inventory not otherwise properly accounted for.

(5) The Contractor shall, within 10 days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and, if the Contractor so elects, any amounts due and payable to the Contractor by those subcontractors.

(6) (i) The Contractor has received $..... for work and services performed, or items delivered, under the completed portion of the contract. The Government confirms the right of the Contractor, subject to paragraph (7) below, to retain this sum and agrees that it constitutes a portion of the total amount to which the Contractor is entitled in settlement of the contract.

(ii) Further, the Government agrees to pay to the Contractor or its assignee, upon presentation of a proper invoice or voucher, the sum of $..... [*insert net amount of settlement*], arrived at by deducting from the sum of $..... [*for proposals on an inventory basis insert gross amount of settlement; for proposals on a total cost basis, insert gross amount of settlement less amount shown in subdivision (6)(i) above*], (A) the amount of $..... for all unliquidated partial or progress payments previously made to the Contractor or its assignee and all unliquidated advance payments (with any interest) and (B) the amount of $..... for all applicable property disposal credits [*insert if appropriate,* "and (C) the amount of $..... for all other amounts due the Government under this contract, except as provided in paragraph (7) below"].

(iii) The net settlement of $..... in subdivision (ii) above, together with sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor for the complete termination of the contract and of all other demands and liabilities of the Contractor and the Government under the contract except as provided in paragraph (7) below.

(7) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved:

[*The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated (see 49.109-2). The suggested language of the excepted items on the list may be varied at the discretion of the contracting officer. If accuracy or completeness can be achieved by referencing the number of a contract clause or provision covering the matter in question, then follow that method of enumerating reserved rights and liabilities. Omit any of the following that are not applicable and add any additional exceptions or reservations required.*]

(i) All rights and liabilities, if any, of the parties, as to matters covered by and regulations made implementing 10 U.S.C. 2382, as amended, and any other renegotiation authority.

(ii) All rights of the Government to take the benefit of agreements or judgments affecting royalties paid or payable in connection with the performance of the contract.

(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, employment of aliens, and "officials not to benefit." [*If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress*

or Executive Orders, the suggested language should be appropriately modified.]

(iv) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.

(v) All rights and liabilities of the parties, arising under the contract or otherwise, and concerning defects, guarantees, or warranties relating to any articles or component parts furnished to the Government by the Contractor under the contract or this agreement.

(vi) All rights and liabilities of the parties under the contract relating to any contract termination inventory stored for the Government.

(vii) All rights and liabilities of the parties under agreements relating to the future care and disposition by the Contractor of Government-owned property remaining in the Contractor's custody.

(viii) All rights and liabilities of the parties relating to Government property furnished to the Contractor for the performance of this contract.

(ix) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, and covenants of indemnity.

(x) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective cost or pricing data.

(End of agreement)

49.603-2 Fixed-price contracts—partial termination.

[*Insert the following in Block 14 of SF 30 for settlements of fixed-price contracts partially terminated.*]

(a) This supplemental agreement settles the settlement proposal resulting from the Notice of Termination dated ..... .

(b) The parties agree to the following:

(1) The terminated portion of the contract is as follows: [*specify the terminated portion clearly as to (i) item numbers, (ii) descriptions, (iii) quantity terminated, (iv) unit price of items, (v) total price of terminated items, and (vi) any other explanation necessary to avoid uncertainty or misunderstanding*].

(2) The Contractor certifies that all contract termination inventory (including scrap) has been retained or acquired by the Contractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits have been used in arriving at this agreement.

(3) The Contractor certifies that each immediate subcontractor, whose settlement proposal is included in the proposal settled by this agreement, has furnished the Contractor a certificate stating (i) that all subcontract termination inventory (including scrap) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract, and (ii) that the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.

(4) The Contractor certifies that all items of termination inventory, the costs of which were used in arriving at the amount of this settlement or the settlement of any subcontract settlement proposal included in this settlement, (i) are properly allocable to the terminated portion of the contract, (ii) do not exceed the reasonable quantitative requirements of the terminated portion of the contract, and (iii) do not include any items reasonably usable without loss to the Contractor on its other work. The Contractor further certifies that the Contracting Officer has been informed of any substantial change in the status of the items between the dates of the termination inventory schedules and the date of this agreement.

(5) The Contractor transfers, conveys, and assigns to the Government all the right, title, and interest, if any, that the Contractor has received, or is entitled to receive, in and to subcontract termination inventory not otherwise properly accounted for.

(6) The Contractor shall, within 10 days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and, if the Contractor so elects, any amounts due and payable to the Contractor by those subcontractors.

(7) (i) The Government agrees to pay to the Contractor or its assignee, upon presentation of a proper invoice or voucher, the sum of $..... [*insert net amount of settlement*], arrived at by deducting from $..... [*insert gross amount of settlement*], (A) the amount of $..... for all unliquidated partial or progress payments previously made to the Contractor or its assignee and all unliquidated advance payments (with any interest) applicable to the terminated portion of the contract and (B) the amount of $..... for all applicable property disposal credits.

(ii) The net settlement of $..... in subdivision (i) above, together with sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor for the terminated portion of the contract, except as provided in subparagraph (8) below.

(iii) Upon payment of the net settlement of $....., all obligations of the Contractor to perform further work or services or to make further deliveries under the terminated portion of the contract and all obligations of the Government to make further payments or carry out other undertakings concerning the terminated portion of the contract shall cease; *provided*, that nothing in this agreement shall impair or affect any covenants, terms, or conditions of the contract relating to the completed or continued portion of this contract.

(8) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved:

[*The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated (see 49.109-2). The suggested language of the excepted items on the list may be varied at the discretion of the contracting officer. If accuracy or completeness can be achieved by referencing the number of a contract clause or provision covering the matter in question, then follow that method of enumerating reserved rights and liabilities. Omit any of the following that are not applicable and add any additional exceptions or reservations required.*]

(i) All rights and liabilities, if any, of the parties, as to matters covered by, and regulations made implementing 10 U.S.C. 2382, as amended, and any other renegotiation authority.

(ii) All rights of the Government to take the benefit of agreements or judgments affecting royalties paid or payable in connection with the performance of the contract.

(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees,

domestic articles, employment of aliens, and "officials not to benefit." [*If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.*]

(iv) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.

(v) All rights and liabilities of the parties, arising under the contract or otherwise, and concerning defects, guarantees, or warranties relating to any articles or component parts furnished to the Government by the Contractor under the contract or this agreement.

(vi) All rights and liabilities of the parties under the contract relating to any contract termination inventory stored for the Government.

(vii) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective cost or pricing data.

(End of agreement)

49.603-3 Cost-reimbursement contracts—complete termination, if settlement includes cost.

[*Insert the following in Block 14 of SF 30 for settlement of cost-reimbursement contracts that are completely terminated, if settlement includes costs.*]

(a) This supplemental agreement settles the settlement proposal resulting from the Notice of Termination dated ..... .

(b) The parties agree to the following:

(1) The Contractor certifies that all contract termination inventory (including scrap) has been retained or acquired by the Contractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits have been used in arriving at this agreement.

(2) The Contractor certifies that each immediate subcontractor, whose settlement proposal is included in the proposal settled by this agreement, has furnished the Contractor a certificate stating (i) that all subcontract termination inventory (including scrap) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract, and (ii) that the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.

(3) The Contractor certifies that all items of termination inventory, the costs of which were used in arriving at the amount of this settlement or the settlement of any subcontract settlement proposal included in this settlement, (i) are properly allocable to the terminated portion of the contract, (ii) do not exceed the reasonable quantitative requirements of the terminated portion of the contract, and (iii) do not include any items reasonably usable without loss to the Contractor on its other work. The Contractor further certifies that the Contracting Officer has been informed of any substantial change in the status of the items between the dates of the termination inventory schedules and the date of this agreement.

(4) The Contractor transfers, conveys, and assigns to the Government all the right, title, and interest, if any, that the Contractor has received, or is entitled to receive, in and to subcontract termination inventory not otherwise properly accounted for.

(5) The Contractor shall, within 10 days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and, if the Contractor so elects, any amounts due and payable to the Contractor by those subcontractors.

(6) (i) The Contractor has received $..... for work and services performed, or articles delivered, under the contract before the effective date of termination. The Government confirms the right of the Contractor, subject to paragraph (7) below, to retain this sum and agrees that it constitutes a portion of the total amount to which the Contractor is entitled in complete and final settlement of the contract.

(ii) Further, the Government agrees to pay to the Contractor or its assignee, upon presentation of a proper invoice or voucher, the sum of $..... [*insert net amount of settlement*], arrived at by deducting from the sum of $..... [*insert gross amount of settlement less amount shown in subdivision (6)(i) above*] (A) the amount of $..... for all unliquidated partial or progress payments previously made to the Contractor or its assignee and all unliquidated advance payments (with any interest), (B) the amount of $..... for all applicable property disposal credits [*insert if appropriate,* "and (C) the amount of $..... for all other amounts due the Government under this contract, except as provided in paragraph (7) below."]

(iii) The net settlement of $..... in subdivision (ii) above, together with sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor for the complete termination of the contract and of all other demands and liabilities of the Contractor and the Government under the contract, except as provided in paragraph (7) below.

(7) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved:

[*The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated (see 49.109-2). The suggested language of the excepted items on the list may be varied at the discretion of the contracting officer. If accuracy or completeness can be achieved by referencing the number of a contract clause or provision covering the matter in question, then follow that method of enumerating reserved rights and liabilities. Omit any of the following that are not applicable and add any additional exceptions or reservations required.*]

(i) All rights and liabilities, if any, of the parties, as to matters covered by, and regulations made implementing 10 U.S.C. 2382, as amended, and any other renegotiation authority.

(ii) All rights of the Government to take the benefit of agreements or judgments affecting royalties paid or payable in connection with the performance of the contract.

(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, employment of aliens, and "officials not to benefit." [*If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.*]

(iv) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against

patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.

(v) All rights and liabilities of the parties, arising under the contract or otherwise, and concerning defects, guarantees, or warranties relating to any articles or component parts furnished to the Government by the Contractor under the contract or this agreement.

(vi) All rights and liabilities of the parties under the contract relating to any contract termination inventory stored for the Government.

(vii) All rights and liabilities of the parties under agreements relating to the future care and disposition by the Contractor of Government-owned property remaining in the Contractor's custody.

(viii) All rights and liabilities of the parties relating to Government property furnished to the Contractor for the performance of this contract.

(ix) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, and covenants of indemnity.

(x) Unresolved demands or assertions by the Contractor against the Government for costs under General Accounting Office exceptions or other costs of the same nature that are excluded from the settlement without prejudice to the rights of either party, as follows: [*Insert amount and describe charges not waived.*]

(xi) Claims by the Contractor against the Government, when the Contractor's rights of reimbursement are disputed, that are excluded without prejudice to the rights of either party are as follows: [*Insert the amounts and describe the claims on which the Contracting Officer has made findings and has disallowed and on which the Contractor has taken, or intends to take, timely appeal.*]

(xii) Unresolved demands or assertions by the Contractor against the Government that are unknown in amount and involve costs alleged to be reimbursable under the contract are as follows: [*Insert the estimated amounts and describe the charges.*]

(xiii) Unknown amounts alleged by the Contractor against the Government, based upon responsibility of the Contractor to third parties that involve costs reimbursable under the contract.

(xiv) Debts due the Government by the Contractor that are based on refunds, rebates, credits, or other amounts not now known to the Government, with interest, now due or that may become due the Contractor from third parties, if the amounts arise out of transactions for which reimbursement has been made to the Contractor under the contract. The Contractor shall pay to the Government, within 30 days after receipt, any of these amounts that become due from any third party or any other source. Interest at the rate established by the Secretary of the Treasury under 50 U.S.C. (App.) 1215(b)(2) shall accrue and shall be paid to the Government on any amounts that remain unpaid after the 30-day period.

(xv) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective cost or pricing data.

(End of agreement)

49.603-4 Cost-reimbursement contracts—complete termination, with settlement limited to fee.

[*Insert the following in Block 14 of SF 30 for settlement of cost-reimbursement contracts that are completely terminated, if settlement is limited to fee.*]

(a) This supplemental agreement settles the amount of fee due under the contract, terminated in its entirety by Notice of Termination dated ..... .

(b) The parties agree to the following:

(1) The Contractor has received $..... on account of its fee under the contract before the effective date of termination.

(2) The Government agrees to pay to the Contractor or its assignee, upon presentation of a proper invoice or voucher, $..... [*insert net amount to be paid on account of fee*]. This sum, with sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor on account of its fee under the contract.

(3) The Contractor's allowable costs under the contract will be paid under the terms and conditions of the contract and Parts 31 and 49 of the Federal Acquisition Regulation.

[*Insert subparagraph (3) only if there are costs to be vouchered out (see 49.302) or if there are costs to be covered later by a separate settlement agreement.*]

(4) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved:

[*The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated (see 49.109-2). The suggested language of the excepted items on the list may be varied at the discretion of the contracting officer. If accuracy or completeness can be achieved by referencing the number of a contract clause or provision covering the matter in question, then follow that method of enumerating reserved rights and liabilities. Omit any of the following that are not applicable and add any additional exceptions or reservations required.*]

(i) All rights and liabilities, if any, of the parties, as to matters covered by, and regulations made implementing 10 U.S.C. 2382, as amended, and any other renegotiation authority.

(ii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, employment of aliens, and "officials not to benefit." [*If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.*]

(iii) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.

(iv) All rights and liabilities of the parties, arising under the contract or otherwise, and concerning defects, guarantees, or warranties relating to any articles or component parts furnished to the Government by the Contractor under the contract or this agreement.

(v) All rights and liabilities of the parties under agreements relating to the future care and disposition by the Contractor of Government-owned property remaining in the Contractor's custody.

(vi) All rights and liabilities of the parties relating to Government property furnished to, or acquired by, the Contractor for the performance of the contract.

(vii) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, and covenants of indemnity.

(viii) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective cost or pricing data.

(End of agreement)

49.603-5 Cost-reimbursement contracts—partial termination.

[*Insert the following in Block 14 of SF 30, Amendment of Solicitation/Modification of Contract, for settlement agreements for cost-reimbursement contracts as a result of partial termination.*]

(a) This supplemental agreement settles the termination settlement proposal resulting from the Notice of Termination dated ..... .

(b) The parties agree as follows:

(1) The contract is amended by deleting the terminated portion as follows: [*specify the terminated portion clearly as to (i) item numbers, (ii) descriptions, (iii) quantity terminated, (iv) unit and total price of terminated items, and (v) any other explanation necessary to avoid uncertainty or misunderstanding*].

(2) The fee stated in the contract is decreased by $....., from $..... to $..... .

[*Insert, if appropriate,* "(3) The estimated cost of the contract is decreased by $....., from $..... to $....."."]

(c) The Contractor's allowable costs and earned fee, if any, for the terminated portion of the contract will continue to be reimbursed on SF 1034, Public Voucher for Purchase and Services Other Than Personal, under the applicable provisions of the contract and Part 31 of the Federal Acquisition Regulation.

(End of agreement)

49.603-6 No-cost settlement agreement—complete termination.

[*Insert the following in Block 14 of SF 30 if a no-cost settlement agreement, under a complete termination, is to be executed.*]

(a) This supplemental agreement ..... [*insert* "modifies the contract to reflect a no-cost settlement agreement with respect to the Notice of Termination dated ....." *or, if not previously terminated,* "terminates the contract in its entirety".]

(b) The parties agree as follows:

The Contractor unconditionally waives any charges against the Government because of the termination of the contract and, except as set forth below, releases it from all obligations under the contract or due to its termination. The Government agrees that all obligations under the contract are concluded, except as follows:

[*List reserved or excepted rights and liabilities. See 49.109-2 and 49.603-1(b)(7).*]

(End of agreement)

49.603-7 No-cost settlement agreement—partial termination.

[*Insert the following in Block 14 of SF 30 if a no-cost settlement agreement, under a partial termination, is to be executed.*]

(a) This supplemental agreement modifies the contract to reflect a no-cost settlement agreement with respect to the Notice of Termination dated ..... .

(b) The parties agree as follows:

(1) The terminated portion of the contract is as follows: [*Specify (i) item numbers, (ii) descriptions, (iii) quantity terminated, (iv) unit and total price of terminated items, and (v) any other explanation necessary to avoid uncertainty or misunderstanding.*]

(2) The Contractor unconditionally waives any charges against the Government arising under the terminated portion of the contract or by reason of its termination, including, without limitation, all obligations of the Government to make further payments or to carry out any further undertakings under the terminated portion of the contract. The Government acknowledges that the Contractor has no obligation to perform further work or services or to make further deliveries under the terminated portion of the contract. Nothing in this paragraph affects any other covenants, terms, or conditions of the contract. Under the terminated portion of the contract, the following rights and liabilities of the parties are reserved:

[*List reserved or excepted rights and liabilities. See 49.109-2 and 49.603-1(b)(7).*]

(End of agreement)

49.603-8 Fixed-price contracts—settlements with subcontractors only.

[*Insert the following in Block 14 of SF 30 for settlements of fixed-price contracts covering only settlements with subcontractors.*]

(a) This agreement settles that portion of the settlement proposal of the Contractor that is based upon termination of the following subcontracts entered into in performing this contract:

[*Insert a list of the terminated subcontracts included in this settlement.*]

(b) The parties agree to the following:

(1) The Contractor certifies that each immediate subcontractor, whose settlement proposal is included in the proposal settled by the agreement, has furnished the Contractor a certificate stating (i) that all subcontract termination inventory (including scrap) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract, and (ii) that the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.

(2) The Contractor certifies that all items of termination inventory, the costs of which were used in arriving at the amount of this settlement or the settlement of any subcontract settlement proposal included in this settlement, (i) are properly allocable to the terminated portion of the contract, (ii) do not exceed the reasonable quantitative requirements of the terminated portion of the contract, and (iii) do not include any items reasonably usable without loss to the Contractor on its other work. The Contractor further certifies that the Contracting Officer has been informed of any substantial change in the status of the items between the dates of the termination inventory schedules and the date of this agreement.

(3) The Contractor transfers, conveys, and assigns to the Government all the right, title, and interest, if any, that the Contractor has received or is entitled to receive, in and to subcontract termination inventory not otherwise properly accounted for.

(4) The Contractor shall, within 10 days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and, if the Contractor so elects, any amounts due and payable to the Contractor by those subcontractors.

(5) The Government agrees to pay the Contractor or its assignee, upon presentation of a proper invoice or voucher, $..... [*insert net amount of settlement*], which, together with the amount of $..... previously paid the Contractor as partial, progress, or advance payments, constitutes payment in full and complete settlement, except as provided in subparagraph (b)(6) below, of the amount due the Contractor for that portion of its settlement proposal that is based upon termination of the subcontracts listed above.

(6) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: [*List reserved or excepted rights and liabilities. See 49.109-2 and 49.603-1(b)(7).*]

(End of agreement)

49.603-9 Settlement of reservations.

[*Insert the following in Block 14 of SF 30 for settlement of reservations.*]

(a) Supplemental Agreement No. ....., dated....., was executed to reflect the settlement of the termination of this contract. The supplemental agreement excepted from the settlement certain items described in the agreement including the items described in paragraph (b) below. This supplemental agreement settles those items listed in paragraph (b) below.

(b) The parties agree to the following:

(1) The Government agrees to pay the Contractor $..... for the following reserved or excepted items:* [*List items.*]

(2) The Contractor releases and forever discharges the Government from all liability and from all existing and future claims and demands that it may have under this contract, insofar as it pertains to the contract, for the items described in subparagraph (1) above.* [**When payment is due the Government, reverse the words "Government" and "Contractor" in subparagraphs (b)(1) and (b)(2).*]

(End of agreement)

49.604 Release of excess funds under terminated contracts.

The following format shall be used to recommend the release of excess funds under terminated contracts, except if the contracting office retains responsibility for settlement of the termination:

FROM: Termination Contracting Officer..... [address]

TO: Contracting office..... [address]

SUBJ: Terminated Contract No..... with.....[Contractor]

Refs:

(a) [*Cite termination notice and effective date.*]

(b) [*Cite prior letters releasing excess funds, if any.*]

1. Referenced termination notice, ... [*insert* "completely" *or* "partially"] terminated contract ..... .

2. Based on the best information available, it is estimated that the gross settlement cost will be $..... . The amount available for release as excess to the contract is $..... . Any payments previously made to the Contractor for terminated items have been considered in arriving at the above amounts.

[*If prior letters recommending release of excess funds are cited, use the following as paragraph 2:*

"The estimated settlement costs previously reported by reference (b) in the amount of $..... are revised. On the best evidence now available, it is estimated that the settlement costs will be $..... . The additional amount available for release is $....."."]

3. The related appropriations and amounts involved are:

Appropriations	Allocated Amounts

Copies to:
Paying Office
Accounting and Finance Office
Other

49.605 Request to settle subcontractor settlement proposals.

Contractors requesting authority to settle subcontractor settlement proposals shall furnish applicable information from the list below and any additional information required by the contracting officer:

(a) Name of contractor and address of principal office.

(b) Name and location of divisions of the applicant's plant for which authorization is requested.

(c) An explanation of the necessity and justification for the authorization requested.

(d) A full description of the applicant's organization for handling terminations, including the names of the officials in charge of processing and settling proposals.

(e) The number and dollar amount (estimated if necessary) of uncompleted contracts with Government agencies and the percentage applicable to each agency.

(f) The number and dollar amount (estimated if necessary) of uncompleted subcontracts under Government contracts and the percentage applicable to each agency.

(g) The extent of the applicant's experience in termination matters, including the handling of proposals of subcontractors.

(h) The approximate amount and general nature of terminations of the applicant currently in process.

(i) A statement that no other application has been made for any division of the applicant's plant covered by the application or, if one has been made, a full statement of the facts.

(j) The limit of authorization requested.

49.606 Granting subcontract settlement authorization.

Contracting officers shall use the following format when granting subcontract settlement authorization:

LETTER OF AUTHORIZATION

(a) Your request of ..... (date) is approved, and you are authorized, subject to the limitations of subsection 49.108-4 and those stated below, to settle, without further approval of the Government, all subcontracts and purchase orders terminated by you as a result of a Government contract being terminated or modified (1) for the convenience of the Government or (2) under any other circumstances that may require the Government to bear the cost of their settlement.

(b) This authorization does not extend to the disposition of Government-furnished material or articles completed but undelivered under the subcontract or purchase order, as these require screening and approval of disposal actions by the Government, except that allocable completed articles may be disposed of without Government approval or screening if the total amount (at subcontract price) when added to the amount of settlement (as computed below) does not exceed $..... [*insert limit of authorization being granted*].

(c) This authorization is subject to the following conditions and requirements:

(1) The amount of the subcontract termination settlement does not exceed $..... [*insert limit of authorization being granted*], computed as follows:

(i) Do not deduct advance or partial payments or credits for retention or other disposal of termination inventory allocated to the settlement proposal.

(ii) Deduct amounts payable for completed articles or work at the contract price or for the settlement of termination proposals of subcontractors (except those settlements that have not been approved by the Government).

(2) Any termination inventory involved has been disposed of under subsection 49.108-4, except that screening and Government approval of scrap and salvage determinations are not required.

(3) The Contracting Officer may incorporate into each Notice of Termination specific instructions about the disposition of specific items of termination inventory, or the Contracting Officer may, at any time before final settlement, issue specific instructions. These instructions will not affect any disposal action taken by you or your subcontractors before their receipt.

(4) The settlements made by you with your subcontractors and suppliers under this authorization, including sales, retention, or other dispositions of property involved in making these settlements, are reimbursable under Part 49 and the Termination clause of the contract, and do not require approval of the Contracting Officer.

(5) Any number of separate settlements of $..... [*insert limit of authorization granted*] or less may be made with a single subcontractor. Settlement proposals that would normally be included in a single proposal; e.g., those based on a series of separate orders for the same item under one contract, should be consolidated whenever possible and shall not be divided to bring them within the authorization.

(6) This authorization does not apply if a subcontractor or supplier is affiliated with you. For this purpose, you should consider a contractor to be affiliated with you if you are under common control or if there is any

common interest between you by reason of stock ownership, or otherwise, that is sufficient to create a reasonable doubt that the bargaining between you is completely at arm's length.

(7) A representative of this office will, from time to time, review the methods used in negotiating settlements with your subcontractors and will make a selective examination of the settlements made by you. If the review indicates that you are not adequately protecting the Government's interest, this delegation will be revoked.

(End of letter)

49.607 Delinquency notices.

The formats of the delinquency notices in this section may be used to satisfy the requirements of 49.402-3. All notices will be sent with proof of delivery requested. (See Subpart 12.5 for stop-work orders.)

(a) *Cure notice.* If a contract is to be terminated for default before the delivery date, a "Cure Notice" is required by the Default clause. Before using this notice, it must be ascertained that an amount of time equal to or greater than the period of "cure" remains in the contract delivery schedule or any extension to it. If the time remaining in the contract delivery schedule is not sufficient to permit a realistic "cure" period of 10 days or more, the "Cure Notice" should not be issued. The "Cure Notice" may be in the following format:

CURE NOTICE

You are notified that the Government considers your ..... [*specify the contractor's failure or failures*] a condition that is endangering performance of the contract. Therefore, unless this condition is cured within 10 days after receipt of this notice [*or insert any longer time that the Contracting Officer may consider reasonably necessary*], the Government may terminate for default under the terms and conditions of the ..... [*insert clause title*] clause of this contract.

(End of notice)

(b) *Show cause notice.* If the time remaining in the contract delivery schedule is not sufficient to permit a realistic "cure" period of 10 days or more, the following "Show Cause Notice" may be used. It should be sent immediately upon expiration of the delivery period.

SHOW CAUSE NOTICE

Since you have failed to ..... [*insert* "perform Contract No. ..... within the time required by its terms", *or* "cure the conditions endangering performance under Contract No. ..... as described to you in the Government's letter of ..... (date)"], the Government is considering terminating the contract under the provisions for default of this contract. Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose from causes beyond your control and without fault or negligence on your part. Accordingly, you are given the opportunity to present, in writing, any facts bearing on the question to ..... [*insert the name and complete address of the contracting officer*], within 10 days after receipt of this notice. Your failure to present any excuses within this time may be considered as an admission that none exist. Your attention is invited to the respective rights of the Contractor and the Government and the liabilities that may be invoked if a decision is made to terminate for default.

Any assistance given to you on this contract or any acceptance by the Government of delinquent goods or services will be solely for the purpose of mitigating damages, and it is not the intention of the Government to condone any delinquency or to waive any rights the Government has under the contract.

(End of notice)

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

50.000 Scope of part.

This part 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 Pub. L. 85-804 as amended by Pub. L. 93-155 (50 U.S.C. 1431-1435), as amended, referred to in this part as "the Act," and Executive Order (EO) 10789, dated November 14, 1958, as amended, referred to in this part as "the Executive Order." It does not cover advance payments (see Subpart 32.4).

50.001 Definitions.

"Approving authority," as used in this part, means an agency official or contract adjustment board authorized to approve actions under the Act and Executive Order.

"Secretarial level," as used in this part, means a level at or above the level of a deputy assistant agency head, or a contract adjustment board.

SUBPART 50.1—GENERAL

50.101 Authority.

(a) The Act empowers the President to authorize agencies exercising functions in connection with the national defense to enter into, amend, and modify contracts, without regard to other provisions of law related to making, performing, amending, or modifying contracts, whenever the President considers that such action would facilitate the national defense.

(b) The Executive Order authorizes the heads of the following agencies to exercise the authority conferred by the Act and to delegate it to other officials within the agency: the Government Printing Office; the Federal Emergency Management Agency; the Tennessee Valley Authority; the National Aeronautics and Space Administration; the General Services Administration; the Defense, Army, Navy, Air Force, Treasury, Interior, Agriculture, Commerce, and Transportation Departments; the Department of Energy for functions transferred to that Department from other authorized agencies; and any other agency that may be authorized by the President.

50.102 Policy.

(a) The authority conferred by the Act may not (1) be used in a manner that encourages carelessness and laxity on the part of persons engaged in the defense effort or (2) be relied upon when other adequate legal authority exists within the agency.

(b) Actions authorized under the Act shall be accomplished as expeditiously as practicable, consistent with the care, restraint, and exercise of sound judgment appropriate to the use of such extraordinary authority.

(c) Certain kinds of relief previously available only under the Act; e.g.,

recission or reformation for mutual mistake, are now available under the authority of the Contract Disputes Act of 1978. In accordance with subparagraph (a)(2) above, Part 33 must be followed in preference to Part 50 for such relief. In case of doubt as to whether Part 33 applies, the contracting officer should seek legal advice.

50.103 Deviations.

Any deviations to this Part 50 shall not be effective for defense agencies until approved by the Secretary of Defense, and for civilian agencies until approved by the agency head.

50.104 Reports.

(a) The Act and Executive Order require that each agency listed in 50.101(b) shall submit to Congress annually by March 15 a report of actions taken on requests for relief, including indemnity, under the Act's authority.

(b) The report shall contain the information in subparagraph (1) below for all actions on approved requests, and in subparagraph (2) below for all requests denied. In addition, for each approved request that involves actual or potential cost to the Government in excess of $50,000, the report shall include the name of the contractor, the actual cost or estimated potential cost, a description of the property or services involved, and a statement of the circumstances justifying the action.

(1) For actions on approved requests, the report shall contain—

(i) The total number of requests, total dollar amount requested, and total dollar amount approved; and

(ii) By type of request (amendments without consideration, correction of mistakes, formalization of informal commitments, and other requests as appropriate), the number of requests, dollar amount requested, and dollar amount approved.

(2) For requests denied, the report shall contain—

(i) The total number of requests and total dollar amount requested; and

(ii) By type of request, the number of requests and dollar amount requested.

(c) The report should omit any information classified "Confidential" or higher.

(d) A request is not reportable until a Memorandum of Decision is issued approving or denying relief.

50.105 Records.

Agencies shall maintain complete records of all actions taken under this Part 50. For each request for relief processed, these records shall include, as a minimum—

(a) The contractor's request;

(b) All relevant memorandums, correspondence, affidavits, and other pertinent documents;

(c) The Memorandum of Decision (see 50.306 and 50.402); and

(d) A copy of the contractual document implementing an approved request.

SUBPART 50.2—DELEGATION OF AND LIMITATIONS ON EXERCISE OF AUTHORITY

50.201 Delegation of authority.

An agency head may delegate in writing authority under the Act and Executive Order, subject to the following limitations:

(a) Authority delegated shall be to a level high enough to ensure uniformity of action.

(b) Authority to approve requests to obligate the Government in excess of $50,000 may not be delegated below the secretarial level.

(c) Regardless of dollar amount, authority to approve any amendment without consideration that increases the contract price or unit price may not be delegated below the secretarial level, except in extraordinary cases or classes of cases when the agency head finds that special circumstances clearly justify such delegation.

(d) Regardless of dollar amount, authority to indemnify against unusually hazardous or nuclear risks, including extension of such indemnification to subcontracts, shall be exercised only by the Secretary or Administrator of the agency concerned, the Public Printer, or the Chairman of the Board of Directors of the Tennessee Valley Authority (see 50.403).

50.202 Contract adjustment boards.

An agency head may establish a contract adjustment board with authority to approve, authorize, and direct appropriate action under this Part 50 and to make all appropriate determinations and findings. The decisions of the board shall not be subject to appeal; however, the board may reconsider and modify, correct, or reverse its previous decisions. The board shall determine its own procedures and have authority to take all action necessary or appropriate to conduct its functions.

50.203 Limitations on exercise of authority.

(a) The Act is not authority for—

(1) Using a cost-plus-a-percentage-of-cost system of contracting;

(2) Making any contract that violates existing law limiting profit or fees;

(3) Negotiating contracts for supplies or services required by law to be acquired by formal advertising; or

(4) Waiving any bid bond, payment bond, performance bond, or other bond required by law.

(b) No contract, amendment, or modification shall be made under the Act's authority—

(1) Unless the approving authority finds that the action will facilitate the national defense;

(2) Unless other legal authority within the agency concerned is deemed to be lacking or inadequate;

(3) Except within the limits of the amounts appropriated and the statutory contract authorization (however, indemnification agreements authorized by an agency head (50.403) are not limited to amounts appropriated or to contract authorization); and

(4) That will obligate the Government for any amount over $25 million, unless the Senate and House Committees on Armed Services are notified in writing of the proposed obligation, 60 days of continuous session of Congress have passed since the transmittal of such notification, and neither House of Congress has adopted a resolution disapproving the obligation. However, this subparagraph (4) does not apply to indemnification agreements authorized under 50.403.

(c) No contract shall be amended or modified unless the contractor submits a request before all obligations (including final payment) under the contract have been discharged. No amendment or modification shall increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder, if the contract was negotiated under 10 U.S.C. 2304(a)(15) or 41 U.S.C. 252(c)(14).

(d) No informal commitment shall be formalized unless—

(1) The contractor submits a written request for payment within 6 months after furnishing, or arranging to furnish, supplies or services in reliance upon the commitment; and

(2) The approving authority finds that, at the time the commitment was made, it was impracticable to use normal contracting procedures.

(e) The exercise of authority by officials below the secretarial level is subject to the following additional limitations:

(1) The action shall not—

(i) Release a contractor from performance of an obligation over $50,000;

(ii) Result in an increase in cost to the Government over $50,000;

(iii) Deal with, or directly affect, any matter that has been submitted to the General Accounting Office; or

(iv) Involve disposal of Government surplus property.

(2) Mistakes shall not be corrected by an action obligating the Government for over $1,000, unless the contracting officer receives notice of the mistake before final payment.

(3) The correction of a contract because of a mistake in its making shall not increase the original contract price to an amount higher than the next lowest responsive offer of a responsible offeror.

SUBPART 50.3—CONTRACT ADJUSTMENTS

50.300 Scope of subpart.

This subpart prescribes standards and procedures for processing contractors' requests for contract adjustment under the Act and Executive Order.

50.301 General.

The fact that losses occur under a contract is not sufficient basis for exercising the authority conferred by the Act. Whether appropriate action will facilitate the national defense is a judgment to be made on the basis of all of the facts of the case. Although it is impossible to predict or enumerate all the types of cases in which action may be appropriate, examples are included in 50.302 below. Even if all of the factors in any of the examples are present, other considerations may warrant denying a contractor's request for contract adjustment. The examples are not intended to exclude other cases in which the approving authority determines that the circumstances warrant action.

50.302 Types of contract adjustment.

50.302-1 Amendments without consideration.

(a) When an actual or threatened loss under a defense contract, however caused, will impair the productive ability of a contractor whose continued performance on any defense contract or whose continued operation as a source of supply is found to be essential to the national defense, the contract may be amended without consideration, but only to the extent necessary to avoid such impairment to the contractor's productive ability.

(b) When a contractor suffers a loss (not merely a decrease in anticipated profits) under a defense contract because of Government action, the character of the action will generally determine whether any adjustment in the contract will be made, and its extent. When the Government directs its action primarily at the contractor and acts in its capacity as the other contracting party, the contract may be adjusted in the interest of fairness. Thus, when Government action, while not creating any liability on the Government's part, increases performance cost and results in a loss to the contractor, fairness may make some adjustment appropriate.

50.302-2 Correcting mistakes.

(a) A contract may be amended or modified to correct or mitigate the effect of a mistake. The following are examples of mistakes that may make such action appropriate:

(1) A mistake or ambiguity consisting of the failure to express, or express clearly, in a written contract, the agreement as both parties understood it.

(2) A contractor's mistake so obvious that it was or should have been apparent to the contracting officer.

(3) A mutual mistake as to a material fact.

(b) Amending contracts to correct mistakes with the least possible delay normally will facilitate the national defense by expediting the contracting program and assuring contractors that mistakes will be corrected expeditiously and fairly

50.302-3 Formalizing informal commitments.

Under certain circumstances, informal commitments may be formalized to permit payment to persons who have taken action without a formal contract; for example, when a person, responding to an agency official's written or oral instructions and relying in good faith upon the official's apparent authority to issue them, has furnished or arranged to furnish supplies or services to the agency, or to a defense contractor or subcontractor, without formal contractual coverage. Formalizing commitments under such circumstances normally will facilitate the national defense by assuring such persons that they will be treated fairly and paid expeditiously.

50.303 Contractor requests.

A contractor seeking a contract adjustment shall submit a request in duplicate to the contracting officer or an authorized representative. The request, normally a letter, shall state as a minimum—

(a) The precise adjustment requested;

(b) The essential facts, summarized chronologically in narrative form;

(c) The contractor's conclusions based on these facts, showing, in terms of the considerations set forth in 50.301 and 50.302 above, when the contractor considers itself entitled to the adjustment; and

(d) Whether or not—

(1) All obligations under the contracts involved have been discharged;

(2) Final payment under the contracts involved has been made;

(3) Any proceeds from the request will be subject to assignment or other transfer, and to whom; and

(4) The contractor has sought the same, or a similar or related, adjustment from the General Accounting Office or any other part of the Government, or anticipates doing so.

50.304 Facts and evidence.

(a) *General.* When it is appropriate, the contracting officer or other agency official shall request the contractor to support any request made under 50.303 with any of the following information:

(1) A brief description of the contracts involved, the dates of execution and amendments, the items being acquired, the price or prices, the delivery schedules, and any special contract provisions relevant to the request.

(2) A history of performance indicating when work under the contracts or commitments began, the progress made to date, an exact statement of the contractor's remaining obligations, and the contractor's expectations regarding completion.

(3) A statement of payments received, due, and yet to be received or to become due, including advance and progress payments; amounts withheld by the Government; and information as to any obligations of the Government yet to be performed under the contracts.

(4) A detailed analysis of the request's monetary elements, including precisely how the actual or estimated dollar amount was determined and the effect of approval or denial on the contractor's profits before Federal income taxes.

(5) A statement of the contractor's understanding of why the request's subject matter cannot now, and could not at the time it arose, be disposed of under the contract terms.

(6) The best supporting evidence available to the contractor, including contemporaneous memorandums, correspondence, and affidavits.

(7) Relevant financial statements, cost analyses, or other such data, preferably certified by a certified public accountant, as necessary to support the request's monetary elements.

(8) A list of persons connected with the contracts who have factual knowledge of the subject matter, including, when possible, their names,

offices or titles, addresses, and telephone numbers.

(9) A statement and evidence of steps taken to reduce losses and claims to a minimum.

(10) Any other relevant statements or evidence that may be required.

(b) *Amendments without consideration—essentiality a factor.* When a request involves possible amendment without consideration, and essentiality to the national defense is a factor (50.302-1(a)), the contractor may be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this section, any of the following information:

(1) A statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances, and profit.

(2) A statement and evidence of the contractor's present estimate of total costs under the contracts involved if it is enabled to complete them, broken down between costs accrued to date and completion costs, and between costs paid and those owed.

(3) A statement and evidence of the contractor's estimate of the final price of the contracts, taking into account all known or contemplated escalation, changes, extras, and the like.

(4) A statement of any claims known or contemplated by the contractor against the Government involving the contracts, other than those stated in response to subparagraph (3) above.

(5) An estimate of the contractor's total profit or loss under the contracts if it is enabled to complete them at the estimated final contract price, broken down between profit or loss to date and completion profit or loss.

(6) An estimate of the contractor's total profit or loss from other Government business and all other sources, from the date of the first contract involved to the estimated completion date of the last contract involved.

(7) A statement of the amount of any tax refunds to date, and an estimate of those anticipated, for the period from the date of the first contract involved to the estimated completion date of the last contract involved.

(8) A detailed statement of efforts the contractor has made to obtain funds from commercial sources to enable contract completion.

(9) A statement of the minimum amount the contractor needs as an amendment without consideration to enable contract completion, and the detailed basis for that amount.

(10) An estimate of the time required to complete each contract if the request is granted

(11) A statement of the factors causing the loss under the contracts involved.

(12) A statement of the course of events anticipated if the request is denied.

(13) Balance sheets, preferably certified by a certified public accountant, (i) for the contractor's fiscal year immediately preceding the date of the first contract, (ii) for each subsequent fiscal year, (iii) as of the request date, and (iv) projected as of the completion date of all the contracts involved (assuming the contractor is enabled to complete them at the estimated final prices), together with income statements for annual periods subsequent to the date of the first balance sheet. Balance sheets and income statements should be both consolidated and broken down by affiliates. They should show all transactions between the contractor and its affiliates, stockholders, and partners, including loans to the contractor guaranteed by any stockholder or partner.

(14) A list of all salaries, bonuses, and other compensation paid or furnished to the principal officers or partners, and of all dividends and other withdrawals, and of all payments to stockholders in any form since the date of the first contract involved.

(c) *Amendments without consideration—essentiality not a factor.* When a request involves possible amendment without consideration because of Government action, and essentiality to the national defense is not a factor (50.302-1(b)), the contractor may be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this section, any of the following information:

(1) A clear statement of the precise Government action that the contractor considers to have caused a loss under the contract, with evidence to support each essential fact.

(2) A statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances, and profit.

(3) The estimated total loss under the contract, with detailed supporting analysis.

(4) The estimated loss resulting specifically from the Government action, with detailed supporting analysis.

(d) *Correcting mistakes.* When a request involves possible correction of a mistake (50.302-2), the contractor may be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this section, any of the following information:

(1) A statement and evidence of the precise error made, ambiguity existing, or misunderstanding arising, showing what it consists of, how it occurred, and the intention of the parties.

(2) A statement explaining when the mistake was discovered, when the contracting officer was given notice of it, and whether this notice was given before completion of work under, or the effective termination date of, the contract.

(3) An estimate of profit or loss under the contract, with detailed supporting analysis.

(4) An estimate of the increase in cost to the Government resulting from the adjustment requested, with detailed supporting analysis.

(e) *Formalizing informal commitments.* When a request involves possible formalizing of an informal commitment (50.302-3), the contractor may be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this section, any of the following information:

(1) Copies of any written instructions or assurances (or a sworn statement of any oral instructions or assurances) given the contractor, and identification of the Government official who gave them.

(2) A statement as to when the contractor furnished or arranged to furnish the supplies or services involved and to whom.

(3) Evidence that the contractor relied upon the instructions or assurances, with a full description of the circumstances that led to this reliance.

(4) Evidence that, when performing the work, the contractor expected to be compensated directly for it by the Government and did not anticipate recovering the costs in some other way.

(5) A cost breakdown supporting the amount claimed as fair compensation for the work performed.

(6) A statement and evidence of the impracticability of providing, in an appropriate contractual instrument, for the work performed.

50.305 Processing cases.

(a) In response to a contractor request made in accordance with 50.303, the contracting officer or an authorized representative shall make a thorough investigation to establish the facts necessary to decide a given case. Facts and evidence, including signed statements of material facts within the knowledge of individuals when documentary evidence is lacking, and audits if considered necessary to establish financial or cost facts, shall be obtained from contractor and Government personnel.

(b) When a case involves matters of interest to more than one Government agency, the interested agencies should maintain liaison with each other to determine whether joint action should be taken.

(c) When additional funds are required from another agency, the contracting agency may not approve adjustment requests before receiving advice that the funds will be available. The request for this advice shall give the contractor's name, the contract number, the amount of proposed relief, a brief description of the contract, and the accounting classification or fund citation. If the other agency makes additional funds available, the agency considering the adjustment request shall be solely responsible for any action taken on the request.

(d) When essentiality to the national defense is an issue (50.302-1(a)), agencies considering requests for amendment without consideration involving another agency shall obtain advice on the issue from the other agency before making the final decision. When this advice is received, the agency considering the request for amendment without consideration shall be responsible for taking whatever action is appropriate.

50.306 Disposition.

When approving or denying a contractor's request made in accordance with 50.303, the approving authority shall sign and date a Memorandum of Decision containing—

(a) The contractor's name and address, the contract identification, and the nature of the request;

(b) A concise description of the supplies or services involved;

(c) The decision reached and the actual cost or estimated potential cost involved, if any;

(d) A statement of the circumstances justifying the decision;

(e) Identification of any of the foregoing information classified "Confidential" or higher (instead of being included in the memorandum, such information may be set forth in a separate classified document referenced in the memorandum); and

(f) If some adjustment is approved, a statement in substantially the following form: "I find that the action authorized herein will facilitate the national defense."

50.307 Contract requirements.

(a) The Act and Executive Order require that every contract entered into, amended, or modified under this Part 50 shall contain—

(1) A citation of the Act and Executive Order;

(2) A brief statement of the circumstances justifying the action; and

(3) A recital of the finding that the action will facilitate the national defense.

(b) The authority in 50.101(a) shall not be used to omit from contracts, when otherwise required, the clauses at 52.203-5, Covenant Against Contingent Fees; 52.215-1, Examination of Records by Comptroller General; 52.222-6, Davis-Bacon Act; 52.222-9, Contract Work Hours and Safety Standards Act—Overtime Compensation—Construction; 52.222-10, Compliance with Copeland Regulations; 52.222-20, Walsh-Healy Public Contracts Act; 52.222-26, Equal Opportunity; and 52.232-23, Assignment of Claims.

SUBPART 50.4—RESIDUAL POWERS

50.400 Scope of subpart.

This subpart prescribes standards and procedures for exercising residual powers under the Act. The term "residual powers" includes all authority under the Act except (a) that covered by Subpart 50.3 and (b) the authority to make advance payments (see Subpart 32.4).

50.401 Standards for use.

Subject to the limitations in 50.203, residual powers may be used in accordance with the policies in 50.102 when necessary and appropriate, all circumstances considered. In authorizing the inclusion of the clause at 52.250-1, Indemnification Under Public Law 85-804, in a contract or subcontract, an agency head may require the indemnified contractor to provide and maintain financial protection of the type and amount determined appropriate. In deciding whether to approve use of the indemnification clause, and in determining the type and amount of financial protection the indemnified contractor is to provide and maintain, an agency head shall consider such factors as self-insurance, other proof of financial responsibility, workers' compensation insurance, and the availability, cost, and terms of private insurance. The approval and determination shall be final.

50.402 General.

(a) When approving or denying a proposal for the exercise of residual powers, the approving authority shall sign and date a Memorandum of Decision containing substantially the same information called for by 50.306.

(b) Every contract entered into, amended, or modified under residual powers shall comply with the requirements of 50.307.

50.403 Special procedures for unusually hazardous or nuclear risks.

50.403-1 Indemnification requests.

(a) Contractor requests for the indemnification clause to cover unusually hazardous or nuclear risks should be submitted to the contracting officer and shall include the following information:

(1) Identification of the contract for which the indemnification clause is requested.

(2) Identification and definition of the unusually hazardous or nuclear risks for which indemnification is requested, with a statement indicating how the contractor would be exposed to them.

(3) A statement, executed by a corporate official with binding contractual authority, of all insurance coverage applicable to the risks to be defined in the contract as unusually hazardous or nuclear, including—

(i) Names of insurance companies, policy numbers, and expiration dates;

(ii) A description of the types of insurance provided (including the extent to which the contractor is self-insured or intends to self-insure), with emphasis on identifying the risks insured against and the coverage extended to persons or property, or both;

(iii) Dollar limits per occurrence and annually, and any other limitation, for relevant segments of the total insurance coverage;

(iv) Deductibles, if any, applicable to losses under the policies;

(v) Any exclusions from coverage under such policies for unusually hazardous or nuclear risks; and

(vi) Applicable workers' compensation insurance coverage.

(4) The controlling or limiting factors for determining the amount of financial protection the contractor is to provide and maintain, with information regarding the availability, cost, and terms of additional insurance or other forms of financial protection.

(5) Whether the contractor's insurance program has been approved or accepted by any Government agency; and whether the contractor has an indemnification agreement covering similar risks under any other Government program, and, if so, a brief description of any limitations.

(6) If the contractor is a division or subsidiary of a parent corporation, (i) a statement of any insurance coverage of the parent corporation that bears on the risks for which the contractor seeks indemnification and (ii) a description of

the precise legal relationship between parent and subsidiary or division.

(b) If the dollar value of the contractor's insurance coverage varies by 10 percent or more from that stated in an indemnification request submitted in accordance with paragraph (a) above, or if other significant changes in insurance coverage occur after submission and before approval, the contractor shall immediately submit to the contracting officer a brief description of the changes.

50.403-2 Action on indemnification requests.

(a) The contracting officer, with assistance from legal counsel and cognizant program office personnel, shall review the indemnification request and ascertain whether it contains all required information. If the contracting officer, after considering the facts and evidence, denies the request, the contracting officer shall notify the contractor promptly of the denial and of the reasons for it. If recommending approval, the contracting officer shall forward the request (as modified, if necessary, by negotiation) through channels to the appropriate official specified in 50.201(d). The contracting officer's submission shall include all information submitted by the contractor and—

(1) All pertinent information regarding the proposed contract or program, including the period of performance, locations, and facilities involved;

(2) A definition of the unusually hazardous or nuclear risks involved in the proposed contract or program, with a statement that the parties have agreed to it;

(3) A statement by responsible authority that the indemnification action would facilitate the national defense;

(4) A statement that the contract will involve unusually hazardous or nuclear risks that could impose liability upon the contractor in excess of financial protection reasonably available;

(5) A statement that the contractor is complying with applicable Government safety requirements;

(6) A statement of whether the indemnification should be extended to subcontractors; and

(7) A description of any significant changes in the contractor's insurance coverage (see 50.403-1(b)) occurring since submission of the indemnification request.

(b) Approval of a request to include the indemnification clause in a contract shall be by a Memorandum of Decision executed by the appropriate official specified in 50.201(d).

(c) When use of the indemnification clause is approved under paragraph (b) above, the definition of unusually hazardous or nuclear risks (see subparagraph (a)(2) above) shall be incorporated into the contract, along with the clause.

(d) When approval is (1) authorized in the Memorandum of Decision and (2) justified by the circumstances, the contracting officer may approve the contractor's written request to provide for indemnification of subcontractors, using the same procedures as those required for contractors.

50.403-3 Contract clause.

The contracting officer shall insert the clause at 52.250-1, Indemnification Under Public Law 85-804, in contracts whenever the approving official determines that the contractor shall be indemnified against unusually hazardous or nuclear risks (also see 50.403-2(c)). In cost-reimbursement contracts, the contracting officer shall use the clause with its Alternate I.

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Sec.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

51.000 Scope of part.

This part prescribes policies and procedures for the use by contractors of Government supply sources and interagency motor pool vehicles and related services.

SUBPART 51.1—CONTRACTOR USE OF GOVERNMENT SUPPLY SOURCES

51.100 Scope of subpart.

This subpart prescribes policies and procedures for the use of Government supply sources (see 51.102(c)) by contractors. In this subpart, the terms "contractors" and "contracts" include "subcontractors" and "subcontracts."

51.101 Policy.

(a) If it is in the Government's interest, and if supplies or services required in the performance of a Government contract are available from Government supply sources, contracting officers may authorize contractors to use these sources in performing—

(1) Government cost-reimbursement contracts; or

(2) Other types of negotiated contracts when the agency determines that a substantial dollar portion of the contractor's contracts are of a Government cost-reimbursement nature.

(b) Contractors with fixed-price Government contracts that require protection of security classified information may acquire security equipment through GSA sources (see 41 CFR 101-26.407).

51.102 Authorization to use Government supply sources.

(a) Before issuing an authorization to a contractor to use Government supply sources, the contracting officer shall place in the contract file a written finding supporting issuance of the authorization. The determination shall be based on, but not limited to, considerations of the following factors:

(1) The administrative cost of placing orders with Government supply sources and the program impact of delay factors, if any.

(2) The lower cost of items available through Government supply sources.

(3) Suitability of items available through Government supply sources.

(4) Delivery factors such as cost and time.

(5) Recommendations of the contractor.

(b) Authorizations to subcontractors shall be issued through, and with the approval of, the contractor.

(c) Upon deciding to authorize a contractor to use Government supply sources, the contracting officer shall request, in writing, as applicable—

(1) A FEDSTRIP activity address code, through the agency's central contact point for matters involving activity address codes, from the General Services Administration (GSA), FSR, Washington, DC 20406;

(2) A MILSTRIP activity address code from the appropriate Department of Defense (DOD) service point listed in Section 1 of the Introduction to the DOD Activity Address Directory;

(3) Approval for the contractor to use Veterans Administration (VA) supply sources from the Assistant Administrator for Supply Services (Code 90), Office of Supply Services, Veterans Administration, 810 Vermont Avenue NW, Washington, DC 20420;

(4) Approval for the contractor to acquire helium from the Department of the Interior, Bureau of Mines, Division of Helium Operations, Box H-4372, Herring Plaza, Amarillo, Texas 79101; or

(5) Approval from the appropriate agency for the contractor to use a Government supply source other than those identified in (1) through (4) above.

(d) Each request made under paragraph (c) above shall contain—

(1) The complete address(es) to which the contractor's mail, freight, and billing documents are to be directed;

(2) A copy of the contracting officer's letter of authorization to the contractor;

(3) The prime contract number(s); and

(4) The effective date and duration of each contract.

(e) In each authorization to the contractor, the contracting officer—

(1) Shall cite the contract number(s) involved;

(2) Shall, when practicable, limit the period of the authorization;

(3) Shall specify, as appropriate, that—

(i) When requisitioning from GSA or DOD, the contractor shall use FEDSTRIP or MILSTRIP, as appropriate, and include the activity address code assigned by GSA or DOD;

(ii) When requisitioning from the VA, the contractor should use FEDSTRIP or MILSTRIP, as appropriate, Optional Form 347, Order for Supplies or Services (see 53.302-347), or an agency-approved form; and

(iii) When placing orders for helium with the Bureau of Mines, the contractor shall reference the Federal contract number on the purchase order;

(4) May include any other limitations or conditions deemed necessary. For example, the contracting officer may—

(i) Authorize purchases from Government supply sources of any overhead supplies, but no production supplies;

(ii) Limit any authorization requirement to use Government sources to a specific dollar amount, thereby leaving the contractor free to make smaller purchases from other sources if so desired;

(iii) Restrict the authorization to certain facilities or to specific contracts; or

(iv) Provide specifically if vesting of title is to differ from other property acquired or otherwise furnished by the contractor for use under the contract; and

(5) Shall instruct the contractor to comply with the applicable policies and procedures prescribed in this subpart.

(f) After issuing the authorization, the authorizing agency shall be responsible for—

(1) Ensuring that contractors comply with the terms of their authorizations and that supplies and services obtained from Government supply sources are properly accounted for and properly used;

(2) Any indebtedness incurred for supplies or services and not satisfied by the contractor; and

(3) Submitting, in writing, to the appropriate Government sources, address changes of the contractor and deletions when contracts are completed or terminated.

51.103 Ordering from Government supply sources.

(a) Contractors placing orders under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules shall follow the terms of the applicable schedule and authorization and include with each order—

(1) A copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contractor); and

(2) The following statement:

This order is placed under written authorization from.....dated..... In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract or Personal Property Rehabilitation Price Schedule contract, the latter will govern.

(b) If a Federal Supply Schedule contractor refuses to honor an order placed by a Government contractor under an agency authorization, the contracting agency shall report the circumstances to the General Services Administration, FFN, Washington, DC 20406.

(c) Contractors placing orders under nonmandatory schedule contracts and requirements contracts issued by GSA, Office of Information Resources Management, for automated data processing equipment, software and maintenance, communications equipment and supplies, and teleprocessing services shall follow the terms of the applicable contract and the procedures in 51.103(a)(1) and (2).

(d) Contractors placing orders for Government stock shall—

(1) Comply with the requirements of the contracting officer's authorization, using FEDSTRIP or MILSTRIP procedures, as appropriate;

(2) Use only the GSA Form 1948-A, Retail Services Shopping Plate, when ordering from GSA Self-Service Stores; and

(3) Order only those items required in the performance of their contracts.

51.104 Furnishing assistance to contractors.

After receiving an activity address code, the contracting officer will notify the appropriate GSA regional office or military activity, which will contact the contractor and—

(a) Provide initial copies of ordering information and instructions; and

(b) When necessary, assist the contractor in preparing and submitting, as appropriate—

(1) The initial FEDSTRIP or MILSTRIP requisitions, the Optional Form 347, or the agency-approved forms;

(2) A completed GSA Form 457, FSS Publications Mailing List Application, so that the contractor will automatically receive current copies of required publications; or

(3) A completed GSA Form 1947, Application for Retail Services Shopping Plate.

51.105 Payment for shipments.

GSA, DOD, and VA will not forward bills to contractors for supplies ordered from Government stock until after the supplies have been shipped. Receipt of billing is sufficient evidence to establish contractor liability and to provide a basis for payment. Contracting officers should direct their contractors to make payment promptly upon receipt of billings.

51.106 Title.

(a) Title to all property acquired by the contractor under the contracting officer's authorization shall vest in the parties as provided in the contract, unless specifically provided for otherwise.

(b) If contracts are with educational institutions and the Government Property clause at 52.245-2, Alternate II, or 52.245-5, Alternate I, is used, title to property having an acquisition cost of less than $1,000 shall vest in the contractor as provided in the clause. Agencies may provide higher thresholds, if appropriate.

51.107 Contract clause.

The contracting officer shall insert the clause at 52.251-1, Government Supply Sources, in solicitations and contracts when the contracting officer may authorize the contractor to acquire supplies or services from a Government

supply source. If a facilities contract is contemplated, the contracting officer shall use the clause with its Alternate I.

SUBPART 51.2—CONTRACTOR USE OF INTERAGENCY MOTOR POOL VEHICLES

51.200 Scope of subpart.

This subpart prescribes policies and procedures for the use by contractors of interagency motor pool vehicles and related services. In this subpart, the terms "contractors" and "contracts" include "subcontractors" and "subcontracts."

51.201 Policy.

(a) If it is in the Government's interest, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, interagency motor pool vehicles and related services, including (1) fuel and lubricants, (2) vehicle inspection, maintenance, and repair, (3) vehicle storage, and (4) commercially rented vehicles for short-term use.

(b) Complete rebuilding of major components of contractor-owned or -leased equipment requires the approval of the contracting officer in each instance.

(c) Government contractors shall not be authorized to obtain interagency motor pool vehicles and related services for use in performance of any contract other than a cost-reimbursement contract, except as otherwise specifically approved by the Administrator of the General Services Administration at the request of the agency involved.

51.202 Authorization.

(a) The contracting officer may authorize a cost-reimbursement contractor to obtain interagency motor pool vehicles and related services, if the contracting officer has—

(1) Determined that the authorization will accomplish the agency's contractual objectives and effect demonstrable economies;

(2) Received evidence that the contractor has obtained motor vehicle liability insurance covering bodily injury and property damage, with limits of liability as required or approved by the agency, protecting the contractor and the Government against third-party claims arising from the ownership, maintenance, or use of a motor pool vehicle;

(3) Arranged for periodic checks to ensure that authorized contractors are using vehicles and related services exclusively under cost-reimbursement contracts;

(4) Ensured that contractors shall establish and enforce suitable penalties for their employees who use or authorize the use of Government vehicles for other than performance of Government contracts (see 41 CFR 101-39.602);

(5) Received a written statement that the contractor will assume, without the right of reimbursement from the Government, the cost or expense of any use of motor pool vehicles and services not related to the performance of the contract; and

(6) Considered any recommendations of the contractor.

(b) The authorization shall—

(1) Be in writing;

(2) Cite the contract number;

(3) Specify any limitations on the authority, including its duration, and any other pertinent information; and

(4) Instruct the contractor to comply with the applicable policies and procedures provided in this subpart.

(c) Authorizations to subcontractors shall be issued through, and with the approval of, the contractor.

(d) Contracting officers authorizing contractor use of interagency motor pool vehicles and related services subject their agencies to the responsibilities and liabilities provided in 41 CFR 101-39.8 regarding accidents and claims.

51.203 Means of obtaining service.

(a) Authorized contractors shall submit requests for interagency motor pool vehicles and related services in writing to the appropriate GSA regional Customer Service Bureau, Attention: Motor Equipment Activity; except that requests for more than five vehicles shall be submitted to General Services Administration, FTM, Washington, DC 20406, and not to the regions. Each request shall include the following:

(1) Two copies of the agency authorization to obtain vehicles and related services from GSA.

(2) The number of vehicles and related services required and period of use.

(3) A list of the contractor's employees who are authorized to request vehicles and related services.

(4) A listing of the make, model, and serial numbers of contractor-owned or -leased equipment authorized to be serviced.

(5) Billing instructions and address.

(b) Contractors requesting unusual quantities of vehicles should do so as far in advance as possible to facilitate availability.

51.204 Use of interagency motor pool vehicles and related services.

Contractors authorized to use interagency motor pool vehicles and related services shall comply with the requirements of 41 CFR 101-39 and the operator's packet furnished with each vehicle.

51.205 Contract clause.

The contracting officer shall insert the clause at 52.251-2, Interagency Motor Pool Vehicles and Related Services, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contracting officer may authorize the contractor to use interagency motor pool vehicles and related services.

SUBCHAPTER H—Clauses and Forms

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

shall be made public. No other contract for construction shall be awarded to that contractor, its subcontractors, or suppliers with which that contractor is associated or affiliated, within a period of 3 years after the findings are made public. (For debarment procedures, see Subpart 9.4.)

25.205 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 52.225-5, Buy American Act—Construction Materials, in solicitations and contracts for construction inside the United States.

SUBPART 25.3—BALANCE OF PAYMENTS PROGRAM

25.300 Scope of subpart.

This subpart provides policies and procedures applicable to contracting for supplies, services, or construction for use outside the United States and provides for the use of excess or near-excess foreign currency. The Balance of Payments Program restrictions have been waived with respect to the acquisition in accordance with Subpart 25.4 of certain products under the Trade Agreements Act of 1979.

25.301 Definitions.

"Components" (see 25.101).

"Domestic end product" (see 25.101).

"Domestic offer" (see 25.101).

"Domestic services," as used in this subpart, means services performed in the United States. If services provided under a single contract are performed both inside and outside the United States, they shall be considered domestic if 25 percent or less of their total cost is attributable to services (including incidental supplies used in connection with these services) performed outside the United States.

"End product" (see 25.101).

"Foreign end product" (see 25.101).

"Foreign offer" (see 25.101).

"Foreign services," as used in this subpart, means services other than domestic services.

"United States" (see 25.101).

25.302 Policy.

(a) The Balance of Payments Program is an interim measure imposed to alleviate the impact of Government expenditures on the Nation's balance of international payments. The Balance of Payments Program differs from the Buy American Act in that the Buy American Act applies only to acquisitions for use inside the United States, while the Balance of Payments Program applies to acquisitions for use outside the United States.

(b) Foreign end products or services may be acquired for use outside the United States if any of the following conditions are met:

(1) The estimated cost of the product or service does not exceed the appropriate small purchase limitation in Part 13.

(2) Perishable subsistence items are required and the agency head, or a designee, determines that delivery from the United States would significantly impair their quality at the point of consumption.

(3) The agency head, or a designee, determines that a requirement can only be filled by a foreign end product or service, and that it is not feasible to forgo filling it or to provide a domestic substitute (see 25.108).

(4) The acquisition is for ice, books, utilities, communications, and other materials or services that, by their nature or as a practical matter, can only be acquired or performed in the country concerned and a U.S. Government capability does not exist.

(5) Subsistence items are required specifically for resale in overseas commissary stores.

(6) The acquisition of foreign end products or services is required by a treaty or executive agreement between governments.

(7) Petroleum supplies and their by-products as listed and defined in 25.108 are required.

(8) The end products or services are paid for with excess or near-excess foreign currencies (see 25.304).

(9) The end products or services are mined, produced, or manufactured in Panama and are required by and for the use of United States Forces in Panama.

(c) Contracts shall require use of domestic construction materials (see 25.201) for construction, repair, or maintenance of real property outside the United States, except when the cost of these materials (including transportation and handling costs) exceeds the cost of foreign construction materials by more than 50 percent. A differential greater than 50 percent may be used when specifically authorized by the agency head or a designee.

25.303 Procedures.

(a) *Solicitation of offers.* The procedures in this section apply to contracts for supplies and services when the exceptions in 25.302(b) do not apply. Solicitations shall state that information regarding articles, materials, supplies, and services excepted from these procedures is available to prospective contractors upon request. When quotations are obtained orally (see Part 13), vendors shall be informed that only domestic end products or services will be acceptable, except for those items that have been excepted or when the price for the foreign end products or services meets the evaluation criteria in paragraph (b) below.

(b) *Evaluation.* For purposes of evaluation, each foreign offer shall be adjusted by increasing it by 50 percent. If this procedure results in a tie between a foreign offer as evaluated and a domestic offer, the domestic offer shall be considered the successful offer. When this procedure results in the acquisition of foreign end products or services, the acquisition of domestic end products or services is thereby considered unreasonable in cost or inconsistent with the public interest.

25.304 Excess and near-excess foreign currencies.

(a) The United States holds currencies of the countries listed in paragraphs (e) and (f) below in amounts determined by the Secretary of the Treasury to be excess to the normal, or above the immediate (near-excess) requirements of the Government. Acquisitions of foreign end products, services, or construction paid for in excess or near-excess foreign currencies are an exception to the balance of payments restrictions in this subpart (see 25.302(b)(8)).

(b) Excess and near-excess foreign currencies shall be used whenever feasible in payment of contracts over $1 million performed wholly or partly in any of the listed countries. In some cases, award may be made to an offeror willing to accept payment, in whole or part, in excess or near-excess foreign currency, even though the offer, when compared to offers in United States dollars, is not the lowest received. Price differentials may be funded from excess or near-excess foreign currencies available without charge to agency appropriations, subject to Office of Management and Budget (OMB) Circular No. A-20, May 21, 1966.

(c) Before issuing solicitations for contracts to be performed wholly or partly in the listed countries, the contracting officer shall obtain a determination from the agency head, or a designee no lower than the head of the contracting activity, as to the feasibility of using excess or near-excess foreign currency. Agency officials shall consult with the Budget Review Division, Office of Management and Budget, and verify—

(1) The availability of excess or near-excess foreign currency;

(2) The feasibility of using that currency in payment of the contract;

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 1

Establishing the Federal Acquisition Regulation

Correction

In FR Doc. 83–25334 beginning on page 42102 in the issue of Monday, September 19, 1983 (Book 2), page 42482 was omitted and a duplicate of page 42282 was printed in its place. The correct text of page 42482 appears on the following page.

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Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

52.000 Scope of part.

This part (a) gives instructions for using provisions and clauses in solicitations and/or contracts, (b) sets forth the solicitation provisions and contract clauses prescribed by this regulation, and (c) presents matrices listing the FAR provisions and clauses applicable to each principal contract type and/or purpose (e.g., fixed-price supply, cost-reimbursement research and development).

SUBPART 52.1—INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES

52.100 Scope of subpart.

This subpart (a) gives instructions for using Part 52, including the explanation and use of provision and clause numbers, prescriptions, prefaces, and matrices; (b) prescribes procedures for incorporating, identifying, and modifying provisions and clauses in solicitations and contracts, and for using alternates; and (c) describes the derivation of FAR provisions and clauses.

52.101 Using Part 52.

(a) *Definitions.* "Alternate" means a substantive variation of a basic provision or clause prescribed for use in a defined circumstance. It (1) adds wording to, (2) deletes wording from, or (3) substitutes specified wording for a portion of the basic provision or clause. The alternate version of a provision or clause is the basic provision or clause as changed by the addition, deletion, or substitution (see 52.105(a)).

"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.

"Modification," as used in this subpart, means a minor change in the details of a provision or clause that is specifically authorized by the FAR and does not alter the substance of the provision or clause (see 52.104).

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

"Substantially as follows" or "substantially the same as," when used in the prescription and preface of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition; *provided*, that the variation includes the salient features of the FAR provision or clause, and is not inconsistent with the intent, principle, and substance of the FAR provision or

clause or related coverage of the subject matter.

(b) *Numbering.* (1) *FAR provisions and clauses.* Subpart 52.2 sets forth the texts of all FAR provisions and clauses, each in its own separate subsection. The subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the FAR. Each FAR provision or clause is uniquely identified. All FAR provision and clause numbers begin with "52.2," since the texts of all FAR provisions and clauses appear in Subpart 52.2. The next two digits of the provision or clause number correspond to the number of the FAR subject part in which the provision or clause is prescribed. The FAR provision or clause number is then completed by a hyphen and a sequential number assigned within each section of Subpart 52.2. The following example illustrates the makeup of the FAR provision or clause number:

(2) *Provisions or clauses that supplement the FAR.*

(i) Provisions or clauses that supplement the FAR are—

(A) Prescribed and included in authorized agency acquisition regulations issued within an agency to satisfy the specific needs of the agency as a whole;

(B) Prescribed and included in a regulation issued by a suborganization of an agency to satisfy the needs of that particular suborganization; or

(C) Developed for use at a suborganizational level of an agency, not meant for repetitive use, but intended to meet the needs of an individual acquisiton and, thus, impractical to include in either an agency or suborganization acquisition regulation. (See 1.301(c).)

(ii) Supplemental provisions or clauses published in agency acquisition regulations shall be in full text and the prescription for the use of each shall be included. Supplemental provisions or clauses published in agency acquisition regulations shall be numbered in the same manner in which FAR provisions and clauses are numbered except that—

(A) If it is included in an agency acquisition regulation that is published in the Federal Register and is codified in Title 48, Code of Federal Regulations (48 CFR), the number shall be preceded by the chapter number within 48 CFR assigned by the CFR staff; and

(B) The sequential number shall be "70" or a higher number (see 1.303).

(iii) The sequential number at the end of the number of a provision or clause that supplements the FAR, like its counterpart at the end of any FAR provision or clause number, indicates the subsection location of the provision or clause in Subpart 52.2 of the agency acquisition regulation that contains its full text. If, for example, an agency acquisition regulation contains only one provision followed by only one clause supplementing the FAR in its section 52.236 (Construction and Architect-Engineer Contracts), then the sequential numbers would be "70" for the provision and "71" for the clause.

(c) *Prescriptions.* Each provision or clause in Subpart 52.2 is prescribed at that place in the FAR text where the subject matter of the provision or clause receives its primary treatment. The prescription includes all conditions, requirements, and instructions for using the provision or clause and its alternates, if any. The provision or clause may be referred to in other FAR locations.

(d) *Prefaces.* Within Subpart 52.2, each provision or clause is prefaced with (1) a cross-reference to the location in the FAR subject text that prescribes its use, and (2) directions for inserting it in solicitations and/or contracts.

(e) *Matrices.*

(1) Subpart 52.3 consists of a series of matrices, one for each principal type and/or purpose of contract (e.g., fixed-price supply, cost-reimbursement research and development). Each matrix lists the—

(i) Required solicitation provisions;

(ii) Required-when-applicable solicitation provisions;

(iii) Optional solicitation provisions;

(iv) Required contract clauses;

(v) Required-when-applicable contract clauses; and

(vi) Optional contract clauses.

(2) For each provision or clause listed, the matrix provides information on—

(i) Whether it may be incorporated by reference or is to be set forth in full text;

(ii) The section of the Uniform Contract Format (UCF) in which it is to be located, if it is used in an acquisition that is subject to the UCF;

(iii) Its number;

(iv) The citation of the FAR text that prescribes its use; and

(v) Its title.

(3) Since the matrices do not provide sufficient information to determine the applicability of a provision or clause in the "required-when-applicable" and "optional" categories, contracting officers shall refer to the FAR text (cited in the matrix) that prescribes its use.

(4) FAR matrices may be reproduced at agency levels, and at subordinate levels, for the purpose of supplementing them with agency-developed provisions and clauses. The resulting consolidated matrices may be included in agency acquisition regulations.

(f) *Dates.* Since they are subject to revision from time to time, all provisions, clauses, and alternates are dated: e.g., (DEC 1983). To avoid questions concerning which version of any provision, clause, or alternate is operative in any given solicitation or contract, its date shall be included whether it is incorporated by reference or in full text.

52.102 Incorporating provisions and clauses.

52.102-1 Incorporation by reference.

(a) Except as specified in 52.102-2, provisions and clauses may be incorporated by reference in solicitations and/or contracts if they are prescribed in—

(1) The FAR and are identified by a single asterisk in the matrices (see Subpart 52.3); or

(2) An agency acquisition regulation published by—

(i) The Secretary of Defense for use throughout the Department of Defense (DOD); or

(ii) The head of an agency outside the DOD for agency-wide use.

(b) The provisions and clauses referred to in 52.102-1(a) should be incorporated by reference to the maximum practical extent, rather than being incorporated in full text, even if they (1) are used with one or more alternates or on an optional basis, (2) are prescribed on a "substantially as follows" or "substantially the same as" basis; *provided*, that they are used verbatim, or (3) require modification or the insertion by the Government of fill-in material (see 52.104). However, the contracting officer, upon request, shall provide the full text of any provision or clause incorporated by reference.

(c) Provisions or clauses may not be incorporated by reference by being listed in the (1) provision at 52.252-3, Alterations in Solicitations, or (2) clause at 52.252-4, Alterations in Contract.

52.102-2 Incorporation in full text.

(a) A provision or clause shall be incorporated in solicitations and/or contracts in full text if it—

(1) Requires completion by the offeror or prospective contractor;

(2) Is a FAR provision or clause that will be used with an authorized deviation (see Subpart 1.4);

(3) Is a FAR provision or clause that is identified by a double asterisk (**) in the matrices (see Subpart 52.3);

(4) Is prescribed for use in an agency acquisition regulation published at levels below those specified in 52.102-1(a)(2);

(5) Is a special provision or clause of the type described in 52.101(b)(2)(i)(C);

(6) Will be used in a specific acquisition or class of acquisitions covered by a written determination of the chief of the contracting office to restrict the use of incorporation by reference for valid reasons; or

(7) Is prescribed on a "substantially as follows" or "substantially the same as" basis in the FAR or an agency acquisition regulation specified in 52.102-1(a)(2), but will not be used verbatim.

(b) Provisions and clauses of the type described in 52.101(b)(2)(i)(C), if developed by an organizational element below that of the agency headquarters level, shall be subject to agency oversight through the agency procedure required by 1.202.

52.103 Identification of provisions and clauses.

(a) Whenever any FAR provision or clause is used without deviation in a solicitation or contract, whether it is incorporated by reference or in full text, it shall be identified by number, title, and date. This identification shall also be used if the FAR provision or clause is used with an authorized deviation, except that the contracting officer shall then insert "(DEVIATION)" after the date. Solicited firms and contractors will be advised of the meaning of this insertion through the use of the (1) provision at 52.252-5, Authorized Deviations in Provisions, or (2) clause at 52.252-6, Authorized Deviations in Clauses. The above mentioned provision and clause are prescribed in 52.107(e) and (f).

(b) Any provision or clause that supplements the FAR whether it is incorporated by reference or in full text shall be clearly identified by number, title, date, and name of the regulation. When a supplemental provision or clause is used with an authorized deviation, insert "(DEVIATION)" after the name of the regulation.

(c) A provision or clause of the type described in 52.101(b)(2)(i)(C) shall be identified by the title, date, and the name of the agency or suborganization within the agency that developed it.

(d) Except for provisions or clauses covered by 52.103(c), the following hypothetical examples illustrate how a provision or clause that supplements the FAR shall be identified when it is incorporated in solicitations and/or contracts by reference or in full text:

(1) If Part 14 (Formal Advertising) of the X Agency Acquisition Regulation, published in the Federal Register and codified as Chapter 99 in 48 CFR, prescribes the use of a provision entitled "Bid Envelopes," dated October 1983, and that provision is sequentially the first provision or clause appearing in Section 52.214 of the X Agency Acquisition Regulation, then the identification of that provision shall be "9952.214-70—Bid Envelopes (OCT 1983)."

(2) Assume that Y, a major organizational element of the X Agency, is authorized to issue the Y Acquisition Regulation, which is not published in the Federal Register and codified in 48 CFR. If Part 36 (Construction and Architect-Engineer Contracts) of the Y Acquisition Regulation prescribes the use of a clause entitled "Refrigerated Display Cases," dated March 1983, pertaining to a specialized type of construction work, and that clause is sequentially the second provision or clause appearing in Section 52.236 of the Y Acquisition Regulation, then the identification of that clause shall be "52.236-71—Refrigerated Display Cases (MAR 1983)—Y Acquisition Regulation."

52.104 Procedures for modifying and completing provisions and clauses.

(a) Provisions and clauses shall not to be modified unless the FAR authorizes their modification. Any such authorizations are contained in the provision or clause preface in Subpart 52.2; for example—

(1) "In the following clause, the stated 60-day period may be varied from 30 to 90 days"; or

(2) "'Task Order' or other appropriate designation may be substituted for 'Schedule' wherever that word appears in the clause."

(b) When modifying provisions or clauses incorporated by reference, insert the changed wording directly below the title of the provision or clause identifying to the lowest level necessary (e.g., paragraph, sentence, word), to clearly indicate what is being modified.

(c) When modifying provisions or clauses incorporated in full text, modify the language directly by substituting the changed wording as permitted.

(d) When completing blanks in provisions or clauses incorporated by reference, insert the fill-in information directly below the title of the provision or clause identifying to the lowest level necessary to clearly indicate the blanks being filled in.

(e) When completing blanks in provisions or clauses incorporated in full text, insert the fill-in information in the blanks of the provision or clause.

52.105 Procedures for using alternates.

(a) A major variation in a provision or clause is accommodated by use of an alternate. All alternates to a given provision or clause are prescribed at the point in the FAR subject text where the provision or clause is itself prescribed. The alternates to each provision or clause are titled "Alternate I," "Alternate II," "Alternate III," and so on. In Subpart 52.2, the instructions for using these alternates appear after the basic provision or clause. A statement of the manner of and conditions for its use is given for each alternate. This statement shall be read in conjunction with the preface to the provision or clause.

(b) When an alternate is used, its date shall be cited along with the date of the basic provision or clause; e.g., 52.209-3 FIRST ARTICLE APPROVAL—CONTRACTOR TESTING (OCT 1983)—ALTERNATE I (DEC 1983).

(c) Under certain circumstances, a provision or clause may be used with two or more alternates. In these circumstances, each of the applicable alternates shall be cited, whether incorporated by reference or in full text; e.g., 52.209-3 FIRST ARTICLE APPROVAL—CONTRACTOR TESTING (OCT 1983)—ALTERNATE I (DEC 1983) AND ALTERNATE II (FEB 1984). However, under no circumstances may an alternate to a specific provision or clause be applied to any other provision or clause.

52.106 Derivations of FAR provisions and clauses.

(a) Nearly all FAR provisions and clauses have been derived from Defense Acquisition Regulation (DAR) and/or Federal Procurement Regulations (FPR) provisions and clauses. In order to enable the user of this regulation to understand the derivation, a notation has been added at the bottom of each FAR provision or clause underneath the words "(End of provision)" or "(End of clause)." The notation shows the nature of the derivation by one of the following codes:

"NM" means *new material* not in the DAR or FPR.

"R" means the FAR coverage is *rewritten* from the DAR, FPR, or other material from which it is derived.

"AV" means the FAR coverage repeats a provision or clause in the DAR, FPR, or other source *almost verbatim*. In the text of the provision or clause, titles of organizations, officials, or documents are changed or personal pronouns deleted. The language is substantially the same, with no substantive differences from that of the DAR, FPR, or other provision or clause from which it is derived.

"V" means the FAR coverage repeats a DAR, FPR, or other provision or clause *verbatim*.

(b) In addition, when the derivation is from the DAR or FPR, the citation (and date when appropriate) of the DAR or FPR provision or clause from which the FAR material is derived has been included. The acronyms DAR and FPR have not been used when citing these former provisions or clauses, since their citations are distinctive: DAR citations generally begin "7-" and are dated, while the FPR citations all begin "1-" and are undated.

(c) When a provision or clause is revised or the FAR reissued, the derivation notations will be deleted.

52.107 Provisions and clauses prescribed in Subpart 52.1.

(a) The contracting officer shall insert the provision at 52.252-1, Solicitation Provisions Incorporated by Reference, in solicitations in order to incorporate provisions by reference, and shall list each of these provisions by number, title, and date.

(b) The contracting officer shall insert the clause at 52.252-2, Clauses Incorporated by Reference, in solicitations and contracts in order to incorporate clauses by reference, and shall list each of these clauses by number, title, and date.

(c) The contracting officer shall insert the provision at 52.252-3, Alterations in Solicitation, in solicitations in order to revise or supplement, as necessary, other parts of the solicitation that apply to the solicitation phase only, except for any provision authorized for use with a deviation.

(d) The contracting officer shall insert the clause at 52.252-4, Alterations in Contract, in solicitations and contracts in order to revise or supplement, as necessary, other parts of the contract, or parts of the solicitations that apply to the contract phase, except for any clause authorized for use with a deviation.

(e) The contracting officer shall insert the provision at 52.252-5, Authorized Deviations in Provisions, in solicitations that include any FAR or supplemental provision with an authorized deviation. Whenever any FAR or supplemental provision is used with an authorized deviation, the contracting officer shall identify it by the same number, title, and date assigned to the provision when it is used without deviation. include regulation name for any supplemental provision, except that the contracting officer shall insert "(DEVIATION)" after the date of the provision.

(f) The contracting officer shall insert the clause at 52.252-6, Authorized Deviations in Clauses, in solicitations and contracts that include any FAR or supplemental clause with an authorized deviation. Whenever any FAR or supplemental clause is used with an authorized deviation, the contracting officer shall identify it by the same number, title, and date assigned to the clause when it is used without deviation. include regulation name for any supplemental clause, except that the contracting officer shall insert "(DEVIATION)" after the date of the clause.

SUBPART 52.2—TEXTS OF PROVISIONS AND CLAUSES

52.200 Scope of subpart.

This subpart sets forth the texts of all FAR provisions and clauses (see 52.101(b)(1)), and for each provision and clause, gives (a) a cross-reference to the location in the FAR that prescribes its use, and (b) directions for including it in solicitations and/or contracts.

52.201 [Reserved].

52.202-1 Definitions.

As prescribed in Subpart 2.2, insert the following clause in solicitations and contracts except when (a) a fixed-price research and development contract that is expected to be $2,500 or less is contemplated or (b) a purchase order is contemplated. Additional definitions may be included; *provided*, they are consistent with this clause and the Federal Acquisition Regulation.

DEFINITIONS (APR 1984)

(a) "Head of the agency" (also called "agency head") or "Secretary" means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency, and, in the Department of Defense, the Under Secretary and any Assistant Secretary of the Departments of the Army, Navy, and Air Force and the Director and Deputy Director of Defense agencies; and the term "authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.

(b) "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.

(c) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(End of clause)
(R 7-103.1 1979 MAR)
(R 7-203.1)
(R 7-302.1)
(R 7-402.1)
(R 7-901.1)
(R 7-1902.1)
(R 7-1909.1)

Alternate I (APR 1984). If the contract is for personal services; construction; architect-engineer services; or dismantling, demolition, or removal of improvements, delete paragraph (c) of the basic clause.

(R 7-503.1)
(R 7-602.1 JUN 64)
(R 7-605.38)
(R 7.607.1)
(R 7-2101.1)
(R 1-7.602-1)

52.203-1 Officials Not to Benefit.

As prescribed in 3.102-2, insert the following clause in solicitations and contracts, except those related to agriculture that are exempted by 41 U.S.C. 22:

OFFICIALS NOT TO BENEFIT (APR 1984)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

(End of clause)
(R 7-103.19 1949 JUL)
(R 1-7.102-17)

52.203-2 Certificate of Independent Price Determination.

As prescribed in 3.103-1, insert the following provision in solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(a) The acquisition is to be made under the small purchase procedures in Part 13;

(b) The work is to be performed by foreign suppliers outside the United States, its possessions, and Puerto Rico;

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

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

If the solicitation is a Request for Quotations, the terms "Quotation" and "Quoter" may be substituted for "Offeror" and "Offer."

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1984)

(a) The offeror certifies that—

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a formally advertised solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory—

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above ..... [*insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization*]:

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(End of provision)
(R 7-2003.1 1975 OCT)
(R 1-1.317)

52.203-3 Gratuities.

As prescribed in 3.202, insert the following clause in solicitations and contracts, except those for personal services and those between military departments or defense agencies and foreign governments that do not obligate any funds appropriated to the Department of Defense:

GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative—

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled—

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)
(R 7-104.16 1952 MAR)

52.203-4 Contingent Fee Representation and Agreement.

As prescribed in 3.404(b), insert the following provision in solicitations, except those excluded by subparagraphs 3.404(b)(1) through (b)(6). If the solicitation is a Request for Quotations, the terms "Quotation" and "Quoter" may be substituted for "Offeror" and "Offer."

CONTINGENT FEE REPRESENTATION AND AGREEMENT (APR 1984)

(a) *Representation.* The offeror represents that, except for full-time bona fide employees working solely for the offeror, the offeror—

[Note: The offeror must check the appropriate boxes. For interpretation of the representation, including the term "bona fide employee," see Subpart 3.4 of the Federal Acquisition Regulation.]

(1) ☐ has, ☐ has not employed or retained any person or company to solicit or obtain this contract; and

(2) ☐ has, ☐ has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) *Agreement.* The offeror agrees to provide information relating to the above Representation as requested by the Contracting Officer and, when subparagraph (a)(1) or (a)(2) is answered affirmatively, to promptly submit to the Contracting Officer—

(1) A completed Standard Form 119, Statement of Contingent or Other Fees, (SF 119); or

(2) A signed statement indicating that the SF 119 was previously submitted to the same contracting office, including the date and applicable solicitation or contract number, and representing that the prior SF 119 applies to this offer or quotation.

(End of provision)
(R 7-2002.1 1974 APR)
(R 1-1.505)

52.203-5 Covenant Against Contingent Fees.

As prescribed in 3.404(c), insert the following clause in all solicitations and contracts.

COVENANT AGAINST CONTINGENT FEES (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an angreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent

upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)
(R 7-103.20 1958 JAN)
(R 1-1.503)
(R 1-7.102-18)

52.204-1 Approval of Contract.

As prescribed in 4.103, insert the following clause in solicitations and contracts when agency procedures require written approval of the contract at a level above that of the contracting officer:

APPROVAL OF CONTRACT (APR 1984)

This contract is subject to the written approval of the agency official designated in the Schedule and shall not be binding until so approved.

(End of clause)
(R 7-105.2 1949 JUL)
(R 1-7.204-2)

52.204-2 Security Requirements.

As prescribed in 4.404(a), insert the following clause in solicitations and contracts when the contract may require access to classified information, unless the conditions specified in 4.404(d) apply:

SECURITY REQUIREMENTS (APR 1984)

(a) This clause applies to the extent that this contract involves access to information classified "Confidential," "Secret," or "Top Secret."

(b) The Contractor shall comply with (1) the Security Agreement (DD Form 441), including the *Department of Defense Industrial Security Manual For Safeguarding Classified Information* (DOD 5220.22-M), and (2) any revisions to that manual, notice of which has been furnished to the Contractor.

(c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government and if the changes cause an increase or decrease in security costs or otherwise affect any other term or condition of this contract, the contract shall be subject to an equitable adjustment as if the changes were directed under the Changes clause of this contract.

(d) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (d) but excluding any reference to the Changes clause of this contract, in all subcontracts under this contract that involve access to classified information.

(End of clause)
(R 7-104.12 1971 APR)
(R
(R7-204.12 1971 APR)
(R 7-702.29 1973 APR)
(R 7-704.22 1976 JULY)
(R 7-902.3 1976 JULY)

Alternate I (APR 1984). If a cost contract for research and development with an educational institution is contemplated, add the following paragraphs (e), (f), and (g) to the basic clause:

(e) If a change in security requirements, as provided in paragraphs (b) and (c), results (1) in a change in the security classification of this contract or any of its elements from an unclassified status or a lower classification to a higher classification, or (2) in more restrictive area controls than previously required, the Contractor shall exert every reasonable effort compatible with the Contractor's established policies to continue the performance of work under the contract in compliance with the change in security classification or requirements. If, despite reasonable efforts, the Contractor determines that the continuation of work under this contract is not practicable because of the change in security classification or requirements, the Contractor shall notify the Contracting Officer in writing. Until resolution of the problem is made by the Contracting Officer, the Contractor shall continue safeguarding all classified material as required by this contract.

(f) After receiving the written notification, the Contracting Officer shall explore the circumstances surrounding the proposed change in security classification or requirements, and shall endeavor to work out a mutually satisfactory method whereby the Contractor can continue performance of the work under this contract.

(g) If, 15 days after receipt by the Contracting Officer of the notification of the Contractor's stated inability to proceed, (1) the application to this contract of the change in security classification or requirements has not been withdrawn or (2) a mutually satisfactory method for continuing performance of work under this contract has not been agreed upon, the Contractor may request the Contracting Officer to terminate the contract in whole or in part. The Contracting Officer shall terminate the contract in whole or in part, as may be appropriate, and the termination shall be deemed a termination under the terms of the Termination for the Convenience of the Government clause.

(R 7-402.24, clause paragraphs (e), (f), and (g) 1971 APR)

Alternate II (APR 1984). If employee identification is required for security or other reasons in a construction contract or architect-engineer contract, add the following paragraph (e) to the basic clause:

(e) The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Contracting Officer. All prescribed identification shall immediately be delivered to the Contracting Officer, for cancellation upon the release of any employee. When required by the Contracting Officer, the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project.

52.205 [Reserved].

52.206 [Reserved].

52.207-1 Notice of Cost Comparison (Advertised).

As prescribed in 7.305(a), when contracting by formal advertising, insert the following provision in solicitations issued for the purpose of comparing the costs of contractor and Government performance:

NOTICE OF COST COMPARISON (ADVERTISED) (APR 1984)

(a) This solicitation is part of a Government cost comparison to determine whether accomplishing the specified work under contract or by Government performance is more economical. If Government performance is determined to be more economical, this solicitation will be canceled and no contract will be awarded.

(b) The Government's cost estimate for performance by the Government will be based on the work statement in this solicitation and will be submitted by designated agency personnel to the Contracting Officer in a sealed envelope not later than the time set for bid opening. At the public bid opening, the Contracting Officer will open the bids and the envelope containing the cost estimate for Government performance and announce the result. This announcement will be based on an initial comparison of the cost of Government performance with the cost of contract performance, as indicated on the cost-comparison form. The abstract of bids, completed cost-comparison form, and detailed data supporting the cost estimate for Government performance will be made available to interested parties for review.

(c) ..... [*insert a number from 5 to 15, depending on the complexity of the matter (see 7.306(a)(1)(iv)*)] working days beginning with the date the documents are available to interested parties will be provided for this public review. The Government will not make a final determination either for contract or Government performance during this period. During this period, directly affected parties may file with the Contracting Officer written requests, based on specific objections, for administrative review of the cost-comparison result under the agency appeals procedure. The appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and will not apply to decisions regarding selection of one bidder in preference to another. Agency determinations under the appeals procedure shall be final.

(d) After evaluation of bids and resolution of any requests under the appeals procedure, the Contracting Officer will either award a contract or cancel this solicitation. The

completed cost comparison analysis will be made available to interested parties.

(e) A cost estimate for Government performance is considered a bid for purposes of this solicitation's Late Modifications of Bids or Withdrawal of Bids provision, and a late modification that displaces an otherwise low cost estimate for Government performance shall not be considered.

(End of provision)
(R 7-2003.89(a) 1980 MAY)

52.207-2 Notice of Cost Comparison (Negotiated).

As prescribed in 7.305(b), when contracting by negotiation, insert the following provision in requests for proposals issued for the purpose of comparing the costs of contractor and Government performance:

NOTICE OF COST COMPARISON (NEGOTIATED) (APR 1984)

(a) This solicitation is part of a Government cost comparison to determine whether accomplishing the specified work under contract or by Government performance is more economical. If Government performance is determined to be more economical, this solicitation will be canceled and no contract will be awarded.

(b) The Government's cost estimate for performance by the Government will be based on the work statement in this solicitation and will be submitted by designated agency personnel to the Contracting Officer in a sealed envelope not later than the time set for receipt of initial proposals.

(c) After completion of proposal evaluation, negotiation, and selection of the most advantageous proposal, the Contracting Officer, in the presence of the preparer of the cost estimate for Government performance, will open the sealed cost-estimate envelope. These officials will make a cost comparison before public announcement. Depending on whether the cost-comparison result favors performance under contract or Government performance, the procedure in either subparagraph (1) or (2) following applies:

(1) If the result of the cost comparison favors performance under contract and administrative approval is obtained, the Contracting Officer will award a contract and publicly reveal the completed cost-comparison form showing the cost estimate for Government performance, its detailed supporting data, and the Contractor's name. However, this award is conditioned on the offer remaining the more economical alternative after (i) completion of a public review period of .....[*insert a numeral from 5 to 15, depending upon the complexity of the matter (see 7.306(b)(3))*] working days beginning with the date this information is available to interested parties and (ii) resolution of any requests for review under the agency appeals procedure (see paragraph (d) below). The Government assumes no liability for costs incurred during the periods specified in (i) and (ii). The Contracting Officer will then either notify the Contractor in writing that it may proceed with performance of the contract or will cancel the contract at no cost to the Government.

(2) If the result of the cost comparison favors Government performance, the Contracting Officer will publicly disclose this result, the completed cost-comparison form and its detailed supporting data, and the price of the offer most advantageous to the Government. After (i) completion of a public review period of .....[*insert a numeral from 5 to 15, depending upon the complexity of the matter (see 7.306(b)(3))*] working days beginning with the date this information is available to interested parties and (ii) resolution of any requests for review under the agency appeals procedure (see paragraph (d) below), the Contracting Officer will either cancel this solicitation or award a contract, as appropriate.

(d) The Government will not make a final determination either for contract or Government performance during the public review period. During this period, directly affected parties may file with the Contracting Officer written requests, based on specific objections, for administrative review of the cost-comparison result under the agency appeals procedure. This review will be completed within 30 days after the Contracting Officer receives the requests. The appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and will not apply to questions concerning award to one offeror in preference to another. Agency determinations under the appeals procedure shall be final.

(e) A cost estimate for Government performance is considered a proposal for purposes of this solicitation's Late Submissions, Modifications, and Withdrawal of Proposals or Quotations provision, and a late modification that displaces an otherwise low cost estimate for Government performance shall not be considered.

(End of provision)
(R 7-2003.89(b) 1980 MAY)

52.207-3 Right of First Refusal of Employment.

As prescribed in 7.305(c), insert the following clause in solicitations issued for the purpose of making a cost comparison covering work currently being performed by the Government and in contracts that result from the solicitation:

RIGHT OF FIRST REFUSAL OF EMPLOYMENT (APR 1984)

The Contractor shall give Government employees displaced as a result of the conversion to contract performance the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards.

(End of clause)
(R 7-104.104 1980 MAY)

52.208-1 Required Sources for Jewel Bearings and Related Items.

As prescribed in 8.203-1(a), insert the following clause in solicitations and contracts that may involve items (or any subassembly, component, or part of such items) in the Federal supply classes and groups listed in 8.203-1(b), except as provided in 8.203-1(a)(1) through (3):

REQUIRED SOURCES FOR JEWEL BEARINGS AND RELATED ITEMS (APR 1984)

(a) This clause applies only if supplies furnished under this contract contain jewel bearings or related items.

(b) "Jewel bearing," as used in this clause, means a piece of synthetic corundum (sapphire or ruby) of any shape, except a phonograph needle, that has one or more polished surfaces to provide supporting surfaces or low-friction contact areas for revolving, oscillating, or sliding parts in an instrument, mechanism, subassembly, or part. A jewel bearing may be unmounted or may be mounted into a ring or bushing. Examples are watch holes—olive, watch holes—straight, pallet stones, roller jewels (jewel pins), endstones (caps), vee (cone) jewels, instrument rings, cups, and double cups.

"Plant," as used in this clause, means the Government-owned, contractor-operated William Langer Plant, Rolla, North Dakota 58367 (Phone: 701-477-3193).

"Price list," as used in this clause, means the U.S. Government Jewel Bearing Price List, published periodically by the General Services Adminstration for jewel bearings produced by the Plant.

"Related item," as used in this clause, means a piece of synthetic corundum (sapphire or ruby), other than a jewel bearing, that (1) is made from material produced by the Verneuil flame fusion process, (2) has a geometric shape up to a maximum of 1 inch in any dimension, (3) requires extremely close tolerances and highly polished surfaces identical to those involved in manufacturing jewel bearings, and (4) is either mounted in a retaining or supporting structure or unmounted. Examples are window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, and notched plate.

(c) All jewel bearings and related items required for the supplies to be furnished under this contract (or an equal quantity of the same type, size, and tolerances) shall be acquired from the following sources: jewel bearings from the Plant, unless the Plant declines or rejects the order; and related items from domestic manufacturers, including the Plant, if the items can be obtained from those sources. Sources other than the foregoing may be used if the foregoing sources decline or reject the order.

(1) Orders may be placed with the Plant for individual contracts, for a combination of contracts, or for stock. If the order is for an individual contract, the prime contract number shall be placed on it.

(2) Orders, and any supplements to orders, for items listed in the price list shall refer to the most recent price list and its date.

(3) Requests for quotations for items not listed in the price list should be accompanied by drawings and forwarded to the Plant as soon as possible to ensure prompt quotation or rejection of the order.

(d) At its option, the Plant may decline or reject all or part of a Contractor's or subcontractor's order. If the order is declined or rejected, the Contractor shall notify the contract administration office cognizant of this contract promptly in writing, enclosing a copy of the rejection notice. Unless the declination or rejection has been caused by current excessive and overdue Contractor indebtedness to the Plant as determined by the Plant, the Contracting Officer shall evaluate the impact and make an equitable adjustment in the contract price, in the delivery schedule, or in both, if one is warranted. This procedure shall also apply to orders for related items rejected by any other domestic manufacturer.

(e) The Contractor agrees to insert this clause, including this paragraph (e), and the prime contract number in every subcontract unless the Contractor has positive knowledge that the subassembly, component, or part being purchased does not contain jewel bearings or related items.

(End of clause)
(R 7-104.37 1977 NOV)
(R 1-1.319(e))

52.208-2 Jewel Bearings and Related Items Certificate.

As prescribed in 8.203-1(c), insert the following provision in solicitations that contain the clause at 52.208-1, Required Sources for Jewel Bearings and Related Items, except those for research and development:

JEWEL BEARINGS AND RELATED ITEMS CERTIFICATE (APR 1984)

(a) This is to certify that—

(1) Jewel bearings and/or related items, as defined in the Required Sources for Jewel Bearings and Related Items clause, will be incorporated into one or more items/will not be incorporated into any item [*delete one*] covered by this offer;

(2) Any jewel bearings required (or an equal quantity of the same type, size, and tolerances) will be ordered from the William Langer Plant, Rolla, North Dakota 58367, as provided in the Required Sources for Jewel Bearings and Related Items clause; and

(3) Any related items required (or an equal quantity of the same type, size, and tolerances) will be acquired from domestic manufacturers, including the Plant, if the items can be obtained from those sources.

(b) Attached to this certificate are estimates of the quantity, type, and size (including tolerances) of the jewel bearings and related items required, and identification of the components, subassemblies, or parts that require jewel bearings or related items.

Date of Execution.....
Solicitation No.....
Name.....
Title.....
Firm.....
Address.....

(End of provision)
(R 1-2207.2 DPC 76-13 1977 NOV)
(R 1-2207.2(c)(3))

52.208-3 Conflicts.

As prescribed in 8.309(a), insert the following clause in solicitations and contracts for utility services:

CONFLICTS (APR 1984)

To the extent of any inconsistency between the terms of this contract and any schedule, rider, or exhibit incorporated in this contract by reference or otherwise, or any of the Contractor's rules and regulations, the terms of this contract shall control.

(End of clause)
(R S5-203.2(7) OCT 1974)
(AV 1-4.410-5(a)(10) FEB 1980)

52.208-4 Vehicle Lease Payments.

As prescribed in 8.1104(a), insert the following clause in solicitations and contracts for leasing motor vehicles, unless the motor vehicles are leased in foreign countries:

VEHICLE LEASE PAYMENTS (APR 1984)

(a) Upon the submission of proper invoices or vouchers, the Government shall pay rent for each vehicle at the rate(s) specified in this contract.

(b) Rent shall accrue from the beginning of this contract, or from the date each vehicle is delivered to the Government, whichever is later, and shall continue until the expiration of the contract term or the termination of this contract. However, rent shall accrue only for the period that each vehicle is in the possession of the Government.

(c) Rent shall not accrue for any vehicle that the Contracting Officer determines does not comply with the Condition of Leased Vehicles clause of this contract or otherwise does not comply with the requirements of this contract, until the vehicle is replaced or the defects are corrected.

(d) Rent shall not accrue for any vehicle during any period when the vehicle is unavailable or unusable as a result of the Contractor's failure to render services for the operation and maintenance of the vehicle as prescribed by this contract.

(e) Rent stated in monthly terms shall be prorated on the basis of 1/30th of the monthly rate for each day the vehicle is in the Government's possession. If this contract contains a mileage provision, the Government shall pay rent as provided in the Schedule.

(End of clause)
(R 7-1501.1 1967 APR)

52.208-5 Condition of Leased Vehicles.

As prescribed in 8.1104(b), insert the following clause in solicitations and contracts for leasing motor vehicles, unless the motor vehicles are leased in foreign countries:

CONDITION OF LEASED VEHICLES (APR 1984)

Each vehicle furnished under this contract shall be of good quality and in safe operating condition, and shall comply with the Federal Motor Vehicle Safety Standards (49 CFR 571) and State safety regulations applicable to the vehicle. The Government shall accept or reject the vehicles promptly after receipt. If the Contracting Officer determines that any vehicle furnished is not in compliance with this contract, the Contracting Officer shall promptly inform the Contractor in writing. If the Contractor fails to replace the vehicle or correct the defects as required by the Contracting Officer, the Government may (a) by contract or otherwise, correct the defect or arrange for the lease of a similar vehicle and shall charge or set off against the Contractor any excess costs occasioned thereby, or (b) terminate the contract under the Default clause of this contract.

(End of clause)
(R 7-1501.2 1967 APR)

52.208-6 Marking of Leased Vehicles.

As prescribed in 8.1104(c), insert the following clause in solicitations and contracts for leasing motor vehicles, unless the motor vehicles are leased in foreign countries:

MARKING OF LEASED VEHICLES (APR 1984)

(a) The Government may place nonpermanent markings or decals, identifying the using agency, on each side, and on the front and rear bumpers, of any motor vehicle leased under this contract. The Government shall use markings or decals that are removable without damage to the vehicle.

(b) The Contractor may use placards for temporary identification of vehicles except that the placards may not contain any references to the Contractor that may be construed as advertising or endorsement by the Government of the Contractor.

(End of clause)
(R 7-1501.5 1967 APR)

52.209-1 Qualified Products—End Items.

As prescribed in 9.206-2(a), insert the following provision in solicitations when acquiring qualified products as end items:

QUALIFIED PRODUCTS—END ITEMS (APR 1984)

(a) The Contracting Officer will make awards for end items requiring qualification only if the items are qualified for inclusion in the Qualified Products List (QPL) identified below. The item must be qualified at the time set for opening of bids, or the time of award of negotiated contracts, whether or not the item is actually included in the QPL. Offerors should contact the specification preparing activity (SPA) designated below to arrange for qualification of the products they intend to offer.

*QPL.....
SPA (Name).....
(Address).....

(b) Offerors shall insert the item name and the test number (if known) of each qualified product in the blank spaces below.

Item Name.....
Test Number.....

(c) Offerors of products that have been qualified, but not yet listed, shall submit evidence of qualification with their offers, in order to receive consideration. If this is a formally advertised acquisition and the qualified product offered is not identified, either above or elsewhere in the bid, the Contracting Officer will reject the bid.

(d) Any change in location or ownership of the plant where a previously qualified product was manufactured requires reevaluation of the qualification. The reevaluation must be accomplished before the bid opening date for advertised acquisitions and before the date of award for negotiated acquisitions. Failure of offerors to arrange for timely reevaluation shall preclude consideration of their offers.

(End of provision)
(R 7-2003.6 1974 APR)

*The Contracting Officer shall identify the QPL and the name and address of the SPA involved.

52.209-2 Qualified Products—Components of End Items.

As prescribed in 9.206-2(b), insert the following clause in solicitations and contracts, when acquiring qualified products as components of end items:

QUALIFIED PRODUCTS—COMPONENTS OF END ITEMS (APR 1984)

(a) If any of the end items to be acquired by the Government will contain one or more components that are qualified products, qualification of the components is required, (whether or not the components are actually included in the Qualified Products List (QPL)), before the Contractor awards any subcontract for the components. If the Contractor plans to manufacture the components, the Contractor shall have the components qualified before beginning to manufacture them. The components need not be qualified before manufacture of the prototype, preproduction model, or first article, for qualification testing.

(b) Unless required for interchangeability or compatibility, the Contractor shall not cite brand names from any QPL in any subcontract solicitation, but shall refer to the pertinent specification in order to obtain optimum competition.

(c) Delay resulting from the Contractor's awaiting qualification approval by the Government of a component shall not constitute excusable delay when a previously qualified component could have been acquired in time to meet the end item delivery schedule.

(d) Any change in location or ownership of the plant where a previously qualified product was manufactured requires reevaluation of the qualification. The reevaluation must be completed before the award of any subcontract for the components or before beginning the manufacture of the components.

(End of clause)
(R 7-2003.7 1969 DEC)

52.209-3 First Article Approval—Contractor Testing.

As prescribed in 9.308-1(a), insert the following clause in solicitations and contracts when a fixed-price contract is contemplated and it is intended that the contract require (a) first article approval and (b) that the contractor be required to conduct the first article test. As prescribed in 9.308-1(b), insert a clause substantially the same as the following clause in solicitations and contracts when a cost-reimbursement contract is contemplated and it is intended that the contract require (a) first article approval and (b) that the contractor be required to conduct the first article test.

FIRST ARTICLE APPROVAL—CONTRACTOR TESTING (APR 1984)

[*Contracting Officer shall insert details*]

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

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

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

(d) If the Contractor fails to deliver any first article report on time, or the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract.

(e) Unless otherwise provided in the contract, and if the approved first article is not consumed or destroyed in testing, the Contractor may deliver the approved first article as part of the contract quantity if it meets all contract requirements for acceptance.

(f) If the Government does not act within the time specified in paragraph (b) or (c) above, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust under the Changes clause of this contract the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.

(g) Before first article approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor. Before first article approval, the costs thereof shall not be allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government.

(End of clause)
(R 7-104.55(a) 1974 APR)

Alternate I (APR 1984). If it is intended that the contractor be required to produce the first article and the production quantity at the same facility, add the following paragraph (h) to the basic clause:

(h) The Contractor shall produce both the first article and the production quantity at the same facility and shall submit a certification to this effect with each first article.

(R 7-104.55(a)(h) 1974 APR)

Alternate II (APR 1984). If it is necessary to authorize the contractor to purchase material or to commence production before first article approval, substitute the following paragraph (g) for paragraph (g) of the basic clause:

(g) Before first article approval, the Contracting Officer may, by written authorization, authorize the Contractor to acquire specific materials or components or to commence production to the extent essential to meet the delivery schedules. Until first article approval is granted, only costs for the first article and costs incurred under this authorization are allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

(R 7-104.55(c) 1974 APR)

52.209-4 First Article Approval—Government Testing.

As prescribed in 9.308-2(a), insert the following clause in solicitations and contracts when a fixed-price contract is contemplated and it is intended that the contract require first article approval and that the Government will be responsible for conducting the first article test. As prescribed in 9.308-2(b), insert a clause substantially the same as the following clause in solicitations and contracts when a cost-reimbursement contract is contemplated and it is intended that the contract require first article approval and that the Government be responsible for conducting the first article test.

FIRST ARTICLE APPROVAL—GOVERNMENT TESTING (APR 1984)

[*Contracting Officer shall insert details*]

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

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

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

(d) If the Contractor fails to deliver any first article on time, or the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract.

(e) Unless otherwise provided in the contract, the Contractor—

(1) May deliver the approved first article as a part of the contract quantity, provided it meets all contract requirements for acceptance and was not consumed or destroyed in testing; and

(2) Shall remove and dispose of any first article from the Government test facility at the Contractor's expense.

(f) If the Government does not act within the time specified in paragraph (b) or (c) above, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust under the Changes clause of this contract the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.

(g) The Contractor is responsible for providing operating and maintenance instructions, spare parts support, and repair of the first article during any first article test.

(h) Before first article approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor. Before first article approval, the costs thereof shall not be allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government.

(End of clause)

(R 7-104.55(b) 1977 APR)

Alternate I (APR 1984). If it is intended that the contractor be required to produce the first article and the production quantity at the same facility, add the following paragraph (i) to the basic clause:

(i) The Contractor shall produce both the first article and the production quantity at the same facility and shall submit a certification to this effect with each first article.

(R 7-104.55(b)(i) 1974 APR)

Alternate II (APR 1984). If it is necessary to authorize the contractor to purchase material or to commence production before first article approval, substitute the following paragraph (h) for paragraph (h) of the basic clause:

(h) Before first article approval, the Contracting Officer may, by written authorization, authorize the Contractor to acquire specific materials or components or to commence production to the extent essential to meet the delivery schedules. Until first article approval is granted, only costs for the first article and costs incurred under this authorization are allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

(R 7-104.55(c) 1974 APR)

52.210-1 Availability of Specifications Listed in the Index of Federal Specifications and Standards.

As prescribed in 10.011(a), insert the following provision in solicitations that (a) are issued by civilian agency contracting offices and (b) cite specifications listed in the Index that are not furnished with solicitation:

AVAILABILITY OF SPECIFICATIONS LISTED IN THE INDEX OF FEDERAL SPECIFICATIONS AND STANDARDS (APR 1984)

(a) Single copies of specifications cited in this solicitation may be obtained by submitting a written request to the appropriate supply point listed below. The request must contain the title of the specification, its number, date, applicable amendment(s), and the solicitation or contract number. In case of urgency, telephone or telegraphic requests are acceptable. Voluntary standards listed in the Index are not available to offerors and contractors from the following Government sources and may be obtained from the organization responsible for their preparation, maintenance, or publication.

Region	Address/Telephone No.	Service Area
1	GSA Business Service Center John McCormack Post Office and Courthouse Boston, MA 02109 Telephone No. 617/223-2868	Connecticut, Maine, Vermont, New Hampshire, Massachusetts, and Rhode Island
2	GSA Business Service Center 26 Federal Plaza New York, NY 10278 Telephone No. 212/264-1234	New Jersey, New York, Puerto Rico, and Virgin Islands
3	GSA Specification and Consumer Information Distribution Center 9th & Market Streets Philadelphia, PA 19107 Telephone No. 215/597-9613	Delaware, Maryland (except Prince Georges and Montgomery Counties), Pennsylvania, Virginia (except Prince William, Loudon, Fairfax, and Arlington Counties), and West Virginia
4	GSA Business Service Center 75 Spring Street SW Atlanta, GA 30303 Telephone No. 404/221-5103	Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, and Tennessee
5	GSA Business Service Center 230 South Dearborn Street Chicago, IL 60604 Telephone No. 312/353-5383	Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin
6	GSA Business Service Center 1500 East Bannister Road Kansas City, MO 64131 Telephone No. 816/926-7203	Iowa, Kansas, Missouri, and Nebraska

Region	Address/Telephone No.	Service Area
7	GSA Business Service Center 819 Taylor Street Fort Worth, TX 76102 Telephone No. 817/334-3284	Arkansas, Louisiana, Texas, New Mexico, and Oklahoma
7	GSA Business Service Center 515 Rusk Street FOB Courthouse Houston, TX 77002 Telephone No. 713/226-5787	Gulf coast from Brownsville, Texas, to New Orleans, Louisiana
8	GSA Business Service Center Building 41 Denver Federal Center Denver, CO 80225 Telephone No. 303/234-2216	Colorado, North Dakota, Utah, South Dakota, Montana, and Wyoming
9	GSA Business Service Center 525 Market San Francisco, CA 94105 Telephone No. 415/974-9000	Northern California, Hawaii, and Nevada (except Clark County)
9	GSA Business Service Center 300 North Los Angeles Street Los Angeles, CA 90012 Telephone No. 213/688-3210	Southern California, Nevada (Clark County), and Arizona
10	GSA Business Service Center 440 Federal Building 915 Second Avenue Seattle, WA 98174 Telephone No. 206/442-5556	Alaska, Idaho, Oregon, and Washington
National Capital	GSA Business Service Center 7th & D Streets SW Washington, D.C. 20407 Telephone No. 202/472-1804	Maryland (Prince Georges and Montgomery Counties), Virginia (Prince William, Loudon, Fairfax, and Arlington Counties), and Washington, D.C.

(b) The Index of Federal Specifications and Standards may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(End of provision)
(NM)

52.210-2 Availability of Specifications Listed in the DOD Index of Specifications and Standards (DODISS).

As prescribed in 10.011(b), insert the following provision in solicitations that (a) are issued by DOD contracting offices and (b) cite specifications listed in the DODISS that are not furnished with the solicitation:

AVAILABILITY OF SPECIFICATIONS LISTED IN THE DOD INDEX OF SPECIFICATIONS AND STANDARDS (DODISS) (APR 1984)

Single copies of specifications cited in this solicitation may be obtained by submitting a written request to the supply point listed below. The request must contain the title of the specification, its number, date, applicable amendment(s), and the solicitation or contract number. In case of urgency, telephone or telegraphic requests are acceptable. Voluntary standards, which are not available to offerors and contractors from Government sources, may be obtained from the organization responsible for their preparation, maintenance, or publication.

Commanding Officer
U.S. Naval Publication and Forms Center
5801 Tabor Avenue
Philadelphia, PA 19120
Telex Number..... 834295
Western Union Number.... 710-670-1685
Telephone Number..... (215) 697-3321

(End of provision)
(R 1-1203.2)

52.210-3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications and Standards.

As prescribed in 10.011(c), insert a provision substantially the same as the following in solicitations that cite specifications that are not listed in the Index and are not furnished with the solicitation, but may be obtained from a designated source:

AVAILABILITY OF SPECIFICATIONS NOT LISTED IN THE GSA INDEX OF FEDERAL SPECIFICATIONS AND STANDARDS (APR 1984)

The specifications cited in this solicitation may be obtained from:
(Activity).....
(Complete address).....
.....
.....
(Telephone number).....
(Person to be contacted).....

The request should identify the solicitation number and the specification requested by date, title, and number, as cited in the solicitation.

(End of provision)
(SS 7-2003.9(a) UNDATED)

52.210-4 Availability for Examination of Specifications Not Listed in the Index of Federal Specifications and Standards.

As prescribed in 10.011(d), insert a provision substantially the same as the following in solicitations that cite specifications that are not listed in the Index and are available for examination at a specified location:

AVAILABILITY FOR EXAMINATION OF SPECIFICATIONS NOT LISTED IN THE INDEX OF FEDERAL SPECIFICATIONS AND STANDARDS (APR 1984)

The specifications cited in this solicitation are not available for distribution. However, they may be examined at the following location(s):
(ACTIVITY).....
(COMPLETE ADDRESS).....
.....
.....
(TELEPHONE NUMBER).....
(PERSON TO BE CONTACTED).....
(TIME(S) FOR VIEWING).....

(End of provision)
(SS 7-2003.9(b) UNDATED)

52.210-5 New Material.

As prescribed in 10.011(e), insert the following clause in solicitations and contracts for supplies, unless, in the judgment of the contracting officer, the clause would serve no useful purpose. The contracting officer may insert the clause in solicitations and contracts for services that may involve incidental furnishing of parts.

NEW MATERIAL (APR 1984)

Unless this contract specifies otherwise, the Contractor represents that the supplies and components, including any former Government property identified under the Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property clause of this contract, are new, including recycled (not used or reconditioned) and are not of such age or so deteriorated as to impair their usefulness or safety. If the Contractor believes that furnishing used or reconditioned supplies or components will be in the Government's interest, the Contractor shall so notify the Contracting Officer in writing. The Contractor's notice shall include the reasons for the request along with a proposal for any consideration to the Government if the Contracting Officer authorizes the use of used or reconditioned supplies or components.

(End of clause)
(SS 7-104.48 1965 JAN)

52.210-6 Listing of Used or Reconditioned Material, Residual Inventory and Former Government Surplus Property.

As prescribed in 10.011(f), insert the following provision in solicitations for supplies, unless, in the judgment of the contracting officer, the provision would serve no useful purpose. The contracting officer may insert the provision in solicitations for services that may involve the incidental furnishing of parts.

LISTING OF USED OR RECONDITIONED MATERIAL, RESIDUAL INVENTORY AND FORMER GOVERNMENT SURPLUS PROPERTY (APR 1984)

(a) If the offeror proposes to furnish items or components which are used or reconditioned material, residual inventory resulting from terminated Government contracts, or former Government surplus property, the offeror shall provide the following information as an attachment to the offer: a complete description of the items or components; quantity; name of Government agency from which acquired; and date of acquisition, if applicable. No used, reconditioned, residual inventory, or former Government surplus property other than that listed on the attachment shall be furnished

under the resulting contract unless authorized in writing by the Contracting Officer.

(b) All items to be furnished under the resultant contract must comply with the terms and specifications contained in the contract.

(End of provision)
(R 7-104.49 1965 JAN)

52.210-7 Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property

As prescribed in 10.011(g), insert the following clause in solicitations and contracts for supplies, unless, in the judgment of the contracting officer, the clause would serve no useful purpose. The contracting officer may insert the clause in solicitations and contracts for services that may involve the incidental furnishing of parts.

USED OR RECONDITIONED MATERIAL, RESIDUAL INVENTORY, AND FORMER GOVERNMENT SURPLUS PROPERTY (APR 1984)

(a) The Contractor shall not furnish any item or component which is used or reconditioned material, residual inventory resulting from terminated Government contracts, or former Government surplus property, unless such item or component was listed in the applicable attachment to the offer and approved by the Contracting Officer or unless otherwise authorized in writing by the Contracting Officer.

(b) All items or components furnished under this contract shall comply with the terms and specifications contained in the contract.

(End of clause)
(R 7-104.49 1965 JAN)

52.211 [Reserved].

52.212-1 Time of Delivery.

As prescribed in 12.104(a)(2), the contracting officer may insert a clause substantially as follows in solicitations and contracts for supplies or services if the Government requires delivery by a particular time and the delivery schedule is to be based on the date of the contract:

TIME OF DELIVERY (APR 1984)

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

REQUIRED DELIVERY SCHEDULE

[Contracting Officer insert specific details]

ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT

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

OFFEROR'S PROPOSED DELIVERY SCHEDULE

ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT

(b) Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed, or otherwise furnished to the successful offeror, results in a binding contract. The Government will mail or otherwise furnish to the offeror an award or notice of award not later than the day award is dated. Therefore, the offeror should compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails. However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the contract or notice of award by adding five days for delivery of the award through the ordinary mails. If, as so computed, the offered delivery date is later than the required delivery date, the offer will be considered nonresponsive and rejected.

(End of clause)
(R 7-104.92(b) 1974 APR)
(R 1-1.316-5)
(R 1-1.316-4(c))

Alternate I (APR 1984). If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date of award, the contracting officer may substitute the following paragraph (b) for paragraph (b) of the basic clause. The time may be expressed by substituting "on or before"; "during the months ..."; or "not sooner than ... or later than ..." as headings for the third column of paragraph (a) the basic clause.

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

(R 7-104.92(e) 1974 APR)
(R 1-1.316-4(b)(1))

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

(b) The delivery dates or specific periods above are based on the assumption that the successful offeror will receive notice of award by .....[*Contracting Officer insert date*]. Each delivery date in the delivery schedule above will be extended by the number of calendar days after the above date that the Contractor receives notice of award; *provided*, that the Contractor promptly acknowledges receipt of notice of award.

(R 7-104.92(e)(2) 1974 APR)
(R 1-1.316-4(b)(2))

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

52.212-2 Desired and Required Time of Delivery.

As prescribed in 12.104(a)(3), the contracting officer may insert a clause substantially as follows in solicitations and contracts for supplies or services if the Government desires delivery by a certain time, but requires delivery by a specified later time, and the delivery schedule is to be based on the date of the contract:

DESIRED AND REQUIRED TIME OF DELIVERY (APR 1984)

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

DESIRED DELIVERY SCHEDULE

[Contracting Officer insert specific details]

ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT

If the offeror is unable to meet the desired delivery schedule, it may, without prejudicing evaluation of its offer, propose a delivery schedule below. However, the offeror's proposed delivery schedule must not extend the delivery period beyond the time for delivery in the Government's required delivery schedule as follows:

REQUIRED DELIVERY SCHEDULE

[Contracting Officer insert specific details

ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT

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

OFFEROR'S PROPOSED DELIVERY SCHEDULE

ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT

(b) Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed or otherwise furnished to the successful offeror results in a binding contract. The Government will mail or otherwise furnish to the offeror an award or notice of award not later than the day the award is dated. Therefore, the offeror shall compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails. However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the contract or notice of award by adding five days for delivery of the award through the ordinary mails. If, as so computed, the offered delivery date is later than the required delivery date, the the offer will be considered nonresponsive and rejected.

(End of clause)
(R 7-104.92(c) 1974 APR)
(R 1-1.316-5(c))
(R 1-1.316-4(c))

Alternate I (APR 1984). If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date of award, the contracting officer may substitute the following paragraph (b) for paragraph (b) of the basic clause. The time may be expressed by substituting "on or before"; "during the months . . ."; or "not sooner than ..., or later than ..." as headings for the third column of paragraph (a) of the basic clause.

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

(R 7-104.92(e) 1974 APR)
(R 1-1.316-4(b)(1))

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

(b) The delivery dates or specific periods above are based on the assumption that the successful offeror will receive notice of award by .....[*Contracting Officer insert date*]. Each delivery date in the delivery schedule above will be extended by the number of calendar days after the above date that the Contractor receives notice of award; *provided*, that the Contractor promptly acknowledges receipt of notice of award.

(R 7-104.92(e)(2) 1974 APR)
(R 1-1.316-4(b)(2))

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

52.212-3 Commencement, Prosecution, and Completion of Work.

As prescribed in 12.104(b), insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated. The clause may be changed to accommodate the issuance of orders under indefinite-delivery contracts for construction.

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

The Contractor shall be required to (a) commence work under this contract within ..... *[Contracting Officer insert number]* calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than....*. The time stated for completion shall include final cleanup of the premises.

(End of clause)
(R 7-602.44(a) 1965 JAN)

*The Contracting Officer shall specify either a number of days after the date the contractor receives the notice to proceed, or a calendar date.

Alternate I (APR 1984). If the completion date is expressed as a specific calendar date, computed on the basis of the contractor receiving the notice to proceed by a certain day, add the following paragraph to the basic clause:

The completion date is based on the assumption that the successful offeror will receive the notice to proceed by..... *[Contracting Officer insert date]*. The completion date will be extended by the number of calendar days after the above date that the Contractor receives the notice to proceed, except to the extent that the delay in issuance of the notice to proceed results from the failure of the Contractor to execute the contract and give the required performance and payment bonds within the time specified in the offer.

(R 7-602.44(b) 1968 APR)

52.212-4 Liquidated Damages—Supplies, Services, or Research and Development.

As prescribed in 12.204(a), the contracting officer may insert the following clause in solicitations and contracts when a fixed-price contract is contemplated for supplies, services, or research and development (see 12.202):

LIQUIDATED DAMAGES—SUPPLIES, SERVICES, OR RESEARCH AND DEVELOPMENT (APR 1984)

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, or any extension, the Contractor shall, in place of actual damages, pay to the Government as fixed, agreed, and liquidated damages, for each calendar day of delay the sum of .....[*Contracting Officer insert amount*].

(b) Alternatively, if delivery or performance is so delayed, the Government may terminate this contract in whole or in part under the Termination for Default—Supplies and Services clause in this contract and in that event, the Contractor shall be liable for fixed, agreed, and liquidated damages accruing until the time the Government may reasonably obtain delivery or performance of similar supplies or

services. The liquidated damages shall be in addition to excess costs under the Termination clause.

(c) The Contractor shall not be charged with liquidated damages when the delay in delivery or performance arises out of causes beyond the control and without the fault or negligence of the Contractor as defined in the Termination for Default—Supplies and Services clause in this contract.

(End of clause)
(R 7-105.5 1969 AUG)

52.212-5 Liquidated Damages—Construction.

As prescribed in 12.204(b), the contracting officer may insert the following clause in solicitations and contracts for construction, except contracts on a cost-plus-fixed-fee basis (see 12.202):

LIQUIDATED DAMAGES—CONSTRUCTION (APR 1984)

(a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, the Contractor shall pay to the Government as liquidated damages, the sum of .....[*Contracting Officer insert amount*] for each day of delay.

(b) If the Government terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If the Government does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

(End of clause)
(R 7-602.5 1969 AUG)
(R 1-18.110(a))
(R 7-603.39 1965 JAN)
(R 1-8.709-1)

Alternate I (APR 1984). If different completion dates are specified in the contract for separate parts or stages of the work, revise paragraph (a) of the clause to state the amount of liquidated damages for delay of each separate part or stage of the work.

(R 7-603.39 1977 NOV)

52.212-6 Time Extensions.

As prescribed in 12.204(c), insert the following clause in solicitations and contracts for construction in which the clause at 52.212-5, Liquidated Damages—Construction, is used with its Alternate I:

TIME EXTENSIONS (APR 1984)

Notwithstanding any other provisions of this contract, it is mutually understood that the time extensions for changes in the work will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements so delayed and that the remaining contract completion dates for all other portions of the work will not be altered and may further provide for an equitable readjustment of liquidated damages under the new completion schedule.

(End of clause)
(AV 7-603.36 1965 JAN)

52.212-7 Rated or Authorized Controlled Material Orders.

As prescribed in 12.304(a), insert the following provision in solicitations that will result in the placement of rated orders or authorized controlled material orders:

RATED OR AUTHORIZED CONTROLLED MATERIAL ORDERS (APR 1984)

Contracts or purchase orders to be awarded as a result of this solicitation shall be assigned a ☐ DX-rating; ☐ DO-rating; ☐ DMS allotment number in accordance with Defense Priorities System Regulation 1 and/or Defense Materials System Regulation 1. [*Contracting Officer check appropriate box or boxes*].

(End of provision)
(AV 7-2003.22 1974 APR)

52.212-8 Priorities, Allocations, and Allotments.

As prescribed in 12.304(b), insert the following clause in solicitations and contracts that are ratable, except for contracts under $2,500 that are not rated:

PRIORITIES, ALLOCATIONS, AND ALLOTMENTS (APR 1984)

The Contractor shall follow the provisions of Defense Materials System Regulation 1 or Defense Priorities System Regulation 1 [see 32A CFR 621-662] and all other applicable regulations and orders of the Office of Industrial Resource Administration, Department of Commerce, in obtaining controlled materials and other products and materials needed to fill this order.

(End of clause)
(R 7-104.18 1975 OCT)

52.212-9 Variation in Quantity.

As prescribed in 12.403(a), insert the following clause in solicitations and contracts when a fixed-price contract is contemplated for supplies, and for services that involve the furnishing of supplies:

VARIATION IN QUANTITY (APR 1984)

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

(b) The permissible variation shall be limited to:

.....Percent increase [*Contracting Officer insert percentage*]

.....Percent decrease [*Contracting Officer insert percentage*]

This increase or decrease shall apply to .....*

(End of clause)
(R 7-103.4(a) 1949 JUL)
(R 7-103.4(b) 1965 APR)

*Contracting Officer shall insert in the blank the designation(s) to which the percentages apply, such as (1) the total contract quantity, (2) item 1 only, (3) each quantity specified in the delivery schedule, (4) the total item quantity for each destination, or (5) the total quantity of each item without regard to destination.

52.212-10 Delivery of Excess Quantities of $100 or Less.

As prescribed in 12.403(b), the contracting officer may insert the following clause in solicitations and contracts, when a fixed-price supply contract is contemplated.

DELIVERY OF EXCESS QUANTITIES OF $100 OR LESS (APR 1984)

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and the Government receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. The Government may retain such excess quantities up to $100 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of $100 will, at the option of the Government, either be returned at the Contractor's expense or retained and paid for by the Government at the contract unit price.

(End of clause)
(V 7-104.103 1980 DEC)

52.212-11 Variation in Estimated Quantity.

As prescribed in 12.403(c), insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated that authorizes a variation in the estimated quantity of unit-priced items:

VARIATION IN ESTIMATED QUANTITY (APR 1984)

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

period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgement of the Contracting Officer, is justified.

(End of clause)
(R 7-603.27 1968 APR)

52.212-12 Suspension of Work.

As prescribed in 12.505(a), insert the following clause in solicitations and contracts when a fixed-price construction or architect-engineer contract is contemplated:

SUSPENSION OF WORK (APR 1984)

(a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

(End of clause)
(R 7-602.46 1968 FEB)

52.212-13 Stop-Work Order.

As prescribed in 12.505(b), when contracting by negotiation, the contracting officer may insert the following clause in solicitations and contracts for supplies, services, or research and development. The "90-day" period stated in the clause may be reduced to less than 90 days.

STOP-WORK ORDER (APR 1984)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts a claim for the adjustment within 30 days after the end of the period of work stoppage; *provided*, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim asserted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the conveninece of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(End of clause)
(AV 7-105.3 1971 APR)

Alternate I (APR 1984). If this clause is inserted in a cost-reimbursement contract, substitute in paragraph (a)(2) the words "the Termination clause of this contract" for the words "the Default, or the Termination for Convenience of the Government clause of this contract." In paragraph (b) substitute the words "an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected" for the words "an equitable ajdustment in the delivery schedule or contract price, or both."

52.212-14 Stop-Work Order—Facilities.

As prescribed in 12.505(c), insert the following clause in solicitations and contracts when a facilities acquisition contract or a consolidated facilities contract is contemplated. The "90-day" period stated in the clause may be reduced to less than 90 days.

STOP-WORK ORDER—FACILITIES (APR 1984)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the acquisition, construction, or installation work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall, at Government expense, immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination of Work clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery completion schedule, the estimated cost, or both, and the contract shall be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts a claim for the adjustment within 30 days after the end of the period of work stoppage; *provided*, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim asserted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) An appropriate equitable adjustment may be made in any related contract of the Contractor that provides for adjustment and is affected by any stop-work order under this clause. The Government shall not be liable to the Contractor for damages or loss of profits because of a stop-work order issued under this clause.

(End of clause)
(AV 7-702.21(d) 1964 SEP)

52.212-15 Government Delay of Work.

As prescribed in 12.505(d), insert the following clause in solicitations and contracts when a fixed-price contract is contemplated for supplies other than commercial or modified-commercial items. The clause use is optional when a fixed-price contract is contemplated for services, or for supplies that are commercial or modified-commercial items.

GOVERNMENT DELAY OF WORK (APR 1984)

(a) If the performance of all or any part of the work of this contract is delayed or interrupted (1) by an act of the Contracting Officer in the administration of this contract that is not expressly or impliedly authorized by this contract, or (2) by a failure of the Contracting Officer to act within the time specified in this contract, or within a reasonable time if not specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this contract caused by the delay or interruption and the contract shall be modified in writing accordingly. Adjustment shall also be made in the delivery or performance dates and any other contractual term or condition affected by the delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(b) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved, and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

(End of clause)
(AV 7-104.77 1968 SEP)

52.213-1 Fast Payment Procedure.

As prescribed in 13.305, insert the following clause in solicitations and contracts when the conditions in 13.302 are applicable and it is intended that the fast payment procedure be used in the contract (in the case of BPA's, the contracting officer may elect to insert the clause either in the BPA or in orders under the BPA):

FAST PAYMENT PROCEDURE (APR 1984)

(a) *General.* Invoices will be paid on the basis of the Contractor's delivery to a post office or common carrier (or, in shipment by other means, to the point of first receipt by the Government).

(b) *Responsibility for supplies.* Title to the supplies shall vest in the Government upon delivery to a post office or common carrier for shipment to the specific destination. If shipment is by means other than Postal Service or common carrier, title to the supplies shall vest in the Government upon delivery to the point of first receipt by the Government. Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall assume all responsibility and risk of loss for supplies (1) not received at destination, (2) damaged in transit, or (3) not conforming to purchase requirements. The Contractor shall either replace, repair, or correct those supplies promptly at the Contractor's expense, but only if instructions to do so are furnished by the Contracting Officer within 90 days from the date title to the supplies vests in the Government (180 days for overseas shipments).

(c) *Preparation of invoice.* (1) Upon delivery of supplies to a post office or common carrier, (or, in shipments by other means, the point of first receipt by the Government) the Contractor shall prepare an invoice as provided in this contract, order, or blanket purchase agreement. In addition, the invoice shall be prominently marked "FAST PAY".

(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 cost of parcel post insurance will not be paid by the Government. If transportation charges are separately stated on the invoice, the Contractor agrees to retain related paid freight bills or other transportation billings paid separately for a period of 3 years and to furnish the bills to the Government when requested for audit purposes.

(3) If this contract, order, or blanket purchase agreement requires the preparation of a receiving report on a prescribed form, the Contractor has the option of either preparing the receiving report on the prescribed form or including the following information on the invoice, in addition to that required in subparagraph (c)(1) above:

(i) A statement in prominent letters "NO RECEIVING REPORT PREPARED".

(ii) Shipment number.

(iii) Mode of shipment.

(iv) At line item level, (A) national stock number and/or manufacturer's part number, (B) unit of measure, (C) Ship-To Point, (D) Mark-For Point if in contract, and (E) FEDSTRIP/MILSTRIP document number if in contract.

(4) If this contract, order or blanket purchase agreement does not require preparation of a receiving report on a prescribed form, the invoice will include at the line item level information at the line item level in addition to that required in subparagraph (c)(1) above:

(i) Ship-To-Point.

(ii) Mark-For-Point.

(iii) FEDSTRIP/MILSTRIP document number if in contract, in addition to that required in subparagraph (c)(1) above.

(5) Where a receiving report is not required, a copy of the invoice will be included in each shipment.

(d) *Certification of invoice.* The Contractor agrees that the submission of an invoice to the Government for payment is a certification that the supplies for which the Government is being billed 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.* All outer shipping containers shall be marked "FAST PAY".

(End of clause)
(R 7-104.84(a) 1981 MAY)
(R 7-104.84(b) 1981 MAY)

52.213-2 Invoices.

As prescribed in 13.507(c), insert the following clause in purchase orders that authorize advance payments (see 31 U.S.C. 530) for subscriptions or other charges for newspapers, magazines, periodicals, or other publications (i.e., any publication printed, microfilmed, photocopied, or magnetically or otherwise recorded for auditory or visual usage):

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 subcription 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)
(AV 7-2003.45 1974 APR)

52.213-3 Notice To Supplier.

As prescribed in 13.507(d), insert the following clause in unpriced purchase orders:

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)
(AV 7-2003.46 1971 NOV)

52.214-1 Solicitation Definitions—Formal Advertising.

As prescribed in 14.201-6(b)(1), insert the following provision in all invitations for bids:

SOLICITATION DEFINITIONS—FORMAL ADVERTISING (APR 1984)

"Advertised," for purposes of this solicitation, includes small business restricted advertising and other types of restricted advertising.

"Offer" means "bid" in formal advertising.

"Solicitation" means an invitation for bids in formal advertising.

(End of provision)
(R SF 33A, Para 1, 1978 JAN)

52.214-2 Type of Business Organization—Formal Advertising

As prescribed in 14.201-6(b)(2), insert the following provision in all invitations for bids:

TYPE OF BUSINESS ORGANIZATION—FORMAL ADVERTISING (APR 1984)

The bidder, by checking the applicable box, represents that it operates as ☐ a corporation incorporated under the laws of the State of ....., ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, or ☐ a joint venture.

(End of provision)
(R SF 33 Part 2, Para 5, 1978 JAN)
(R SF 19B, Para 4, 1976 JUN)

52.214-3 Acknowledgment of Amendments to Invitations for Bids.

As prescribed in 14.201-6(b)(3), insert the following provision in all invitations for bids:

ACKNOWLEDGMENT OF AMENDMENTS TO INVITATIONS FOR BIDS (APR 1984)

Bidders shall acknowledge receipt of any amendment to this solicitation (a) by signing and returning the amendment, (b) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, or (c) by letter or telegram. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

(End of provision)
(R SF 33A, Para 4, 1978 JAN)

52.214-4 False Statements in Bids.

As prescribed in 14.201-6(b)(4), insert the following provision in all invitations for bids:

FALSE STATEMENTS IN BIDS (APR 1984)

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(End of provision)
(R 2-201(b)(Xiii))
(R 1-2.201(a)(11))

52.214-5 Submission of Bids.

As prescribed in 14.201-6(c)(1), insert the following provision in invitations for bids unless they are for construction that is not estimated to exceed $10,000. The use of this provision in invitations for bids for construction that is not estimated to exceed $10,000 is optional:

SUBMISSION OF BIDS (APR 1984)

(a) Bids and bid modifications shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation and (2) showing the time specified for receipt, the solicitation number, and the name and address of the bidder.

(b) Telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice, if such notice is received by the time specified for receipt of bids.

(End of provision)
(R SF 33A Para 5, 1978 JAN)

52.214-6 Explanation to Prospective Bidders.

As prescribed in 14.201-6(c)(2), insert the following provision in invitations for bids unless they are for construction that is not estimated to exceed $10,000. The use of this provision in invitations for bids for construction that is not estimated to exceed $10,000 is optional:

EXPLANATION TO PROSPECTIVE BIDDERS (APR 1984)

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

(End of provision)
(R SF 33A, Para 3, 1978 JAN)

52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.

As prescribed in 14.201-6(c)(3), insert the following provision in invitations for bids unless they are for construction that is not estimated to exceed $10,000. The use of this provision in invitations for bids for construction that is not estimated to exceed $10,000 is optional:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (APR 1984)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th); or

(2) Was sent by mail (or was a telegraphic bid if authorized), and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) above.

(c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the bid, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, bidders should request the postal clerks to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

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

(f) A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and that person signs a receipt for the bid.

(End of provision)
(R 7-2002.2 1979 MAR)
(R 1-2.201(a)(31))

52.214-8 Parent Company and Identifying Data.

As prescribed in 14.201-6(d), insert the following provision in invitations for bids unless they are for construction that is not estimated to exceed $10,000:

PARENT COMPANY AND IDENTIFYING DATA (APR 1984)

(a) A "parent" company, for the purpose of this provision, is one that owns or controls the activities and basic business policies of the bidder. To own the bidding company means that the parent company must own more than 50 percent of the voting rights in that company. A company may control a bidder as a parent even though not meeting the requirement for such ownership if the parent company is able to formulate, determine, or veto basic policy decisions of the offeror through the use of dominant minority voting rights, use of proxy voting, or otherwise.

(b) The bidder ☐ is, ☐ is not [*check applicable box*] owned or controlled by a parent company.

(c) If the bidder checked "is" in paragraph (b) above, it shall provide the following information:

Name and Main Office Address of Parent Company (Include Zip Code)	Parent Company's Employer's Identification Number

(d) If the bidder checked "is not" in paragraph (b) above, it shall insert its own Employer's Identification Number on the following line .....

(End of provision)
(R SF 33, Part 2, Para 6 1977 MAR)
(R SF 33A, Para 16 and 17 1969 MAR)

52.214-9 Failure to Submit Bid.

As prescribed in 14.201-6(e)(1), insert the following provision in invitations for bids except those for construction:

FAILURE TO SUBMIT BID (APR 1984)

Recipients of this solicitation not responding with a bid should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter or postcard whether they want to receive future solicitations for similar requirements. If a recipient does not submit a bid and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

(End of provision)
(R SF 33A, Para 6, 1978 JAN)

52.214-10 Contract Award—Formal Advertising.

As prescribed in 14.201-6(e)(2), insert the following provision in invitations for bids except those for construction:

CONTRACT AWARD—FORMAL ADVERTISING (APR 1984)

(a) The Government will award a contract resulting from this solicitation to the responsible bidder whose bid conforming to the solicitation will be most advantageous to the Government, price and other factors, specified elsewhere in this solicitation, considered.

(b) The Government may (1) reject any or all bids, (2) accept other than the lowest bid, and (3) waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. *Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the bidder specifies otherwise in the bid.*

(d) A written award or acceptance of a bid mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the bid shall result in a binding contract without further action by either party.

(End of provision)
(R SF 33A, Para 10, 1978 JAN)

52.214-11 Order of Precedence—Formal Advertising.

As prescribed in 14.201-6(f)(1), insert the following provision in invitations for bids to which the uniform contract format applies:

ORDER OF PRECEDENCE—FORMAL ADVERTISING (APR 1984)

Any inconsistency in this solicitation shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) representations and other instructions; (c) contract clauses; (d) other documents, exhibits, and attachments; and (e) the specifications.

(End of provision)
(R 7-2003.41 1973 APR)

52.214-12 Preparation of Bids.

As prescribed in 14.201-6(f)(2), insert the following provision in invitations for bids to which the uniform contract format applies:

PREPARATION OF BIDS (APR 1984)

(a) Bidders are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the bidder's risk.

(b) Each bidder shall furnish the information required by the solicitation. The bidder shall sign the bid and print or type its name on the Schedule and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(c) For each item offered, bidders shall (1) show the unit price, including, unless otherwise specified, packaging, packing, and preservation and (2) enter the extended price for the quantity of each item offered in the "Amount" column of the Schedule. In case of discrepancy between a unit price and an extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

(d) Bids for supplies or services other than those specified will not be considered unless authorized by the solicitation.

(e) Bidders must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.

(f) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

(End of provision)
(R SF 33A, Para 2, 1978 JAN)

52.214-13 Telegraphic Bids.

As prescribed in 14.201-6(g), insert the following provision in invitations for bids if the contracting officer decides to authorize telegraphic bids:

TELEGRAPHIC BIDS (APR 1984)

(a) Bidders may submit telegraphic bids as responses to this solicitation. These responses must arrive at the place, and by the time, specified in the solicitation.

(b) Telegraphic bids shall refer to this solicitation and include the items or subitems, quantities, unit prices, time and place of delivery, all representations and other information required by this solicitation, and a statement of agreement with all the terms, conditions, and provisions of the invitation for bids.

(c) Telegraphic bids that fail to furnish required representations or information, or that reject any of the terms, conditions, and provisions of the solicitation, may be excluded from consideration.

(d) Bidders must promptly sign and submit complete copies of the bids in confirmation of their telegraphic bids.

(e) The term "telegraphic bids," as used in this provision, includes mailgrams.

(End of provision)
(R 7-2003.29 1964 MAR)

52.214-14 Place of Performance—Formal Advertising.

As prescribed in 14.201-6(h), insert the following provision in invitations for bids except those in which the place of performance is specified by the Government:

PLACE OF PERFORMANCE—FORMAL ADVERTISING (APR 1984)

(a) The bidder, in the performance of any contract resulting from this solicitation, ☐ intends, ☐ does not intend [*check applicable box*] to use one or more plants or facilities located at a different address from the address of the bidder as indicated in this bid.

(b) If the bidder checks "intends" in paragraph (a) above, it shall insert in the spaces provided below the required information:

Place of Performance (Street Address, City, County, State, Zip Code)	Name and Address of Owner and Operator of the Plant or Facility if Other than Bidder

(End of provision)
(R 2-201(a) Sec K (iv))
(R 1-2.201(b)(4))

52.214-15 Period for Acceptance of Bids.

As prescribed in 14.201-6(i), insert the following provision in invitations for bids (IFB's) that are not issued on Standard Form 33, Solicitation, Offer, and Award, except IFB's (1) for construction or (2) in which the Government specifies a minimum acceptance period:

PERIOD FOR ACCEPTANCE OF BIDS (APR 1984)

In compliance with the solicitation, the bidder agrees, if this bid is accepted within ..... calendar days (60 calendar days unless a different period is inserted by the bidder) from the date specified in the solicitation for

receipt of bids, to furnish any or all items upon which prices are bid at the price set opposite each item, delivered at the designated point(s), within the time specified in the Schedule.

(End of provision)
(R SF33 1977 MAR)

52.214-16 Minimum Bid Acceptance Period.

As prescribed in 14.201-6(j), insert the following provision in invitations for bids, except for construction, if the contracting officer determines that a minimum acceptance period must be specified:

MINIMUM BID ACCEPTANCE PERIOD (APR 1984)

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of ..... calendar days [*the Contracting Officer shall insert the number of days*].

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the Government's minimum requirement.

The bidder allows the following acceptance period: ..... calendar days.

(e) A bid allowing less than the Government's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

(End of provision)
(R 2-201(a) Sec. L(xvii) (A) and (B) 1975 MAR)
(R 2-201(b)(xii)(B) 1975 MAR)
(R 1-2.201(a)(15))

52.214-17 Affiliated Bidders.

As prescribed in 14.201-6(k), insert the following provision in invitations for bids if the contracting officer determines that disclosure of affiliated bidders is necessary to prevent practices prejudicial to fair and open competition, such as improper multiple bidding:

AFFILIATED BIDDERS (APR 1984)

(a) Business concerns are affiliates of each other when, either directly or indirectly, (1) one concern controls or has the power to control the other, or (2) a third party controls or has the power to control both.

(b) Each bidder shall submit with its bid an affidavit stating that it has no affiliates, or containing the following information:

(1) The names and addresses of all affiliates of the bidder.

(2) The names and addresses of all persons and concerns exercising control or ownership of the bidder and any or all of its affiliates, and whether they exercise such control or ownership as common officers, directors, stockholders holding controlling interest, or otherwise.

(End of clause)
(R 7-2003.12 1974 APR)

52.214-18 Preparation of Bids—Construction.

As prescribed in 14.201-6(l), insert the following provision in invitations for bids for construction work estimated to exceed $10,000. The use of this provision in invitations for bids for construction work that is not estimated to exceed $10,000 is optional:

PREPARATION OF BIDS—CONSTRUCTION (APR 1984)

(a) Bids must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing a bid must initial each erasure or change appearing on any bid form.

(b) The bid form may require bidders to submit bid prices for one or more items on various bases, including—

(1) Lump sum bidding;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of subparagraphs (1) through (3) above.

(c) If the solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "no bid" in the space provided for any item on which no price is submitted.

(d) Alternate bids will not be considered unless this solicitation authorizes their submission.

(End of provision)
(R SF 22, Para 5, 1978 FEB)

52.214-19 Contract Award—Formal Advertising—Construction.

As prescribed in 14.201-6(m), insert the following provision in all invitations for bids for construction work that is estimated to exceed $10,000:

CONTRACT AWARD—FORMAL ADVERTISING—CONSTRUCTION (APR 1984)

(a) The Government will award a contract resulting from this solicitation to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, price and other factors considered.

(b) The Government may reject any or all bids, and waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the bid.

(End of provision)
(R SF 22, Para 10, 1978 FEB)

52.214-20 Bid Samples.

As prescribed in 14.201-6(o)(1), insert the following provision in invitations for bids if bid samples are required:

BID SAMPLES (APR 1984)

(a) "Bid samples" are item sample submissions required of bidders to show those characteristics of the offered products that cannot adequately be described by specifications or purchase descriptions (e.g., balance, facility of use, or pattern).

(b) Bid samples, required elsewhere in this solicitation, must be furnished as part of the bid and must be received by the time specified for receipt of bids. Failure to furnish samples on time will require rejection of the bid, except that a late sample sent by mail may be considered under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

(c) Bid samples will be tested or evaluated to determine compliance with all the characteristics listed for examination in this solicitation. Failure of these samples to conform to the required characteristics will require rejection of the bid. Products delivered under any resulting contract must conform to (1) the approved sample for the characteristics listed for test or evaluation and (2) the specifications for all other characteristics.

(d) Unless otherwise specified in the solicitation, bid samples shall be (1) submitted at no expense to the Government, and (2) returned at the bidder's request and expense, unless they are destroyed during preaward testing.

(End of provision)
(R 7-2003.30(a) 1974 APR)
(R 1-2.202-4))
(R 2-202.4 1980 OCT)
(R SF 33A 1978 JAN)

Alternate I (APR 1984). If it appears that the conditions in 14.202-4(f)(1) will apply and the contracting officer anticipates granting waivers thereunder, and if the nature of the required product *does not* necessitate limiting the grant of a waiver to a product produced at the same plant in which the product previously acquired or tested was produced, add the following paragraph (e) to the basic provision:

(e) At the discretion of the Contracting Officer, the requirement for furnishing bid samples may be waived for a bidder if (1) the bid states that the offered product is the same as a product offered by the bidder to the ..... [*as appropriate, the Contracting Officer shall designate the contracting office or an alternate activity or office*], and (2) the Contracting Officer determines that the previously offered product was accepted or tested and found to comply with specification and other requirements for technical acceptability conforming in every material respect with those in this solicitation.

(R 7-2003.30(b) 1974 APR)
(R 1-2.202-4)

Alternate II (APR 1984). If it appears that the conditions in 14.202-4(f)(1) will apply and the contracting officer anticipates granting waivers thereunder, and if the nature of the required product necessitates limiting the grant of a waiver to a product produced at the same plant in which the product previously acquired or tested was produced, add the following paragraph (e) to the basic provision:

(e) At the discretion of the Contracting Officer, the requirements for furnishing bid samples may be waived for a bidder if (1) the bid states that the offered product is the same as a product offered by the bidder to the ..... [*as appropriate, the Contracting Officer shall designate the contracting office or an alternate activity or office*] on a previous acquisition, (2) the Contracting Officer determines that the previously offered product was accepted or tested and found to comply with specification and other requirements for technical acceptability conforming in every material respect with those of this solicitation, and (3) the product offered under this solicitation will be produced under a resulting contract at the same plant in which the previously acquired or tested product was produced.

(R 7-2003.30(b) 1974 APR)

52.214-21 Descriptive Literature.

As prescribed in 14.201-6(p)(1), insert the following provision in invitations for bids if (a) descriptive literature is required to evaluate the technical acceptability of an offered product and (b) the required information will not be readily available unless it is submitted by bidders:

DESCRIPTIVE LITERATURE (APR 1984)

(a) "Descriptive literature" means information (e.g., cuts, illustrations, drawings, and brochures) that is submitted as part of a bid. Descriptive literature is required to establish, for the purpose of evaluation and award, details of the product offered that are specified elsewhere in the solicitation and pertain to significant elements such as (1) design; (2) materials; (3) components; (4) performance characteristics; and (5) methods of manufacture, assembly, construction, or operation. The term includes only information required to determine the technical acceptability of the offered product. It does not include other information such as that used in determining the responsibility of a prospective Contractor or for operating or maintaining equipment.

(b) Descriptive literature, required elsewhere in this solicitation, must be (1) identified to show the item(s) of the offer to which it applies and (2) received by the time specified in this solicitation for receipt of bids. Failure to submit descriptive literature on time will require rejection of the bid, except that late descriptive literature sent by mail may be considered under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

(c) The failure of descriptive literature to show that the product offered conforms to the requirements of this solicitation will require rejection of the bid.

(End of provision)
(R 7-2003.31(a) UNDATED)
(R 1-2.202-5(d))

Alternate I (APR 1984). If the possibility exists that the contracting officer may waive the requirement for furnishing descriptive literature for a bidder offering a previously supplied product that meets specification requirements of the current solicitation, add the following paragraphs (d) and (e).

(d) At the discretion of the Contracting Officer, the requirement for furnishing descriptive literature under this solicitation may be waived for any bidder that makes an affirmative representation in subparagraph (d)(1) below, if the Contracting Officer determines that the product supplied by the bidder under a prior contract meets the requirements of this solicitation.

(1) The bidder represents that it ☐ has, ☐ has not [*check applicable box*] supplied a product to the ..... [*as appropriate, the Contracting Officer shall designate the contracting office or an alternate activity or office*] under a prior contract that is the same as the product offered under this solicitation for which descriptive literature is required.

(2) If the bidder checked "has" in paragraph (d)(1) above, and seeks a waiver of the requirement for submitting descriptive literature, the bidder must fill in the following information:

Prior contract number .....
Date of prior contract.....
Contract line item number of product supplied .....
Name and address of government activity to which delivery was made.....
Date of final delivery of product supplied .....

(e) Bidders must submit bids on the basis of required descriptive literature or on the basis of a previously supplied product under paragraph (d) above. A bidder submitting a bid on one of these two bases may not elect to have its bid considered on the alternative basis after the time specified for receipt of bids. A bidder's request for a waiver under paragraph (d) above will be disregarded if that bidder has submitted the descriptive literature required under this solicitation.

(R 1-2003.31(b) UNDATED)
(R 2.202-5(e))

52.214-22 Evaluation of Bids for Multiple Awards.

As prescribed in 14.201-6(q), insert the following provision in invitations for bids when the contracting officer determines that multiple awards might be made if doing so is economically advantageous to the Government:

EVALUATION OF BIDS FOR MULTIPLE AWARDS (APR 1984)

In addition to other factors, bids will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (multiple awards). It is assumed, for the purpose of evaluating bids, that $250 would be the administrative cost to the Government for issuing and administering each contract awarded under this solicitation, and individual awards will be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(End of provision)
(R 7-2003.23(b) 1982 AUG)

52.214-23 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Formal Advertising.

As prescribed in 14.201-6(r), insert the following provision in solicitations for technical proposals in step one of two-step formal advertising:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP FORMAL ADVERTISING (APR 1984)

(a) Any technical proposal under step one of two-step formal advertising received at the office designated in this solicitation after the exact time specified for receipt will not be considered unless it is received before the invitation for bids in step two is issued and it—

(1) Was sent by registered or certified mail not later than the 5th calendar day before the date specified for receipt of technical proposals (e.g., a technical proposal submitted in response to a solicitation requiring receipt of technical proposals by the 20th of the month must have been mailed by the 15th);

(2) Was sent (i) by mail, or (ii) if authorized, by telegram (including mailgram), and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(3) Is the only technical proposal received.

(b) Any modification of a technical proposal is subject to the same conditions as in paragraph (a) above, except that the use of a telegram (or mailgram) is authorized.

(c) Technical proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before the exact time set for receipt of bids under step two. Technical proposals may be withdrawn in person by the submitter or the submitter's authorized representative if, before the exact time set for receipt of bids in step two, the identity of the person requesting withdrawal is established and that person signs a receipt for the technical proposal.

(d) The only acceptable evidence to establish the date of mailing of a late technical proposal, modification, or withdrawal of a technical proposal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the technical

proposal, modification, or withdrawal of technical proposal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, submitters of technical proposals should request the postal clerks to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(End of provision)
(R 7-2003.3 1979 MAR)

52.214-24 Multiple Technical Proposals.

As prescribed in 14.201-6(s), insert the following provision in solicitations for technical proposals in step one of two-step formal advertising if the contracting officer permits the submission of multiple proposals:

MULTIPLE TECHNICAL PROPOSALS (APR 1984)

In the first step of this two-step acquisition, solicited sources are encouraged to submit multiple technical proposals presenting different basic approaches. Each technical proposal submitted will be separately evaluated and the submitter will be notified as to its acceptability.

(End of provision)
(R 7-2003.36 1974 APR)
(R 1-2.502-1(a)(10))

52.214-25 Step Two of Two-Step Formal Advertising.

As prescribed in 14.201-6(t), insert the following provision in invitations for bids issued under step two of two-step formal advertising:

STEP TWO OF TWO-STEP FORMAL ADVERTISING (APR 1984)

(a) This invitation for bids is issued to initiate step two of two-step formal advertising under Subpart 14.5 of the Federal Acquisition Regulation.

(b) The only bids that the Contracting Officer may consider for award of a contract are those received from bidders that have submitted acceptable technical proposals in step one of this acquisition under .....[*the Contracting Officer shall insert the identification of the step-one request for technical proposals*].

(c) Any bidder that has submitted multiple technical proposals in step one of this acquisition may submit a separate bid on each technical proposal that was determined to be acceptable to the Government.

(End of provision)
(R 7-2003.37 1974 APR)
(R 1-2.503-2(b))

52.214-26 Audit—Formal Advertising.

As prescribed in 14.201-7(a), when contracting by formal advertising, insert the following clause in solicitations and contracts if the contract amount is expected to exceed $100,000:

AUDIT—FORMAL ADVERTISING (APR 1984)

(a) *Cost or pricing data.* If the Contractor has submitted cost or pricing data in connection with the pricing of any modification to this contract, unless the pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Contracting Officer or a representative who is an employee of the Government shall have the right to examine and audit all books, records, documents, and other data of the Contractor (including computations and projections) related to negotiating, pricing or performing the modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. In the case of pricing any modification, the Comptroller General of the United States or a representative who is an employee of the Government shall have the same rights.

(b) *Availability.* The Contractor shall make available at its office at all reasonable times the materials described in paragraph (a) above, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) 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.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(c) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (c), in all subcontracts over $10,000 under this contract, altering the clause only as necessary to identify properly the contracting parties and the contracting office under the Government prime contract.

(End of clause)
(R 7-104.41(a) 1982 DEC)
(R 1-3.814-2(a))

52.214-27 Price Reduction for Defective Cost or Pricing Data—Modifications—Formal Advertising.

As prescribed in 14.201-7(b), when contracting by formal advertising, insert the following clause in solicitations and contracts if the contract amount is expected to exceed $500,000, unless a contract with a foreign government or an agency of that government is contemplated and the head of the contracting activity has waived the requirement for the inclusion of the clause:

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS—FORMAL ADVERTISING (APR 1984)

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, of more than $500,000 except that this clause does not apply to any modification for which the price is—

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(b) If any price, including profit, negotiated in connection with any modification under this clause, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) above.

(c) Any reduction in the contract price under paragraph (b) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; *provided*, that the actual subcontract price was not itself affected by defective cost or pricing data.

(End of clause)
(R 7-104.29(b) 1982 DEC)
(R 1-3.814-1(b))

52.214-28 Subcontractor Cost or Pricing Data—Modifications—Formal Advertising.

As prescribed in 14.201-7(c), when contracting by formal advertising, insert the following clause in solicitations and contracts if the contract amount is expected to exceed $500,000, unless a contract with a foreign government is contemplated and the head of the

contracting activity has waived the requirement for the inclusion of this clause:

SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS—FORMAL ADVERTISING (APR 1984)

(a) The requirements of paragraphs (b) and (c) of this clause shall (1) become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed $500,000 and (2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed $500,000 when entered into, or pricing any subcontract modification involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed $500,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is—

(1) Based an adequate completion;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in subsection 15.804-4 of the Federal Acquisition Regulation that, to the best of its knowledge and belief, the data submitted under paragraph (b) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds $500,000 when entered into.

(End of clause)
(R 7-104.42(b) 1982 DEC)
(R 1-3.814-3(b))

52.215-1 Examination of Records by Comptroller General.

As prescribed in 15.106-1(b), when contracting by negotiation (including small business restricted advertising), insert the following clause in solicitations and contracts except when (a) making small purchases (see Part 13), (b) contracting for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge, or (c) making contracts with foreign contractors for which the agency head authorizes omission under Subpart 25.9:

EXAMINATION OF RECORDS BY COMPTROLLER GENERAL (APR 1984)

(a) This clause applies if this contract exceeds $10,000 and was entered into by negotiation.

(b) The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under this contract or for any shorter period specified in Federal Acquisition Regulation (FAR) Subpart 4.7, Contractor Records Retention, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract.

(c) The Contractor agrees to include in first-tier subcontracts under this contract a clause to the effect that the Comptroller General or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under the subcontract or for any shorter period specified in FAR Subpart 4.7, have access to and the right to examine any of the subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract. "Subcontract," as used in this clause, excludes (1) purchase orders not exceeding $10,000 and (2) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

(d) The periods of access and examination in paragraphs (b) and (c) above for records relating to (1) appeals under the Disputes clause, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.

(End of clause)
(R 7-104.15 1975 JUN)
(R 1-7.103-3)

52.215-2 Audit—Negotiation.

As prescribed in 15.106-2(b), when contracting by negotiation, insert the following clause in solicitations and contracts, unless the acquisition is a small purchase under Part 13:

AUDIT—NEGOTIATION (APR 1984)

(a) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of these, the Contractor shall maintain—and the Contracting Officer or representatives of the Contracting Officer shall have the right to examine and audit—books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(b) *Cost or pricing data.* If, pursuant to law, the Contractor has been required to submit cost or pricing data in connection with pricing this contract or any modification to this contract, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all books, records, documents, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the contract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.

(c) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(d) *Availability.* The Contractor shall make available at its office at all reasonable times the materials described in paragraphs (a) and (b) above, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation, or for any longer period required by statute or by other clauses of this contract. In addition—

(1) 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; and

(2) 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 disposed of.

(e) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (e), in all subcontracts over $10,000 under this contract, altering the clause only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)
(R 7-104.41(a) 1978 AUG)
(R 1-3.814-2(a))
(R 7-303.28)
(R 7-402.30)
(R 7-603.20)
(R 7-605.11)
(R 7-607.22)
(R 7-802.7)
(R 7-901.16)
(R 7-1702.15 1971 APR)
(R 7-1903.29)
(R 7-1909.24)
(R 7-2102.19)

Alternate I (APR 1984). In facilities contracts, add the following sentence at the end of paragraph (a) of the basic clause:

The obligations and rights specified in this paragraph shall extend to the use of, and charges for the use of, the facilities under this contract.

(R 7-104.41(b) 1978 AUG)
(R 7-702.48)
(R 7-703.41)
(R 7-704.33)

52.215-3 Solicitation for Information or Planning Purposes.

As prescribed in 15.405-2, insert the following provision on the face of each solicitation (other than those excluded by 15.401) issued for information or planning purposes:

SOLICITATION FOR INFORMATION OR PLANNING PURPOSES (APR 1984)

(a) The Government does not intend to award a contract on the basis of this solicitation or to otherwise pay for the information solicited except as provided in subsection 31.205-18, Bid and proposal (B&P) costs, of the Federal Acquisition Regulation.

(b) This solicitation is issued for the purpose of: [*state purpose*].

(End of provision)
(R 1-309)

52.215-4 Notice of Possible Standardization.

As prescribed in 15.407(b), upon the approval of chief of the contracting office (see 15.213(d)), the following provision may be inserted in requests for proposals, other than those excluded by 15.401 and those for information or planning purposes, for supplies that subsequently might be standardized for the applications specified in 15.213(b)(1) (see 14.201-6(n) regarding use of the provision in invitations for bids):

NOTICE OF POSSIBLE STANDARDIZATION (APR 1984)

If the supplies for which this solicitation has been issued are established as standard, future contracts for the required supplies may be negotiated under the authority of section 15.213 of the Federal Acquisition Regulation.

(End of provision)
(R 7-2003.38 1975 OCT)

52.215-5 Solicitation Definitions.

As prescribed 15.407(c)(1), insert the following provision in requests for proposals and requests for quotations:

SOLICITATION DEFINITIONS (APR 1984)

"Offer" means "proposal" in negotiation.

"Solicitation" means a request for proposals (RFP) or a request for quotations (RFQ) in negotiation.

(End of provision)
(R SF 33A, Para 1, 1978 JAN)

52.215-6 Type of Business Organization.

As prescribed in 15.407(c)(2), insert the following provision in requests for proposals and requests for quotations:

TYPE OF BUSINESS ORGANIZATION (APR 1984)

The offeror or quoter, by checking the applicable box, represents that it operates as ☐ a corporation incorporated under the laws of the State of ....., ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, or ☐ a joint venture.

(End of provision)
(AV SF 33 1977 MAR)
(R SF 19B, Para 4, 1976 JUNE)

52.215-7 Unnecessarily Elaborate Proposals or Quotations.

As prescribed in 15.407(c)(3), insert the following provision in requests for proposals and requests for quotations:

UNNECESSARILY ELABORATE PROPOSALS OR QUOTATIONS (APR 1984)

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the offeror's or quoter's lack of cost consciousness. Elaborate art work, expensive paper and bindings, and expensive visual and other presentation aids are neither necessary nor wanted.

(End of provision)
(AV 7-2003.40 1969 OCT)

52.215-8 Acknowledgment of Amendments to Solicitations.

As prescribed in 15.407(c)(4), insert the following provision in requests for proposals:

ACKNOWLEDGMENT OF AMENDMENTS TO SOLICITATIONS (APR 1984)

Offerors shall acknowledge receipt of any amendment to this solicitation (a) by signing and returning the amendment; (b) by identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer; or (c) by letter or telegram. The Government must receive the acknowledgment by the time specified for receipt of offers.

(End of provision)
(R SF 33A Para 4, 1978 JAN)

52.215-9 Submission of Offers.

As prescribed in 15.407(c)(5), insert the following provision in requests for proposals:

SUBMISSION OF OFFERS (APR 1984)

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice, if that notice is received by the time specified for receipt of offers.

(c) Item samples, if required, must be submitted within the time specified for receipt of offers. Unless otherwise specified in the solicitation, these samples shall be (1) submitted at no expense to the Government and (2) returned at the sender's request and expense, unless they are destroyed during preward testing.

(End of provision)
(R SF 33A Para 5, 1978 JAN)

52.215-10 Late Submissions, Modifications, and Withdrawals of Proposals.

As prescribed in 15.407(c)(6), insert the following provision in requests for proposals:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS (APR 1984)

(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(3) Is the only proposal received.

(b) Any modification of a proposal or quotation, except a modification resulting from the Contracting Officer's request for "best and final" offer, is subject to the same conditions as in subparagraphs (a)(1) and (2) above.

(c) A modification resulting from the Contracting Officer's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Government after receipt at the Government installation.

(d) The only acceptable evidence to establish the date of mailing of a late proposal or modification sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the proposal, quotation, or modification shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors or quoters should request the postal clerks to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(f) Notwithstanding paragraph (a) above, a late modification of an otherwise successful

proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(g) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(End of provision)
(R 7-2002.4 1979 MAR)
(1-3.802.1)

52.215-11 Authorized Negotiators.

As prescribed in 15.407(c)(7), insert the following provision in all requests for proposals and requests for quotations:

AUTHORIZED NEGOTIATORS (APR 1984)

The offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposals or quotations: [*list names, titles, and telephone numbers of the authorized negotiators*].

(End of provision)
(R 3-501(b) Sec K (iv))

52.215-12 Restriction on Disclosure and Use of Data.

As prescribed in 15.407(c)(8), insert the following provision in requests for proposals and requests for quotations:

RESTRICTION ON DISCLOSURE AND USE OF DATA (APR 1984)

Offerors or quoters who include in their proposals or quotations data that they do not want disclosed to the public for any purpose or used by the Government except for evaluation purposes, shall—

(a) Mark the title page with the following legend:

"This proposal or quotation includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part— for any purpose other than to evaluate this proposal or quotation. If, however, a contract is awarded to this offeror or quoter as a result of—or in connection with— the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [*insert numbers or other identification of sheets*]"; and

(b) Mark each sheet of data it wishes to restrict with the following legend:

"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal or quotation."

(End of provision)
(R 3-501(b) Sec L (xxiv))

52.215-13 Preparation of Offers.

As prescribed in 15.407(d)(1), insert the following provision in requests for proposals other than those excluded by 15.401:

PREPARATION OF OFFERS (APR 1984)

(a) Offerors are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the Schedule and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(c) For each item offered, offerors shall (1) show the unit price/cost, including, unless otherwise specified, packaging, packing, and preservation and (2) enter the extended price/cost for the quantity of each item offered in the "Amount" column of the Schedule. In case of discrepancy between a unit price/cost and an extended price/cost, the unit price/cost will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

(d) Offers for supplies or services other than those specified will not be considered unless authorized by the solicitation.

(e) Offerors must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.

(f) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

(End of provision)
(R SF 33A, Para 2, 1978 JAN)

52.215-14 Explanation to Prospective Offerors.

As prescribed in 15.407(d)(2), insert the following provision in requests for proposals other than those excluded by 15.401:

EXPLANATION TO PROSPECTIVE OFFERORS (APR 1984)

Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all propsective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

(End of provision)
(R SF 33A, Para 3, 1978 JAN)

52.215-15 Failure to Submit Offer.

As prescribed in 15.407(d)(3), insert the following provision in requests for proposals other than those excluded by 15.401:

FAILURE TO SUBMIT OFFER (APR 1984)

Recipients of this solicitation not responding with an offer should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter or postcard whether they want to receive future solicitations for similar requirements. If a recipient does not submit an offer and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

(End of provision)
(R SF 33A, Para 6, 1978 JAN)

52.215-16 Contract Award.

As prescribed in 15.407(d)(4), insert the following provision in requests for proposals other than those excluded by 15.401:

CONTRACT AWARD (APR 1984)

(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, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The Government may (1) reject any or all offers, (2) accept other than the lowest offer, and (3) waive informalities and minor irregularities in offers received.

(c) The Government may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. *Unless otherwise provided in the Schedule, offers may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the offer.*

(e) A written award or acceptance of 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, as provided in paragraph (d) above), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the Government.

(f) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract. However, if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished is incomplete, inaccurate, or not current.

(End of provision)
(R SF 33A, Para 10, 1978 JAN)

52.215-17 Telegraphic Proposals.

As prescribed in 15.407(e), insert the following provision in requests for proposals that authorize telegraphic proposals or quotations:

TELEGRAPHIC PROPOSALS (APR 1984)

(a) Offerors or quoters may submit telegraphic responses to this solicitation. These responses must arrive in the contracting office by the time specified in this solicitation.

(b) Telegraphic responses shall refer to this solicitation and include the item or sub-items, quantities, unit prices, time and place of delivery, all representations and other information required by this solicitation, and a statement specifying the extent of agreement with all the terms, conditions, and provisions of the solicitation.

(c) Telegraphic responses that fail to furnish required representations or information, or that reject any of the terms, conditions and provisions of the solicitation, may be excluded from consideration.

(d) Offerors must promptly sign and submit complete copies of the proposals in confirmation of their telegraphic responses.

(e) The term "telegraphic responses," as used in the provision, includes mailgrams.

(End of provision)
(R 7-2003.29 1964 MAR)

52.215-18 Order of Precedence.

As prescribed in 15.407(f), insert the following provision in all requests for proposals to which the uniform contract format applies:

ORDER OF PRECEDENCE (APR 1984)

Any inconsistency in this solicitation shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) representations and other instructions; (c) contract clauses; (d) other documents, exhibits, and attachments; and (e) the specifications.

(End of provision)
(R 7-2003.41 1973 APR)

52.215-19 Period for Acceptance of Offer.

As prescribed in 15.407(g), insert the following provision in requests for proposals (other than those excluded by 15.401) that are not issued on SF 33 except those (a) for construction work or (b) in which the Government specifies a minimum acceptance period:

PERIOD FOR ACCEPTANCE OF OFFER (APR 1984)

In compliance with the solicitation, the offeror agrees, if this offer is accepted within.....calendar days (60 calendar days unless a different period is inserted by the offeror) from the date specified in the solicitation for receipt of offers, to furnish any or all items on which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the Schedule.

(End of provision)
(R SF 33 1977 MAR)

52.215-20 Place of Performance.

As prescribed in 15.407(h), insert the following provision in requests for proposals, and in requests for quotations, other than those excluded by 15.401 and those for information or planning purposes, except those in which the place of performance is specified by the Government:

PLACE OF PERFORMANCE (APR 1984)

(a) The offeror or quoter, in the performance of any contract resulting from this solicitation, ☐ intends, ☐ does not intend (check applicable block) to use one or more plants or facilities located at a different address from the address of the offeror or quoter as indicated in this proposal or quotation.

(b) If the offeror or quoter checks "intends" in paragraph (a) above, it shall insert in the spaces provided below the required information:

Place of Performance (Street Address, City, County, State, Zip Code)	Name and Address of Owner and Operator of the Plant or Facility if Other than Offeror or Quoter

(End of provision)
(R 3-501(b) Sec K (viii))

52.215-21 Changes or Additions to Make-or-Buy Program.

As prescribed in 15.708, insert the following clause in solicitations and contracts when it is contemplated that a make-or-buy program will be incorporated in the contract:

CHANGES OR ADDITIONS TO MAKE-OR-BUY PROGRAM (APR 1984)

(a) The Contractor shall perform in accordance with the make-or-buy program incorporated in this contract. If the Contractor proposes to change the program, the Contractor shall, reasonably in advance of the proposed change, (1) notify the Contracting Officer in writing and (2) submit justification in sufficient detail to permit evaluation. Changes in the place of performance of any "make" items in the program are subject to this requirement.

(b) For items deferred at the time of negotiation of this contract for later addition to the program, the Contractor shall, at the earliest possible time, (1) notify the Contracting Officer of each proposed addition and (2) provide justification in sufficient detail to permit evaluation.

(c) Modification of the make-or-buy program to incorporate proposed changes or additions shall be effective upon the Contractor's receipt of the Contracting Officer's written approval.

(End of clause)
(R 7-204.20(a) 1967 APR)
(R 1-3.902-3)

Alternate I (APR 1984). If a less economical "make" or "buy" categorization is selected for one or more items of significant value when a fixed-price incentive contract is contemplated, add the following paragraph (d) to the basic clause:

(d) If the Contractor desires to reverse the categorization of "make" or "buy" for any item or items designated in the contract as subject to this paragraph, it shall (1) support its proposal with cost or pricing data to permit evaluation and (2), after approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract price in accordance with paragraph (k) of the Incentive Price Revision—Firm Target clause or paragraph (m) of the Incentive Price Revision—Successive Targets clause of this contract.

(R 7-204.20(b) 1967 APR)

Alternate II (APR 1984). If a less economical "make" or "buy" categorization is selected for one or more items of significant value when a cost-plus-incentive-fee contract is contemplated, add the following paragraph (d) to the basic clause:

(d) If the Contractor desires to reverse the categorization of "make" or "buy" for any item or items designated in the contract as subject to this paragraph, it shall (1) support its proposal with cost or pricing data to permit evaluation and (2), after approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract's total estimated cost and fee in accordance with paragraph (e) of the Incentive Fee clause.

(R 7-204.20(b) 1967 APR)

52.215-22 Price Reduction for Defective Cost or Pricing Data.

As prescribed in 15.804-8(a), when contracting by negotiation, insert the following clause in solicitations and contracts when it is contemplated that cost or pricing data will be required (see 15.804-2):

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (APR 1984)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data,

(2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; *provided*, that the actual subcontract price was not itself affected by defective cost or pricing data.

(End of clause)
(R 7-104.29(a) 1970 JAN)
(R 1-3.814-1(a))

52.215-23 Price Reduction for Defective Cost or Pricing Data—Modifications.

As prescribed in 15.804-8(b), when contracting by negotiation, insert the following clause in solicitations and contracts when (a) it is contemplated that cost or pricing data will be required (see 15.804-2) for the pricing of contract modifications, and (b) the clause prescribed in 15.804-8(a) has not been included. If the contract amount is expected to be $500,000 or less, the contracting officer shall reduce the dollar amounts specified in the clause, as appropriate.

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS (APR 1984)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed $500,000, except that this clause does not apply to any modification for which the price is—

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) above.

(c) Any reduction in the contract price under paragraph (b) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; *provided*, that the actual subcontract price was not itself affected by defective cost or pricing data.

(End of clause)
(R 7-104.29(b) 1970 JAN)
(R 1-3.814-1(b))

52.215-24 Subcontractor Cost or Pricing Data.

As prescribed in 15.804-8(c), insert the following clause in solicitations and contracts when the clause prescribed in 15.804-8(a) is included. If the contract amount is expected to be $500,000 or less, the contracting officer shall reduce the dollar amounts specified in the clause, as appropriate.

SUBCONTRACTOR COST OR PRICING DATA (APR 1984)

(a) Before awarding any subcontract expected to exceed $500,000 when entered into, or before pricing any subcontract modification involving a pricing adjustment expected to exceed $500,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is—

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in Subsection 15.804-4 of the Federal Acquisition Regulation (FAR) that, to the best of its knowledge and belief, the data submitted under paragraph (a) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds $500,000 when entered into, the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) above requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-25, Subcontractor Cost or Pricing Data—Modifications.

(End of clause)
(R 7-104.42(a) 1970 JAN)
(R 1-3.814-3(a))

52.215-25 Subcontractor Cost or Pricing Data—Modifications.

As prescribed in 15.804-8(d), insert the following clause in solicitations and contracts when the clause prescribed in 15.804-8(b) is included. If the contract amount is expected to be $500,000 or less, the contracting officer shall reduce the dollar amounts specified in the clause, as appropriate.

SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS(APR 1984)

(a) The requirements of paragraphs (b) and (c) of this clause shall (1) become operative only for any modification to this contract involving a pricing adjustment expected to exceed $500,000 and (2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed $500,000 when entered into, or pricing any subcontract modification involving a pricing adjustment expected to exceed $500,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is—

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in Subsection 15.804-4 of the Federal Acquisition Regulation (FAR) that, to the best of its knowledge and belief, the data submitted under paragraph (b) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds $500,000 when entered into.

(End of clause)
(R 7-104.42(b) 1970 JAN)
(R 1-3.814-3(b))

52.215-26 [Reserved].

52.215-27 [Reserved].

52.215-28 [Reserved].

52.215-29 [Reserved].

52.215-30 Facilities Capital Cost of Money.

As prescribed in 15.904, insert the following clause in solicitations and contracts when it is contemplated that the contract will be subject to the cost principles for contracts with commercial organizations, Subpart 31.2:

FACILITIES CAPITAL COST OF MONEY (APR 1984)

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, but only if the prospective contractor elects to claim it below. If the prospective contractor elects to claim this cost, the Waiver of Facilities Capital Cost of Money will be excluded from the contract. If the prospective contractor does not elect to claim this cost, the contract will include the Waiver of Facilities Capital Cost of Money.

(b) By including an item of proposed allowable cost in response to the solicitation, the prospective contractor will be deemed to have elected to claim facilities capital cost of money.

(End of clause)
(NM)

52.215-31 Waiver of Facilities Capital Cost of Money.

As prescribed in 15.904, insert the following clause in solicitations and contracts when it is contemplated that the contract will be subject to the cost principles for contracts with commercial organizations, Subpart 31.2:

WAIVER OF FACILITIES CAPITAL COST OF MONEY (APR 1984)

If the Contractor did not include facilities capital cost of money as a proposed allowable cost, it shall be deemend that the Contractor waived the right to claim it under this contract.

(End of clause)
(AV OFPP Policy Letter 80-7 1980 OCT)

52.216-1 Type of Contract.

As prescribed in 16.105, complete and insert the following provision in requests for proposals (RFP's) and requests for quotations (RFQ's), unless the solicitation is for (a) a small purchase (see Part 13) or (b) information or planning purposes 15.405).

TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a .....
..... [*Contracting Officer insert specific type of contract*] contract resulting from this solicitation.

(End of provision)
(R 3-501(b) Sec L (iv))

52.216-2 Economic Price Adjustment—Standard Supplies.

As prescribed in 16.203-4(a), when contracting by negotiation, insert the following clause in solicitations and contracts when the conditions specified in 16.203-4(a)(1)(i) through (iii) apply (but see 16.203-4(a)(2)). The clause may be modified by increasing the 10-percent limit on aggregate increases specified in subparagraph (c)(1), upon approval by the chief of the contracting office.

ECONOMIC PRICE ADJUSTMENT—STANDARD SUPPLIES (APR 1984)

(a) The Contractor warrants that the unit price stated in the Schedule for ..... [*offeror insert Schedule line item number*] is not in excess of the Contractor's applicable established price in effect on the contract date for like quantites of the same item. The term "unit price" excludes any part of the price directly resulting from requirements for preservation, packaging, or packing beyond standard commercial practice. The term "established price" means a price that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, (2) meets the criteria of subsection 15.804-3 of the Federal Acquisition Regulation (FAR), and (3) is the net price after applying any standard trade discounts offered by the Contractor.

(b) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased. The decrease shall apply to those items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly. The Contractor shall certify (1) on each invoice that each unit price stated in it reflects all decreases required by this clause or (2) on the final invoice that all required price decreases have been applied as required by this clause.

(c) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price shall be increased, upon the Contractor's written request to the Contracting Officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly, subject to the following limitations:

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed 10 percent of the original contract unit price.

(2) The increased contract unit price shall be effective (i) on the effective date of the increase in the applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter or (ii) if the written request is received later, on the date the Contracting Officer receives the request.

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause.

(4) No modification increasing a contract unit price shall be executed under this paragraph (c) until the Contracting Officer verifies the increase in the applicable established price.

(5) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.

(d) During the time allowed for the cancellation provided for in subparagraph (c)(5) above, and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the contract delivery schedule, and the Government shall pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) above.

(End of clause)
(AV 7-106.3 1978 AUG)

52.216-3 Economic Price Adjustment—Semistandard Supplies.

As prescribed in 16.203-4(b), when contracting by negotiation, insert the following clause in solicitations and contracts when the conditions specified in 16.203-4(b)(1)(i) through (iii) apply (but see 16.203-4(b)(2)). The clause may be modified by increasing the 10-percent limit on aggregate increases specified in subparagraph (c)(1), upon approval by the chief of the contracting office.

ECONOMIC PRICE ADJUSTMENT—SEMISTANDARD SUPPLIES (APR 1984)

(a) The Contractor warrants that the supplies identified as line items ..... [*offeror insert Schedule line item number*] in the Schedule are, except for modifications required by the contract specifications, supplies for which it has an established price. The term "established price" means a price that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, (2) meets the criteria of subsection 15.804-3 of the Federal Acquisition Regulation (FAR), and (3) is the net price after applying any standard trade discounts offered by the Contractor. The Contractor further warrants that, as of the date of this contract, any difference between the unit prices stated in the contract for these line items and the Contractor's established prices for like quantities of the nearest commercial equivalents are due to compliance with contract specifications and with any contract requirements for preservation, packaging, and packing beyond standard commercial practice.

(b) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price (exclusive of any part of the unit price that reflects modifications resulting from compliance with specifications or with requirements for preservation, packaging, and packing beyond standard commercial practice) shall be decreased by the same percentage that the established price is decreased. The decrease shall apply to those items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly. The Contractor shall certify (1) on each invoice that each unit price stated in it reflects all decreases required by this clause or (2) in the

final invoice that all required price decreases have been applied as required by this clause.

(c) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price (exclusive of any part of the unit price resulting from compliance with specifications or with requirements for preservation, packaging, and packing beyond standard commercial practice) shall be increased, upon the Contractor's written request to the Contracting Officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly, subject to the following limitations:

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed 10 percent of the original contract unit price.

(2) The increased contract unit price shall be effective (i) on the effective date of the increase in the applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter or (ii) if the written request is received later, on the date the Contracting Officer receives the request.

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause.

(4) No modification increasing a contract unit price shall be executed under this paragraph (c) until the Contracting Officer verifies the increase in the applicable established price.

(5) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.

(d) During the time allowed for the cancellation provided for in subparagraph (c)(5) above, and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the contract delivery schedule, and the Government shall pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) above.

(End of clause)
(AV 7-106.4 1978 AUG)

52.216-4 Economic Price Adjustment—Labor and Material.

As prescribed in 16.203-4(c), when contracting by negotiation, insert a clause that is substantially the same as the following clause in solicitations and contracts when the conditions specified in 16.203-4(c)(1)(i) through (iv) apply (but see 16.203-4(c)(2)). The clause may be modified by increasing the 10-percent limit on aggregate increases specified in subparagraph (c)(4), upon approval by the chief of the contracting office.

ECONOMIC PRICE ADJUSTMENT—LABOR AND MATERIAL (APR 1984)

(a) The Contractor shall notify the Contracting Officer if, at any time during contract performance, the rates of pay for labor (including fringe benefits) or the unit prices for material shown in the Schedule either increase or decrease. The Contractor shall furnish this notice within 60 days after the increase or decrease, or within any additional period that the Contracting Officer may approve in writing, but not later than the date of final payment under this contract. The notice shall include the Contractor's proposal for an adjustment in the contract unit prices to be negotiated under paragraph (b) below, and shall include, in the form required by the Contracting Officer, supporting data explaining the cause, effective date, and amount of the increase or decrease and the amount of the Contractor's adjustment proposal.

(b) Promptly after the Contracting Officer receives the notice and data under paragraph (a) above, the Contracting Officer and the Contractor shall negotiate a price adjustment in the contract unit prices and its effective date. However, the Contracting Officer may postpone the negotiations until an accumulation of increases and decreases in the labor rates (including fringe benefits) and unit prices of material shown in the Schedule results in an adjustment allowable under subparagraph (c)(3) below. The Contracting Officer shall modify this contract (1) to include the price adjustment and its effective date and (2) to revise the labor rates (including fringe benefits) or unit prices of material as shown in the Schedule to reflect the increases or decreases resulting from the adjustment. The Contractor shall continue performance pending agreement on, or determination of, any adjustment and its effective date.

(c) Any price adjustment under this clause is subject to the following limitations:

(1) Any adjustment shall be limited to the effect on unit prices of the increases or decreases in the rates of pay for labor (including fringe benefits) or unit prices for material shown in the Schedule. There shall be no adjustment for (i) supplies or services for which the production cost is not affected by such changes, (ii) changes in rates or unit prices other than those shown in the Schedule, or (iii) changes in the quantities of labor or material used from those shown in the Schedule for each item.

(2) No upward adjustment shall apply to supplies or services that are required to be delivered or performed before the effective date of the adjustment, unless the Contractor's failure to deliver or perform according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the Default clause.

(3) There shall be no adjustment for any change in rates of pay for labor (including fringe benefits) or unit prices for material which would not result in a net change of at least 3 percent of the then-current total contract price. This limitation shall not apply, however, if, after final delivery of all contract line items, either party requests an adjustment under paragraph (b) above.

(4) The aggregate of the increases in any contract unit price made under this clause shall not exceed 10 percent of the original unit price. There is no percentage limitation on the amount of decreases that may be made under this clause.

(d) The Contractor shall include with the final invoice a certification that the Contractor either (1) has not experienced a decrease in rates of pay for labor (including fringe benefits) or unit prices for material shown in the Schedule or (2) has given notice of all such decreases in compliance with paragraph (a) above.

(e) The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and material during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier.

(End of clause)
(AV 7-107 1974 MAR)

52.216-5 Price Redetermination—Prospective.

As prescribed in 16.205-4, when contracting by negotiation, insert the following clause in solicitations and contracts when a fixed-price contract is contemplated and the conditions specified in 16.205-2 and 16.205-3(a) through (d) apply:

PRICE REDETERMINATION—PROSPECTIVE (APR 1984)

(a) *General.* The unit prices and the total price stated in this contract shall be periodically redetermined in accordance with this clause, except that (1) the prices for supplies delivered and services performed before the first effective date of price redetermination (see paragraph (c) below) shall remain fixed and (2) in no event shall the total amount paid under this contract exceed any ceiling price included in the contract.

(b) *Definition.* "Costs," as used in this clause, means allowable costs in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Price redetermination periods.* For the purpose of price redetermination, performance of this contract is divided into successive periods. The first period shall extend from the date of the contract to ..... [see Note (1)] and the second and each succeeding period shall extend for ..... [*insert appropriate number*] months from the end of the last preceding period, except that the parties may agree to vary the length of the final period. The first day of the second and each succeeding period shall be the effective date of price redetermination for that period.

(d) *Data submission.* (1) Not more than ..... nor less than ..... [see Note (2)] days before the end of each redetermination period, except the last, the Contractor shall submit—

(i) Proposed prices for supplies that may be delivered or services that may be performed in the next succeeding period, and—

(A) An estimate and breakdown of the costs of these supplies or services on

Standard Form 1411, Contract Pricing Proposal Cover Sheet (or in any other form on which the parties may agree);

(B) Sufficient data to support the accuracy and reliability of this estimate; and

(C) An explanation of the differences between this estimate and the original (or last preceding) estimate for the same supplies or services; and

(ii) A statement of all costs incurred in performing this contract through the end of the ..... month [see Note (3)] before the submission of proposed prices, on Standard Form 1411, Contract Pricing Proposal Cover Sheet (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(2) The Contractor shall also submit, to the extent that it becomes available before negotiations on redetermined prices are concluded—

(i) Supplemental statements of costs incurred after the date stated in subdivision (d)(1)(ii) above for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(ii) Any other relevant data that the Contracting Officer may reasonably require.

(3) If the Contractor fails to submit the data required by subparagraphs (1) and (2) above, within the time specified, the Contracting Officer may suspend payments under this contract until the data are furnished. If it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(e) *Price redetermination.* Upon the Contracting Officer's receipt of the data required by paragraph (d) above, the Contracting Officer and the Contractor shall promptly negotiate to redetermine fair and reasonable prices for supplies that may be delivered or services that may be performed in the period following the effective date of price redetermination.

(f) *Contract modifications.* Each negotiated redetermination of prices shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer, stating the redetermined prices that apply during the redetermination period.

(g) *Adjusting billing prices.* Pending execution of the contract modification (see paragraph (f) above), the Contractor shall submit invoices or vouchers in accordance with the billing prices stated in this contract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the Contractor submits data showing that the redetermined price will be substantially greater than the current billing prices, the parties shall negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment shall be reflected in a contract modification and shall not affect the redetermination of prices under this clause. After the contract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed-upon prices, and any requested additional payments, refunds, or credits shall be made promptly.

(h) *Quarterly limitation on payments statement.* This paragraph (h) applies only during periods for which firm prices have not been established.

(1) Within 45 days after the end of the quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (h)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) The statement required by subparagraph (1) above need not be submitted for any quarter for which either no costs are to be reported under subdivision (1)(ii) above, or revised billing prices have been established in accordance with paragraph (g) above, and do not exceed the existing contract price, the Contractor's price-redetermination proposal, or a price based on the most recent quarterly statement, whichever is least.

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) above exceeds the sum due the Contractor, as computed in accordance with subdivisions (1)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account, consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(4) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(i) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis. The Contractor shall—

(1) Insert in each price redetermination or incentive price revision subcontract the substance of paragraph (h) above, and of this paragraph (i), modified to omit mention of the Government and to reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that part of subparagraph (h)(3) above relating to tax credits; and

(2) Include in each cost-reimbursement subcontract a requirement that each lower-tier price redetermination or incentive price revision subcontract contain the substance of paragraph (h) above, and this paragraph (i), modified as required by subparagraph (1) above.

(j) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices for any price redetermination period within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (d) above are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (f), (g), and (h) above, and pending final settlement of the disagreement on appeal, by failure to appeal, or by agreement, this decision shall be treated as an executed contract modification. Pending final settlement, price redetermination for subsequent periods, if any, shall continue to be negotiated as provided in this clause.

(k) *Termination.* If this contract is terminated, prices shall continue to be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies and services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(End of clause)

(AV 7-109.2(b) 1980 FEB)

NOTES:

(1) Express in terms of units delivered, or as a date; but in either case the period should end on the last day of a month.

(2) Insert the numbers of days chosen so that the Contractor's submission will be late enough to reflect recent cost experience

(taking into account the Contractor's accounting system), but early enough to permit review, audit (if necessary), and negotiation before the start of the prospective period.

(3) Insert "first," except that "second" may be inserted if necessary to achieve compatibility with the Contractor's accounting system.

52.216-6 Price Redetermination—Retroactive.

As prescribed in 16.206-4, when contracting by negotiation, insert the following clause in solicitations and contracts when a fixed-price contract is contemplated and the conditions specified in 16.206-2 and 16.206-3(a) through (d) apply:

PRICE REDETERMINATION—RETROACTIVE (APR 1984)

(a) *General.* The unit price and the total price stated in this contract shall be redetermined in accordance with this clause, but in no event shall the total amount paid under this contract exceed ..... [*insert dollar amount of ceiling price*].

(b) *Definition.* "Costs," as used in this clause, means allowable costs in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Data submission.* (1) Within ..... [*Contracting Officer insert number of days*] days after delivery of all supplies to be delivered and completion of all services to be performed under this contract, the Contractor shall submit—

(i) Proposed prices;

(ii) A statement on Standard Form 1411, Contract Pricing Proposal Cover Sheet, or in any other form on which the parties agree, of all costs incurred in performing this contract; and

(iii) Any other relevant data that the Contracting Officer may reasonably require.

(2) If the Contractor fails to submit the data required by subparagraph (1) above within the time specified, the Contracting Officer may suspend payments under this contract until the data are furnished. If it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) *Price determination.* Upon the Contracting Officer's receipt of the data required by paragraph (c) above, the Contracting Officer and the Contractor shall promptly negotiate to redetermine fair and reasonable prices for supplies delivered and services performed by the Contractor under this contract.

(e) *Contract modification.* The negotiated redetermination of price shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer.

(f) *Adjusting billing prices.* Pending execution of the contract modification (see paragraph (e) above), the Contractor shall submit invoices or vouchers in accordance with billing prices stated in this contract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the Contractor submits data showing that the redetermined prices will be substantially greater than the current billing prices, the parties shall negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment shall be reflected in a contract modification and shall not affect the redetermination of prices under this clause. After the contract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed-upon prices, and any resulting additional payments, refunds, or credits shall be made promptly.

(g) *Quarterly limitation on payments statement.* This paragraph (g) shall apply until final price redetermination under this contract has been completed.

(1) Within 45 days after the end of the quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor), a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) above exceeds the sum due the Contractor, as computed in accordance with subdivisions (i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account, consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reduction in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(h) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis. The Contractor shall—

(1) Insert in each price redetermination or incentive price revision subcontract the substance of paragraph (g) above, and of this paragraph (h), modified to omit mention of the Government and to reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that part of subparagraph (g)(2) above relating to tax credits; and

(2) Include in each cost-reimbursement subcontract a requirement that each lower-tier price redetermination or incentive price revision subcontract contain the substance of paragraph (g) above, and of this paragraph (h) modified as required by subparagraph (1) above.

(i) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (c) above are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (e), (f), and (g) above, and pending final settlement of the disagreement on appeal, by failure to appeal, or by agreement, this decision shall be treated as an executed contract modification.

(j) *Termination.* If this contract is terminated before price redetermination, prices shall be established in accordance with this clause for completed supplies and services not terminated. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(End of clause)

(AV 7-109.3(b) 1980 FEB)

52.216-7 Allowable Cost and Payment.

As prescribed in 16.307(a), insert the following clause in solicitations and contracts when a cost-reimbursement contract (other than a facilities contract) is contemplated. If the contract is with an educational institution, modify the clause by deleting from paragraph (a) the words "Subpart 31.2" and substituting for them "Subpart 31.3." If the contract is with a State or local government, modify the clause by deleting from paragraph (a) the words

"Subpart 31.2" and substituting for them "Subpart 31.6."

ALLOWABLE COST AND PAYMENT
(APR 1984)

(a) *Invoicing.* The Government shall make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(b) *Reimbursing costs.* (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only—

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(A) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(B) Direct labor;

(C) Direct travel;

(D) Other direct in-house costs; and

(E) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of progress payments that have been paid to the Contractor's subcontractors under similar cost standards.

(2) Contractor contributions to any pension, profit-sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; *provided*, that the Contractor pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Contractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Contractor actually makes the payment.

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) below, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) *Small business concerns.* A small business concern may be paid more often than every 2 weeks and may invoice and be paid for recorded costs for items or services purchased directly for the contract, even though the concern has not yet paid for those items or services.

(d) *Final indirect cost rates.* (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2) The Contractor shall, within 90 days after the expiration of each of its fiscal years, or by a later date approved by the Contracting Officer, submit to the cognizant Contracting Officer responsible for negotiating its final indirect cost rates and, if required by agency procedures, to the cognizant audit activity proposed final indirect cost rates for that period and supporting cost data specifying the contract and/or subcontract to which the rates apply. The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(e) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates—

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) *Quick-closeout procedures.* When the Contractor and Contracting Officer agree, the quick-closeout procedures of Subpart 42.7 of the FAR may be used.

(g) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the Contracting Officer not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(h) *Final payment.* (1) The Contractor shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but no later than one year (or longer, as the Contracting Officer may approve in writing) from the completion date. Upon approval of that invoice or voucher, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except—

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; *provided*, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)
(R 7-203.4(a) 1978 SEP)
(R 7-203.4(b) 1979 MAR)
(R 7-203.4(c)(4)(iv))
(R 7-402.3(a) and (c)(5)(iii)
(R 7-605.5)
(R 7-1909.4)
(R 1-7.202-4)
(R 1-7.203-9)
(R 1-3.704-1 and -2)
(R 1-7.402-3(a) and (b)(1) and (3))
(R 1-7.403-9)

52.216-8 Fixed Fee.

As prescribed in 16.307(b), insert the following clause in solicitations and contracts when a cost-plus-fixed-fee contract (other than a facilities contract or a construction contract) is contemplated.

FIXED FEE (APR 1984)

(a) The Government shall pay the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made as specified in the Schedule; *provided*, that after payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or $100,000, whichever is less.

(End of clause)
(R 7-203.4(a) 1978 SEP)
(R 7-203.4(c)(9))
(R 7-402.3(a) and (c)(7))
(R 7-1909.4)
(R 1-7.202-4)
(R 1-7.402-3(a) and (b)(5))

52.216-9 Fixed Fee—Construction.

As prescribed in 16.307(c), insert the following clause in solicitations and contracts when a cost-plus-fixed-fee construction contract is contemplated:

FIXED FEE—CONSTRUCTION (APR 1984)

(a) The Government shall pay to the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made in installments based upon the percentage of completion of the work as determined from estimates submitted to and approved by the Contracting Officer, but subject to the withholding provisions of paragraph (c) below.

(c) After the payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or $100,000, whichever is less.

(End of clause)
(R 7-203.4(a) 1978 SEP)
(R 7-605.5)

52.216-10 Incentive Fee.

As prescribed in 16.307(d), insert the following clause in solicitations and contracts when a cost-plus-incentive-fee contract (other than a facilities contract) is contemplated:

INCENTIVE FEE (APR 1984)

(a) *General.* The Government shall pay the Contractor for performing this contract a fee determined as provided in this contract.

(b) *Target cost and target fee.* The target cost and target fee specified in the Schedule are subject to adjustment if the contract is modified in accordance with paragraph (d) below.

(1) "Target cost," as used in this contract, means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph (d) below.

(2) "Target fee," as used in this contract, means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) below.

(c) *Withholding of payment.* Normally, the Government shall pay the fee to the Contractor as specified in the Schedule. However, when the Contracting Officer considers that performance or cost indicates that the Contractor will not achieve target, the Government shall pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates that the Contractor will earn a fee significantly above the target fee, the Government may, at the sole discretion of the Contracting Officer, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the applicable fee or $100,000, whichever is less.

(d) *Equitable adjustments.* When the work under this contract is increased or decreased by a modification to this contract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to this contract.

(e) *Fee payable.* (1) The fee payable under this contract shall be the target fee increased by ..... [*Contracting Officer insert Contractor's participation*] cents for every dollar that the total allowable cost is less than the target cost or decreased by ..... [*Contracting Officer insert Contractor's participation*] cents for every dollar that the total allowable cost exceeds the target cost. In no event shall the fee be greater than ..... [*Contracting Officer insert percentage*] percent or less than ..... [*Contracting Officer insert percentage*] percent of the target cost.

(2) The fee shall be subject to adjustment, to the extent provided in paragraph (d) above, and within the minimum and maximum fee limitations in subparagraph (1) above, when the total allowable cost is increased or decreased as a consequence of (i) payments made under assignments or (ii) claims excepted from the release as required by paragraph (h)(2) of the Allowable Cost and Payment clause.

(3) If this contract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of this contract.

(4) For the purpose of fee adjustment, "total allowable cost" shall not include allowable costs arising out of—

(i) Any of the causes covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of the Contractor or any subcontractor;

(ii) The taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the Contractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;

(iii) Any direct cost attributed to the Contractor's involvement in litigation as required by the Contracting Officer pursuant to a clause of this contract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;

(iv) The purchase and maintenance of additional insurance not in the target cost and required by the Contracting Officer, or claims for reimbursement for liabilities to third persons pursuant to the Insurance—Liability to Third Persons clause;

(v) Any claim, loss, or damage resulting from a risk for which the Contractor has been relieved of liability by the Government Property clause; or

(vi) Any claim, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk and against which the Government has expressly agreed to indemnify the Contractor.

(5) All other allowable costs are included in "total allowable cost" for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided in this contract.

(f) *Contract modification.* The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to this contract signed by the Contractor and Contracting Officer.

(g) *Inconsistencies.* In the event of any language inconsistencies between this clause and provisioning documents or Government options under this contract, compensation for spare parts or other supplies and services ordered under such documents shall be determined in accordance with this clause.

(End of clause)
(R 7-203.4(b) 1979 MAR)
(R 7-203.4(c)(6) and (9))

52.216-11 Cost Contract—No Fee.

As prescribed in 16.307(e), insert the following clause in solicitations and contracts when a cost-reimbursement contract is contemplated that provides no fee and is not a cost-sharing contract or a facilities contract. This clause may be modified by substituting "$10,000" in lieu of "$100,000" as the maximum reserve in paragraph (b) if the Contractor is a nonprofit organization.

COST CONTRACT—NO FEE (APR 1984)

(a) The Government shall not pay the Contractor a fee for performing this contract.

(b) After payment of 80 percent of the total estimated cost shown in the Schedule, the Contracting Officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed one percent of the total estimated cost shown in the Schedule or $100,000, whichever is less.

(End of clause)
(R 7-203.4(a) 1978 SEP)
(R 7-203.4(c)(4) and (9))
(R 7-402.3(c)(5)(ii), (iii), and (7))
(R 7-1909.4)
(R 1-7.402-3(b))

Alternate I (APR 1984). In a contract for research and development with an educational institution or a nonprofit organization, for which the contracting officer has determined that withholding of a portion of allowable costs is not required, delete paragraph (b) of the basic clause.

(R 7-203.4(a) 1978 SEP)
(R 7-402.3(c)(8))

52.216-12 Cost-Sharing Contract—No Fee.

As prescribed in 16.307(f), insert the following clause in solicitations and contracts when a cost-sharing contract (other than a facilities contract) is contemplated. This clause may be modified by substituting "$10,000" in lieu of "$100,000" as the maximum reserve in paragraph (b) if the contract is with a nonprofit organization.

COST-SHARING CONTRACT—NO FEE (APR 1984)

(a) The Government shall not pay to the Contractor a fee for performing this contract.

(b) After paying 80 percent of the Government's share of the total estimated cost of performance shown in the Schedule, the Contracting Officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed one percent of the Government's share of the total estimated cost shown in the Schedule or $100,000, whichever is less.

(End of clause)
(R 7-203.4(a) 1978 SEP)
(R 7-203.4(c)(4) and (9))
(R 7-402.3(c)(5), (6) and (7))
(R 1-7.402-3(b))

Alternate I (APR 1984). In a contract for research and development with an educational institution, for which the contracting officer has determined that withholding of a portion of allowable cost is not required, delete paragraph (b) of the basic clause.

(R 7-402.3(c)(8))

52.216-13 Allowable Cost and Payment—Facilities.

As prescribed in 16.307(g), insert the following clause in solicitations and contracts when a consolidated facilities contract or a cost-reimbursement facilities acquisition contract (see 45.302-6) is contemplated:

ALLOWABLE COST AND PAYMENT—FACILITIES (APR 1984)

(a) *General.* (1) For the performance of any work, duty, or obligation specified in this contract to be at Government expense, the Government shall pay the Contractor all allowable costs as determined by the Contracting Officer in accordance with the contract terms and section 31.106 of the Federal Acquisition Regulation (FAR) in effect on the contract date.

(2) Except as otherwise specifically provided in this contract, the failure of this contract to provide for reimbursement does not preclude the Contractor from including, as part of the price or cost under any other Government contract or subcontract, an allocable portion of the costs incurred for any work, duty, or obligation performed under this contract, but not reimbursable under it.

(b) *Invoicing.* The Government shall make payments to the Contractor when requested once each month. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for the performance of this contract.

(c) *Negotiated indirect costs.* Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (f) below, allowable indirect costs under this contract shall be obtained by applying final indirect cost rates established as follows:

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the FAR in effect for the period covered by the indirect cost rate proposal.

(2) The Contractor shall, within 90 days after the expiration of each of its fiscal years, or by a later date approved by the Contracting Officer, submit to the Contracting Officer and to the cognizant audit activity proposed final indirect cost rates for that period and supporting cost and data specifying the contract and/or subcontract to which the rates apply. The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the contractor's proposal. The Contractor shall submit an executed Certificate of Current Cost or Pricing Data (in the form prescribed by subsection 15.804-4 of the FAR) applicable to the data furnished in connection with the final indirect cost rates.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(d) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates—

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(e) *Quick-closeout procedures.* When the Contractor and Contracting Officer agree, the quick-closeout procedures of Subpart 42.7 of the FAR may be used.

(f) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the Contracting Officer not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(g) *Assignments and releases.* The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee shall execute and deliver—

(1) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates,

credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(2) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except—

(i) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(ii) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of performance of this contract; *provided* that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(iii) Claims for reimbursement of costs, including related expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)
(R 7-702.10 1978 AUG)

Alternate I (APR 1984). If the contract is for facilities acquisition, and the Contracting Officer considers it appropriate, add the following paragraphs (g) and (h) to the basic clause, and redesignate paragraph (g) of the basic clause as paragraph (i):

(g) *Withholding.* After payment of 80 percent of the total estimated cost shown in the Schedule, the Contracting Officer may withhold payment of allowable costs until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed one percent of the total estimated cost shown in the Schedule or $100,000, whichever is less.

(h) *Final Payment.* The Contractor shall submit a completion invoice or voucher, designated as such, no later than one year (or longer, as the Contracting Officer may approve in writing) from the completion date. Upon approval of the invoice or voucher, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs not previously paid.

(R 7-702.10 1978 AUG)
(R 7-703.9)

52.216-14 Allowable Cost and Payment—Facilities Use.

As prescribed in 16.307(h), insert the following clause in solicitations and contracts when a facilities use contract is contemplated:

ALLOWABLE COST AND PAYMENT—FACILITIES USE (APR 1984)

(a) For the performance of any work, duty, or obligations specified in this contract to be at Government expense, the Government shall pay the Contractor all allowable costs as determined by the Contracting Officer in accordance with the contract terms and section 31.106 of the Federal Acquisition Regulation (FAR) in effect on the contract date.

(b) Except as otherwise specifically provided in this contract, the failure of this contract to provide for reimbursement does not preclude the Contractor from including, as part of the price or cost under any other Government contract or subcontract, an allocable portion of the costs incurred for any work, duty, or obligation performed under this contract, but not reimbursed under it.

(End of clause)
(R 7-704.3 1965 JUL)

52.216-15 Predetermined Indirect Cost Rates.

As prescribed in 16.307(i), insert the following clause in solicitations and contracts when a cost-reimbursement research and development contract with an educational institution is contemplated and predetermined indirect cost rates are to be used. If the contract is a facilities contract, modify paragraph (c) by deleting the words "Subpart 31.3" and substituting for them "section 31.106".

PREDETERMINED INDIRECT COST RATES (APR 1984)

(a) Notwithstanding the Allowable Cost and Payment clause of this contract, the allowable indirect costs under this contract shall be obtained by applying predetermined indirect cost rates to bases agreed upon by the parties, as specified below.

(b) Not later than 90 days after the expiration of the Contractor's fiscal year, the Contractor shall submit to the cognizant Contracting Officer under Subpart 42.7 of the Federal Acquisition Regulation (FAR) and, if required by agency procedures, to the cognizant Government audit activity, proposed predetermined indirect cost rates and supporting cost data. The proposed rate shall be based on the Contractor's actual cost experience during that fiscal year. Negotiations of predetermined indirect cost rates shall begin as soon as practical after receipt of the contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with FAR Subpart 31.3 in effect on the date of this contract.

(d) Predetermined rate agreements in effect on the date of this contract shall be incorporated into the contract Schedule. The Contracting Officer and Contractor shall negotiate rates for subsequent periods and execute a written indirect cost rate agreement setting forth the results. The agreement shall specify (1) the agreed-upon predetermined indirect cost rates, (2) the bases to which the rates apply, (3) the fiscal year (unless the parties agree to a different period) for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs. The indirect cost rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The agreement is incorporated into this contract upon execution.

(e) Pending establishment of predetermined indirect cost rates for any fiscal year (or other period agreed to by the parties), the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year (or other period) or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established.

(f) Any failure by the parties to agree on any predetermined indirect cost rates under this clause shall not be considered a dispute within the meaning of the Disputes clause. If for any fiscal year (or other period specified in the Schedule) the parties fail to agree to predetermined indirect cost rates, the allowable indirect costs shall be obtained by applying final indirect cost rates established in accordance with the Allowable Cost and Payment clause.

(g) Allowable indirect costs for the period from the beginning of performance until the end of the Contractor's fiscal year shall be obtained using the predetermined indirect cost rates and the bases shown in the Schedule.

(End of clause)
(R 7-403.9 1978 AUG)

52.216-16 Incentive Price Revision—Firm Target.

As prescribed in 16.405(a), insert the following clause in solicitations and contracts when a fixed-price incentive (firm target) contract is contemplated. For items to be subject to incentive price revision, show in the contract Schedule the target cost, target profit, and target price for each item.

INCENTIVE PRICE REVISION—FIRM TARGET (APR 1984)

(a) *General.* The supplies or services identified in the Schedule as Items ..... [*Contracting Officer insert Schedule line item numbers*] are subject to price revision in accordance with this clause; *provided*, that in no event shall the total final price of these items exceed the ceiling price of ..... dollars ($.....). Any supplies or services that are to be (1) ordered separately under, or otherwise added to, this contract and (2) subject to price revision in accordance with the terms of this clause shall be identified as such in a modification to this contract.

(b) *Definition.* "Costs," as used in this clause, means allowable costs in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Data submission.* (1) Within ..... [*Contracting Officer insert number of days*] days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) above, the Contractor shall submit on Standard Form 1411 or in any other form on which the parties agree—

(i) A detailed statement of all costs incurred up to the end of that month in performing all work under the items;

(ii) An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items;

(iii) A list of all residual inventory and an estimate of its value; and

(iv) Any other relevant data that the Contracting Officer may reasonably require.

(2) If the Contractor fails to submit the data required by subparagraph (1) above within the time specified and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) *Price revision.* Upon the Contracting Officer's receipt of the data required by paragraph (c) above, the Contracting Officer and the Contractor shall promptly establish the total final price of the items specified in (a) above by applying to final negotiated cost an adjustment for profit or loss, as follows:

(1) On the basis of the information required by paragraph (c) above, together with any other pertinent information, the parties shall negotiate the total final cost incurred or to be incurred for supplies delivered (or services performed) and accepted by the Government and which are subject to price revision under this clause.

(2) The total final price shall be established by applying to the total final negotiated cost an adjustment for profit or loss, as follows:

(i) If the total final negotiated cost is equal to the total target cost, the adjustment is the total target profit.

(ii) If the total final negotiated cost is greater than the total target cost, the adjustment is the total target profit, less ..... [*Contracting Officer insert percent*] percent of the amount by which the total final negotiated cost exceeds the total target cost.

(iii) If the final negotiated cost is less than the total target cost, the adjustment is the total target profit plus ..... [*Contracting Officer insert percent*] percent of the amount by which the total final negotiated cost is less than the total target cost.

(e) *Contract modification.* The total final price of the items specified in paragraph (a) above shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer. This price shall not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that—

(1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of those elements; and

(2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.

(f) *Adjusting billing prices.* (1) Pending execution of the contract modification (see paragraph (e) above), the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the target prices shown in this contract.

(2) If at any time it appears from information provided by the contractor under subparagraph (g)(2) below that the then-current billing prices will be substantially greater than the estimated final prices, the parties shall negotiate a reduction in the billing prices. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor's submission of factual data showing that final cost under this contract will be substantially greater than the target cost.

(3) Any billing price adjustment shall be reflected in a contract modification and shall not affect the determination of the total final price under paragraph (d) above. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits shall be made promptly.

(g) *Quarterly limitation on payments statement.* This paragraph (g) shall apply until final price revision under this contract has been completed.

(1) Within 45 days after the end of each quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total target profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established—increased or decreased in accordance with subparagraph (d)(2) above, when the amount stated under subdivision (ii), immediately above, differs from the aggregate target costs of the supplies or services; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) above exceeds the sum due the Contractor, as computed in accordance with subdivisions (1)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(h) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis. The Contractor shall—

(1) Insert in each price redetermination or incentive price revision subcontract the substance of paragraph (g), above, and of this paragraph (h), modified to omit mention of the Government and to reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that part of subparagraph (g)(2) above relating to tax credits; and

(2) Include in each cost-reimbursement subcontract a requirement that each lower-tier price redetermination or incentive price revision subcontract contain the substance of paragraph (g) above and of this paragraph (h), modified as required by subparagraph (1) above.

(i) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon the total final price within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required by paragraph (c) above are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause.

(j) *Termination.* If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision shall be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies and services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(k) *Equitable adjustment under other clauses.* If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the

adjustment is made after the total final price is established, only the total final price shall be adjusted.

(l) *Exclusion from target price and total final price.* If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price includes or will include any amount for that purpose.

(m) *Separate reimbursement.* If any clause of this contract expressly provides that the cost of performance of an obligation shall be at Government expense, that expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(n) *Taxes.* As used in the Federal, State, and Local Taxes clause or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term "contract price" includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so that it will not affect the Contractor's profit or loss on this contract.

(End of clause)
(R 7-108.1 1980 FEB)

Alternate I (APR 1984). If the contract calls for supplies or services to be ordered under a provisioning document or Government option and the prices are to be subject to the incentive price revision described in the basic clause, add the following paragraph (o) to the basic clause:

(o) *Provisioning and options.* Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Government option shall be subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Government option shall be treated as target prices. Target cost and profit covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.

(R 7-108.1 1980 FEB)

52.216-17 Incentive Price Revision—Successive Targets.

As prescribed in 16.405(b), insert the following clause in solicitations and contracts when a fixed-price incentive (successive target) contract is contemplated. For items to be subject to incentive price revision, show in the contract Schedule the initial target cost, initial target profit, and initial target price for each item.

INCENTIVE PRICE REVISION—SUCCESSIVE TARGETS (APR 1984)

(a) *General.* The supplies or services identified in the Schedule as Items ..... [*Contracting Officer insert line item numbers*] are subject to price revision in accordance with this clause; *provided*, that in no event shall the total final price of these items exceed the ceiling price of ..... dollars ($.....). The prices of these items shown in the Schedule are the initial target prices, which include an initial target profit of .....[*Contracting Officer insert percent*] percent of the initial target cost. Any supplies or services that are to be (1) ordered separately under, or otherwise added to, this contract and (2) subject to price revision in accordance with this clause shall be identified as such in a modification to this contract.

(b) *Definition.* "Costs," as used in this clause, means allowable costs in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) *Submitting data for establishing the firm fixed price or a final profit adjustment formula.* (1) Within ..... [*Contracting Officer insert number of days*] days after the end of the month in which the Contractor has completed .... [see Note 1], the Contractor shall submit the following data:

(i) A proposed firm fixed price or total firm target price for supplies delivered and to be delivered and services performed and to be performed.

(ii) A detailed statement of all costs incurred in the performance of this contract through the end of the month specified above, on Standard Form 1411 (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(iii) An estimate of costs of all supplies delivered and to be delivered and all services performed and to be performed under this contract, using the statement of costs incurred plus an estimate of costs to complete performance, on Standard Form 1411 (or in any other form on which the parties may agree), together with—

(A) Sufficient data to support the accuracy and reliability of the estimate; and

(B) An explanation of the differences between this estimate and the original estimate used to establish the initial target prices.

(2) The Contractor shall also submit, to the extent that it becomes available before negotiations establishing the total firm price are concluded—

(i) Supplemental statements of costs incurred after the end of the month specified in subparagraph (1) above for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(ii) Any other relevant data that the Contracting Officer may reasonably require.

(3) If the Contractor fails to submit the data required by subparagraphs (1) and (2) above within the time specified and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) *Establishing firm fixed price or final profit adjustment formula.* Upon the Contracting Officer's receipt of the data required by paragraph (c) above the Contracting Officer and the Contractor shall promptly establish either a firm fixed price or a profit adjustment formula for determining final profit, as follows:

(1) The parties shall negotiate a total firm target cost, based upon the data submitted under paragraph (c) above.

(2) If the total firm target cost is more than the total initial target cost, the total initial target profit shall be decreased. If the total firm target cost is less than the total initial target cost, the total initial target profit shall be increased. The initial target profit shall be increased or decreased by ..... percent [see Note 2] of the difference between the total initial target cost and the total firm target cost. The resulting amount shall be the total firm target profit; *provided*, that in no event shall the total firm target profit be less than .... percent or more than .... percent [*Contracting Officer insert percents*] of the total initial target cost.

(3) If the total firm target cost plus the total firm target profit represent a reasonable price for performing that part of the contract subject to price revision under this clause, the parties may agree on a firm fixed price, which shall be evidenced by a contract modification signed by the Contractor and the Contracting Officer.

(4) Failure of the parties to agree to a firm fixed price shall not constitute a dispute under the Disputes clause. If agreement is not reached, or if establishment of a firm fixed price is inappropriate, the Contractor and the Contracting Officer shall establish a profit adjustment formula under which the total final price shall be established by applying to the total final negotiated cost an adjustment for profit or loss, determined as follows:

(i) If the total final negotiated cost is equal to the total firm target cost, the adjustment is the total firm target profit.

(ii) If the total final negotiated cost is greater than the total firm target cost, the adjustment is the total firm target profit, less ..... percent of the amount by which the total final negotiated cost exceeds the total firm target cost.

(iii) If the total final negotiated cost is less than the total firm target cost, the adjustment is the total firm target profit, plus ..... percent of the amount by which the total final negotiated cost is less than the total firm target cost.

(iv) The total firm target cost, total firm target profit, and the profit adjustment formula for determining final profit shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer.

(e) *Submitting data for final price revision.* Unless a firm fixed price has been

established in accordance with paragraph (d) above within ..... [*Contracting Officer insert number of days*] days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) above, the Contractor shall submit on Standard Form 1411 (or in any other form on which the parties agree)—

(1) A detailed statement of all costs incurred up to the end of that month in performing all work under the items;

(2) An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items;

(3) A list of all residual inventory and an estimate of its value; and

(4) Any other relevant data that the Contracting Officer may reasonably require.

(f) *Final price revision.* Unless a firm fixed price has been agreed to in accordance with paragraph (d) above, the Contractor and the Contracting Officer shall, promptly after submission of the data required by paragraph (e) above, establish the total final price, as follows:

(1) On the basis of the information required by paragraph (e) above, together with any other pertinent information, the parties shall negotiate the total final cost incurred or to be incurred for the supplies delivered (or services performed) and accepted by the Government and which are subject to price revision under this clause.

(2) The total final price shall be established by applying to the total final negotiated cost an adjustment for final profit or loss determined as agreed upon under subparagraph (d)(4) above.

(g) *Contract modification.* The total final price of the items specified in paragraph (a) above shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer. This price shall not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that—

(1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of these elements; and

(2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.

(h) *Adjustment of billing prices.* (1) Pending execution of the contract modification (see paragraph (e) above), the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the initial target prices shown in this contract until firm target prices are established under paragraph (d) above. When established, the firm target prices shall be used as the billing prices.

(2) If at any time it appears from information provided by the contractor under subparagraph (i)(1) below that the then-current billing prices will be substantially greater than the estimated final prices, the parties shall negotiate a reduction in the billing prices. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor's submission of factual data showing that the final cost under this contract will be substantially greater than the target cost.

(3) Any adjustment of billing prices shall be reflected in a contract modification and shall not affect the determination of any price under paragraph (d) or (f) above. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits shall be made promptly.

(i) *Quarterly limitation on payments statement.* This paragraph (i) shall apply until a firm fixed price or a total final price is established under subparagraph (d)(3) or (f)(2).

(1) Within 45 days after the end of each quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total cost (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or sevices performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (i)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established—increased or decreased in accordance with subparagraph (d)(4) above when the amount stated under subdivision (ii), immediately above, differs from the aggregate firm target costs of the supplies or services; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) above exceeds the sum due the Contractor, as computed in accordance with subdivisions (1)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(j) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis. The Contractor shall—

(1) Insert in each price redetermination or incentive price revision subcontract the substance of paragraph (i) above, and of this paragraph (j), modified to omit mention of the Government and to reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that part of subparagraph (i)(2) above relating to tax credits; and

(2) Include in each cost-reimbursement subcontract a requirement that each lower-tier price redetermination or incentive price revision subcontract contain the substance of paragraph (i) above, and of this paragraph (j), modified as required by subparagraph (j)(1), immediately above.

(k) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon (1) a total firm target cost and a final profit adjustment formula or (2) a total final price, within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required in paragraphs (c) and (e) above are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause.

(l) *Termination.* If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision shall be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies or services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(m) *Equitable adjustments under other clauses.* If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price shall be adjusted.

(n) *Exclusion from target price and total final price.* If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the

total final price includes or will include any amount for that purpose.

(o) *Separate reimbursement.* If any clause of this contract expressly provides that the cost of performance of an obligation shall be at Government expense, that expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(p) *Taxes.* As used in the Federal, State, and Local Taxes clause or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term "contract price" includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so that it will not affect the Contractor's profit or loss on this contract.

(End of clause)
(R 7-108.2 1980 FEB)

NOTES:
(1) The degree of completion may be based on a percentage of contract performance or any other reasonable basis.
(2) The language may be changed to describe a negotiated adjustment pattern under which the extent of adjustment is not the same for all levels of cost variation.

Alternate I (APR 1984). If the contract calls for supplies or services to be ordered under a provisioning document or Government option and the prices are to be subject to the incentive price revision described in the basic clause, add the following paragraph (q) to the basic clause:

(q) *Provisioning and options.* Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Government option shall be subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Government option shall be treated as initial target prices, or target prices as agreed upon and stipulated in the pricing document supporting the provisioning or added items. Initial or firm target costs and profits and final prices covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.

(R 7-108.2 1980 FEB)

52.216-18 Ordering.

As prescribed in 16.505(a), insert the following clause in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated:

ORDERING (APR 1984)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders by the individuals or activities designated in the Schedule. Such orders may be issued from ..... through ..... [*insert dates*].

(b) All delivery orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order and this contract, the contract shall control.

(c) If mailed, a delivery order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally or by written telecommunications only if authorized in the Schedule.

(End of clause)
(R 7-1101 1968 JUN)

52.216-19 Delivery-Order Limitations.

As prescribed in 16.505(b), insert a clause substantially the same as follows in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated:

DELIVERY-ORDER LIMITATIONS (APR 1984)

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than ..... [*insert dollar figure or quantity*], the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor—

(1) Any order for a single item in excess of ..... [*insert dollar figure or quantity*];

(2) Any order for a combination of items in excess of ..... [*insert dollar figure or quantity*]; or

(3) A series of orders from the same ordering office within ..... days that together call for quantities exceeding the limitation in subparagraph (1) or (2) above.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) above.

(d) Notwithstanding paragraphs (b) and (c) above, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within ..... days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)
(R 7-1102.1(a) 1965 AUG)
(R 7-1102.2(a))
(R 7-1102.3(a))

52.216-20 Definite Quantity.

As prescribed in 16.505(c), insert the following clause in solicitations and contracts when a definite-quantity contract is contemplated.

DEFINITE QUANTITY (APR 1984)

(a) This is a definite-quantity, indefinite-delivery contract for the supplies or services specified, and effective for the period stated, in the Schedule.

(b) The Government shall order the quantity of supplies or services specified in the Schedule, and the Contractor shall furnish them when ordered. Delivery or performance shall be at locations designated in orders issued in accordance with the Ordering clause and the Schedule.

(c) Except for any limitations on quantities in the Delivery-Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after ..... [*insert date*].

(End of clause)
(R 7-1102.1(b) 1965 AUG)

52.216-21 Requirements.

As prescribed in 16.505(d), insert the following clause in solicitations and contracts when a requirements contract is contemplated:

REQUIREMENTS (APR 1984)

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Delivery-Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after ..... [insert date].

(End of clause)
(R 7-1102.2(b) 1966 OCT)

Alternate I (APR 1984). If the requirements contract is for nonpersonal services and related supplies and covers estimated requirements that exceed a specific Government activity's internal capability to produce or perform, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The estimated quantities are not the total requirements of the Government activity specified in the Schedule, but are estimates of requirements in excess of the quantities that the activity may itself furnish within its own capabilities. Except as this contract otherwise provides, the Government shall order from the Contractor all of that activity's requirements for supplies and services specified in the Schedule that exceed the quantities that the activity may itself furnish within its own capabilities.

(R 7-1102.2(b)(1) 1966 OCT)

Alternate II (APR 1984). If the requirements contract includes subsistence for both Government use and resale in the same Schedule, and similar products may be acquired on a brand-name basis, add the following paragraph (g) to the basic clause:

(g) The requirements referred to in this contract are for items to be manufactured according to Government specifications. Notwithstanding anything to the contrary stated in the contract, the Government may acquire similar products by brand name from other sources for resale.

(R 7-1102.2(b)(2) 1966 OCT)

Alternate III (APR 1984). If the requirements contract involves a partial small business or labor surplus area set-aside, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The Government's requirements for each item or subitem of supplies or services described in the Schedule are being purchased through one non-set-aside contract and one set-aside contract. Therefore, the Government shall order from each Contractor approximately one-half of the total supplies or services specified in the Schedule that are required to be purchased by the specified Government activity or activities. The Government may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government shall allocate successive orders, in accordance with its delivery requirements, to maintain as close a ratio as is reasonably practicable between the total quantities ordered from the two Contractors.

(R 7-1102.2(b)(4) 1966 OCT)

Alternate IV (APR 1984). If the contract includes subsistence for both Government use and resale in the same Schedule and similar products may be acquired on a brand-name basis and the contract also involves a partial small business or labor surplus area set-aside, substitute the following paragraph (c) for paragraph (c) of the basic clause and add the following paragraph (g) to the basic clause:

(c) The Government's requirements for each item or subitem of supplies or services described in the Schedule are being purchased through one non-set-aside contract and one set-aside contract. Therefore, the Government shall order from each Contractor approximately one-half of the total supplies or services specified in the Schedule that are required to be purchased by the specified Government activity or activities. The Government may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government shall allocate successive orders, in accordance with its delivery requirements, to maintain as close a ratio as is reasonably practicable between the total quantities ordered from the two Contractors.

(g) The requirements referred to in this contract are for items to be manufactured according to the Government specifications. Notwithstanding anything to the contrary stated in the contract, the Government may acquire similar products by brand name from other sources for resale.

(R 7-1102.2(b) 1966 OCT)

52.216-22 Indefinite Quantity.

As prescribed in 16.505(e), insert the following clause in solicitations and contracts when an indefinite-quantity contract is contemplated:

INDEFINITE QUANTITY (APR 1984)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Delivery-Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contact after ..... [*insert date*].

(End of clause)
(R 7-1102.3(b) 1965 AUG)

52.216-23 Execution and Commencement of Work.

As prescribed in 16.603-4(b)(1), insert the following clause in solicitations and contracts when a letter contract is contemplated, except that it may be omitted from letter contracts awarded on SF 26:

EXECUTION AND COMMENCEMENT OF WORK (APR 1984)

The Contractor shall indicate acceptance of this letter contract by signing three copies of the contract and returning them to the Contracting Officer not later than ..... [*insert date*]. Upon acceptance by both parties, the Contractor shall proceed with performance of the work, including purchase of necessary materials.

(End of clause)
(R 7-802.2 1964 MAR)

52.216-24 Limitation of Government Liability.

As prescribed in 16.603-4(b)(2), insert the following clause in solicitations and contracts when a letter contract is contemplated:

LIMITATION OF GOVERNMENT LIABILITY (APR 1984)

(a) In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding ..... dollars.

(b) The maximum amount for which the Government shall be liable if this contract is terminated is ..... dollars.

(End of clause)
(R 7-802.3 1967 OCT)

52.216-25 Contract Definitization.

As prescribed in 16.603-4(b)(3), insert the following clause in solicitations and contracts when a letter contract is contemplated. If, at the time of entering into the letter contract, the contracting officer knows that the definitive contract will be based on adequate price competition or will otherwise meet the

criteria of 15.804-3 for not requiring submission of cost or pricing data, the words "and cost or pricing data" may be deleted from paragraph (a) of the clause.

CONTRACT DEFINITIZATION (APR 1984)

(a) A ..... *[insert specific type of contract]* definitive contract is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the letter contract, (2) all clauses required by law on the date of execution of the definitive contract, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a ..... [*insert specific type of proposal (e.g., fixed-price or cost-and-fee)*] proposal and cost or pricing data supporting its proposal.

(b) The schedule for definitizing this contract is *[insert target date for definitization of the contract and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of make-or-buy and subcontracting plans and cost or pricing data]*:

.....

.....

.....

.....

(c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph (b) above, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with Subpart 15.8 and Part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by—

(i) All clauses required by the FAR on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with subparagraph (c)(1) above, all clauses, terms, and conditions included in this letter contract shall continue in effect, except those that by their nature apply only to a letter contract.

(End of clause)

(R 7-802.5(a) 1969 DEC)

Alternate I (APR 1984). In letter contracts awarded on the basis of price competition, add the following paragraph (d) to the basic clause:

(d) The definitive contract resulting from this letter contract will include a negotiated ..... *[insert "price ceiling" or "firm fixed price"]* in no event to exceed ..... *[insert the proposed price upon which the award was based]*.

(R 7-802.5(b) 1969 DEC)

52.216-26 Payments of Allowable Costs Before Definitization.

As prescribed in 16.603-4(c), insert the following clause in solicitations and contracts if a cost-reimbursement definitive contract is contemplated, unless the acquisition involves conversion, alteration, or repair of ships:

PAYMENTS OF ALLOWABLE COSTS BEFORE DEFINITIZATION (APR 1984)

(a) *Reimbursement rate.* Pending the placing of the definitive contract referred to in this letter contract, the Government shall promptly reimburse the Contractor for all allowable costs under this contract at the following rates:

(1) One hundred percent of approved costs representing progress payments to subcontractors under fixed-price subcontracts; *provided*, that the Government's payments to the Contractor shall not exceed 80 percent of the allowable costs of those subcontractors.

(2) One hundred percent of approved costs representing cost-reimbursement subcontracts; *provided*, that the Government's payments to the Contractor shall not exceed 85 percent of the allowable costs of those subcontractors.

(3) Eighty-five percent of all other approved costs.

(b) *Limitation of reimbursement.* To determine the amounts payable to the Contractor under this letter contract, the Contracting Officer shall determine allowable costs in accordance with the applicable cost principles in Part 31 of the Federal Acquisition Regulation (FAR). The total reimbursement made under this paragraph shall not exceed 85 percent of the maximum amount of the Government's liability, as stated in this contract.

(c) *Invoicing.* Payments shall be made promptly to the Contractor when requested as work progresses, but (except for small business concerns) not more often than every 2 weeks, in amounts approved by the Contracting Officer. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost incurred by the Contractor in the performance of this contract.

(d) *Allowable costs.* For the purpose of determining allowable costs, the term "costs" includes—

(1) Those recorded costs that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(2) When the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(i) Materials issued from the Contractor's stores inventory and placed in the production process for use on the contract;

(ii) Direct labor;

(iii) Direct travel;

(iv) Other direct in-house costs; and

(v) Properly allocable and allowable indirect costs as shown on the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(3) The amount of progress payments that have been paid to the Contractor's subcontractors under similar cost standards.

(e) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks and may invoice and be paid for recorded costs for items or services purchased directly for the contract, even though it has not yet paid for such items or services.

(f) *Audit.* At any time before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of costs audited. Any payment may be (1) reduced by any amounts found by the Contracting Officer not to constitute allowable costs or (2) adjusted for overpayments or underpayments made on preceding invoices or vouchers.

(End of clause)

(R 7-802.4(a) 1972 MAY)

52.217-1 Limitation of Price and Contractor Obligations.

As prescribed in 17.105(a)(1), insert the following clause in solicitations and contracts when a multiyear contract is contemplated.

LIMITATION OF PRICE AND CONTRACTOR OBLIGATIONS (APR 1984)

(a) Funds available for performance are described in the Schedule. The amount of funds available at award is not considered sufficient for the performance required for any program year other than the first program year. When additional funds are available for the full requirements of the next succeeding program year, the Contracting Officer shall, not later than the date specified in the Schedule (unless a later date is agreed to), so notify the Contractor in writing. The Contracting Officer shall also modify the amount of funds described in the Schedule as available for contract performance. This procedure shall apply for each successive program year.

(b) The Government is not obligated to the Contractor for any amount over that described in the Schedule as available for contract performance.

(c) The Contractor is not obligated to incur costs for the performance required for any program year after the first unless and until written notification is received from the Contracting Officer of an increase in availability of funds. If so notified, the Contractor's obligation shall increase only to the extent contract performance is required for the additional program year for which funds are made available.

(d) If this contract is terminated under the "Termination for Convenience of the

Government" clause, "total contract price" in that clause means the amount available for performance of this contract, as in paragraph (a) above, plus the amount established as the cancellation ceiling. "Work under the contract" in that clause means the work under program year requirements for which funds have been made available. If the contract is terminated for default, the Government's rights under this contract shall apply to the entire multiyear requirements.

(e) Notification to the Contractor of an increase or decrease in the funds available for performance of this contract under another clause (e.g., an "Option" or "Changes" clause) shall not constitute the notification contemplated by paragraph (a) of this clause.

(End of clause)

52.217-2 Cancellation of Items.

As prescribed in 17.105(a)(2), insert the following clause in solicitations and contracts when a multiyear contract is contemplated.

CANCELLATION OF ITEMS (APR 1984)

(a) "Cancellation," as used in this clause, means that the Government is canceling its requirements for all items 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 prime contractor and/or subcontractor, (ii) reasonably necessary for performance of the contract, and (iii) that would have been equitably amortized in the unit prices for the entire multiyear contract period but, because of the cancellation, are not so amortized, and (2) a reasonable profit 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 FAR 15.8) which are applicable to and normally would have been amortized in all items to be furnished under the multiyear 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 by the unit price 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 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 the price for option quantities any costs of a startup or nonrecurring nature, that have been fully provided for in the unit prices of the firm quantities of the program years. The Contractor further agrees that the prices offered for option quantities will reflect only those recurring costs, and a reasonable profit 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)

Alternate I (APR 1984). If a multiyear modified requirements contract is awarded for more than 1 program year, substitute the following paragraph (a) for paragraph (a) of the basic clause, delete paragraph (b) of the basic clause, and redesignate the remaining paragraphs accordingly:

(a) As used herein, the term "cancellation" means that the Government is cancelling, pursuant to this clause, its anticipated requirements for items as set forth in the schedule for all program years subsequent to that in which notice of cancellation is provided. Such cancellation shall occur if, by the date of within the time period specified in the schedule or such further time as may be agreed to, the Contracting Officer (1) notifies the Contractor that funds will not be available for contract performance for any subsequent program year or (2) fails to notify the Contractor that funds will be available for performance of a requirement for the succeeding program year. "Cancellation" shall also be deemed to have occurred if, upon expiration of the final program year, the Government has failed to order the specified items in quantities up to the aggregate Best Estimated Quantity set forth in the Schedule. Following cancellation under this clause of any program year(s), the Government shall not be obligated to issue nor the Contractor to accept any further orders under this contract.

(R 1-322.8)

52.217-3 Evaluation Exclusive of Options.

As prescribed in 17.208(a), insert a provision substantially the same as 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)
(R 1-1504(a))

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 in solicitations when the solicitation includes an option clause and an option may be exercised at the time of contract award:

EVALUATION OF OPTIONS EXERCISED AT TIME OF CONTRACT AWARD (APR 1984)

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)
(R 7-2003.11(a))
(AV 1-1.1508-1(a))

52.217-5 Evaluation of Options.

As prescribed in 17.208(c)(1), insert a provision substantially the same as the following in solicitations when the solicitation contains an option clause; an option is not to be exercised at the time of contract award; a firm-fixed-price contract, a fixed-price contract with economic price adjustment, or another type of contract as approved under agency procedures is contemplated; and a determination has been made as specified in 17.206(a):

EVALUATION OF OPTIONS (APR 1984)

(a) 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).

(b) The Government may reject an offer as nonresponsive if it is materially unbalanced as to prices for the basic requirement and the option quantities. An offer is unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(End of provision)
(R 7-2003.11(b))
(AV 1-1.1508-1(b))

Alternate I (APR 1984). If all conditions specified in 17.208(c)(1) apply, except that a fixed-price incentive contract is contemplated, and the conditions specified in 17.206(b) apply, substitute the following paragraph (a) for paragraph (a) of the basic provision:

(a) 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 offeror's target cost for the basic requirement and option(s) is the price of the basic requirement and the option(s) for evaluation purposes. Evaluation of options will not obligate the Government to exercise the option(s).

(R 7-2003.11(c) 1974 APR)
(R 1-1.1508-1(c))

52.217-6 Option for Increased Quantity.

As prescribed in 17.208(d), insert a clause substantially the same as the following in solicitations and contracts, other than those for services, when the inclusion of an option is appropriate (see 17.200 and 17.202) and the option quantity is expressed as a percentage of the basic contract quantity or as an additional quantity of a specific line item:

OPTION FOR INCREASED QUANTITY (APR 1984)

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 the period specified in the Schedule. 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)
(AV 7-104.27(a))
(V 1-1.1508-2(a))

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 in solicitations and contracts, other than those for services, when the inclusion of an option is appropriate (see 17.200 and 17.202) and the option is identified as a separately priced line item having the same nomenclature as a corresponding basic contract line item:

OPTION FOR INCREASED QUANTITY—SEPARATELY PRICED LINE ITEM (APR 1984)

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 Contracting Officer may exercise the option by written notice to the Contractor within the period specified in the Schedule. 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)
(AV 7-104.27(b))
(AV 1-1.1508-2(b))

52.217-8 Option to Extend Services.

As prescribed in 17.208(f), insert a clause substantially the same as the following in solicitations and contracts for services when the inclusion of an option is appropriate (see 17.200 and 17.202) unless the conditions specified in 17.208(g) apply:

OPTION TO EXTEND SERVICES (APR 1984)

The Government may require continued performance of any services within the limits and at the rates stated in the Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within the period specified in the Schedule.

(End of clause)
(R 7-1903.22))
(V 1-1.1508-2(c))

52.217-9 Option to Extend the Term of the Contract—Services.

As prescribed in 17.208(g), insert a clause substantially the same as the following in solicitations and contracts for services when the inclusion of an option is appropriate (see 17.200 and 17.202) and it is necessary to include in the contract a requirement that the Government shall give the contractor a preliminary written notice of its intent to extend the contract, a stipulation that an extension of the contract includes an extension of the option, and/or a specified limitation on the total duration of the contract:

OPTION TO EXTEND THE TERM OF THE CONTRACT—SERVICES (APR 1984)

(a) The Government may extend the term of this contract by written notice to the Contractor within the time specified in the Schedule; *provided*, that the Government shall give the Contractor a preliminary written notice of its intent to extend at least 60 days 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 provision.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed ..... (months)(years).

(End of clause)
(R 7-104.27(c))
R 1-1.1508-2(d))

52.218 [Reserved].

52.219-1 Small Business Concern Representation.

As prescribed in 19.304(a), insert the following provision in solicitations when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia:

SMALL BUSINESS CONCERN REPRESENTATION (APR 1984)

The offeror represents and certifies as part of its offer that it ☐ is, ☐ is not a small business concern and that ☐ all, ☐ not all supplies to be furnished will be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico. "Small business concern," as used in this provision, 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.

(End of provision)
(R 3-501(b)(3), Part IV, Section K, (i)(A) 1979 SEP)

52.219-2 Small Disadvantaged Business Concern Representation.

As prescribed in 19.304(b), insert the following provision in solicitations (other than those for small purchases), when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia:

SMALL DISADVANTAGED BUSINESS CONCERN REPRESENTATION (APR 1984)

(a) *Representation.* The offeror represents that it ☐ is, ☐ is not a small disadvantaged business concern.

(b) *Definitions.*

"Asian-Indian American," as used in this provision, means a United States citizen whose origins are in India, Pakistan, or Bangladesh.

"Asian-Pacific American," as used in this provision, means a United States citizen whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands, the Northern Mariana Islands, Laos, Cambodia, or Taiwan.

"Native Americans," as used in this provision, means American Indians, Eskimos, Aleuts, and native Hawaiians.

"Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and

operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

"Small disadvantaged business concern," as used in this provision, means a small business concern that (1) is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals and (2) has its management and daily business controlled by one or more such individuals.

(c) *Qualified groups.* The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, and other individuals found to be qualified by the SBA under 13 CFR 124.1.

(End of provision)
(R 7-2003.74 1980 AUG)
(R 3-501(b)(3), Part IV, Section K, (i)(B) 1980 AUG)

52.219-3 Women-Owned Small Business Representation.

As prescribed in 19.304(c), insert the following provision in solicitations (other than those for small purchases), when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia:

WOMEN-OWNED SMALL BUSINESS REPRESENTATION (APR 1984)

(a) *Representation.* The offeror represents that it ☐ is, ☐ is not a women-owned small business concern.

(b) *Definitions.*

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

"Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(End of provision)
(R FPR Temp. Reg 48 1978 DEC)

52.219-4 Notice of Small Business-Small Purchase Set-Aside.

As prescribed in 19.508(a), insert the following provision in each written solicitation of quotations or offers to provide supplies and/or services when (a) the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia, (b) the contract amount is expected to be $10,000 or less, and (c) the acquisition is subject to small purchase procedures; unless purchase on an unrestricted basis is appropriate, as specified in 13.105(d):

NOTICE OF SMALL BUSINESS-SMALL PURCHASE SET-ASIDE (APR 1984)

Quotations under this acquisition are solicited from small business concerns only. Any acquisition resulting from this solicitation will be from a small business concern. Quotations received from concerns that are not small businesses shall not be considered and shall be rejected.

(End of provision)
(R 7-2003.32 1980 AUG)

52.219-5 Notice of Total Small Business-Labor Surplus Area Set-Aside.

As prescribed in 19.508(b) and except for the Department of Defense, insert the following clause in solicitations and contracts involving total small business-labor surplus area set-asides:

NOTICE OF TOTAL SMALL BUSINESS-LABOR SURPLUS AREA SET-ASIDE (APR 1984)

(a) *Definitions.*

"Labor surplus area," as used in this clause, means a geographical area identified by the Department of Labor as an area of labor surplus.

"Labor surplus area concern," as used in this clause, means a concern that, together with its first-tier subcontractors, will perform substantially in labor surplus areas.

"Perform substantially in labor surplus areas," as used in this clause, means that the costs incurred under the contract on account of manufacturing, production, and performance of services in labor surplus areas exceed 50 percent of the contract price.

"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 criteria and size standards in 13 CFR 121.

(b) *General.* (1) Offers are solicited from small business concerns that are also labor surplus area concerns. Offers received from concerns that are not small business-labor surplus area concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business-labor surplus area concern.

(c) *Agreement.* (1) The offeror agrees that, if awarded a contract as a small business-labor surplus area concern, it will take the following actions:

(i) Perform the contract, or cause it to be performed, substantially in areas classified as labor surplus areas at the time of award or performance. However, if an area selected by the offeror is no longer classified as a labor surplus area at the time of performance, the offeror will make an effort to select another area for performance that is classified at the time as a labor surplus area.

(ii) If the contract exceeds $10,000, submit a report to the Contracting Officer within 30 days after the date of award (or a longer period of time, if prescribed by the Contracting Officer) that contains the following information:

(A) The dollar amount of the contract.

(B) Identification of each labor surplus area in which contract (and first-tier subcontract) performance is taking or will take place.

(C) The total costs incurred and the total costs to be incurred under the contract on account of manufacturing, production, and performance of services in each of the labor surplus areas by (*1*) the prime Contractor and (*2*) first-tier subcontractors.

(D) The total dollar amount attributable to performance in labor surplus areas.

(2) A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)
(R 1-1.706-5(d))

52.219-6 Notice of Total Small Business Set-Aside.

As prescribed in 19.508(c), insert the following clause in solicitations and contracts involving total small business set-asides:

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (APR 1984)

(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 manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)
(R 7-2003.2 1972 JUL)
(R 1-1.706-5(e))

52.219-7 Notice of Partial Small Business Set-Aside.

As prescribed in 19.508(d), insert the following clause in solicitations and contracts involving partial small business set-asides:

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE (APR 1984)

(a) *Definitions.*

"Labor surplus area," as used in this clause, means a geographical area identified by the Department of Labor as an area of labor surplus.

"Labor surplus area concern," as used in this clause, means a concern that, together with its first-tier subcontractors, will perform substantially in labor surplus areas.

"Perform substantially in labor surplus areas," as used in this clause, means that the costs incurred under the contract on account of manufacturing, production, and performance of services in labor surplus areas exceed 50 percent of the contract price.

"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) (i) 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. These concerns fall into two groups:

(A) Group 1 — Small business concerns that are also labor surplus area concerns.

(B) Group 2 — Other small business concerns.

(ii) Negotiations will be conducted with the concern in Group 1 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, first with concerns in Group 1 and then with concerns in Group 2, 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.* (1) The offeror agrees that, if awarded a contract as a small business-labor surplus area concern, it will perform the contract, or cause it to be performed, substantially in areas classified as labor surplus areas at the time of award or performance of this contract. However, if an area selected by the offeror is no longer classified as a labor surplus area at the time of performance, the offeror will make an effort to select another area for performance that is classified at the time as a labor surplus area.

(2) The offeror agrees that, if awarded a contract that exceeds $10,000, it will submit a report to the Contracting Officer within 30 days after the date of award (or a longer period of time, if prescribed by the Contracting Officer) that contains the following information:

(i) The dollar amount of the contract.

(ii) Identification of each labor surplus area in which contract (and subcontract) performance is taking or will take place.

(iii) The total costs incurred and the total costs to be incurred under the contract on account of manufacturing, production, and performance of services in each of the labor surplus areas by (A) the prime Contractor and (B) first-tier subcontractors.

(iv) The total dollar amount attributable to performance in labor surplus areas.

(3) A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)
(R 7-2003.3(a) 1978 JUN)
(R 1-1.706-6(c))

52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.

As prescribed in 19.708(a), insert the following clause in solicitations and contracts when the contract amount is expected to be over $10,000, unless—

(a) A personal services contract (see 37.104) is contemplated; or

(b) The contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS (APR 1984)

(a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency.

(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) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern—

(1) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

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

The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

(End of clause)
(R 7-104.14(a) 1980 AUG)
(V FPR Temp. Reg. 50 1979 JUN and its Supplement 2 1980 MAY)

52.219-9 Small Business and Small Disadvantaged Business Subcontracting Plan.

As prescribed in 19.708(b), when contracting by negotiation, insert the following clause in solicitations and contracts that (a) offer subcontracting possibilities, (b) are expected to exceed $500,000 ($1,000,000 for construction of any public facility), and (c) are required to include the clause at 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, unless the acquisition has been set aside for small business or is to be accomplished under the 8(a) program.

SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (APR 1984)

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

(b) "Commercial product," as used in this clause, means a product in regular production that is sold in substantial quantities to the general public and/or industry at established catalog or market prices. It also means a product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product.

"Subcontract," as used in this clause, 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, which addresses separately subcontracting with small business concerns and small disadvantaged business concerns and which 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 concerns and small disadvantaged 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.

(2) A statement of—

(i) Total dollars planned to be subcontracted;

(ii) Total dollars planned to be subcontracted to small business concerns; and

(iii) Total dollars planned to be subcontracted to small disadvantaged 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 and (ii) small disadvantaged business concerns.

(4) A description of the method used to develop the subcontracting goals in (1) above.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administration, 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 and small disadvantaged business concerns trade associations).

(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 and (ii) small disadvantaged 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 concerns and small disadvantaged business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause in this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess of $500,000 ($1,000,000 for construction of any public facility), to adopt a plan similar to the plan agreed to by the offeror.

(10) Assurances that the offeror will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan, (iii) submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms, and (iv) ensure that its subcontractors agree to submit Standard Forms 294 and 295.

(11) A recitation of the types of records the offeror will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small and small disadvantaged 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, guides, and other data that identify small and small disadvantaged business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small or small disadvantaged business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than $100,000, indicating (A) whether small business concerns were solicited and if not, why not, (B) whether small disadvantaged business concerns were solicited and if not, why not, and (C) 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, and (C) conferences and trade fairs to locate small and small disadvantaged business sources.

(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 programs's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having company or division-wide annual 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 and small disadvantaged 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 and small disadvantaged 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 and small disadvantaged business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms.

(f) A master subcontracting plan on a plant or division-wide basis which contains all the elements required by (d) above, 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 provides copies of the approved master plan and 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) (1) If a commercial product is offered, the subcontracting plan required by this clause may relate to the offeror's production generally, for both commercial and noncommercial products, rather than solely to the Government contract. In these cases, the offeror shall, with the concurrence of the Contracting Officer, submit one company-wide or division-wide annual plan.

(2) The annual plan shall be reviewed for approval by the agency awarding the offeror its first prime contract requiring a subcontracting plan during the fiscal year, or by an agency satisfactory to the Contracting Officer.

(3) The approved plan shall remain in effect during the offeror's fiscal year for all of the offeror's commercial products.

(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) 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 and Small Disadvantaged Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)
(R 7-104.14(b) 1980 AUG)
(R 7-104.14(c) 1980 AUG)
(R FPR Temp. Reg. 50 1979 JUN and its Supplement 2 1980 MAY)

Alternate I (APR 1984). When contracting by formal advertising rather than by negotiation, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, which addresses separately subcontracting with small business concerns and small disadvantaged business concerns, and which shall be included in and made 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.

(R 7-104.14(b) 1980 AUG)
(R 7-104.14(c) 1980 AUG)
(R FPR Temp. Reg 50 1979 JUN and its Supplement 2 1980 MAY)

52.219-10 Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns.

As prescribed in 19.708(c)(1), the contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause substantially as follows when a subcontracting plan is required (see 19.702(a)(2)), and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small and disadvantaged business concerns, and is commensurate with the efficient and economical performance of the contract; unless the condition in 19.708(c)(3) is applicable. The contracting officer may vary the terms of the clause as specified in 19.708(c)(2).

INCENTIVE SUBCONTRACTING PROGRAM FOR SMALL AND SMALL DISADVANTAGED BUSINESS CONCERNS(APR 1984)

(a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its subcontracting plan to try to award a certain percentage to small business concerns and a certain percentage to small disadvantaged business concerns.

(b) If the Contractor exceeds its subcontracting goals in performing this contract, it will receive ..... [*insert the appropriate number between 0 and 10*] percent of the dollars in excess of each goal in the plan, 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 subcontracting plan, or the award of subcontracts that had been planned but had not been disclosed in the subcontracting plan during contract negotiations). Determinations made under this paragraph are not subject to the Disputes clause.

(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 Subpart 15.9 of the Federal Acquisition Regulation.

(End of clause)
(R 7-104.14(d) 1979 JUL)
(R FPR Temp. Reg. 50 1979 JUN)

52.219-11 Special 8(a) Contract Conditions.

As prescribed in 19.809-2(a), insert the following clause in contracts between the Small Business Administration (SBA) and a contracting agency when the acquisition is accomplished using 8(a) procedures:

SPECIAL 8(a) CONTRACT CONDITIONS (APR 1984)

The Small Business Administration (SBA) agrees to the following:

(a) To furnish the supplies or services set forth in this contract according to the specifications and the terms and conditions hereof by subcontracting with an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(b) That in the event SBA does not award a subcontract for all or a part of the work hereunder, this contract may be terminated either in whole or in part without cost to either party.

(c) Delegates to the ..... [*insert name of contracting agency*] the responsibility for administering the subcontract to be awarded hereunder with complete authority to take any action on behalf of the Government under the terms and conditions of the subcontract; *provided, however,* that the ..... [*insert name of contracting agency*] shall give advance notice to the SBA before it issues a final notice terminating the right of a subcontractor to proceed with further performance, either in whole or in part, under the subcontract for default or for the convenience of the Government.

(d) That payments to be made under any subcontract awarded under this contract will be made directly to the subcontractor by the ..... [*insert name of contracting agency*].

(e) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the Contracting Officer cognizable under the "Disputes" clause of said subcontract.

(End of clause)
(AV FPR 1-1.713-3(d)(1))

52.219-12 Special 8(a) Subcontract Conditions.

As prescribed in 19.809-2(b), insert the following clause in contracts between Small Business Administration and its 8(a) subcontractors:

SPECIAL 8(a) SUBCONTRACT CONDITIONS (APR 1984)

(a) The Small Business Administration (SBA) has entered into Contract No. ..... [*insert number of contract*] with the ..... [*insert name of contracting agency*] to furnish the supplies or services as described therein. A copy of the contract is attached hereto and made a part hereof.

(b) The ..... [*insert name of subcontractor*], hereafter referred to as the subcontractor, agrees and acknowledges as follows:

(1) That it will, for and on behalf of the SBA, fulfill and perform all of the requirements of Contract No. ..... [*insert number of contract*] for the consideration stated therein and that it has read and is familiar with each and every part of the contract.

(2) That the SBA has delegated responsibility for the administration of this subcontract to the ..... [*insert name of contracting agency*] with complete authority to take any action on behalf of the Government under the terms and conditions of this subcontract.

(3) 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 designated Contracting Officer of the ..... [*insert name of contracting agency*].

(c) Payments, including any progress payments under this subcontract, will be made directly to the subcontractor by the ..... [*insert name of contracting agency*].

(End of clause)
(AV 1-1.713-3(e)(1))

52.219-13 Utilization of Women-Owned Small Businesses.

As prescribed in 19.902, insert the following clause in solicitations and contracts when the contract amount is expected to be over the small purchase threshold, unless (a) the contract is to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands, or (b) a personal services contract is contemplated:

UTILIZATION OF WOMEN-OWNED SMALL BUSINESSES (APR 1984)

(a) "Women-owned small businesses," as used in this clause, means businesses that are at least 51 percent owned by women who are United States citizens and who also control and operate the business.

"Control," as used in this clause, means exercising the power to make policy decisions.

"Operate," as used in this clause, means being actively involved in the day-to-day management of the business.

(b) It is the policy of the United States that women-owned small businesses shall have the maximum practicable opportunity to participate in performing contracts awarded by any Federal agency.

(c) The Contractor agrees to use its best efforts to give women-owned small businesses the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with the efficient performance of its contract.

(End of clause)
(7-104.52 1980 AUG)
(FPR Temp. Reg. 54 1980 MAY)

52.220-1 Preference for Labor Surplus Area Concerns.

As prescribed in 20.103(b), insert the following clause in solicitations and contracts that (a) exceed the appropriate small purchase limitation in Part 13 and (b) are not set aside for labor surplus area concerns:

PREFERENCE FOR LABOR SURPLUS AREA CONCERNS (APR 1984)

(a) This acquisition is not a set aside for labor surplus area (LSA) concerns. However, the offeror's status as such a concern may affect (1) entitlement to award in case of tie offers or (2) offer evaluation in accordance with the Buy American Act clause of this solicitation. In order to determine whether the offeror is entitled to a preference under (1) or (2) above, the offeror must identify, below, the LSA in which the costs to be incurred on account of manufacturing or production (by the offeror or the first-tier subcontractors) amount to more than 50 percent of the contract price.

.....

.....

(b) Failure to identify the locations as specified above will preclude consideration of the offeror as an LSA concern. If the offeror is awarded a contract as an LSA concern and would not have otherwise qualified for award, the offeror shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

(End of clause)
(R 7-2003.13 1978 JUN)

52.220-2 Notice of Total Labor Surplus Area Set-Aside.

As prescribed in 20.202, insert the following clause in solicitations and contracts estimated to exceed the appropriate small purchase limitation in Part 13 that are totally set aside for labor surplus area concerns:

NOTICE OF TOTAL LABOR SURPLUS AREA SET-ASIDE (APR 1984)

(a) *General.* Offers are solicited from concerns that will agree to perform as labor surplus area (LSA) concerns. This action is based on the Small Business Act (15 U.S.C. 644(d), (e), and (f)) and Defense Manpower Policy No. 4B (44 CFR 331). Offers received from concerns that do not agree to perform as LSA concerns will be considered nonresponsive.

(b) *Definitions.* "Labor surplus area," as used in this clause, means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

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

(c) *Agreement.* The offeror agrees that, if awarded a contract as an LSA concern, the offeror will—

(1) Perform the contract, or cause it to be performed, substantially in areas classified as LSA's at the time of award or at the time of performance; and

(2) Submit to the Contracting Officer within 30 days after the award of the contract (if it exceeds the appropriate small purchase limitation in Part 13 of the Federal Acquisition Requlation) or such longer time as prescribed by the Contracting Officer, a report containing the following information:

REPORT ON PERFORMANCE IN LABOR SURPLUS AREAS

(a) Amount of the contract: ..... $.....

(b) Costs incurred or to be incurred by the prime Contractor under the contract on account of production, manufacturing, or appropriate services performed in the following labor surplus areas:

	Labor surplus area	*Cost*
(1)	.....	$.....
(2)	.....	$.....
(3)	.....	$.....
(4)	.....	$.....

(c) Costs incurred or to be incurred by first-tier subcontractors on account of production, manufacturing, or appropriate services performed in the following labor surplus areas:

	Labor surplus area	*Cost*
(1)	.....	$.....
(2)	.....	$.....
(3)	.....	$.....
(4)	.....	$.....
(d)	Total of (b) and (c):	$.....

(End of clause)
(R 1-1.804-1(c))

52.220-3 Utilization of Labor Surplus Area Concerns.

As prescribed in 20.302(a), insert the following clause in solicitations and contracts when it is estimated that the contract will exceed the appropriate small purchase limitation in Part 13. See 20.302(a)(1) through (2) for exceptions:

UTILIZATION OF LABOR SURPLUS AREA CONCERNS (APR 1984)

(a) *Applicability.* This clause is applicable if this contract exceeds the appropriate small purchase limitation in Part 13 of the Federal Acquisition Regulation.

(b) *Policy.* It is the policy of the Government to award contracts to concerns that agree to perform substantially in labor surplus areas (LSA's) when this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use its best efforts to place subcontracts in accordance with this policy.

(c) *Order of preference.* In complying with paragraph (b) above and with paragraph (c) of the clause of this contract entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, the Contractor shall observe the following order of preference in awarding subcontracts: (1) small business concerns that are LSA concerns, (2) other small business concerns, and (3) other LSA concerns.

(d) *Definitions.* "Labor surplus area," as used in this clause, means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

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

(End of clause)
(R 1-1.805-3(a))
(R 7-104.20(a) 1981 May)

52.220-4 Labor Surplus Area Subcontracting Program.

As prescribed in 20.302(b), insert the following clause in solicitations and contracts that (a) may exceed $500,000, (b) contain the clause at 52.220-3, Utilization of Labor Surplus Area Concerns, and (c) in the opinion of the contracting officer, offer substantial subcontracting possibilities. In addition, the contracting officer shall urge contractors, that will receive negotiated contracts that may not exceed $500,000 but that meet the criteria in (b) and (c) above, to accept this clause:

LABOR SURPLUS AREA SUBCONTRACTING PROGRAM (APR 1984)

(a) See the Utilization of Labor Surplus Area Concerns clause of this contract for applicable definitions.

(b) The Contractor agrees to establish and conduct a program to encourage labor surplus area (LSA) concerns to compete for subcontracts within their capabilities when the subcontracts are consistent with the efficient performance of the contract at prices no higher than obtainable elsewhere. The Contractor shall—

(1) Designate a liaison officer who will (i) maintain liaison with authorized representatives of the Government on LSA matters, (ii) supervise compliance with the Utilization of Labor Surplus Area Concerns

clause, and (iii) administer the Contractor's labor surplus area subcontracting program;

(2) Provide adequate and timely consideration of the potentialities of LSA concerns in all make-or-buy decisions;

(3) Ensure that LSA concerns have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of offers, quantities, specifications, and delivery schedules so as to facilitate the participation of LSA concerns;

(4) Include the Utilization of Labor Surplus Area Concerns clause in subcontracts that offer substantial LSA subcontracting opportunities; and

(5) Maintain records showing (i) the procedures adopted and (ii) the Contractor's performance, to comply with this clause. The records will be kept available for review by the Government until the expiration of 1 year after the award of this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulations.

(c) The Contractor further agrees to insert in any related subcontract that may exceed $500,000 and that contains the Utilization of Labor Surplus Area Concerns clause, terms that conform substantially to the language of this clause, including this paragraph (c), and to notify the Contracting Officer of the names of subcontractors.

(End of clause)
(R1-1.805-3(b))
(R 7-104.20(b) 1978 JUN)

52.221 [Reserved].

52.222-1 Notice to the Government of Labor Disputes.

As prescribed in 22.103-5(a), insert the following clause in solicitations and contracts that involve programs or requirements that have been designated under 22.101-1(e):

NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (APR 1984)

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the prime Contractor, as the case may be, of all relevant information concerning the dispute.

(End of clause)
(R 7-203.27 1967 JUN)
(AV 7-104.4 1958 SEP)
(AV 7-603.1 1958 SEP)

52.222-2 Payment for Overtime Premiums.

As prescribed in 22.103-5(b), insert the following clause in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract amount is expected to be over $100,000; unless (a) a cost-reimbursement contract for operation of vessels is contemplated, or (b) a cost-plus-incentive-fee contract that will provide a swing from the target fee of at least plus or minus 3 percent and a contractor's share of at least 10 percent is contemplated.

PAYMENT FOR OVERTIME PREMIUMS (APR 1984)

(a) The use of overtime is authorized under this contract if the overtime premium cost does not exceed *..... In addition to this dollar ceiling, overtime is permitted only for work—

(1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or

(4) That will result in lower overall costs to the Government.

(b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall—

(1) Identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;

(2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;

(3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and

(4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

*Insert either "zero" or the dollar amount agreed to during negotiations.

(End of clause)
(R 7-203.27 1967 JUN)

52.222-3 Convict Labor.

As prescribed in 22.202, insert the following clause in solicitations and contracts when the contract is to be performed in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands; unless—

(a) The contract will be subject to the Walsh-Healey Public Contracts Act (see Subpart 22.6), which contains a separate prohibition against the employment of convict labor;

(b) The supplies or services are to be purchased from Federal Prison Industries, Inc. (see Subpart 8.6); or

(c) The acquisition involves the purchase, from any State prison, of finished supplies that may be secured in the open market or from existing stocks, as distinguished from supplies requiring special fabrication.

CONVICT LABOR (APR 1984)

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing this contract except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

(End of clause)
(R 7-104.17 1975 OCT)
(R 7-607.12 1975 OCT)
(R 1-12.204)

52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation—General.

As prescribed in 22.305(a), insert the following clause in solicitations and contracts (including, for this purpose, basic ordering and blanket purchase agreements) when the contract may require or involve the employment of laborers, mechanics, helpers, apprentices, trainees, watchmen, guards, firefighters, or fireguards, except as provided in 22.305(a)(1) through (7):

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION—GENERAL (APR 1984)

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) (the Act), is subject to the following terms and all other applicable provisions and exceptions of the Act and the regulations of the Secretary of Labor.

(a) *Overtime requirements.* A Contractor or subcontractor shall not require or permit any laborer or mechanic to work in excess of 8 hours in any calendar day, or 40 hours in any workweek, on any part of the contract work subject to the Act; *unless*, the laborer or mechanic receives compensation at a rate not less than 1 ½ times the basic rate of pay for

all hours worked in excess of 8 hours in any calendar day, or 40 hours in any workweek, whichever produces the greater amount of overtime.

(b) *Violation, liability for unpaid wages, and liquidated damages.* If the terms of paragraph (a) above are violated, the Contractor and any subcontractor responsible for the violation shall be liable to any affected employee for unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States for liquidated damages. These damages are computed for each individual laborer or mechanic at $10 for each calendar day on which the employee was required or permitted to be employed in violation of paragraph (a) above.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer may withhold from the Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such amounts as may administratively be determined to be necessary to satisfy any liabilities of the Contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph (b) above.

(d) *Subcontracts.* The Contractor and subcontractor shall insert paragraphs (a) through (d) of this clause in all subcontracts.

(e) *Records.* The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). These records shall be preserved for 3 years from contract completion. The contractor will make the records available for inspection by authorized representatives of the ..... [*Contracting Officer insert the name of agency*] and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

(End of clause)
(R 7-103.16(a) 1971 NOV)
(R 7-607.11 1972 APR)
(R 1-12.303)

52.222-5 Contract Work Hours and Safety Standards Act—Overtime Compensation—Firefighters and Fireguards.

As prescribed in 22.305(b), insert the following clause in solicitations and contracts if (a) firefighters or fireguards are to be employed and (b) the clause prescribed in 22.305(a) is required.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION—FIREFIGHTERS AND FIREGUARDS (APR 1984)

A workday consisting of a fixed and recurring 24-hour period commencing at the same time on each calendar day may be used instead of the calendar day in applying the daily overtime provisions of the Act to the employment of firefighters or fireguards if—

(a) The employment is under a platoon system requiring these employees to remain in excess of 8 hour per day at their post of duty in a standby or on-call status;

(b) The use of the alternate 24-hour day was agreed upon between the employer and employees or their authorized representatives before performance of the work; and

(c) In applying the daily and weekly overtime requirements of the Act in any particular workweek of any employee whose established workweek begins at a time of the calendar day different from the time when the agreed 24-hour day commences, the hours worked in excess of 8 hours in any 24-hour day are counted in the established workweek (of 168 hours commencing at the same time each week) in which hours are actually worked.

(End of clause)
(R 7-103.16(b) 1974 APR)

52.222-6 [Reserved].

52.222-7 [Reserved].

52.222-8 [Reserved].

52.222-9 [Reserved].

52.222-10 [Reserved].

52.222-11 [Reserved].

52.222-12 [Reserved].

52.222-13 [Reserved].

52.222-14 [Reserved].

52.222-15 [Reserved].

52.222-16 [Reserved].

52.222-17 [Reserved].

52.222-18 [Reserved].

52.222-19 Walsh-Healey Public Contracts Act Representation.

As prescribed in 22.610(a), insert the following provision in solicitations that will result in contracts covered by the Act. If the solicitation is a Request for Quotation, the terms "quoter" and "quote" may be substituted for "offeror" and "offer".

WALSH-HEALEY PUBLIC CONTRACTS ACT REPRESENTATION (APR 1984)

The offeror represents as a part of this offer that the offeror is ☐ or is not ☐ a regular dealer in, or is ☐ or is not ☐ a manufacturer of, the supplies offered.

(End of provision)
(41 CFR 50-201.1)

52.222-20 Walsh-Healey Public Contracts Act.

As prescribed in 22.610(b), insert the following clause in solicitations and contracts covered by the Act:

WALSH-HEALEY PUBLIC CONTRACTS ACT (APR 1984)

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed $10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

(a) All representations and stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These representations and stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

(End of clause)
(R 7-103.17 1958 JAN)
(R 1-12.605)

52.222-21 Certification of Nonsegregated Facilities.

As prescribed in 22.810(a)(1), insert the following provision in solicitations when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the contract amount is expected to exceed $10,000:

CERTIFICATION OF NONSEGREGATED FACILITIES (APR 1984)

(a) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(b) By the submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.

(c) The offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will—

(1) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;

(2) Retain the certifications in the files; and

(3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted

identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES.

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

(End of provision)
(R 7-2003.14(b)(1)(A) 1970 AUG)
(R 1-12.803-10(d))

52.222-22 Previous Contracts and Compliance Reports.

As prescribed in 22.810(a)(2), insert the following provision in solicitations when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity:

PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (APR 1984)

The offeror represents that—

(a) It ☐ has, ☐ has not participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114;

(b) It ☐ has, ☐ has not, filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(End of provision)
(R 7-2003.14(b)(1)(B) 1973 APR)

52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity.

As prescribed in 22.810(b), insert the following provision in solicitations for construction when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the amount is expected to be in excess of $10,000:

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (APR 1984)

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation for each trade	Goals for female participation for each trade
[*Contracting Officer shall insert goals*]	[*Contracting Officer shall insert goals*]

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction," and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Director, Office of Federal Contract Compliance Programs, within 10 working days following award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the—

(1) Name, address, and telephone number of the subcontractor;

(i) Employer identification number of the subcontractor;

(2) Estimated dollar amount of the subcontract;

(3) Estimated starting and completion dates of the subcontract; and

(4) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is ..... [*Contracting Officer shall insert description of the geographical areas where the contract is to be performed, giving the State, county, and city*].

(End of provision)
(R 7-2003.14(d) 1978 SEP)

52.222-24 Preaward On-Site Equal Opportunity Compliance Review.

As prescribed in 22.810(c), insert the following provision in solicitations, other than those for construction, when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the amount is expected to be for $1 million or more:

PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE REVIEW (APR 1984)

An award in the amount of $1 million or more will not be made under this solicitation unless the offeror and each of its known first-tier subcontractors (to whom it intends to award a subcontract of $1 million or more) are found, on the basis of a compliance review, to be able to comply with the provisions of the Equal Opportunity clause of this solicitation.

(End of provision)
(R 7-2003.14(a) 1970 AUG)
(R 1-12.803-9)

52.222-25 Affirmative Action Compliance.

As prescribed in 22.810(d), insert the following provision in solicitations, other than those for construction, when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity:

AFFIRMATIVE ACTION COMPLIANCE (APR 1984)

The offeror represents that (a) it ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (b) it ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(End of provision)
(R 7-2003.14(b) 1979 SEP)
(R 1-12.805-4)

52.222-26 Equal Opportunity.

As prescribed in 22.810(e), insert the following clause in solicitations and contracts (see 22.802) unless all of the terms of the clause are exempt from the requirements of EO 11246 (see 22.807(a)):

EQUAL OPPORTUNITY (APR 1984)

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated

during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

(8) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraph (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; *provided*, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

(End of clause)
(R 7-103.18 1978 SEP)
(R 1-12.803-2)
(R 7-607.13 1978 SEP)

Alternate I (APR 1984). If one or more, but not all, of the terms of the clause are exempt from the requirements of EO 11246 (see 22.807(a)), the contracting officer shall add the following as a preamble to the clause:

Notice. The following terms of this clause are waived for this contract:
.....[*Contracting Officer shall list terms*].

52.222-27 Affirmative Action Compliance Requirements for Construction.

As prescribed in 22.810(f), insert the following clause in solicitations and contracts for construction that will include the clause at 52.222-26, Equal Opportunity, and the amount of the contract is expected to be in excess of $10,000:

AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (APR 1984)

(a) *Definitions.*

"Covered area," as used in this clause, means the geographical area described in the solicitation for this contract.

"Director," as used in this clause, means Director, Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor, or any person to whom the Director delegates authority.

"Employer indentification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means—

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin);

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of $10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) above.

(6) Disseminate the Contractor's equal employment policy by—

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all onsite supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16). The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16), provided the Contractor—

(1) Actively participates in the group;

(2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;

(3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;

(4) Makes a good-faith effort to meet its individual goals and timetables; and

(5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Director shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to—

(1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;

(2) Submit reports as may be required by the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; *however*, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(End of clause)
(R 7-603.60 1978 SEP)

52.222-28 Equal Opportunity Preaward Clearance of Subcontracts.

As prescribed in 22.810(g), insert the following clause in solicitations and contracts when the amount of the contract is expected to be for $1 million or more and includes the clause prescribed in paragraphs (a), (c), or (e) of 44.204:

EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTS (APR 1984)

Notwithstanding the clause of this contract entitled "Subcontractors," the Contractor shall not enter into a first-tier subcontract for an estimated or actual amount of $1 million or more without obtaining in writing from the Contracting Officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award.

(End of clause)
(AV 7-104.22 1971 OCT)

52.222-29 Notification of Visa Denial.

As prescribed in 22.810(h), insert the following clause in contracts that will include the clause at 52.222-26, Equal Opportunity, if the Contractor is required to perform in or on behalf of a foreign country:

NOTIFICATION OF VISA DENIAL (APR 1984)

It is a violation of Executive Order 11246, as amended, for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, on the basis that the individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where the work is to be performed or for whom the work will be performed (41 CFR 60-1.10). The Contractor agrees to notify the Department of State, Washington, DC, Attention: Director, Bureau of Politico-Military Affairs, and the Director, Office of Federal Contract Compliance Programs, when it has knowledge of any employee or potential employee being denied an entry visa to a country in which the Contractor is required to perform this contract, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.

(End of clause)
(AV 7-2003.14(c) 1978 SEP)

52.222-30 [Reserved].

52.222-31 [Reserved].

52.222-32 [Reserved].

52.222-33 [Reserved].

52.222-34 [Reserved].

52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans.

As prescribed in 22.1308, insert the following clause in solicitations and contracts when the contract is for $10,000 or more or is expected to amount to $10,000 or more (see 22.1308(a) for exceptions):

AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS (APR 1984)

(a) *Definitions.*

"Appropriate office of the State employment service system," as used in this clause, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

"Openings that the Contractor proposes to fill from within its own organization," as used in this clause, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established "recall" lists.

"Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this clause, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

"Suitable employment openings," as used in this clause—

(1) Includes, but is not limited to, openings that occur in jobs categorized as—

(i) Production and nonproduction;

(ii) Plant and office;

(iii) Laborers and mechanics;

(iv) Supervisory and nonsupervisory;

(v) Technical; and

(vi) Executive, administrative, and professional positions compensated on a salary basis of less than $25,000 a year; and

(2) Includes full-time employment, temporary employment of over 3 days, and part-time employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

(b) *General.* (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

(i) Employment;

(ii) Upgrading;

(iii) Demotion or transfer;

(iv) Recruitment;

(v) Advertising;

(vi) Layoff or termination;

(vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) *Listing openings.* (1) The Contractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of $10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.

(3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system

when it is no longer bound by this contract clause.

(5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the Government's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) the requirement of listing would not be in the Government's interest.

(d) *Applicability.* (1) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(2) The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) *Postings.* (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam Era veterans.

(f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

(End of clause)
(R 7-103.27 1976 JUL)
(R FPR Temp. Reg. 39)

Alternate I (APR 1984). As prescribed in 22.1308(b), if the agency head waives one or more (but not all) of the terms of the clause in accordance with 22.1303(a) or 22.1303(b), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this contract: [*List term(s)*].
(R 12-1402(d))

52.222-36 Affirmative Action for Handicapped Workers.

As prescribed in 22.1408, insert the following clause in solicitations and contracts that exceed $2,500 or are expected to exceed $2,500. See 22.1408(a) for exceptions.

AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (APR 1984)

(a) *General.* (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental handicap. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as—

(i) Employment;
(ii) Upgrading;
(iii) Demotion or transfer;
(iv) Recruitment;
(v) Advertising;
(vi) Layoff or termination;
(vii) Rates of pay or other forms of compensation; and
(viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) *Postings.* (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.

(c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of $2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

(End of clause)
(R 7-103.28 1976 MAY)
(R FPR Temp. Reg. 38)

Alternate I (APR 1984). As prescribed in 22.1408(b), when the agency head waives one or more (but not all) of the terms of the clause in accordance with 22.1403(a) or 22.1403(b), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this contract: [*List term(s)*].
(R 12.1302(d))

52.222-37 [Reserved].

52.222-38 [Reserved].

52.222-39 [Reserved].

52.222-40 Service Contract Act of 1965—Contracts of $2,500 or Less.

As prescribed in 22.1005, insert the following clause in solicitations and contracts when the contract amount is expected to be $2,500 or less and the Service Contract Act of 1965 is applicable. With respect to Blanket Purchase Agreements and Basic Ordering Agreements, the amount to be compared to the dollar threshold is the total dollar amount of orders reasonably anticipated to be placed in a 1-year period.

SERVICE CONTRACT ACT OF 1965—CONTRACTS OF $2,500 OR LESS (APR 1984)

Except to the extent that an exemption, variation, or tolerance would apply under 29 CFR Part 4.6 if this contract were in excess of $2,500, the Contractor and any subcontractor shall pay all employees working on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-206). All regulations and interpretations of the Service Contract Act of 1965 expressed in 29 CFR Part 4 are hereby incorporated by reference in this contract.

(End of clause)
(R 7-1903.41(b) 1968 SEP)
(AV 1-12.904-2)

52.222-41 Service Contract Act of 1965.

As prescribed in 22.1006(a), insert the following clause in solicitations and contracts when the contract is subject to the Service Contract Act of 1965 and is (a) for over $2,500 or (b) for an indefinite dollar amount and the contracting officer expects the contract amount will exceed $2,500 during any 12-month period. With respect to Blanket Purchase Agreements and Basic Ordering Agreements, the amount to be compared to the dollar threshold is the total dollar amount of orders reasonably

anticipated to be placed in a 1-year period.

SERVICE CONTRACT ACT OF 1965 (APR 1984)

(a) *Definitions.* "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351-358).

"Contractor," as used in this clause, means the prime Contractor or any subcontractor at any tier.

"Service employee," as used in this clause, means any person (other than a person employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR 541) engaged in performing a Government contract not exempted under 41 U.S.C. 356, the principal purpose of which is to furnish services in the United States, as defined in section 22.1001 of the Federal Acquisition Regulation. It includes all such persons regardless of the actual or alleged contractual relationship between them and a contractor.

(b) *Applicability.* To the extent that the Act applies, this contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR 4). All interpretations of the Act in Subpart C of 29 CFR 4 are incorporated in this contract by reference. This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR 4.

(c) *Compensation.* (1) The Contractor shall pay not less than the minimum wage and shall furnish fringe benefits to each service employee under this contract in accordance with the wages and benefits determined by the Secretary of Labor or the Secretary's authorized representative, as specified in any attachment to this contract.

(2) If there is an attachment, the Contractor shall classify any class of service employees not listed in it, but to be employed under this contract. The classification shall provide a reasonable relationship to those listed in the attachment. The Contractor shall pay that class wages and fringe benefits determined by agreement of the interested parties: the contracting agency, the Contractor, and the employees who will perform the contract or their representatives. If the interested parties do not agree, the Contracting Officer shall submit the question, with a recommendation, for final determination by the Office of Government Contract Wage Standards, Wage and Hour Division, Employment Standards Administration (ESA), Department of Labor. Failure to pay such employees the compensation agreed upon by the interested parties or finally determined by ESA is a contract violation.

(3) If the term of this contract is more than 1 year, the minimum wages and fringe benefits required for service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by ESA.

(4) The Contractor can discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) above by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, in accordance with Subparts B and C of 29 CFR 4.

(d) *Minimum wage.* In the absence of a minimum wage attachment for this contract, the Contractor shall not pay any service or other employees performing this contract less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206). Nothing in this clause shall relieve the Contractor of any other legal or contractual obligation to pay a higher wage to any employee.

(e) *Successor contracts.* If this contract succeeds a contract subject to the Act under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then, in the absence of a minimum wage attachment to this contract, the Contractor may not pay any service employee performing this contract less than the wages and benefits, including those accrued and any prospective increases, provided for under that agreement. No contractor may be relieved of this obligation unless the limitations of 29 CFR 4.1c(b) apply or unless the Secretary of Labor or the Secretary's authorized representative—

(1) Determines that the agreement under the predecessor contract was not the result of arms-length negotiations; or

(2) Finds, after a hearing under 29 CFR 4.10, that the wages and benefits provided for by that agreement vary substantially from those prevailing for similar services in the locality.

(f) *Notification to employees.* The Contractor shall notify each service employee commencing work on this contract of the minimum wage and any fringe benefits required to be paid, or shall post a notice of these wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.

(g) *Safe and sanitary working conditions.* The Contractor shall not permit services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor that are unsanitary, hazardous, or dangerous to the health or safety of service employees. The Contractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(h) *Records.* The Contractor shall maintain for 3 years from the completion of the work, and make available for inspection and transcription by authorized ESA representatives, a record of the following:

(1) For each employee subject to the Act—

(i) Name and address;

(ii) Work classification or classifications, rate or rates of wages and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(iii) Daily and weekly hours worked; and

(iv) Any deductions, rebates, or refunds from total daily or weekly compensation.

(2) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by ESA under the terms of paragraph (c) of this clause. A copy of the report required by paragraph (k) of this clause will fulfill this requirement.

(i) *Withholding of payments and termination of contract.* The Contracting Officer shall withhold from the prime Contractor under this or any other Government contract with the prime contractor any sums the Contracting Officer, or an appropriate officer of the Labor Department, decides may be necessary to pay underpaid employees. Additionally, any failure to comply with the requirements of this clause may be grounds for termination for default.

(j) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts.

(k) *Contractor's report.* (1) If there is a wage determination attachment to this contract and any classes of service employees not listed on it are to be employed under the contract, the Contractor shall report promptly to the Contracting Officer the wages to be paid and the fringe benefits to be provided each of these classes, when determined under paragraph (c) of this clause.

(2) If wages to be paid or fringe benefits to be furnished any service employees under the contract are covered in a collective bargaining agreement effective at any time when the contract is being performed, the prime Contractor shall provide to the Contracting Officer a copy of the agreement and full information on the application and accrual of wages and benefits (including any prospective increases) to service employees working on the contract. The prime Contractor shall report when contract performance begins, in the case of agreements then in effect, and shall report subsequently effective agreements, provisions, or amendments promptly after they are negotiated.

(l) *Variations, tolerances, and exemptions involving employment.* Notwithstanding any of the provisions in paragraphs (c) through (k) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions authorized by the Secretary of Labor:

(1) (i) In accordance with regulations issued under Section 14 of the Fair Labor Standards Act of 1938 by the Administrator of the Wage and Hour Division, ESA (29 CFR 520, 521, 524, and 525), apprentices, student-learners, and workers whose earning capacity is impaired by age or by physical or mental deficiency or injury, may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act, without diminishing any fringe benefits or payments in lieu of these benefits required under section 2(a)(2) of the Act.

(ii) The Administrator will issue certificates under the Act for employing apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum

wages, but without changing requirements concerning fringe benefits or supplementary cash payments in lieu of these benefits.

(iii) The Administrator may also withdraw, annul, or cancel such certificates under 29 CFR 525 and 528.

(2) An employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with regulations in 29 CFR 531. However, the amount of credit shall not exceed 40 percent of the minimum rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended.

(End of clause)
(R 7-1903.41(a) 1977 OCT)
(R 1-12.904-1)

52.222-42 Statement of Equivalent Federal Wage Rates.

As prescribed in 22.1006(b), insert the following clause in solicitations and contracts when the contract amount is expected to be over $2,500 and the Service Contract Act of 1965 is applicable:

STATEMENT OF EQUIVALENT FEDERAL WAGE RATES (APR 1984)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

THIS CLAUSE IS FOR INFORMATION ONLY; IT IS NOT A WAGE DETERMINATION

	Hourly Compensation		
Employee Class	Wages	Fringe Benefits	Total

(End of clause)
(R 7-2003.84 1979 SEP)
(R 1-12.904-1(l))

52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts).

As prescribed in 22.1006(c)(1), insert the following clause in solicitations and contracts when the contract is expected to be a fixed-price service contract containing the clause at 52.222-41, Service Contract Act of 1965, and is a multiyear contract or is a contract with options to renew (note that the adjustments under subparagraphs (c)(2) and (3) of the clause may apply to the base period as well as to subsequent periods):

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (MULTIYEAR AND OPTION CONTRACTS)(APR 1984)

(a) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The minimum prevailing wage determination, including fringe benefits, issued under the Service Contract Act of 1965 (41 U.S.C. 351-358), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current at the beginning of each renewal option period, shall apply to any renewal of this contract. When no such determination has been made applicable to this contract, then the current Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) shall apply to any renewal of this contract.

(c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages or fringe benefits of employees working on this contract to comply with—

(1) The Department of Labor determination of minimum prevailing wages and fringe benefits applicable at the beginning of the renewal option period;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described in paragraph (c) above, and to the concomitant increases or decreases in social security and unemployment taxes and workers's compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)
(R 7-1905(b) 1975 MAY)

52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.

As prescribed in 22.1006(c)(2), insert the following clause in solicitations and contracts when the contract is expected to be a fixed-price service contract containing the clause at 52.222-41, Service Contract Act of 1965, and is *not* a multiyear contract or is *not* a contract with options to renew:

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (APR 1984)

(a) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages or fringe benefits of employees working on this contract to comply with—

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(c) Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described in paragraph (b) above, and to the concomitant increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(d) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(e) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)
(R 7-1905(c) 1975 MAY)

52.222-45 Notice of Compensation for Professional Employees.

As prescribed in 22.1103, insert the following provision in solicitations for negotiated service contracts when the contract amount is expected to exceed $250,000 and the service to be provided will require meaningful numbers of professional employees:

NOTICE OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (APR 1984)

Note the provisions relating to evaluation of compensation for professional employees set forth elsewhere in this solicitation. Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal. The total compensation plan required to be submitted by the offeror will be viewed as being within the purview of Public Law 87-653 (10 U.S.C. 2306(f)) and in accordance with Federal Acquisition Regulation 15.802(a).

(End of provision)
(AV 7-2003.78 1978 JUN)

52.222-46 Evaluation of Compensation for Professional Employees.

As prescribed in 22.1103, insert the following provision in solicitations for negotiated service contracts when the contract amount is expected to exceed $250,000 and the service to be provided will require meaningful numbers of professional employees:

EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (APR 1984)

(a) Recompetition of service contracts may in some cases result in lowering the compensation (salaries and fringe benefits) paid or furnished professional employees. This lowering can be detrimental in obtaining the quality of professional services needed for adequate contract performance. It is therefore in the Government's best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated. As a part of their proposals, offerors will submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The Government will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure.

(b) The compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. The salary rates or ranges must take into account differences in skills, the complexity of various disciplines, and professional job difficulty. Additionally, proposals envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees. Offerors are cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.

(c) The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

(End of provision)
(R 7-2003.79 1978 JUN)

52.223-1 Clean Air and Water Certification.

As prescribed in 23.105(a), insert the following provision in solicitations containing the clause at 52.223-2, Clean Air and Water.

CLEAN AIR AND WATER CERTIFICATION (APR 1984)

The Offeror certifies that—

(a) Any facility to be used in the performance of this proposed contract is ☐ is not ☐ listed on the Environmental Protection Agency List of Violating Facilities;

(b) The Offeror will immediately notify the Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the Offeror proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and

(c) The Offeror will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

(End of provision)
(AV 7-2003.71 1977 JUN)
(AV 1-1.2302-1)

52.223-2 Clean Air and Water.

As prescribed in 23.105(b), insert the following clause in solicitations and contracts to which Subpart 23.1 applies (see 23.101) if (a) the contract is expected to exceed $100,000; (b) the contracting officer believes that orders under an indefinite quantity contract in any year will exceed $100,000; or (c) a facility to be used has been the subject of a conviction under the applicable portion of the Air Act (42 U.S.C. 7413(c)(1)) or the Water Act (33 U.S.C. 1319(c)) and is listed by EPA as a violating facility; and (d) the acquisition is not otherwise exempt under 23.104.

CLEAN AIR AND WATER (APR 1984)

(a) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. 7401 et seq.).

"Clean air standards," as used in this clause, means—

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

(2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));

(3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or

(4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

"Compliance," as used in this clause, means compliance with—

(1) Clean air or water standards; or

(2) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

"Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251 et seq.).

(b) The Contractor agrees—

(1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and

the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

(4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

(End of clause)
(R 7-103.29 1975 OCT)
(R 1-1.2302)

52.223-3 Hazardous Material Identification and Material Safety Data.

As prescribed in 23.303, insert the following clause in solicitations and contracts when it is contemplated that the contract will require the delivery of hazardous materials as defined in Appendix A of Federal Standard No. 313A, or on the advice of the Government's technical representative that the contract will involve exposure to hazardous materials in any manner; e.g., performance of work, use, handling, manufacturing, packaging, transportation, storage, inspection, and disposal.

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (APR 1984)

(a) The Contractor agrees to submit a Material Safety Data Sheet (Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313A, for all hazardous material 5 days before delivery of the material, whether or not listed in Appendix A of the Standard. This obligation applies to all materials delivered under this contract which will involve exposure to hazardous materials or items containing these materials.

(b) "Hazardous material," as used in this clause, is as defined in Federal Standard No. 313A, in effect on the date of this contract.

(c) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(d) The Contractor shall comply with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(e) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate, and disclose any data to which this clause is applicable. The purposes of this right are to (i) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials; (ii) obtain medical treatment for those affected by the material; and (iii) have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (e)(1) above, in precedence over any other clause of this contract providing for rights in data.

(3) That the Government is not precluded from using similar or identical data acquired from other sources.

(4) That the data shall not be duplicated, disclosed, or released outside the Government, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies—

"This is furnished under United States Government Contract No. ..... and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of ..... This legend shall be marked on any reproduction of this data."

(End of legend)

(5) That the Contractor shall not place the legend or any other restrictive legend on any data which (i) the Contractor or any subcontractor previously delivered to the Government without limitations or (ii) should be delivered without limitations under the conditions specified in the Federal Acquisition Regulation in the clause at 52.227-18, Rights in Data.

(f) The Contractor shall insert this clause, including this paragraph (f), with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under this contract involving hazardous material.

(End of clause)
(R 7-104.98 1977 OCT)

52.223-4 Recovered Material Certification.

As prescribed in 23.405, insert the following provision in solicitations that incorporate specifications requiring the use of recovered materials.

RECOVERED MATERIAL CERTIFICATION (APR 1984)

The offeror certifies, by signing this offer, that recovered materials, as defined in section 23.402 of the Federal Acquisition Regulation, will be used as required by the applicable specifications.

(End of provision)
(AV 7-2003.82 1979 MAR)
(AV 1-1.2504)

52.224-1 Privacy Act Notification.

As prescribed in 24.104, insert the following clause in solicitations and contracts, when the design, development, or operation of a system of records on individuals is required to accomplish an agency function:

PRIVACY ACT NOTIFICATION (APR 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

(End of clause)
(R 7-2003.72 1975 NOV)
(R 1-1.327-5(b))

52.224-2 Privacy Act.

As prescribed in 24.104, insert the following clause in solicitations and contracts, when the design, development, or operation of a system of records on individuals is required to accomplish an agency function:

PRIVACY ACT (APR 1984)

(a) The Contractor agrees to—

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies—

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the design, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor and any employee of the Contractor is considered to be an employee of the agency.

(c) (1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the

individual, such as a fingerprint or voiceprint or a photograph.

(3) "System of records on individuals," as used in this clause means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(End of clause)
(AV 7-104.96 1975 NOV)
(AV 1-1.327-5(c))

52.225-1 Buy American Certificate.

As prescribed in 25.109(a), insert the following provision in solicitations for the acquisition of supplies, or for services involving the furnishing of supplies, for use within the United States, except for acquisitions made under the Trade Agreements Act of 1979, as specified in Subpart 25.4:

BUY AMERICAN CERTIFICATE (APR 1984)

The offeror certifies that each end product, except those listed below, is a domestic end product (as defined in the clause entitled "Buy American Act—Supplies"), and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

Excluded End Products	Country of Origin

(List as necessary)

Offerors may obtain from the contracting officer lists of articles, materials, and supplies excepted from the Buy American Act (listed at 25.108 of the Federal Acquisition Regulation).

(End of provision)
(R 7-2003.47 1969 NOV)
(R 1-6.104-3)

52.225-2 Waiver of Buy American Act for Civil Aircraft and Related Articles.

As prescribed in 25.109(c), insert the following provision in solicitations for the acquisition of civil aircraft and related articles:

WAIVER OF BUY AMERICAN ACT FOR CIVIL AIRCRAFT AND RELATED ARTICLES (APR 1984)

(a) "Civil aircraft and related articles," as used in this provision, means—

(1) All aircraft other than aircraft to be purchased for use by the Department of Defense or the U.S. Coast Guard;

(2) The engines (and parts and components for incorporation into the engines) of these aircraft;

(3) Any other parts, components, and subassemblies for incorporation into the aircraft; and

(4) Any ground flight simulators, and parts and components of these simulators, for use with respect to the aircraft, whether to be used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of the aircraft, and without regard to whether the aircraft or articles receive duty-free treatment under section 601(a)(2) of the Trade Agreements Act of 1979.

(b) The U.S. Trade Representative has waived applying of the Buy American Act to the acquisition of civil aircraft and related articles (as defined in paragraph (a) above) of countries or instrumentalities that are parties to the Agreement on Trade in Civil Aircraft. As of January 1, 1981, those countries and instrumentalities include Austria, Canada, the European Economic Community (Belgium, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom), Japan, Norway, Romania, Sweden, and Switzerland.

(c) For the purpose of this waiver, an article is a product of a country or instrumentality only if—

(1) It is wholly the growth, product, or manufacture of that country or instrumentality; or

(2) In the case of an article that consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(d) The waiver is subject to modification or withdrawal by the U.S. Trade Representative.

(End of provision)
(R 1-6.601-1)

52.225-3 Buy American Act—Supplies.

As prescribed in 25.109(d), insert the following clause in solicitations and contracts for the acquisition of supplies, or for services involving the furnishing of supplies, for use within the United States, except for acquisitions made under subparagraph (a)(3) of the Trade Agreements Act of 1979, as specified in Subpart 25.4:

BUY AMERICAN ACT—SUPPLIES (APR 1984)

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

"Components," as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

"Domestic end product," as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End products," as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

(b) The Contractor shall deliver only domestic end products, except those—

(1) For use outside the United States;

(2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the agency determines that domestic preference would be inconsistent with the public interest; or

(4) For which the agency determines the cost to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954, as amended, and Subpart 25.1 of the Federal Acquisition Regulation.)

(End of clause)
(R 7-104.3 1964 MAY)
(R 1-6.104-5)

52.225-4 [Reserved].

52.225-5 Buy American Act—Construction Materials.

As prescribed in 25.205, insert the following clause in solicitations and contracts for construction inside the United States:

BUY AMERICAN ACT—CONSTRUCTION MATERIALS (APR 1984)

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic construction material.

"Components," as used in this clause, means those articles, materials, and supplies incorporated directly into construction materials.

"Construction materials," as used in this clause, means articles, materials, and supplies brought to the construction site for incorporation into the building or work.

"Domestic construction material," as used in this clause, means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(3) of the Federal Acquisition Regulation (FAR) shall be treated as domestic.

(b) The Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, materialmen, and suppliers in the performance of this contract, except for foreign construction materials, if any, listed in this contract.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954, as amended, and Subpart 25.2 of the FAR).

(End of clause)
(R 7-602.20 1966 OCT)
(R 1-6.104-5)
(R 1-18.605)

52.225-6 Balance of Payments Program Certificate.

As prescribed in 25.305(a), insert the following provision in solicitations for supplies or services for use outside the United States, unless one or more of the exceptions in 25.302(b) applies or the acquisition is made under the Trade Agreements Act of 1979 (see Subpart 25.4):

BALANCE OF PAYMENTS PROGRAM CERTIFICATE (APR 1984)

(a) The offeror hereby certifies that each end product or service, except the end products or services listed below, is a domestic end product or service (as defined in the clause entitled "Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

Excluded End Products or Services

Line Item No.	Country of Origin

(List as necessary)

(b) Offers will be evaluated by giving a certain preference to domestic end products or services over foreign end products or services. Evaluation will be in accordance with paragraph 25.303(b) of the Federal Acquisition Regulation.

(End of provision)
(R 7-2003.47 1969 NOV)

52.225-7 Balance of Payments Program.

As prescribed in 25.305(c), insert the following clause in solicitations and contracts for acquiring supplies or services for use outside the United States, unless one or more of the exceptions in 25.302(b) applies or the acquisition is made under the Trade Agreeements Act of 1979 (see Subpart 25.4):

BALANCE OF PAYMENTS PROGRAM (APR 1984)

(a) This clause implements the Balance of Payments Program by providing a preference for domestic end products or services over foreign end products or services.

"Components," as used in this clause, means those articles, materials, and supplies directly incorporated into the end products.

"Domestic end product," as used in this clause, means—

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in the United States in sufficient reasonably available commercial quantities of a satisfactory quality shall be treated as domestic. Components of unknown origin shall be considered foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"Domestic services," as used in this clause, means services performed in the United States. If services provided under a single contract are performed both in and outside the United States, they shall be considered domestic if 25 percent or less of their total cost is attributable to services (including incidental supplies used in connection with these services) performed outside the United States.

"End product," as used in this clause, means an article, material, or supply acquired for public use under this contract.

"Foreign end product," as used in this clause, means a product other than a domestic end product.

(b) The contractor agrees that there will be delivered under this contract only domestic end products or services unless, in its offer, it specified delivery of foreign end products or services in the provision entitled "Balance of Payments Program Certificate." An offer based on supplying a foreign end product or service, if accepted, will permit the contractor to supply a product or service without regard to the requirements of this clause.

(c) Offers will be evaluated in accordance with paragraph 25.303(b) of the Federal Acquisition Regulation.

(End of clause)
(R 7-104.3)

52.225-8 Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate.

As prescribed in 25.407(a)(1), insert the following provision in solicitations for supplies, except as specified in 25.403:

BUY AMERICAN ACT—TRADE AGREEMENTS ACT—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (APR 1984)

(a) The offeror hereby certifies that each end product, except those listed in paragraph (b) below, is a domestic end product (as defined in the clause entitled "Buy American Act—Trade Agreements Act—Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States or a designated country as defined in section 25.401 of the Federal Acquisition Regulation.

(b) Excluded End Products:

Line Item Number	Country of Origin

(List as necessary)

(c) Offers will be evaluated by giving certain preferences to domestic end products and designated country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product, offerors must identify and certify below those excluded end products that are designated country end products. Offerors must certify by inserting the applicable line item numbers in the following:

The offeror certifies that the following supplies qualify as "designated country end products" as that term is defined in the clause entitled "Buy American Act—Trade Agreements Act—Balance of Payments Program":

.....

(Insert line item numbers)

(d) Offers will be evaluated in accordance with Part 25 of the Federal Acquisition Regulation.

(End of provision)
(R 7-2003.47 1980 OCT)
(R 1-6.1609)

52.225-9 Buy American Act—Trade Agreements Act—Balance of Payments Program.

As prescribed in 25.407(a)(2), insert the following clause in solicitations and contracts for supplies, except as specified in 25.403:

BUY AMERICAN ACT—TRADE AGREEMENTS ACT—BALANCE OF PAYMENTS PROGRAM (APR 1984)

(a) This clause implements the Buy American Act (41 U.S.C. 10), the Trade Agreements Act of 1979 (19 U.S.C. 2501-2582), and the Balance of Payments Program by providing a preference for domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as designated country end products.

"Components," as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

"Designated country end product," as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of the designated country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

"Domestic end product," as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its

components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality, or (ii) to which the agency head concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

"End products," as used in this clause, means those articles, materials, and supplies to be acquired under this contract for public use.

"Foreign end product," as used in this clause, means an end product other than a domestic end product.

(b) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specifies delivery of foreign end products in the provision entitled "Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate." An offer certifying that a designated country end product will be supplied requires the contractor to supply a designated country end product or, at the contractor's option, a domestic end product. Contractors may not supply an end product with a total value of $196,000 or more from a country listed at paragraph 25.402(b) of the FAR.

(c) Offers will be evaluated in accordance with the policies and procedures of Part 25 of the FAR.

(End of clause)
(R 7-104.3(b) 1981 JAN)
(R 1-6.104-5 as amended by 1-6.1611)

52.225-10 Duty-Free Entry.

As prescribed in 25.605(a), insert the following clause in solicitations and contracts over $100,000 that provide for, or anticipate furnishing to the Government, supplies to be imported into the customs territory of the United States. As prescribed in 25.605(b), the clause may be used in contracts of $100,000 or less if such action is consistent with the policy in 25.602. When used in contracts of $100,000 or less, paragraphs (b)(1) and (i)(2) shall be modified to reduce the dollar figure.

DUTY-FREE ENTRY (APR 1984)

(a) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price for any duties on supplies specifically identified in the Schedule to be accorded duty-free entry.

(b) Except for supplies listed in the Schedule to be accorded duty-free entry, and except as provided under any other clause of this contract or in paragraph (c) below, the following procedures apply:

(1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of $10,000 that are to be imported into the customs territory of the United States for delivery to the Government or for incorporation into end items to be delivered under this contract. The notice shall be furnished to the Contracting Officer at least 20 days before the importation and shall identify (i) the foreign supplies, (ii) the estimated amount of duty, and (iii) the country of origin.

(2) If the Contracting Officer determines that these supplies should be entered duty-free, the Contracting Officer shall notify the Contractor within 10 days.

(3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.

(c) Paragraph (b) above shall not apply to purchases of foreign supplies if (1) they are identical in nature with items purchased by the Contractor or any subcontractor in connection with its commercial business and (2) segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(d) The Contractor warrants that all supplies for which duty-free entry is to be claimed are intended to be delivered to the Government or incorporated into the end items to be delivered under this contract, and that duty shall be paid to the extent that these supplies, or any portion of them, are diverted to non-Governmental use, other than as scrap or salvage or as a result of a competitive sale authorized by the Contracting Officer.

(e) The Government agrees to execute any required duty-free entry certificates for items specified in this contract or approved by the Contracting Officer and to assist the Contractor in obtaining duty-free entry of the supplies.

(f) All shipping documents covering the supplies to be entered duty-free shall consign the shipments to the contracting agency in care of the Contractor and shall include the delivery address of the Contractor (or contracting agency, if appropriate). The documents shall bear the following information:

(1) Government prime contract number.

(2) Identification of carrier.

(3) The notation "UNITED STATES GOVERNMENT, ... [agency]..... Duty-free entry to be claimed pursuant to Item No(s)..... [*from Tariff Schedules*]..... Tariff Schedules of the United States (19 U.S.C. 1202). Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR 142 and notify ..... [*cognizant contract administration office*] ..... for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates."

(4) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight).

(5) Estimated value in United States dollars.

(g) The Contractor agrees to instruct the foreign supplier to consign the shipment as specified in (f) above, to mark all packages with the words "UNITED STATES GOVERNMENT" and the title of the contracting agency, and to accompany the shipment with at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.

(h) The Contractor agrees to notify in writing the cognizant contract administration office immediately upon notification from the Contracting Officer that duty-free entry will be accorded (or, if the duty-free supplies were listed in the contract Schedule, upon award by the Contractor to the overseas supplier). The notice shall identify (1) the foreign supplies, (2) the country of origin, (3) the contract number, and (4) the scheduled delivery date(s).

(i) The Contractor agrees to insert the substance of this clause in any subcontract under which—

(1) There will be imported into the customs territory of the United States supplies identified in the Schedule as supplies to be accorded duty-free entry; or

(2) Other foreign supplies in excess of $10,000 may be imported into the customs territory of the United States.(

End of clause)
(R 7-104.31(a) 1971 FEB)
(R 7-104.31(b) 1971 FEB)
(R 7-2003.49 1965 DEC)

52.225-11 Certain Communist Areas.

As prescribed in 25.704, insert the following clause in solicitations and contracts for supplies, services, or construction if acceptance is to take place outside the United States, its possessions, or Puerto Rico:

CERTAIN COMMUNIST AREAS (APR 1984)

(a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire for use in the performance of this contract—

(1) Any supplies or services originating from sources within the Communist areas of North Korea, Vietnam, Cambodia, or Cuba; or

(2) Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts hereunder.

(End of clause)
(R 7-103.15 1977 SEP)

52.226 [Reserved].

52.227 [Reserved].

52.228-1 Bid Guarantee.

As prescribed in 28.101-3(b), insert the following clause in solicitations and contracts that contain a requirement for a bid guarantee. A clause substantially

the same as this may be used for negotiated contracts.

BID GUARANTEE (APR 1984)

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The offeror (bidder) shall furnish a bid guarantee in the form of a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds, (1) to unsuccessful bidders as soon as practicable after the opening of bids, and (2) to the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.

(c) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or give a bond(s) as required by the solicitation within the time specified, the Contracting Officer may terminate the contract for default.

(d) Unless otherwise specified in the bid, the bidder will (1) allow 60 days for acceptance of its bid and (2) give bond within 10 days after receipt of the forms by the bidder.

(e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

(End of clause)
(R 1-10.103-3)
(R 7-2003.25 1964 JUN)

52.228-2 Additional Bond Security.

As prescribed in 28.106-4, insert the following clause in solicitations and contracts when bonds are required:

ADDITIONAL BOND SECURITY (APR 1984)

The Contractor shall promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if—

(a) Any surety upon any bond furnished with this contract becomes unacceptable to the Government;

(b) Any surety fails to furnish reports on its financial condition as required by the Government; or

(c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer.

(End of clause)
(R 1-7.103-2)
(R 1-7.602-17)
(R 7-103.9 1949 JUL)
(R 7-602.17 1976 OCT)

52.228-3 Workers' Compensation Insurance (Defense Base Act).

As prescribed in 28.309(a), insert the following clause in solicitations and contracts when the Defense Base Act applies (see 28.305) and (a) the contract will be a public-work contract performed outside the United States; or (b) the contract will be approved or financed under the Foreign Assistance Act of 1961 (Pub. L. 87-195) and is not excluded by 28.305(b)(2):

WORKERS' COMPENSATION INSURANCE (DEFENSE BASE ACT) (APR 1984)

The Contractor shall (a) provide, before commencing performance under this contract, such workers' compensation insurance or security as the Defense Base Act (42 U.S.C. 1651 et seq.) requires and (b) continue to maintain it until performance is completed. The Contractor shall insert, in all subcontracts under this contract to which the Defense Base Act applies, a clause similar to this clause (including this sentence) imposing upon those subcontractors this requirement to comply with the Defense Base Act.

(End of clause)
(R 7-104.2(a) 1960 JAN)
(R 1-10.402(a))

52.228-4 Workers' Compensation and War-Hazard Insurance Overseas.

As prescribed in 28.309(b), insert the following clause in solicitations and contracts when the contract will be a public-work contract performed outside the United States and the Secretary of Labor waives the applicability of the Defense Base Act (see 28.305(d)):

WORKERS' COMPENSATION AND WAR-HAZARD INSURANCE OVERSEAS (APR 1984)

(a) This paragraph applies if the Contractor employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to workers' compensation insurance under the Defense Base Act (42 U.S.C. 1651 et seq.). On behalf of employees for whom the applicability of the Defense Base Act has been waived, the Contractor shall (1) provide, before commencing performance under this contract, at least that workers' compensation insurance or the equivalent as the laws of the country of which these employees are nationals may require and (2) continue to maintain it until performance is completed. The Contractor shall insert, in all subcontracts under this contract to which the Defense Base Act would apply but for the waiver, a clause similar to this paragraph (a) (including this sentence) imposing upon those subcontractors this requirement to provide such workers' compensation insurance coverage.

(b) This paragraph applies if the Contractor or any subcontractor under this contract employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to the War Hazards Compensation Act (42 U.S.C. 1701 et seq.). On behalf of employees for whom the applicability of the Defense Base Act (and hence that of the War Hazards Compensation Act) has been waived, the Contractor shall, subject to reimbursement as provided elsewhere in this contract, afford the same protection as that provided in the War Hazards Compensation Act, except that the level of benefits shall conform to any law or international agreement controlling the benefits to which the employees may be entitled. In all other respects, the standards of the War Hazards Compensation Act shall apply; e.g., the definition of war-hazard risks (injury, death, capture, or detention as the result of a war hazard as defined in the Act), proof of loss, and exclusion of benefits otherwise covered by workers' compensation insurance or the equivalent. Unless the Contractor elects to assume directly the liability to subcontractor employees created by this clause, the Contractor shall insert, in all subcontracts under this contract to which the War Hazards Compensation Act would apply but for the waiver, a clause similar to this paragraph (b) (including this sentence) imposing upon those subcontractors this requirement to provide war-hazard benefits.

(End of clause)
(R 7-104.2(b) 1968 JUL)

52.228-5 Insurance—Work on a Government Installation.

As prescribed in 28.310, insert the following clause in solicitations and contracts when a fixed-price contract is contemplated, the contract amount is expected to be over the appropriate small purchase limitation in Part 13, and the contract will require work on a Government installation, unless (a) only a small amount of work is required on the Government installation (e.g., a few brief visits per month); or (b) all work on the Government installation is to be performed outside the United States, its possessions, and Puerto Rico. The contracting officer may insert the following clause in solicitations and contracts described in (a) and (b) above if it is in the Government's interest to do so.

INSURANCE—WORK ON A GOVERNMENT INSTALLATION (APR 1984)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance period of this contract at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall certify to the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any

cancellation or any material change adversely affecting the Government's interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. At least 5 days before entry of each such subcontractor's personnel on the Government installation, the Contractor shall furnish (or ensure that there has been furnished) to the Contracting Officer a current certificate of insurance, meeting the requirements of paragraph (b) above, for each such subcontractor.

(End of clause)
(R 7-104.65 1977 JAN)
(R 7-603.10 1977 JAN)
(R 1-7.303-46)

52.228-6 Insurance—Immunity From Tort Liability.

As prescribed in 28.311-1, insert the following provision in solicitations for research and development when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause at 52.228-7, Insurance—Liability to Third Persons:

INSURANCE—IMMUNITY FROM TORT LIABILITY (APR 1984)

If the offeror is partially or totally immune from tort liability to third persons as a State agency or as a charitable institution, and includes in its offer a representation to that effect, the clause at 52.228-7, Insurance—Liability to Third Persons, will be included in the contract.

(a) With its Alternate I, if the offeror represents that it is partially immune from tort liability to third persons as a State agency or as a charitable institution; or

(b) With its Alternate II, if the offeror represents that it is totally immune from tort liability to third persons as a State agency or as a charitable institution.

(End of provision)
(NM)

52.228-7 Insurance—Liability to Third Persons.

As prescribed in 28.311-2, insert the following clause in solicitations and contracts, other than construction contracts and those for architect-engineer services, when a cost-reimbursement contract is contemplated unless the head of the contracting activity waives the requirement for use of the clause:

INSURANCE—LIABILITY TO THIRD PERSONS (APR 1984)

(a) (1) Except as provided in subparagraph (2) immediately following, or in paragraph (h) of this clause (if the clause has a paragraph (h)), the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; *provided* that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

(b) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.

(c) Except as provided in paragraph (h) of this clause (if the clause has a paragraph (h)), the Contractor shall be reimbursed—

(1) For that portion (i) of the reasonable cost of insurance allocable to this contract and (ii) required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Government. These liabilities are for—

(i) Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or

(ii) Death or bodily injury.

(d) The Government's liability under paragraph (c) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(e) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)—

(1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract;

(2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or

(3) That result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(f) The provisions of paragraph (e) of this clause shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; *provided*, that such cost is allowable under the Allowable Cost and Payment clause of this contract.

(g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall—

(1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(3) Authorize Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)
(R 7-203.22 1966 DEC)
(R 1-7.204-5)

Alternate I (APR 1984). If the solicitation includes the provision at 52.228-6, Insurance—Immunity from Tort Liability, and the successful offeror represents in the offer that the offeror is *partially* immune from tort liability as a State agency or as a charitable institution, add the following paragraph (h) to the basic clause:

(h) Notwithstanding paragraphs (a) and (c) of this clause—

(1) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract; and

(2) The Contractor need not provide or maintain insurance coverage as required by paragraph (a) of this clause; *provided*, that the Contractor may obtain any insurance coverage deemed necessary, subject to approval by the Contracting Officer as to form, amount, and duration. The Contractor

shall be reimbursed for the cost of such insurance and, to the extent provided in paragraph (c) of this clause, for liabilities to third persons for which the Contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount.

(End of clause)
(R 1-7.404-9(a))
(R 7-402.26 1962 SEP)

Alternate II (APR 1984). If the solicitation includes the provision at 52.228-6, Insurance—Immunity from Tort Liability, and the successful offeror represents in the offer that the offeror is *totally* immune from tort liability as a State agency or as a chartiable institution, substitute the following paragraphs (a) and (b) for paragraphs (a) through (g) of the basic clause:

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract.

(b) If any suit or action is filed, or if any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, the Contractor shall immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received by the Contractor. The Contractor shall, if required by the Government, authorize Government representatives to settle or defend the claim and to represent the Contractor in or take charge of any litigation. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)
(R 7-402.26(b) 1960 OCT)
(R 1-7.404-9(b))

52.228-8 Liability and Insurance—Leased Motor Vehicles.

As prescribed in 28.312, insert the following clause in solicitation and contracts for the leasing of motor vehicles (see Subpart 8.11):

LIABILITY AND INSURANCE—LEASED MOTOR VEHICLES (APR 1984)

(a) The Government shall be responsible for loss of or damage to—

(1) Leased vehicles, except for (i) normal wear and tear and (ii) loss or damage caused by the negligence of the Contractor, its agents, or employees; and

(2) Property of third persons, or the injury or death of third persons, if the Government is liable for such loss, damage, injury, or death under the Federal Tort Claims Act (28 U.S.C. 2671-2680)

(b) The Contractor shall be liable for, and shall indemnify and hold harmless the Government against, all actions or claims for loss of or damage to property or the injury or death of persons, resulting from the fault, negligence, or wrongful act or omission of the Contractor, its agents, or employees.

(c) The Contractor shall provide and maintain insurance covering its liabilities under paragraph (b) of this clause, in amounts of at least $200,000 per person and $500,000 per occurrence for death or bodily injury and $20,000 per occurrence for property damage or loss.

(d) Before commencing work under this contract, the Contractor shall certify to the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the interests of the Government shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after written notice to the Contracting Officer, whichever period is longer. The policies shall exclude any claim by the insurer for subrogation against the Government by reason of any payment under the policies.

(e) The Contractor warrants that the contract price includes no cost for insurance or contingency to cover losses, damage, injury, or death for which the Government is responsible under paragraph (a) of this clause.

(End of clause)
(R 7-1501.4 1977 JAN)

52.228-9 Cargo Insurance.

As prescribed in 28.313(a), insert the following clause in solicitations and contracts for transportation or for transportation-related services, except when freight is shipped under rates subject to released or declared value:

CARGO INSURANCE (APR 1984)

(a) The Contractor, at the Contractor's expense, agrees to provide and maintain, during the continuance of this contract, cargo liability insurance of $..... per vehicle to cover the value of property on each vehicle and of $.... to cover the total value of the property in the shipment.

(b) All insurance shall be written on companies acceptable to .....[*insert name of contracting agency*], and policies shall include such terms and conditions as required by ..... [*insert name of contracting agency*]. As evidence of insurance maintained, a complete duplicate certified copy of the cargo liability insurance policy or policies shall be furnished to ..... [*insert name of contracting agency*]. Evidence of acceptable cargo insurance shall be furnished before commencing operations under this contract.

(c) Each cargo insurance policy shall include the following statement:

It is a condition of this policy that the Company shall furnish—

(1) Written notice to ..... [*insert name of contracting agency*], at the address shown on the face sheet of this contract, 30 days in advance of the effective date of any reduction in, or cancellation of, this policy; and

(2) A complete duplicate certified copy of any renewal policy to ..... [*insert name of contracting agency*] not less than 15 days prior to the expiration of any current policy on file with .....[*insert name of contracting agency*].

(End of clause)
(R 1-19.702-5)

52.228-10 Vehicular and General Public Liability Insurance.

As prescribed in 28.313(b), insert a clause substantially the same as the following in solicitations and contracts for transportation or for transportation-related services when the contracting officer determines that vehicular liability or general public liability insurance required by law is not sufficient:

VEHICULAR AND GENERAL PUBLIC LIABILITY INSURANCE (APR 1984)

(a) The Contractor, at the Contractor's expense, agrees to maintain, during the continuance of this contract, vehicular liability and general public liability insurance with limits of liability for (1) bodily injury of not less than $..... for each person and $..... for each occurrence and (2) property damage of not less than $..... for each accident and $..... in the aggregate.

(b) The Contractor also agrees to maintain workers' compensation and other legally required insurance with respect to the Contractor's own employees and agents.

(End of clause)
(R 1-19.702-5)

52.229-1 State and Local Taxes.

As prescribed in 29.401-1, insert the following clause in solicitations and contracts for leased equipment, when a fixed-price indefinite-delivery contract is contemplated, the contract will be performed wholly or partly within the United States, its possessions, or Puerto Rico, and the place or places of delivery are not known at the time of contracting:

STATE AND LOCAL TAXES (APR 1984)

Notwithstanding the terms of the Federal, State, and Local Taxes clause, the contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The Contractor shall state separately on its invoices taxes excluded from the contract price, and the Government agrees either to pay the amount of the taxes to the Contractor or provide evidence necessary to sustain an exemption[.

End of clause)
(R 41 CFR 5A-11.401-71)
(R GSA Form 2891)

52.229-2 North Carolina State and Local Sales and Use Tax.

As prescribed in 29.401-2, insert the following clause in solicitations and contracts for construction to be performed in North Carolina:

NORTH CAROLINA STATE AND LOCAL SALES AND USE TAX (APR 1984)

(a) "Materials," as used in this clause, means building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure erected, altered, or repaired under this contract.

(b) If this is a fixed-price contract, the contract price includes North Carolina State and local sales and use taxes to be paid on materials, notwithstanding any other provision of this contract. If this is a cost-reimbursement contract, any North Carolina State and local sales and use taxes paid by the Contractor on materials shall constitute an allowable cost under this contract.

(c) At the time specified in paragraph (d) below, the Contractor shall furnish the Contracting Officer certified statements setting forth the cost of the materials purchased from each vendor and the amount of North Carolina State and local sales and use taxes paid. In the event the Contractor makes several purchases from the same vendor, the certified statement shall indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the North Carolina State and local sales and use taxes paid. The statement shall also include the cost of any tangible personal property withdrawn from the Contractor's warehouse stock and the amount of North Carolina State and local sales or use tax paid on this property by the Contractor. Any local sales or use taxes included in the Contractor's statements must be shown separately from the State sales or use taxes. The Contractor shall furnish any additional information the Commissioner of Revenue of the State of North Carolina may require to substantiate a refund claim for sales or use taxes. The Contractor shall also obtain and furnish to the Contracting Officer similar certified statements by its subcontractors.

(d) If this contract is completed before the next October 1, the certified statements to be furnished pursuant to paragraph (c) above shall be submitted within 60 days after completion. If this contract is not completed before the next October 1, the certified statements shall be submitted on or before November 30 of each year and shall cover taxes paid during the 12-month period that ended the preceding September 30.

(e) The certified statements to be furnished pursuant to paragraph (c) above shall be in the following form:

I hereby certify that during the period ..... to ..... [*insert dates*], ... [*insert name of Contractor or subcontractor*] paid North Carolina State and local sales and use taxes aggregating $..... (State) and $..... (local), with respect to building materials, supplies, fixtures, and equipment that have become a part of or annexed to a building or structure erected, altered, or repaired by ..... [*insert name of Contractor or subcontractor*] for the United States of America, and that the vendors from whom the property was purchased, the dates and numbers of the invoices covering the purchases, the total amount of the invoices of each vendor, the North Carolina State and local sales and use taxes paid on the property (shown separately), and the cost of property withdrawn from warehouse stock and North Carolina State and local sales or use taxes paid on this property are as set forth in the attachments.

(End of clause)

(V 7-602.27 1977 JAN)

Alternate I(APR 1984). If the requirement is for vessel repair to be performed in North Carolina, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) "Materials," as used in this clause, means materials, supplies, fixtures, and equipment that become a part of or are annexed to any vessel altered or repaired under this contract.

(R 7-602.27 1977 JAN)

52.229-3 Federal, State, and Local Taxes.

As prescribed in 29.401-3, insert the following clause in solicitations and contracts if the contract is to be performed wholly or partly within the United States, its possessions, or Puerto Rico (a) when contracting by formal advertising, unless the requirement is for construction and the contract amount is expected to be less than the applicable small purchase limitation in Part 13, or (b) when contracting by negotiation, if a fixed-price contract is contemplated and the contract amount is expected to be over the applicable small purchase limitation in Part 13, unless the clause at 52.229-4, Federal, State, and Local Taxes (Noncompetitive Contract), is included in the contract:

FEDERAL, STATE, AND LOCAL TAXES (APR 1984)

(a) "Contract date," as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"All applicable Federal, State, and local taxes and duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax," as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," as used in this clause, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $100.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(End of clause)

(R 7-103.10(a) 1971 NOV)

(R 1-11.401-1(c))

52.229-4 Federal, State, and Local Taxes (Noncompetitive Contract).

As prescribed in 29.401-4, insert the following clause in fixed-price noncompetitive negotiated contracts over the applicable small purchase limitation in Part 13 to be performed wholly or partly within the United States, its possessions, or Puerto Rico when the contracting officer is satisfied (a) that the contract price does not include contingencies for State and local taxes and (b) that, unless the clause is used, the contract price will include such contingencies. When the following clause is included in a contract, the contracting officer shall ensure that the contract does not include the clause at 52.229-3, Federal, State, and Local Taxes.

FEDERAL, STATE, AND LOCAL TAXES (NONCOMPETITIVE CONTRACT) (APR 1984)

(a) "Contract date," as used in this clause, means the effective date of this contract and, for any modification to this contract, the effective date of the modification.

"All applicable Federal, State, and local taxes and duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is

imposing and collecting on the transactions or property covered by this contract.

"After-imposed tax," as used in this clause, means any new or increased Federal, State, or local tax or duty, or tax that was excluded on the contract date but whose exclusion was later revoked or amount of exemption reduced during the contract period, other than an excepted tax, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

"After-relieved tax," as used in this clause, means any amount of Federal, State, or local tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"Excepted tax," as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor's possession of, interest in, or use of property, title to which is in the Government.

(b) Unless otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed tax, or of any tax or duty specifically excluded from the contract price by a term or condition of this contract that the Contractor is required to pay or bear, including any interest or penalty, if the Contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(d) The contract price shall be decreased by the amount of any after-relieved tax. The Government shall be entitled to interest received by the Contractor incident to a refund of taxes to the extent that such interest was earned after the Contractor was paid by the Government for such taxes. The Government shall be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.

(e) The contract price shall be decreased by the amount of any Federal, State, or local tax, other than an excepted tax, that was included in the contract price and that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $100.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to Federal, State, and local taxes and duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.

(h) The Government shall furnish evidence appropriate to establish exemption from any Federal, State, or local tax when (1) the Contractor requests such exemption and states in writing that it applies to a tax excluded from the contract price and (2) a reasonable basis exists to sustain the exemption.

(End of clause)
(R 7-103.10(b) 1960 JUL)
(R 1-11.401-2(d))

52.229-5 Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.

As prescribed in 29.401-5, insert the following clause in solicitations and contracts that include the clause at 52.229-3, Federal, State, and Local Taxes, or 52.229-4, Federal, State, and Local Taxes (Noncompetitive Contract):

TAXES—CONTRACTS PERFORMED IN U.S. POSSESSIONS OR PUERTO RICO (APR 1984)

The term "local taxes," as used in the Federal, State, and local taxes clause of this contract, includes taxes imposed by a possession of the United States or by Puerto Rico.

(End of clause)
(AV 7-103.10(c) 1963 NOV)
(AV 1-11.401-3(a))

52.229-6 Taxes—Foreign Fixed-Price Contracts.

As prescribed in 29.402-1(a), insert the following clause in solicitations and contracts when a fixed-price contract is contemplated and the contract is to be performed wholly or partly in a foreign country, unless it is contemplated that the contract will be with a foreign government:

TAXES—FOREIGN FIXED-PRICE CONTRACTS (APR 1984)

(a) To the extent that this contract provides for furnishing supplies or performing services outside the United States, its possessions, and Puerto Rico, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

(b) "Contract date," as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"Country concerned," as used in this clause, means any country, other than the United States, its possessions, and Puerto Rico, in which expenditures under this contract are made.

"Tax" and "taxes," as used in this clause, include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

"All applicable taxes and duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract, pursuant to written ruling or regulation in effect on the contract date.

"After-imposed tax," as used in this clause, means any new or increased tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, other than excepted tax, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

"After-relieved tax," as used in this clause, means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"Excepted tax," as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor's possession of, interest in, or use of property, title to which is in the U.S. Government.

(c) Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(d) The contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the contract price by a provision of this contract that the Contractor is required to pay or bear, including any interest or penalty, if the Contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(e) The contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States shall be

entitled to interest received by the Contractor incident to a refund of taxes to the extent that such interest was earned after the Contractor was paid by the Government of the United States for such taxes. The Government of the United States shall be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.

(f) The contract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the contract and that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(g) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $100.

(h) If the Contractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the contract price or was the basis of an increase in the contract price, the amount of the reduction shall be paid or credited to the Government of the United States as the Contracting Officer directs.

(i) The Contractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the Contractor, any subcontractor, or the transactions or property covered by this contract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(j) The Contractor shall promptly notify the Contracting Officer of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.

(End of clause)
(R 7-103.10(d) 1977 JAN)

52.229-7 Taxes—Fixed-Price Contracts with Foreign Governments.

As prescribed in 29.402-1(b), insert the following clause in solicitations and contracts when a fixed-price contract with foreign governments is contemplated:

TAXES—FIXED-PRICE CONTRACTS WITH FOREIGN GOVERNMENTS (APR 1984)

(a) "Contract date," as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

(b) The contract price, including the prices in any subcontracts under this contract, does not include any tax or duty that the Government of the United States and the Government of ..... [*insert name of the foreign government*] have agreed shall not apply to expenditures made by the United States in ..... [*insert name of country*], or any tax or duty not applicable to this contract or any subcontracts under this contract, pursuant to the laws of ..... [*insert name of country*]. If any such tax or duty has been included in the contract price, through error or otherwise, the contract price shall be correspondingly reduced.

(c) If, after the contract date, the Government of the United States and the Government of ..... [*insert name of the foreign government*] agree that any tax or duty included in the contract price shall not apply to expenditures by the United States in ..... [*insert name of country*], the contract price shall be reduced accordingly.

(d) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $100.

(End of clause)
(R 7-103.10(e) 1960 JUL)

52.229-8 Taxes—Foreign Cost-Reimbursement Contracts.

As prescribed in 29.402-2(a), insert the following clause in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract is to be performed wholly or partly in a foreign country, unless it is contemplated that the contract will be with a foreign government:

TAXES—FOREIGN COST-REIMBURSEMENT CONTRACTS (APR 1984)

Any tax or duty from which the United States Government is exempt by agreement with the Government of ..... [*insert name of the foreign government*], or from which the Contractor or any subcontractor under this contract is exempt under the laws of ..... [*insert name of country*], shall not constitute an allowable cost under this contract.

(End of clause)
(AV 7-204.24(a) 1960 JUL)

52.229-9 Taxes—Cost-Reimbursement Contracts with Foreign Governments.

As prescribed in 29.402-2(b), insert the following clause in solicitations and contracts when a cost-reimbursement contract with a foreign government is contemplated:

TAXES—COST-REIMBURSEMENT CONTRACTS WITH FOREIGN GOVERNMENTS (APR 1984)

Any tax or duty from which the United States Government is exempt by agreement with the Government of ..... [*insert name of the foreign government*], or from which any subcontractor under this contract is exempt under the laws of ..... [*insert name of country*], shall not constitute an allowable cost under this contract.

(End of clause)
(AV 7-204.24(b) 1960 JUL)

52.230-1 Cost Accounting Standards Notices and Certification (National Defense).

As prescribed in 30.303-1(a), insert the following provision in solicitations for proposed national defense contracts subject to CAS as specified in 30.301:

COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (NATIONAL DEFENSE) (APR 1984)

Note: This notice does not apply to small businesses or foreign governments.

This notice is in four parts, identified by Roman numerals I through IV.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

I. DISCLOSURE STATEMENT—COST ACCOUNTING PRACTICES AND CERTIFICATION

(a) Any contract in excess of $100,000 resulting from this solicitation, except contracts in which the price negotiated is based on (1) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (2) prices set by law or regulation, and except for contracts which may be exempt under the provisions of 4 CFR 331.30(b), will be subject to the requirements of the Cost Accounting Standards Board (CASB).

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of the CASB must, as a condition of contracting, submit a Disclosure Statement as required by regulations of the Board. The Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) below. CAUTION: A practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

☐ (1) Certificate of Concurrent Submission of Disclosure Statement

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) original and one copy to the cognizant Administrative Contracting Officer (ACO), and (ii) one copy to the cognizant contract auditor.

(Disclosure must be on Form Number CASB-DS-1. Forms may be obtained from the cognizant ACO.)

Date of Disclosure Statement: .....

Name and Address of Cognizant ACO where

filed: .....

The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) Certificate of Previously Submitted Disclosure Statement

The offeror hereby certifies that Disclosure Statement was filed as follows:

Date of Disclosure Statement: .....

Name and Address of Cognizant ACO where filed: .....

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable disclosure statement.

☐ (3) Certificate of Monetary Exemption

The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated national defense prime contracts and subcontracts subject to CAS totaling more than $10 million in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

☐ (4) Certificate of Interim Exemption

The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) above, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with the regulations of the CASB (4 CFR 351.40(f)), the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under (1) or (2) above, as appropriate, to verify submission of a completed Disclosure Statement.

CAUTION: Offerors currently required to disclose because they were awarded a CAS-covered national defense prime contract or subcontract of $10 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. COST ACCOUNTING STANDARDS—EXEMPTION FOR CONTRACTS OF $500,000 OR LESS

If this proposal is expected to result in the award of a contract of $500,000 or less, the offeror shall indicate whether the exemption below is claimed. Failure to check the box below shall mean that the resultant contract is subject to CAS requirements or that the offeror elects to comply with such requirements.

☐ The offeror hereby claims an exemption from the CAS requirements under the provisions of 4 CFR 331.30(b)(7) and certifies that notification of final acceptance of all deliverable items has been received on all prime contracts or subcontracts containing the Cost Accounting Standards clause or the Disclosure and Consistency of Cost Accounting Practices clause. The offeror further certifies that the Contracting Officer will be immediately notified in writing when an award of any other contract or subcontract containing Cost Accounting Standards clauses is received by the offeror subsequent to this certificate but before the date of any award resulting from this proposal.

III. COST ACCOUNTING STANDARDS—ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

If the offeror is eligible to use the modified provisions of 4 CFR 332 and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 4 CFR 331.30(b)(2) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because (i) during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than $10 million in awards of CAS-covered national defense prime contracts and subcontracts, and (ii) the sum of such awards equaled less than 10 percent of total sales during that cost accounting period. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

CAUTION: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a national defense contract of $10 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered national defense prime contract or subcontract of $10 million or more.

IV. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS

The offeror shall indicate below whether award of the contemplated contract would, in accordance with paragraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

☐ YES ☐ NO

NOTE: If the offeror has checked "yes" above and is awarded the contemplated contract, the offeror will be required to comply with the requirements of paragraphs (a)(i), (b), and (c) of the Administration of Cost Accounting Standards clause.

(End of provision)

(R 7-2003.67(a) 1975 DEC)

(R 1-3.1203-3(a)(1))

(R 7-2003.67(b) 1975 MAR)

(R 1-3.1203-3(a)(2))

(R 1-3.1203-3(a)(3))

(R 7-2003.67(c) 1975 MAR)

(R 1-3.1203-3(a)(4))

52.230-2 Cost Accounting Standards Notices and Certification (Nondefense).

As prescribed in 30.303-1(b), insert the following provision in solicitations for proposed nondefense contracts that do not meet the criteria for CAS exemption in 30.301:

COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (NONDEFENSE) (APR 1984)

Note: This notice does not apply to small businesses or foreign governments.

(a) Any contract over $100,000 resulting from this solicitation shall be subject to Cost Accounting Standards (CAS) if it is awarded to a business unit that is currently performing a national defense CAS-covered contract or subcontract, except when—

(1) The award is based on adequate price competition;

(2) The price is set by law or regulation;

(3) The price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(4) One of the exemptions in 4 CFR 331.30(b) applies (also see Federal Acquisition Regulation (FAR) 30.301(b)).

(b) Contracts not exempted from CAS shall be subject to full or modified coverage as follows:

(1) If the business unit receiving the award is currently performing a national defense contract or subcontract subject to full CAS coverage (4 CFR 331), this contract will have full CAS coverage and will contain the clauses from the FAR entitled Cost Accounting Standards (52.230-3) and Administration of Cost Accounting Standards (52.230-4).

(2) If the business unit receiving the award is currently performing a national defense contract or subcontract subject to modified CAS coverage (4 CFR 332), this contract will have modified coverage and will contain the clauses entitled Disclosure and Consistency of Cost Accounting Practices (52.230-5) and Administration of Cost Accounting Standards (52.230-4).

A. Certificate of CAS Applicability

The offeror hereby certifies that—

☐ The offeror is not performing any CAS-covered national defense contract or subcontract. The offeror further certifies that it will immediately notify the Contracting Officer in writing if it is awarded any national defense CAS-covered contract or subcontract subsequent to the date of this certificate but before the date of the award of a contract resulting from this solicitation. (If this statement applies, no further certification is required.)

☐ The offeror is currently performing a negotiated national defense contract or subcontract that contains the Cost Accounting Standards clause at FAR 52.230-3.

☐ The offeror is currently performing a negotiated national defense contract or subcontract that contains the Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230-5.

B. Additional Certification—CAS Applicable Offerors

☐ The offeror subject to Cost Accounting Standards further certifies that practices used in estimating costs in pricing this proposal are consistent with the practices disclosed in the Disclosure Statement where it has been submitted pursuant to CAS Board regulations (4 CFR 351).

C. Data Required—CAS Covered Offerors

The offeror certifying that it is currently performing a national defense contract containing either CAS clause (see A above) is required to furnish the name, address (including agency or department component), and telephone number of the cognizant Contracting Officer administering the offeror's CAS-covered contracts.

Name of Contracting Officer:.....

Address:.....

.....

Telephone Number:.....

(End of provision)
(R 1-3.1203-3(b))

52.230-3 Cost Accounting Standards.

As prescribed in 30.303-2(a)(1), insert the following clause in negotiated contracts, unless the contract is exempted (see 30.301), the contract is subject to modified coverage (see 30.302), or the clause at 52.230-6 is used:

COST ACCOUNTING STANDARDS
(APR 1984)

(a) Unless the Cost Accounting Standards Board (CASB) has prescribed rules or regulations exempting the Contractor or this contract from standards, rules, and regulations promulgated pursuant to 50 U.S.C. App. 2168 (Pub. L. 91-379, August 15, 1970), the Contractor, in connection with this contract, shall—

(1) (National Defense Contracts Only) By submission of a Disclsoure Statement, disclose in writing the Contractor's cost accounting practices as required by regulations of the CASB. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CASB requirements, the change must be applied prospectively to this contract, and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) below, as appropriate.

(3) Comply with all CAS in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS which hereafter becomes applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) (i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to (3) above, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of this paragraph 4; *provided*, that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under (4)(i) above, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to Pub. L. 92-41, 85 Stat. 97, or 7 percent per annum, whichever is less, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS, rule, or regulation of the CASB and as to any cost adjustment demanded by the United States, such failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(c) The Contractor shall permit any authorized representatives of the agency head, of the CASB, or of the Comptroller General of the United States to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontract's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated subcontracts in excess of $100,000 where the price negotiated is not based on—

(1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause by reason of 331.30(b) of Title 4, Code of Federal Regulations (4 CFR 331.30(b)).

Note (1): New CAS shall be applicable to both national defense and nondefense CAS-covered contracts upon award of a new national defense CAS-covered contract containing the new Standard. The award of a new nondefense CAS-covered contract shall not trigger application of new CAS.

Note (2): Subcontractors shall be required to submit their Disclosure Statements to the Contractor. However, if a subcontractor has previously submitted its Disclosure Statement to a Government Administrative Contracting Officer (ACO), it may satisfy that requirement by certifying to the Contractor the date of the Statement and the address of the ACO.

Note (3): In any case where a subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to the Contractor or higher tier subcontractor, the Contractor may authorize direct submission of that subcontractor's Disclosure Statement to the same Government offices to which the Contractor was required to make submission of its Disclosure Statement. Such authorization shall in no way relieve the Contractor of liability as provided in paragraph (a)(5) of this clause. In view of the foregoing and since the contract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations, and Standards of the CASB in connection with covered subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the Contractor and the subcontractor, provided that they do not conflict with the duties of the Contractor under its contract with the Government. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by its subcontractors.

Note (4): If the subcontractor is a business unit which, pursuant to 4 CFR 332 is entitled to elect modified contract coverage and to follow Standards 401 and 402, the clause at 52.230-5, "Disclosure Consistency of Cost

Accounting Practices," of the Federal Acquisition Regulation shall be inserted in lieu of this clause.

Note (5): The terms defined in 4 CFR 331.20 shall have the same meanings herein. As there defined, "negotiated subcontract" means any subcontract except a firm-fixed-price subcontract made by a Contractor or subcontractor after receiving offers from at least two persons not associated with each other or with such Contractor or subcontractor, providing (1) the solicitation to all competitors is identical, (2) price is the only consideration in selecting the subcontractor from among the competitors solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted.

(End of clause)
(R 7-104.83(a) 1975 FEB)
(R 1-3.1204-1(a)(1))
(R 1-3.1204-2(a))

52.230-4 Administration of Cost Accounting Standards.

As prescribed at 30.303-2(b)(1), insert the following clause in solicitations and contracts containing either the clause at 52.230-3, Cost Accounting Standards, or the clause at 52.230-5, Disclosure and Consistency of Cost Accounting Practices:

ADMINISTRATION OF COST ACCOUNTING STANDARDS (APR 1984)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in (a) through (f) below:

(a) Submit to the cognizant Contracting Officer a description of any accounting change, the potential impact of the change on contracts containing a CAS clause, and if not obviously immaterial, a general dollar magnitude cost impact analysis of the change which displays the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed-fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis should display the potential impact of funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

(1) For any change in cost accounting practices required to comply with a new CAS in accordance with paragraphs (a)(3) and (a)(4)(i) of the CAS clause, within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.

(2) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (a)(4)(iii) of the CAS clause or with paragraph (a)(3) or (a)(5) of the Disclosure and Consistency of Cost Accounting Practices clause, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.

(3) For any failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by paragraph (a)(5) of the CAS clause or by paragraph (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause, within 60 days (or such other date as may be mutually agreed to) after the date of agreement of noncompliance by the Contractor.

(b) Submit a cost impact proposal in the form and manner specified by the cognizant Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to (a) above. If the above proposal is not submitted within the specified time, or any extension granted by the cognizant Contracting Officer, an amount not to exceed 10 percent of each payment made after that date may be withheld until such time as a proposal has been provided in the form and manner specified by the cognizant Contracting Officer.

(c) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with paragraphs (a)(4) and (a)(5) of the CAS clause or with paragraphs (a)(3), (a)(4), or (a)(5) of the Disclosure and Consistency of Cost Accounting Practices clause.

(d) For all subcontracts subject either to the CAS clause or to the Disclosure and Consistency of Cost Accounting Practices clause—

(1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and

(2) Include the substance of this clause in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(iv) Any changes the subcontractor has made or proposes to make to accounting practices that affect prime contracts or subcontracts containing the CAS clause or Disclosure and Consistency of Cost Accounting Practices clause, unless these changes have already been reported. If award of the subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.

(e) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract's price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.

(f) For subcontracts containing the CAS clause, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.(End ofporclause)

(R 7-104.83(b) 1977 OCT)
(R 1-3.1204-1(b))

52.230-5 Disclosure and Consistency of Cost Accounting Practices.

As prescribed in 30.303-2(c)(1), insert the following clause in negotiated contracts when the contract amount is over $100,000 but less than $10 million and the offeror certifies that it is eligible for and elects to use modified CAS coverage (see 30.302), unless the clause at 52.230-6 is used:

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (APR 1984)

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 4 CFR Parts 401, Consistency in Estimating, Accumulating, and Reporting Costs, and 402, Consistency in Allocating Costs Incurred for the Same Purpose, in effect on the date of award of this contract.

(2) (National Defense Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by regulations of the Cost Accounting Standards Board (CASB). If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

Note (1): Subcontractors shall be required to submit their Disclosure Statements to the Contractor. However, if a subcontractor has previously submitted its Disclosure Statement to a Government Administrative Contracting Officer (ACO), it may satify that requirement by certifying to the Contractor the date of the Statement and the address of the Contracting Officer.

Note (2): In any case where a subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to the Contractor or higher tier subcontractor, the Contractor may authorize direct submission of the subcontractor's Disclosure Statement to the same Government offices to which the Contractor was required to make submission of its Disclosure Statement. Such authorization shall in no way relieve the Contractor of liability if it or a subcontractor fails to comply with an applicable Cost Accounting Standard (CAS) or to follow any practice disclosed pursuant to this paragraph and such failure results in any increased costs paid by the United States. In view of the foregoing and since the contract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations, and Standards of the CASB in connection with covered subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. However, the inclusion of such a clause and the terms

thereof are matters for negotiation and agreement between the Contractor and subcontractor, provided that they do not conflict with the duties of the Contractor under its contract with the Government. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by its subcontractors.

Note (3): The terms defined in 4 CFR 331.20 shall have the same meanings in this clause. As there defined, "negotiated subcontract" means any subcontract except a firm-fixed-price subcontract made by a Contractor or subcontractor after receiving offers from at least two persons not associated with each other or such Contractor or subcontractor, providing (1) the solicitation to all competitors is identical, (2) price is the only consideration in selecting the subcontractor from among the competitors solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted.

(3) (i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 332.51 of the CASB's regulations, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to Pub. L. 92-41, 85 Stat. 97, or 7 percent per annum, whichever is less, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS, rule, or regulation of the CASB and as to any cost adjustment demanded by the United States, such failure to agree shall be a dispute within the meaning of the Disputes clause of this contract.

(c) The Contractor shall permit any authorized representatives of the agency head, of the CASB, or of the Comptroller General of the United States to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to Part 331 is required to follow all CAS, the clause entitled "Cost Accounting Standards," set forth in 331.50 of the CASB's regulations shall be inserted in lieu of this clause; or

(2) This requirement shall apply only to negotiated subcontracts in excess of $100,000 where the price negotiated is not based on—

(i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(ii) Price set by law or regulation.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause by reason of 331.30(b) of the CASB's regulations.

(End of clause)
(R 1-3.1204-1(a)(2))

52.230-6 Consistency in Cost Accounting Practices.

As prescribed in 30.302-2(d), insert the following clause in negotiated defense contracts that are exempt from CAS requirements solely on the basis of the fact that the contract is to be awarded to a United Kingdom contractor and is to be performed substantially in the United Kingdom (see 30.301(b)(12)):

CONSISTENCY IN COST ACCOUNTING PRACTICES (APR 1984)

The Contractor agrees that it will consistently follow the cost accounting practices disclosed on Form CASB-DS-1 in estimating, accumulating and reporting costs under this contract. In the event the Contractor fails to follow such practices, it agrees that the contract price shall be adjusted, together with payment of interest, if such failure results in increased costs paid by the U.S. Government. Interest shall be determined in accordance with the rules and regulations of the Cost Accounting Standards Board. The Contractor agrees that the Disclosure Statement filed with the U.K. Ministry of Defence shall be available for inspection and use by representatives of the contracting agency, the Cost Accounting Standards Board, and the Comptroller General of the United States.

(End of clause)
(V 4 CFR 331.30(b)(8))

52.231 [Reserved].

52.232-1 Payments.

As prescribed in 32.111(a)(1), insert the following clause, appropriately modified with respect to payment due date in accordance with agency regulations, in solicitations and contracts when a fixed-price contract, a fixed-price service contract, or a contract for nonregulated communication services is contemplated:

PAYMENTS (APR 1984)

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if—

(a) The amount due on the deliveries warrants it; or

(b) The Contractor requests it and the amount due on the deliveries is at least $1,000 or 50 percent of the total contract price.

(End of clause)
(R 7-103.7 1958 JAN)
(R 1-7.102-7)

52.232-2 Payments under Fixed-Price Research and Development Contracts.

As prescribed in 32.111(a)(2), insert the following clause, as appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a fixed-price research and development contract is contemplated:

PAYMENTS UNDER FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACTS (APR 1984)

The Government shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for work delivered or rendered and accepted, less any deductions provided in this contract. Unless otherwise specified, payment shall be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

(End of clause)
(R 7-302.2 1959 JUN)
(R 1-7.302-2)

52.232-3 Payments under Personal Services Contracts.

As prescribed in 32.111(a)(3), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for personal services:

PAYMENTS UNDER PERSONAL SERVICES CONTRACTS (APR 1984)

The Government shall pay the Contractor for the services performed by the Contractor, as set forth in the Schedule of this contract, at the rates prescribed, upon the submission by the Contractor of proper invoices or time statements to the office or officer designated and at the time provided for in this contract. The Government shall also pay the Contractor (a) a per diem rate in lieu of subsistence for each day the Contractor is in a travel status away from home or regular place of employment in accordance with Federal Travel Regulations (41 CFR 101-7) as authorized in appropriate Travel Orders; and

(b) any other transportation expenses if provided for in the Schedule.

(End of clause)
(R 7-503.2 1958 JAN)

52.232-4 Payments under Transportation Contracts and Transportation-Related Services Contracts.

As prescribed in 32.111(a)(4), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for transportation or transportation-related services:

PAYMENTS UNDER TRANSPORTATION CONTRACTS AND TRANSPORTATION-RELATED SERVICES CONTRACTS (APR 1984)

The Government shall pay the Contractor upon the submission of properly certified invoices or vouchers, the amount due for services rendered and accepted, less deductions, if any, as herein provided.

(End of clause)
(R 7-103.7 1958 JAN)
(R1-7.703-5)

52.232-5 Payments under Fixed-Price Construction Contracts.

As prescribed in 32.111(a)(5), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for construction when a fixed-price contract is contemplated:

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (APR 1984)

(a) The Government shall pay the Contractor the contract price as provided in this contract.

(b) The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration if—

(1) Consideration is specifically authorized by this contract; and

(2) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) In making these progress payments, there shall be retained 10 percent of the estimated amount until final completion and acceptance of the contract work. However, if the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer may authorize payment to be made in full without retention of a percentage. When the work is substantially complete, the Contracting Officer shall retain an amount that the Contracting Officer considers adequate protection of the Government and may release to the Contractor all or a portion of any excess amount. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment may be made for the completed work without retention of a percentage.

(d) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as—

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(e) The Government shall, upon request, reimburse the Contractor for the entire amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after furnishing evidence of full payment to the surety.

(f) The Government shall pay the amount due the Contractor under this contract after—

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 203 and 41 U.S.C. 15).

(End of clause)
(R 7-602.7 1979 MAR)
(R 1-7.602-7)

52.232-6 Payment under Communication Service Contracts with Common Carriers.

As prescribed in 32.111(a)(6), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for regulated communication services by common carriers:

PAYMENT UNDER COMMUNICATION SERVICE CONTRACTS WITH COMMON CARRIERS (APR 1984)

The Government shall pay the Contractor, in arrears, upon submission of invoices for services and facilities furnished in accordance with the terms of CSAs issued under this contract, the rates and charges for the services and facilities as set forth in the clause entitled "Rates, Charges and Services."

(End of clause)
(AV 7-1702.10 1971 APR)

52.232-7 Payments under Time-and-Materials and Labor-Hour Contracts.

As prescribed in 32.111(b), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a time-and-materials contract or a labor-hour contract is contemplated:

PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (APR 1984)

The Government shall pay the Contractor as follows upon the submission of invoices or vouchers approved by the Contracting Officer:

(a) *Hourly rate.* (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer), to the Contracting Officer or designee. The Contractor shall substantiate vouchers by evidence of actual payment and by individual daily job timecards, or other substantiation approved by the Contracting Officer. Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract, and subject to the terms of (e) below, pay the voucher as approved by the Contracting Officer.

(2) Unless otherwise prescribed in the Schedule, the Contracting Officer shall withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed $50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (f) below.

(3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(b) *Materials and subcontracts.* (1) Allowable costs of direct materials shall be determined by the Contracting Officer in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the

hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Contractor's usual accounting practices consistent with Subpart 31.2 of the FAR. The Contractor shall be reimbursed for items and services purchased directly for the contract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. Direct materials, as used in this clause, are those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of the end product.

(2) The cost of subcontracts that are authorized under the subcontracts clause of this contract shall be reimbursable costs under this clause; *provided*, that the costs are consistent with subparagraph (3) below. Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subcontractor in the same manner as for items and services purchased directly for the contract under subparagraph (1) above; however, this requirement shall not apply to a Contractor that is a small business concern. Reimbursable costs shall not include any costs arising from the letting, administration or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under (a)(1) above.

(3) To the extent able, the Contractor shall—

(i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. Credit shall be given to the Government for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government, shall not be deducted from gross costs.

(c) *Total cost.* It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during performing this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(d) *Ceiling price.* The Government shall not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(e) *Audit.* At any time before final payment under this contract the Contracting Officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of (f) and (g) below, the Government shall promptly pay any balance due the Contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(f) *Assignment.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.

(2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(g) *Refunds.* The Contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Contractor or any assignee, that arise under the materials portion of this contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Government. The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the Contracting Officer.

(End of clause)
(R 7-901.6 1972 MAY)

Alternate I (APR 1984). If the nature of the work to be performed requires the contractor to furnish material that is regularly sold to the general public in the normal course of business by the contractor, and the price is under the limitations prescribed in 16.601(b)(3), add the following subparagraph (4) to paragraph (b) of the basic clause:

(4) If the nature of the work to be performed requires the Contractor to furnish material which is regularly sold to the general public in the normal course of business by the Contractor, the price to be paid for such material, notwithstanding (b)(1) above, shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to the Government; *provided*, that in no event shall such price be in excess of the Contractor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.

(AV 7-901.6 1972 MAY)

52.232-8 Discounts for Prompt Payment.

As prescribed in 32.111(c)(1), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency

regulations, in solicitations and contracts when a fixed-price supply contract or fixed-price service contract is contemplated:

DISCOUNTS FOR PROMPT PAYMENT (APR 1984)

In connection with any discount offered for prompt payment, time shall be computed from (1) the date of completion of performance of the services or delivery of the supplies to the carrier if acceptance is at point of origin, or date of delivery at destination or port of embarkation if delivery and acceptance are at either of these points, or (2) the date the correct invoice or voucher is received in the office specified by the Government, if the latter is later than date of performance or delivery. For the purpose of computing the discount earned, payment shall be considered to have been made on the date the Government check was mailed.

(End of clause)
(R 7-103.14 1968 JUNE)
(R 7-1902.11 1971 NOV)

52.232-9 Limitation on Withholding of Payments.

As prescribed in 32.111(c)(2), insert a clause substantially as follows, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a supply contract, service contract, time-and-materials contract, labor-hour contract, or research and development contract is contemplated that includes two or more terms authorizing the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed:

LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984)

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; *provided*, that this limitation shall not apply to—

(a) Withholdings pursuant to any clause relating to wages or hours of employees;

(b) Withholdings not specifically provided for by this contract;

(c) The recovery of overpayments; and

(d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

(End of clause)
(R 7-104.21 1958 SEP)
(R 7-403.12 1959 FEB)

52.232-10 Payments under Fixed-Price Architect-Engineer Contracts.

As prescribed in 32.111(d)(1), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in fixed-price architect-engineer contracts:

PAYMENTS UNDER FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (APR 1984)

(a) Estimates shall be made monthly of the amount and value of the work and services performed by the Contractor under this contract. The estimates shall be prepared by the Contractor and accompanied by any supporting data required by the Contracting Officer.

(b) Upon approval of the estimate by the Contracting Officer, payment upon properly executed vouchers shall be made to the Contractor, as soon as practicable, of 90 percent of the approved amount, less all previous payments; *provided*, that payment may be made in full during any months in which the Contracting Officer determines that performance has been satisfactory. Also, whenever the Contracting Officer determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the Government, the Contracting Officer may release the excess amount to the Contractor.

(c) Upon satisfactory completion by the Contractor and acceptance by the Contracting Officer of the work done by the Contractor under the "Statement of Architect-Engineer Services" (Appendix A of the contract), the Contractor will be paid the unpaid balance of any money due for work under the statement, including retained percentages relating to this portion of the work. If the Government exercises the option under the Option for Supervision and Inspection Services clause, progress payments as provided for in (a) and (b) above will be made for this portion of the contract work. Upon satisfactory completion and final acceptance of the construction work, the Contractor shall be paid any unpaid balance of money due under this contract.

(d) Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the Contracting Officer a release of all claims against the Government arising under or by virtue of this contract, other than any claims that are specifically excepted by the Contractor from the operation of the release in amounts stated in the release.

(End of clause)
(R 7-607.14 1976 OCT)

52.232-11 Extras.

As prescribed in 32.111(d)(2), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a fixed-price supply contract, fixed-price service contract, or transportation contract is contemplated:

EXTRAS (APR 1984)

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

(End of clause)
(V 7-103.3 1949 JUL)
(V 1-7.102-3)

52.232-12 Advance Payments.

As prescribed in 32.412(a), insert the following clause in solicitations and contracts under which the Government will provide advance payments, except as provided in 32.412(b):

ADVANCE PAYMENTS (APR 1984)

(a) *Requirements for payment.* Advance payments will be made under this contract (1) upon submission of properly certified invoices or vouchers by the Contractor, and approval by the administering office, ... [*Insert the name of the office designated under agency procedures*], or (2) under a letter of credit. The amount of the invoice or voucher submitted plus all advance payments previously approved shall not exceed $..... If a letter of credit is used, the Contractor shall withdraw cash only when needed for disbursements acceptable under this contract and report cash disbursements and balances as required by the administering office. The Contractor shall apply terms similar to this clause to any advance payments to subcontractors.

(b) *Special bank account.* Until (1) the Contractor has liquidated all advance payments made under the contract and related interest charges and (2) the administering office has approved in writing the release of any funds due and payable to the Contractor, all advance payments and other payments under this contract shall be made by check payable to the Contractor marked for deposit only in the Contractor's special bank account with the .....[*Insert the name of the bank*]. None of the funds in the special bank account shall be mingled with other funds of the Contractor. Withdrawals from the special bank account may be made only by check of the Contractor countersigned by the Contracting Officer or a Government countersigning agent designated in writing by the Contracting Officer.

(c) *Use of funds.* The Contractor may withdraw funds from the special bank account only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, and indirect costs. Other withdrawals require approval in writing by the administering office. Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of Part 31 of the Federal Acquisition Regulation.

(d) *Repayment to the Government.* At any time, the Contractor may repay all or any part of the funds advanced by the Government. Whenever requested in writing to do so by the administering office, the Contractor shall repay to the Government any part of unliquidated advance payments considered by the administering office to exceed the Contractor's current requirements or the amount specified in paragraph (a) above. If the Contractor fails to repay the amount requested by the administering office,

all or any part of the unliquidated advance payments may be withdrawn from the special bank account by check signed by only the countersigning agent and applied to reduction of the unliquidated advance payments under this contract.

(e) *Maximum payment.* When the sum of all unliquidated advance payments, unpaid interest charges, and other payments exceed ... percent of the contract price, the Government shall withhold further payments to the Contractor. On completion or termination of the contract, the Government shall deduct from the amount due to the Contractor all unliquidated advance payments and all interest charges payable. If previous payments to the Contractor exceed the amount due, the excess amount shall be paid to the Government on demand. For purposes of this paragraph, the contract price shall be considered to be the stated contract price of $....., less any subsequent price reductions under the contract, plus (1) any price increases resulting from any terms of this contract for price redetermination or escalation, and (2) any other price increases that do not, in the aggregate, exceed $..... [*Insert an amount not higher than 10 percent of the stated contract amount inserted in this paragraph*]. Any payments withheld under this paragraph shall be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract shall resume.

(f) *Interest.* (1) The Contractor shall pay interest to the Government on the daily unliquidated advance payments at the daily rate specified in subparagraph (f)(3) below. Interest shall be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing the interest charge—

(i) Advance payments shall be considered as increasing the unliquidated balance as of the date of the advance payment check;

(ii) Repayments by Contractor check shall be considered as decreasing the unliquidated balance as of the date on which the check is received by the Government authority designated by the Contracting Officer; and

(iii) Liquidations by deductions from Government payments to the Contractor shall be considered as decreasing the unliquidated balance as of the date of the check for the reduced payment.

(2) Interest charges resulting from the monthly computation shall be deducted from payments, other than advance payments, due the Contractor. If the accrued interest exceeds the payment due, any excess interest shall be carried forward and deducted from subsequent payments. Interest carried forward shall not be compounded. Interest on advance payments shall cease to accrue upon satisfactory completion or termination of the contract for the convenience of the Government. The Contractor shall charge interest on advance payments to subcontractors in the manner described above and credit the interest to the Government. Interest need not be charged on advance payments to nonprofit educational or research subcontractors for experimental, developmental, or research work.

(3) If interest is required under the contract, the Contracting Officer shall determine a daily interest rate based on the higher of (i) the published prime rate of the banking institution (depository) in which the special bank account is established or (ii) the rate established by the Secretary of the Treasury under Pub. L. 92-41 (50 U.S.C. App. 1215(b)(2)). The Contracting Officer shall revise the daily interest rate during the contract period in keeping with any changes in the cited interest rates.

(4) If the full amount of interest charged under this paragraph has not been paid by deduction or otherwise upon completion or termination of this contract, the Contractor shall pay the remaining interest to the Government on demand.

(g) *Bank Agreement.* Before an advance payment is made under this contract, the Contractor shall transmit to the administering office, in the form prescribed by the administering office, an agreement in triplicate from the bank in which the special bank account is established, clearly setting forth the special character of the account and the responsibilities of the bank under the account. If possible, the Contractor shall select a bank that is a member bank of the Federal Reserve System or is an "insured" bank within the meaning the Federal Deposit Insurance Corporation Act (12 U.S.C. 1811).

(h) *Lien on Special Bank Account.* The Government shall have a lien upon any balance in the special bank account paramount to all other liens. The Government lien shall secure the repayment of any advance payments made under this contract and any related interest charges.

(i) *Lien on property under contract.* (1) All advance payments under this contract, together with interest charges, shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, on the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other terms of this contract, or otherwise, shall have valid title to the supplies, materials, or other property as against other creditors of the Contractor.

(2) The Contractor shall identify, by marking or segregation, all property that is subject to a lien in favor of the Government by virtue of any terms of this contract in such a way as to indicate that it is subject to a lien and that it has been acquired for or allocated to performing this contract. If, for any reason, the supplies, materials, or other property are not identified by marking or segregation, the Government shall be considered to have a lien to the extent of the Government's interest under this contract on any mass of property with which the supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over the property on its books and records.

(3) If, at any time during the progress of the work on the contract, it becomes necessary to deliver to a third person any items or materials on which the Government has a lien, the Contractor shall notify the third person of the lien and shall obtain from the third person a receipt in duplicate acknowledging the existence of the lien. The Contractor shall provide a copy of each receipt to the Contracting Officer.

(4) If, under the termination clause, the Contracting Officer authorizes the Contractor to sell or retain termination inventory, the approval shall constitute a release of the Government's lien to the extent that—

(i) The termination inventory is sold or retained; and

(ii) The sale proceeds or retention credits are applied to reduce any outstanding advance payments.

(j) *Insurance.* The Contractor represents and warrants that it maintains with responsible insurance carriers (1) insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality; (2) adequate insurance against liability on account of damage to persons or property; and (3) adequate insurance under all applicable workers' compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made under the contract have been liquidated, it will maintain this insurance; maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien under paragraph (i) of this clause; and furnish any certificates with respect to its insurance that the administering office may require.

(k) *Default.* (1) If any of the following events occurs, the Government may, by written notice to the Contractor, withhold further withdrawals from the special bank account and further payments on this contract:

(i) Termination of this contract for a fault of the Contractor.

(ii) A finding by the administering office that the Contractor has failed to—

(A) Observe any of the conditions of the advance payment terms;

(B) Comply with any material term of this contract;

(C) Make progress or maintain a financial condition adequate for performance of this contract;

(D) Limit inventory allocated to this contract to reasonable requirements; or

(E) Avoid delinquency in payment of taxes or of the costs of performing this contract in the ordinary course of business.

(iii) The appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or the institution of proceedings by or against the Contractor for bankruptcy, reorganization, arrangement, or liquidation.

(iv) The service of any writ of attachment, levy of execution, or commencement of garnishment proceedings concerning the special bank account.

(v) The commission of an act of bankruptcy.

(2) If any of the events described in subparagraph (1) above continue for 30 days after the written notice to the Contractor, the

Government may take any of the following additional actions:

(i) Withdraw by checks payable to the Treasurer of the United States, signed only by the countersigning agency, all or any part of the balance in the special bank account and apply the amounts to reduce outstanding advance payments and any other claims of the Government against the Contractor.

(ii) Charge interest, in the manner prescribed in paragraph (f) above, on outstanding advance payments during the period of any event described in subparagraph (1) above.

(iii) Demand immediate repayment by the Contractor of the unliquidated balance of advance payments.

(iv) Take possession of and, with or without advertisement, sell at public or private sale all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to the sale, apply the net proceeds of the sale to reduce the unliquidated balance of advance payments or other Government claims against the Contractor.

(3) The Government may take any of the actions described in subparagraphs (k)(1) and (2) of this clause it considers appropriate at its discretion and without limiting any other rights of the Government.

(l) *Prohibition against assignment.* Notwithstanding any other terms of this contract, the Contractor shall not assign this contract, any interest therein, or any claim under the contract to any party.

(m) *Information and access to records.* The Contractor shall furnish to the administering office (1) monthly or at other intervals as required, signed or certified balance sheets and profit and loss statements together with a report on the operation of the special bank account in the form prescribed by the administering office; and (2) if requested, other information concerning the operation of the Contractor's business. The Contractor shall provide the authorized Government representatives proper facilities for inspection of the Contractor's books, records, and accounts.

(n) *Other security.* The terms of this contract are considered to provide adequate security to the Government for advance payments; however, if the administering office considers the security inadequate, the Contractor shall furnish additional security satisfactory to the administering office, to the extent that the security is available.

(o) *Representations and warranties.* The Contractor represents and warrants the following:

(1) The balance sheet, the profit and loss statement, and any other supporting financial statements furnished to the administering office fairly reflect the financial condition of the Contractor at the date shown or the period covered, and there has been no subsequent materially adverse change in the financial condition of the Contractor.

(2) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the financial statements.

(3) The Contractor has disclosed all contingent liabilities, except for liability resulting from the renegotiation of defense production contracts, in the financial statements furnished to the administering office.

(4) None of the terms in this clause conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(5) The Contractor has the power to enter into this contract and accept advance payments, and has taken all necessary action to authorize the acceptance under the terms of this contract.

(6) The assets of the Contractor are not subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor. There is no current assignment of claims under any contract affected by these advance payment provisions.

(7) All information furnished by the Contractor to the administering office in connection with each request for advance payments is true and correct.

(8) These representations and warranties shall be continuing and shall be considered to have been repeated by the submission of each invoice for advance payments.

(p) *Covenants.* To the extent the Government considers it necessary while any advance payments made under this contract remain outstanding, the Contractor, without the prior written consent of the administering office, shall not—

(1) Mortgage, pledge, or otherwise encumber or allow to be encumbered, any of the assets of the Contractor now owned or subsequently acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to performing this contract and with respect to which the Government has a lien under this contract;

(2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes, or claims for money due or to become due;

(3) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any of its stock, except as required by sinking fund or redemption arrangements reported to the administering office incident to the establishment of these advance payment provisions;

(4) Sell, convey, or lease all or a substantial part of its assets;

(5) Acquire for value the stock or other securities of any corporation, municipality, or governmental authority, except direct obligations of the United States;

(6) Make any advance or loan or incur any liability as guarantor, surety, or accommodation endorser for any party;

(7) Permit a writ of attachment or any similar process to be issued against its property without getting a release or bonding the property within 30 days after the entry of the writ of attachment or other process;

(8) Pay any remuneration in any form to its directors, officers, or key employees higher than rates provided in existing agreements of which notice has been given to the administering office; accrue excess remuneration without first obtaining an agreement subordinating it to all claims of the Government; or employ any person at a rate of compensation over $... a year;

(9) Change substantially the management, ownership, or control of the corporation;

(10) Merge or consolidate with any other firm or corporation, change the type of business, or engage in any transaction outside the ordinary course of the Contractor's business as presently conducted;

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation;

(12) Create or incur indebtedness for advances, other than advances to be made under the terms of this contract, or for borrowings;

(13) Make or covenant for capital expenditures exceeding $..... in total;

(14) Permit its net current assets, computed in accordance with generally accepted accounting principles, to become less than $.....; or

(15) Make any payments on account of the obligations listed below, except in the manner and to the extent provided in this contract:

[*List the pertinent obligations*]

(End of clause)

(R 7-104.34 1976 OCT)

(R 1-30.414-2)

Alternate I (APR 1984). If the agency desires to waive the countersignature requirement because of the Contractor's financial strength, good performance record, and favorable experience concerning cost disallowances, add the following sentence, if appropriate, to paragraph (b) of the basic clause:

However, for this contract, countersignature on behalf of the Government will not be required unless it is determined necessary by the administering office.

(R 7-104.34 1976 OCT)

(R 1-30.414-2(b))

Alternate II (APR 1984). If used in a cost-reimbursement contract, substitute the following paragraphs (c) and (e), and subparagraphs (f)(1) and (f)(2) for paragraphs (c) and (e) and subparagraphs (f)(1) and (2) of the basic clause:

(c) *Use of funds.* The Contractor shall withdraw funds from the special bank account only to pay for allowable costs as prescribed by the ..... clause of this contract. Payment for any other types of expenses shall be approved in writing by the administering office.

(e) *Maximum payment.* When the sum of all unliquidated advance payments, unpaid interest charges, and other payments equal the total estimated cost of $ ..... (not including fixed-fee, if any) for the work under this contract, the Government shall withhold further payments to the Contractor. Upon completion or termination of the contract, the Government shall deduct from the amount due to the Contractor all unliquidated

advance payments and interest charges payable. The Contractor shall pay any deficiency to the Government upon demand. For purposes of this paragraph, the estimated cost shall be considered to be the stated estimated cost, less any subsequent reductions of the estimated cost, plus any increases in the estimated costs that do not, in the aggregate, exceed $..... [*Insert an amount not higher than 10 percent of the stated estimated cost inserted in this paragraph.*] The estimated cost shall include, without limitation, any reimbursable cost (as estimated by the Contracting Officer) incident to a termination for the convenience of the Government. Any payments withheld under this paragraph shall be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract shall resume.

(f) *Interest.* (1) The Contractor shall pay interest to the Government on the daily unliquidated advance payments at the daily rate specified in subparagraph (f)(3) below. Interest shall be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing the interest charge, the following shall be observed:

(i) Advance payments shall be considered as increasing the unliquidated balance as of the date of the advance payment check.

(ii) Repayments by Contractor check shall be considered as decreasing the unliquidated balance as of the date on which the check is received by the Government authority designated by the Contracting Officer.

(iii) Liquidations by deductions from payments to the Contractor shall be considered as decreasing the unliquidated balance as of the dates on which the Contractor presents to the Contracting Officer full and accurate data for the preparation of each voucher. Credits resulting from these deductions shall be made upon the approval of the reimbursement vouchers by the Disbursing Officer, based upon the Contracting Officer's certification of the applicable dates.

(2) Interest charges resulting from the monthly computation shall be deducted from any payments on account of the fixed-fee due to the Contractor. If the accrued interest exceeds the payment due, any excess interest shall be carried forward and deducted from subsequent payments of the contract price or fixed-fee. Interest carried forward shall not be compounded. Interest on advance payments shall cease to accrue upon (i) satisfactory completion or (ii) termination of the contract for the convenience of the Government. The Contractor shall charge interest on advance payments to subcontractors in the manner described above and credit the interest to the Government. Interest need not be charged on advance payments to nonprofit educational or research subcontractors for experimental, developmental, or research work.

(R 7-104.34 1976 OCT)
(R 1-30.414-2(c), (e), and (f))

Alternate III (APR 1984). If the agency considers a more rapid liquidation appropriate, add the following sentence as the first sentence of paragraph (e) of the basic clause with the appropriate percentage specified:

To liquidate the principal amount of any advance payment made to the Contractor, there shall be deductions of .....percent from all payments made by the Government under the contracts involved.

(R 7-104.34 1976 OCT)
(R 1-30.414-2(e))

Alternate IV (APR 1984). If the agency provides advance payments under the contract at no interest to the prime contractor, add the following sentences as the beginning sentences of paragraph (f) of the clause:

No interest shall be charged to the prime Contractor for advance payments except for interest charged during a period of default. The terms of this paragraph concerning interest charges for advance payments shall not apply to the prime Contractor.

(R 7-104.34 1976 OCT)
(R 1-30.414-2(n)(3))

52.232-13 Notice of Progress Payments.

As prescribed in 32.502-3(a), insert the following provision in invitations for bids and requests for proposals that include a Progress Payments clause:

NOTICE OF PROGRESS PAYMENTS (APR 1984)

The need for customary progress payments conforming to the regulations in Subpart 32.5 of the Federal Acquisition Regulation (FAR) will not be considered as a handicap or adverse factor in the award of the contract. The Progress Payments clause included in this solicitation will be included in any resulting contract, modified or altered if necessary in accordance with subsection 52.232-16 and its Alternate I of the FAR. Even though the clause is included in the contract, the clause shall be inoperative during any time the contractor's accounting system and controls are determined by the Government to be inadequate for segregation and accumulation of contract costs.

(End of provision)
(R 7-2003.64 APR 1974)
(R 1-30.504-4(a))

52.232-14 Notice of Availability of Progress Payments Exclusively for Small Business Concerns.

As prescribed in 32.502-3(b)(2), insert the following provision in invitations for bids if it is anticipated that (a) both small business concerns and others may submit bids in response to the same invitation and (b) only the small business bidders would need progress payments:

NOTICE OF AVAILABILITY OF PROGRESS PAYMENTS EXCLUSIVELY FOR SMALL BUSINESS CONCERNS (APR 1984)

The Progress Payments clause will be available only to small business concerns. Any bid conditioned upon inclusion of a progress payment clause in the resulting contract will be rejected as nonresponsive if the bidder is not a small business concern.

(End of provision)
(R 7-2003.63 APR 74)
(R 1-30.504-4(c))

52.232-15 Progress Payments Not Included.

As prescribed in 32.502-3(c), insert the following provision in invitations for bids if the solicitation will not contain one of the provisions prescribed in 32.502-3(a) and (b):

PROGRESS PAYMENTS NOT INCLUDED (APR 1984)

A progress payments clause is not included in this solicitation, and will not be added to the resulting contract at the time of award. Bids conditioned upon inclusion of a progress payment clause in the resulting contract will be rejected as nonresponsive.

(End of provision)
(R E-504.5 JULY 1976)
(R 1-30.504-6)

52.232-16 Progress Payments.

(a) As prescribed in 32.502-4(a), insert the following clause in solicitations and fixed-price contracts under which the Government will provide progress payments based on costs. A different customary rate for other than small business concerns may be substituted in accordance with 32.501-1 for the progress payment and liquidation rate indicated.

(b) If an unusual progress payment rate is approved for the prime contractor (see 32.501-2), the rate approved shall be substituted for the customary rate in paragraph (a)(1).

(c) If the liquidation rate is changed from the customary progress payment rate (see 32.503-8 and 32.503-9), the new rate shall be substituted for the rate in paragraph (a)(4), (a)(5), and (b).

(d) If advance and progress payments are authorized in the same contract, the words "less any unliquidated advance payments" may be deleted from paragraph (a)(4) of this clause.

(e) If an unusual progress payment rate is approved for a subcontract (see 32.504(b) and 32.501-2), subparagraph (j)(4) shall be modified to specify the new rate, the name of the subcontractor, and that the new rate shall be used for that subcontractor in lieu of the customary rate.

PROGRESS PAYMENTS (APR 1984)

Progress payments shall be made to the Contractor when requested as work progresses, but not more frequently than monthly in amounts approved by the Contracting Officer, under the following conditions:

(a) *Computation of amounts.* (1) Unless the Contractor requests a smaller amount, each progress payment shall be computed as (i) 90 percent of the Contractor's cumulative total costs under this contract, as shown by

records maintained by the Contractor for the purpose of obtaining payment under Government contracts, plus (ii) progress payments to subcontractors (see paragraph (j) below), all less the sum of all previous progress payments made by the Government under this contract. Cost of money that would be allowable under 31.205-10 of the Federal Acquisition Regulation shall be deemed an incurred cost for progress payment purposes.

(2) The following conditions apply to the timing of including costs in progress payment requests:

(i) The costs of supplies and services purchased by the Contractor directly for this contract may be included only after payment by cash, check, or other form of actual payment.

(ii) Costs for the following may be included when incurred, even if before payment, when the Contractor is not delinquent in payment of the costs of contract performance in the ordinary course of business:

(A) Materials issued from the Contractor's stores inventory and placed in the production process for use on this contract.

(B) Direct labor, direct travel, and other direct in-house costs.

(C) Properly allocable and allowable indirect costs.

(iii) Accrued costs of Contractor contributions under employee pension, profit sharing, and stock ownership plans shall be excluded until actually paid unless—

(A) The Contractor's practice is to contribute to the plans quarterly or more frequently; and

(B) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contributions remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).

(iv) If the contract is subject to the special transition method authorized in Cost Accounting Standard (CAS) 410, Allocation of Business Unit General and Administrative Expense to Final Cost Objective, General and Administrative expenses (G&A) shall not be included in progress payment requests until the suspense account prescribed in CAS 410 is less than—

(A) Five million dollars; or

(B) The value of the work-in-process inventories under contracts entered into after the suspense account was established (only a pro rata share of the G&A allocable to the excess of the inventory over the suspense account value is includable in progress payment requests under this contract).

(3) The Contractor shall not include the following in total costs for progress payment purposes in subparagraph (a)(1)(i) above:

(i) Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.

(ii) Costs incurred by subcontractors or suppliers.

(iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(iv) Payments made or amounts payable to subcontractors or suppliers, except for—

(A) Completed work, including partial deliveries, to which the Contractor has acquired title; and

(B) Work under cost-reimbursement or time-and-material subcontracts to which the Contractor has acquired title.

(4) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this contract, for which delivery and invoicing by the Contractor and acceptance by the Government are incomplete.

(5) The total amount of progress payments shall not exceed 90 percent of the total contract price.

(6) If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs (a)(4) or (a)(5) above, the Contractor shall repay the amount of such excess to the Government on demand.

(b) *Liquidation.* Except as provided in the Termination for Convenience of the Government clause, all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress payments, the unliquidated progress payments, or 90 percent of the amount invoiced, whichever is less. The Contractor shall repay to the Government any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Government reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (f) and (g) below).

(2) Performance of this contract is endangered by the Contractor's (i) failure to make progress or (ii) unsatisfactory financial condition.

(3) Inventory allocated to this contract substantially exceeds reasonable requirements.

(4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.

(5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.

(6) The Contractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) above, and that rate is less than the progress payment rate stated in subparagraph (a)(1) above.

(d) *Title.* (1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) "Property," as used in this clause, includes all of the below-described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices.

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;

(iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (ii) above; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract, e.g., the termination or special tooling clauses, shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract without requesting the Contracting Officer's approval, but the proceeds shall be credited against the costs of performance.

(5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. The Contractor shall (i) exclude the allocable costs of the property from the costs of contract performance, and (ii) repay to the Government any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all progress payments, title shall vest in the Contractor for all property (or the proceeds thereof) not—

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(e) *Risk of loss.* Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the

extent the Government expressly assumes the risk. The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.

(f) *Control of costs and property.* The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) *Reports and access to records.* The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by the Contracting Officer for the administration of this clause. Also, the Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's books, records, and accounts.

(h) *Special terms regarding default.* If this contract is terminated under the Default clause, (i) the Contractor shall, on demand, repay to the Government the amount of unliquidated progress payments and (ii) title shall vest in the Contractor, on full liquidation of progress payments, for all property for which the Government elects not to require delivery under the Default clause. The Government shall be liable for no payment except as provided by the Default clause.

(i) *Reservations of rights.* (1) No payment or vesting of title under this clause shall (i) excuse the Contractor from performance of obligations under this contract or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause (i) shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this contract and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(j) *Progress payments to subcontractors.* The amounts mentioned in (a)(1)(ii) above shall be all progress payments to subcontractors or divisions, if the following conditions are met:

(1) The amounts included are limited to (i) the unliquidated remainder of progress payments made plus (ii) for small business concerns any unpaid subcontractor requests for progress payments that the Contractor has approved for current payment in the ordinary course of business.

(2) The subcontract or interdivisional order is expected to involve a minimum of approximately 6 months between the beginning of work and the first delivery, or, if the subcontractor is a small business concern, 4 months.

(3) The terms of the subcontract or interdivisional order concerning progress payments—

(i) Are substantially similar to the terms of the clause at 52.232-16, Progress Payments, of the Federal Acquisition Regulation (or that clause with its Alternate I for any subcontractor that is a small business concern);

(ii) Are at least as favorable to the Government as the terms of this clause;

(iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the Contractor;

(iv) Are in conformance with the requirements of paragraph 32.504(e) of the Federal Acquisition Regulation; and

(v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if (A) the Contractor defaults or (B) the subcontractor becomes bankrupt or insolvent.

(4) The progress payment rate in the subcontract is the customary rate used by the Contracting Agency, depending on whether the subcontractor is or is not a small business concern.

(5) The parties agree concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, that the proceeds shall be applied to reducing any unliquidated progress payments by the Government to the Contractor under this contract.

(6) If no unliquidated progress payments to the Contractor remain, but there are unliquidated progress payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had been assigned and transferred to the Contractor.

(7) The Contractor shall pay the subcontractor's progress payment request under subdivision (j)(1)(ii) above, within a reasonable time after receiving the Government progress payment covering those amounts.

(8) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments to small business concerns, in conformity with the standards for customary progress payments stated in Subpart 32.5 of the Federal Acquisition Regulation. The Contractor further agrees that the need for such progress payments shall not be considered as a handicap or adverse factor in the award of subcontracts.

(End of clause)
(R 7-104.35(a) SEP 1982)
(R 1-30.510-1)

Alternate I (APR 1984). If the contract is with a small business concern, change each mention of the progress payment and liquidation rates to the customary rate of 95 percent for small business concerns (see 32.501-1), delete subparagraphs (a)(1) and (a)(2) from the basic clause, and substitute the following subparagraphs (a)(1) and (a)(2):

(a) *Computation of amounts.* (1) Unless the Contractor requests a smaller amount, each progress payment shall be computed as (i) 95 percent of the Contractor's total costs incurred under this contract whether or not actually paid, plus (ii) progress payments to subcontractors (see paragraph (j) below), all less the sum of all previous progress payments made by the Government under this contract. Cost of money that would be allowable under 31.205-10 of the Federal Acquisition Regulation shall be deemed an incurred cost for progress payment purposes.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).

(R 7-104.35(b) JUL 1978)

Alternate II (APR 1984). If the contract is a letter contract, (a) add paragraph (k) shown below, and (b) substitute the following for paragraph (a)(4): "The amount of unliquidated progress payments shall not exceed ....." [*specify dollar amount*]. The amount specified shall not exceed the customary progress payment rate applied to the maximum liability of the Government under the letter contract. Separate limits may be specified for separate parts of the work.

(k) Progress payments made under this letter contract shall, unless previously liquidated under paragraph (b), be liquidated under the following procedures:

(1) If this letter contract is superseded by a definitive contract, unliquidated progress payments made under this letter contract shall be liquidated by deducting the amount from the first progress or other payments made under the definitive contract.

(2) If this letter contract is not superseded by a definitive contract calling for the furnishing of all or part of the articles or services covered under the letter contract, unliquidated progress payments made under the letter contract shall be liquidated by deduction from the amount payable under the Termination clause.

(3) If this letter contract is partly terminated and partly superseded by a contract, the Government shall allocate the unliquidated progress payments to the terminated and unterminated portions as the Government deems equitable, and shall liquidate each portion under the relevant procedure in subparagraphs (1) and (2) above.

(4) If the method of liquidating progress payments provided above does not result in full liquidation, the Contractor shall immediately pay the unliquidated balance to the Government on demand.

(R 1-30.515(b))

52.232-17 Interest.

As prescribed in 32.617(a), insert the following clause in solicitations and contracts unless it is contemplated that the contract will be in one or more of the categories specified in 32.617(a)(1) through 32.617(a)(7). As prescribed in 32.617(b), the following clause may be

inserted in solicitations and contracts when it is contemplated that the contract will be in any of the categories specified in 32.617(a)(1) through 32.617(a)(7):

INTEREST (APR 1984)

(a) Notwithstanding any other clause of this contract, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) 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 12 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 paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)
(R 7-104.39 1972 MAY)
(R 1-7.203-15)

52.232-18 Availability of Funds.

As prescribed in 32.705-1(a), insert the following clause in solicitations and contracts if the contract will be chargeable to funds of the new fiscal year and the contracting action is to be initiated before the funds are available:

AVAILABILITY OF FUNDS (APR 1984)

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(End of clause)
(SS 7-104.91(a) 1962 SEP)

52.232-19 Availability of Funds for the Next Fiscal Year.

As prescribed in 32.705-1(b), insert the following clause in solicitations and contracts if a one-year indefinite-quantity or requirements contract for services is contemplated and the contract (a) is funded by annual appropriations and (b) is to extend beyond the initial fiscal year (see 32.703-2(b)):

AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR (APR 1984)

Funds are not presently available for performance under this contract beyond..... . The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond..... until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

(End of clause)
(SS 7-104.91(b) 1975 JUN)

52.232-20 Limitation of Cost.

As prescribed in 32.705-2(a), insert the following clause in solicitations and contracts if a fully funded cost-reimbursement contract is contemplated, except those for consolidated facilities, facilities acquisition, or facilities use, whether or not the contract provides for payment of a fee. The 60-day period may be varied from 30 to 90 days and the 75 percent from 75 to 85 percent. "Task Order" or other appropriate designation may be substituted for "Schedule" wherever that word appears in the clause.

LIMITATION OF COST (APR 1984)

(a) The parties estimate that performance of this contract, exclusive of any fee, will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.

(b) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that—

(1) The costs the contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or

(2) The total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this contract.

(d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

(1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of (i) the estimated cost specified in the Schedule or, (ii) if this is a cost-sharing contract, the estimated cost to the Government specified in the Schedule; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Contracting Officer (i) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than the Contracting Officer, shall affect this contract's estimated cost to the Government. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the estimated cost or, if this is a cost-sharing contract, for any costs in excess of the estimated cost to the Government specified in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination.

(f) If the estimated cost specified in the Schedule is increased, any costs the Contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the estimated cost to the Government specified in the Schedule, unless they contain a statement increasing the estimated cost.

(h) If this contract is terminated or the estimated cost is not increased, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(End of clause)
(R 7-203.3(a) 1966 OCT)
(R 7-402.2(a) 1966 OCT)
(R 7-402.2(b) 1973 MAY)
(R 1-7.202-3(a))
(R 1-7.402-2(a) & (b))

52.232-21 Limitation of Cost (Facilities).

As prescribed in 32.705-2(b), insert the following clause in solicitations and contracts for consolidated facilities, facilities acquisition, or facilities use (see 45.301):

LIMITATION OF COST (FACILITIES) (APR 1984)

(a) The parties estimate that performance of this contract will not cost the Government more than the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule within the estimated cost.

(b) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that—

(1) The costs that the Contractor expects to incur under this contract in the next 30 days, when added to all costs previously incurred, will exceed 85 percent of the estimated cost specified in the Schedule; or

(2) The total cost to the Government for the performance of this contract will be either greater or substantially less than had previously been estimated.

(c) As part of the notification, the Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this contract.

(d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

(1) The Government is not obligated to reimburse the contractor for costs incurred in excess of the estimated cost specified in the Schedule; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Contracting Officer (i) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract.

(e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than the Contracting Officer, shall affect this contract's estimated cost to the Government. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the estimated cost, whether those excess costs were incurred during the course of the contract or as a result of termination.

(f) If the estimated cost specified in the Schedule is increased, any costs the Contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the estimated cost to the Government specified in the Schedule, unless they contain a statement increasing the estimated cost.

(End of clause)
(R 7-702.11)

52.232-22 Limitation of Funds.

As prescribed in 32.705-2(c), insert the following clause in solicitations and contracts if an incrementally funded cost-reimbursement contract is contemplated. The 60-day period may be varied from 30 to 90 days and the 75 percent from 75 to 85 percent. "Task Order" or other appropriate designation may be substituted for "Schedule" wherever that word appears in the clause.

LIMITATION OF FUNDS (APR 1984)

(a) The parties estimate that performance of this contract will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.

(b) The Schedule specifies the amount presently available for payment by the Government and allotted to this contract, the items covered, the Government's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the contract up to the full estimated cost to the Government specified in the Schedule, exclusive of any fee. The Contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the Government under the contract approximates but does not exceed the total amount actually allotted by the Government to the contract.

(c) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the contract by the Government or, (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Government plus the Contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(d) Sixty days before the end of the period specified in the Schedule, the Contractor shall notify the Contracting Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Contractor's written request the Contracting Officer will terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Contracting Officer may terminate this contract on that later date.

(f) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

(1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by the Government to this contract; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of (i) the amount then allotted to the contract by the Government or, (ii) if this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, until the Contracting Officer notifies the Contractor in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to this contract.

(g) The estimated cost shall be increased to the extent that (1) the amount allotted by the Government or, (2) if this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(h) No notice, communication, or representation in any form other than that specified in subparagraph (f)(2) above, or from any person other than the Contracting Officer, shall affect the amount allotted by the Government to this contract. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to this contract, whether incurred during the course of the contract or as a result of termination.

(i) When and to the extent that the amount allotted by the Government to the contract is increased, any costs the Contractor incurs before the increase that are in excess of (1) the amount previously allotted by the Government or, (2) if this is a cost-sharing contract, the amount previously allotted by the Government to the contract plus the Contractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice and

directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by the Government specified in the Schedule, unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause shall affect the right of the Government to terminate this contract. If this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(l) If the Government does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the Schedule equalling the percentage of completion of the work contemplated by this contract.

(End of clause)
(R 7-203.3(b) 1966 OCT)
(R 7-402.2(c) & (d) 1966 OCT)
(R 1-7.202-3(b)
(R 1-7.402-2(c) & (d))

52.232-23 Assignment of Claims.

As prescribed in 32.806(a)(1), insert the following clause in solicitations and contracts when the contract amount is expected to be $1,000 or more, unless the contract will prohibit the assignment of claims (see 32.803(b)). The use of this clause is not required for purchase orders. However, the clause may be used in purchase orders for $1,000 or more that are accepted in writing by the contractor, if such use is consistent with agency policies and regulations.

ASSIGNMENT OF CLAIMS (APR 1984)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 203, 41 U.S.C. 15 (hereafter referred to as the "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

(End of clause)
(R 7-103.8 1962 FEB; R 1-30.703 1976 MAY)
(R 7-602.8 1976 OCT)
(R 7-607.6 1976 OCT)

Alternate I (APR 1984). If a no-setoff commitment is to be included in the contract (see 32.801 and 32.803(d)), add the following sentence at the end of paragraph (a) of the basic clause:

Unless otherwise stated in this contract, payments to an assignee of any amounts due or to become due under this contract shall not, to the extent specified in the Act, be subject to reduction or setoff.

(R 7-103.8 1962 FEB)
(R 1-30.703 1976 MAY)

52.232-24 Prohibition of Assignment of Claims.

As prescribed in 32.806(b), insert the following clause in solicitations and contracts for which a determination has been made under agency regulations that the prohibition of assignment of claims is in the best interests of the Government:

PROHIBITION OF ASSIGNMENT OF CLAIMS (APR 1984)

The assignment of claims under the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 203, 41 U.S.C. 15, is prohibited for this contract.

(End of clause)
(R 7-503.3 1953 JAN)

52.233-1 Disputes.

As prescribed in 33.014, insert the following clause in solicitations and contracts unless the conditions in 33.003 apply:

DISPUTES (APR 1984)

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $50,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding $50,000, the Contractor shall submit with the claim a certification that—

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and

(iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

(3) (i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification shall be executed by—

(A) A senior company official in charge at the Contractor's plant or location involved; or

(B) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For Contractor claims of $50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (properly certified if required), or (2) the date payment otherwisse would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)
(R 7-103.12 1980 JUN)
(R FPR Temporary Regulation 55-II 1980 JUN)

Alternate I (APR 1984). If it is determined under agency procedures, that continued performance is necessary pending resolution of any claim arising under or relating to the contract, substitute the following paragraph (h) for the paragraph (h) of the basic clause:

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

(AV 7-103.12(h) 1980 JUN)

52.234 [Reserved].

52.235 [Reserved].

52.236-1 Performance of Work by the Contractor.

As prescribed in 36.501(b), insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated and the contract amount is expected to exceed $1,000,000. 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 $1,000,000 or less. Complete the clause by inserting the appropriate percentage consistent with the complexity and magnitude of the work and customary or necessary speciality subcontracting (see 36.501(a)).

PERFORMANCE OF WORK BY THE CONTRACTOR (APR 1984)

The Contractor shall perform on the site, and with its own organization, work equivalent to at least ..... [*insert the appropriate number in words followed by numerals in parentheses*] percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

(End of clause)
(R 7-603.15 1965 JAN)
(R 1-18.104)

52.236-2 Differing Site Conditions.

As prescribed in 36.502, insert the following clause 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 small purchase limitation. 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 within the small purchase limitation.

DIFFERING SITE CONDITIONS (APR 1984)

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; *provided*, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

(End of clause)
(R 7-602.4 1968 FEB)
(R 1-7.602-4)

52.236-3 Site Investigation and Conditions Affecting the Work.

As prescribed in 36.503, insert the following clause 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 small purchase limitation. 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 within the small purchase limitation.

SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

(End of clause)
(R 7-602.14 1964 JUN)
(R 1-7.602-14)
(R 7-602.33 1965 JAN)

52.236-4 Physical Data.

As prescribed in 36.504, insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated and physical data (e.g., test borings, hydrographic, weather conditions data) will be furnished or made available to offerors. All information to be furnished or made available to offerors before award that pertains to the performance of the work should be identified in the clause. When subparagraphs are not applicable they may be deleted.

PHYSICAL DATA (APR 1984)

Data and information furnished or referred to below is for the Contractor's information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

(a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by ..... [*insert a description of investigational methods used, such as surveys, auger borings, core borings, test pits, probings, test tunnels*].

(b) Weather conditions ..... [*insert a summary of weather records and warnings*].

(c) Transportation facilities ..... [*insert a summary of transportation facilities providing access from the site, including information about their availability and limitations*].

(d) ..... [*Insert other pertinent information*].

(End of clause)
(R 7-603.25 1965 JAN)

52.236-5 Material and Workmanship.

As prescribed in 36.505, insert the following clause in solicitations and

contracts when a fixed-price construction contract is contemplated:

MATERIAL AND WORKMANSHIP (APR 1984)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

(End of clause)
(R 7-602.9 1964 JUN)

52.236-6 Superintendence by the Contractor.

As prescribed in 36.506, insert the following clause 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 small purchase limitation. 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 within the small purchase limitation.

SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

(End of clause)
(R 7-602.12 1978 OCT)
(R 1-7.602-12)

52.236-7 Permits and Responsibilities.

As prescribed in 36.507, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated:

PERMITS AND RESPONSIBILITIES (APR 1984)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(End of clause)
(R 7-602.13 1974 JUN)
(R 1-7.602.13)

52.236-8 Other Contracts.

As prescribed in 36.508, insert the following clause 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 small purchase limitation. 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 within the small purchase limitation.

OTHER CONTRACTS (APR 1984)

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommmodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

(End of clause)
(R 7-602.15 1964 JUN)
(R 1-7.602.15)

52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.

As prescribed in 36.509, insert the following clause 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 small purchase limitation. 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 within the small purchase limitation.

PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

(End of clause)
(R 7-602.34 1965 JAN)
(7-2101.13 1976 OCT)

52.236-10 Operations and Storage Areas.

As prescribed in 36.510, insert the following clause 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 small purchase limitation. 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 within the small purchase limitation.

OPERATIONS AND STORAGE AREAS (APR 1984)

(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

(End of clause)
(R 7-602.35 1965 JAN)

52.236-11 Use and Possession Prior to Completion.

As prescribed in 36.511, insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated and the contract award amount is expected to exceed the small purchase limitation. This clause may be inserted in solicitations and contracts when the contract amount is expected to be within the small purchase limitation.

USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)

(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

(End of clause)
(R 7-602.39 1976 OCT)
(1-7.602.31)

52.236-12 Cleaning Up.

As prescribed in 36.512, insert the following clause 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 small purchase limitation. 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 within the small purchase limitation.

CLEANING UP (APR 1984)

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

(End of clause)
(R 7-602.40 1965 JAN)
(R 7-2101.21 1976 OCT)

52.236-13 Accident Prevention.

As prescribed in 36.513, insert the following clause 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 small purchase limitation. 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 within the small purchase limitation.

ACCIDENT PREVENTION (APR 1984)

(a) In performing this contract, the Contractor shall provide for protecting the lives and health of employees and other persons; preventing damage to property, materials, supplies, and equipment; and avoiding work interruptions. For these purposes, the Contractor shall—

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for this purpose are taken.

(b) If this contract is with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, dated April 1981.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. The Contractor shall report this data in the manner prescribed by the Contracting Officer.

(d) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(e) The Contractor shall be responsible for its subcontractors' compliance with this clause.

(End of clause)
(R 7-602.42(a) 1977 JUN)

Alternate I (APR 1984). If the contract will involve work of a long duration or hazardous nature, add the following paragraph (f) to the basic clause:

(f) Before commencing the work, the Contractor shall—

(1) Submit a written proposal for implementing this clause; and

(2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

(R 7-602.42(b) 1977 JUN)

52.236-14 Availability and Use of Utility Services.

As prescribed in 36.514, insert the following clause 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 when the contracting officer decides (a) that the existing utility system 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.

AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)

(a) The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

(End of clause)
(R 7-603.30 1967 APR)
(R 7-2102.4 1976 OCT)

52.236-15 Schedules for Construction Contracts.

As prescribed in 36.515, the contracting officer may insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated, the contract amount is expected to exceed the small purchase limitation, and the period of actual work performance exceeds 60 days. This clause may be inserted in such contracts when work performance is expected to last less than 60 days and an unusual situation exists that warrants impositions of the requirements. This clause should not be used in the same contract with clauses covering other management approaches for ensuring that a contractor makes adequate progress.

SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

(End of clause)
(R 7-603.48 1965 JAN)

52.236-16 Quantity Surveys.

As prescribed in 36.516, the contracting officer may insert the following clause in solicitations and contracts when a fixed-price construction contract providing for unit pricing of items and for payment based on quantity surveys is contemplated:

QUANTITY SURVEYS (APR 1984)

(a) Quantity surveys shall be conducted, and the data derived from these surveys shall be used in computing the quantities of work performed and the actual construction completed and in place.

(b) The Government shall conduct the original and final surveys and make the computations based on them. The Contractor shall conduct the surveys for any periods for which progress payments are requested and shall make the computations based on these surveys. All surveys conducted by the Contractor shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance.

(c) Promptly upon completing a survey, the Contractor shall furnish the originals of all field notes and all other records relating to the survey or to the layout of the work to the Contracting Officer, who shall use them as necessary to determine the amount of progress payments. The Contractor shall retain copies of all such material furnished to the Contracting Officer.

(End of clause)
(R 7-603.50(a) 1979 MAR)

Alternate I (APR 1984). If it is determined at a level above that of the contracting officer that it is impracticable for Government personnel to perform the original and final surveys, and the Government wishes the contractor to perform these surveys, substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Contractor shall conduct the original and final surveys and surveys for any periods for which progress payments are requested. All these surveys shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance. The Government shall make such computations as are necessary to determine the quantities of work performed or finally in place. The Contractor shall make the computations based on the surveys for any periods for which progress payments are requested.

(R 7-603.50(b) 1979 MAR)

52.236-17 Layout of Work.

As prescribed in 36.517, insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated and use of this clause is appropriate due

to a need for accurate work layout and for siting verification during work performance:

LAYOUT OF WORK (APR 1984)

The Contractor shall lay out its work from Government-established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

(End of clause)
(R 7-604.3 1965 JAN)

52.236-18 Work Oversight in Cost-Reimbursement Construction Contracts.

As prescribed in 36.518, insert the following clause in solicitations and contracts when cost-reimbursement construction contracts are contemplated:

WORK OVERSIGHT IN COST-REIMBURSEMENT CONSTRUCTION CONTRACTS (APR 1984)

The extent and character of the work to be done by the Contractor shall be subject to the general supervision, direction, control, and approval of the Contracting Officer.

(End of clause)
(V 7-607.15 1965 JAN)
(R 7-605.16 1965 JAN)

52.236-19 Organization and Direction of the Work.

As prescribed in 36.519, insert the following clause in solicitations and contracts when a cost-reimbursement construction contract is contemplated:

ORGANIZATION AND DIRECTION OF THE WORK (APR 1984)

(a) When this contract is executed, the Contractor shall submit to the Contracting Officer a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under this contract, and their respective duties. The Contractor shall keep the data furnished current by supplementing it as additional information becomes available.

(b) Work performance under this contract shall be under the full-time resident direction of: (1) the Contractor, if the Contractor is an individual; (2) one or more principal partners, if the Contractor is a partnership; or (3) one or more senior officers, if Contractor is a corporation, association, or similar legal entity. However, if the Contracting Officer approves, the Contractor may be represented in the direction of the work by a specific person or persons holding positions other than those identified in this paragraph.

(End of clause)
(R 7-605.7 1977 DEC)
(R 7-605.25 1965 JAN)

52.236-20 Special Requirements.

As prescribed in 36.520, insert the following clause in solicitations and contracts when cost-reimbursement construction contract is contemplated:

SPECIAL REQUIREMENTS (APR 1984)

The Contractor shall—

(a) Be responsible for obtaining any necessary licenses and permits, and comply with any applicable Federal, State, and municipal laws, codes, and regulations in connection with prosecuting the work;

(b) Reduce to writing every contract it awards exceeding $2,000 for work under this contract unless this requirement is waived in writing by the Contracting Officer, and ensure that (i) each contract contains a statement that the contract is assignable to the Government, (ii) each of these contracts is in the Contractor's own name, and (iii) none of these contracts binds or purports to bind the Government or the Contracting Officer;

(c) Furnish sufficient technical, supervisory, and administrative personnel to ensure the prosecution of the work in accordance with the progress schedule approved by the Contracting Officer; and

(d) Cause all work under this contract to be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

(End of clause)
(R 7-605.21 1965 JAN)

52.236-21 Specifications and Drawings for Construction.

As prescribed in 36.521, insert the following clause 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 small purchase limitation. 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 within the small purchase limitation.

SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (APR 1984)

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place", that is "furnished and installed".

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with

respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

(h) This clause shall be included in all subcontracts at any tier.

(End of clause)
(7-602.2 JUNE 1964 and 1-7.602-2)
(7-602.41 JAN 1965)
(7-602.47 APR 1966)
(7-602.54 OCT 1976 and 1-7.602-36)

Alternate I (APR 1984). When record shop drawings are required and reproducible shop drawings are needed, add the following sentences to paragraph (g) of the basic clause:

Upon completing the work under this contract, the Contractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

(7-602.54(b)(1), OCT 1976)

Alternate II (APR 1984). When record shop drawings are required and reproducible shop drawings are not needed, the following sentences shall be added to paragraph (g) of the basic clause:

Upon completing the work under this contract, the Contractor shall furnish..... [*Contracting Officer complete by inserting desired amount*] sets of prints of all shop drawings as finally approved. These drawings shall show changes and revisions made up to the time the equipment is completed and accepted.

(7-602.54(b)(2) OCT 1976)

52.236-22 Design Within Funding Limitations.

As prescribed in 36.609-1(c), insert the following clause in architect-engineer contracts except when (a) inclusion of the clause has been waived (in accordance with 36.609-1(c)), (b) the design is for a standard structure and is not intended for a specific location or (c) there is little or no design effort involved. The contracting officer shall insert the agreed amount of the funding limitation in paragraph (c) of the clause.

DESIGN WITHIN FUNDING LIMITATIONS (APR 1984)

(a) The Contractor shall accomplish the design services required under this contract so as to permit the award of a contract, using standard Federal Acquisition Regulation procedures for the construction of the facilities designed at a price that does not exceed the estimated construction contract price as set forth in paragraph (c) below. When bids or proposals for the construction contract are received that exceed the estimated price, the contractor shall perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of this contract. However, the Contractor shall not be required to perform such additional services at no cost to the Government if the unfavorable bids or proposals are the result of conditions beyond its reasonable control.

(b) The Contractor will promptly advise the Contracting Officer if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the Contracting Officer will review the Contractor's revised estimate of construction cost. The Government may, if it determines that the estimated construction contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph (c) below, or the Government may adjust such estimated construction contract price. When bids or proposals are not solicited or are unreasonably delayed, the Government shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids or proposals to determine compliance with the funding limitation.

(c) The estimated construction contract price for the project described in this contract is $.....

(End of clause)
(R 7-608.3(a) and (b) 1971 APR)

52.236-23 Responsibility of the Architect-Engineer Contractor.

As prescribed in 36.609-2(b), insert the following clause in architect-engineer contracts:

RESPONSIBILITY OF THE ARCHITECT-ENGINEER CONTRACTOR (APR 1984)

(a) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

(b) Neither the Government's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Contractor shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the Contractor's negligent performance of any of the services furnished under this contract.

(c) The rights and remedies of the Government provided for under this contract are in addition to any other rights and remedies provided by law.

(d) If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

(End of clause)
(R 7-607.2 1972 APR)
(V 7-607.20 1972 APR)

52.236-24 Work Oversight in Architect-Engineer Contracts.

As prescribed in 36.609-3, insert the following clause in architect-engineer contracts:

WORK OVERSIGHT IN ARCHITECT-ENGINEER CONTRACTS (APR 1984)

The extent and character of the work to be done by the Contractor shall be subject to the general oversight, supervision, direction, control, and approval of the Contracting Officer.

(End of clause)
(R 7-607.15 1965 JAN)

52.236-25 Requirements for Registration of Designers.

As prescribed in 36.609-4, insert the following clause in fixed-price architect-engineer contracts, except that it may be omitted when the design is to be performed (a) outside the United States, its possessions, and Puerto Rico or (b) in a State or possession that does not have registration requirements for the particular field involved.

REQUIREMENTS FOR REGISTRATION OF DESIGNERS (APR 1984)

The design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in a State or possession of the United States, in Puerto Rico, or in the District of Columbia.

(End of clause)
(R 7-608.6 1972 APR)

52.237-1 Site Visit.

As prescribed in 37.110(a), insert the following provision in solicitations for services to be performed on Government installations, unless the solicitation is for construction:

SITE VISIT (APR 1984)

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves

regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

(End of provision)
(R 7-2003.39 1969 OCT)

52.237-2 Protection of Government Buildings, Equipment, and Vegetation.

As prescribed in 37.110(b), insert the following clause in solicitations and contracts for services to be performed on Government installations, unless a construction contract is contemplated:

PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

(End of clause)
(R 7-104.63 1968 FEB)

52.237-3 Continuity of Services.

As prescribed in 37.110(c), the following clause may be included in solicitations and contracts for services when the Government anticipates difficulties during the transition from one contractor to another or to the Government. The 60-day period in paragraph (b) may be varied from 30 to 90 days.

CONTINUITY OF SERVICES (APR 1984)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 60 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct onsite interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

(End of clause)
(R 7-1910.3 JUL 1976)

52.237-4 Payment by Government to Contractor.

As prescribed in 37.304(a), insert the following clause in solicitations and contracts solely for dismantling, demolition, or removal of improvements whenever the contracting officer determines that the Government shall make payment to the contractor in addition to any title to property that the contractor may receive under the contract:

PAYMENT BY GOVERNMENT TO CONTRACTOR (APR 1984)

(a) In ..... [insert "full" if Alternate I is used; otherwise insert "partial"] consideration of the performance of the work called for in the Schedule, the Government will pay to the Contractor ..... [fill in amount].

(b) The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. Except as provided in paragraph (c) below, in making progress payments the Contracting Officer shall retain 10 percent of the estimated payment until final completion and acceptance of the contract work. However, if the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer may authorize such payment in full, without retaining a percentage. Also, on completion and acceptance of each unit or division for which the price is stated separately, the Contracting Officer may authorize full payment for that unit or division without retaining a percentage.

(c) When the work is substantially completed, the Contracting Officer shall retain an amount considered adequate for the protection of the Government and, at the Contracting Officer's discretion, may release all or a portion of any excess amount.

(d) In further consideration of performance, the Contractor shall receive title to all property to be dismantled or demolished that is not specifically designated as being retained by the Government. The title shall vest in the Contractor immediately upon the Government's issuing the notice of award, or if a performance bond is to be furnished after award, upon the Government's issuance of a notice to proceed with the work. The Government shall not be responsible for the condition of, or any loss or damage to, the property. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition to the granting of this permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(e) Upon completion and acceptance of all work and receipt of a properly executed voucher, the Government shall make final payment of the amount due the Contractor under this contract. If requested, the Contractor shall release all claims against the Government arising under this contract, other than any claims the Contractor specifically excepts, in stated amounts, from operation of this release.

(End of clause)
(R 7-2101.3(a) 1976 OCT)

Alternate I (APR 1984). If the contracting officer determines that the Government shall retain all material resulting from the dismantling or demolition work, delete paragraph (d) from the basic clause and renumber the remaining paragraphs.

(R 7-2101.3(a) OCT 1976)

52.237-5 Payment by Contractor to Government.

As prescribed in 37.304(b), insert the following clause in solicitations and contracts for dismantling, demolition, or removal of improvements whenever the contractor is to receive title to dismantled or demolished property and a net amount of compensation is due to the Government, except if the contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments and the Government to transfer title to the contractor for increments of property only upon receipt of those payments:

PAYMENT BY CONTRACTOR TO GOVERNMENT (APR 1984)

(a) The Contractor shall receive title to all property to be dismantled, demolished, or removed under this contract and not specifically designated in the Schedule as being retained by the Government. The title shall vest in the Contractor immediately upon the Government's issuing the notice of award, or if a performance bond is to be furnished, upon the Government's issuing a notice to proceed with the work. The Government shall not be responsible for the condition of, or any loss or damage to, the property.

(b) The Contractor shall promptly remove from the site all property acquired by the Contractor. The Government shall not permit storage of property on the site beyond the completion date. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition of the granting of the permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(c) The Contractor shall perform the work called for under this contract and within ..... days of receipt of notice of award, unless otherwise provided in the Schedule and before proceeding with the work, shall pay ..... [fill in amount]. Checks shall be made payable to the office designated in the contract and shall be forwarded to the Contracting Officer.

(End of clause)
(R 7-2101.3(b) 1976 OCT)

52.237-6 Incremental Payment by Contractor to Government.

As prescribed in 37.304(c), insert the following clause in solicitations and contracts for dismantling, demolition, or removal of improvements (a) if the contractor is to receive title to dismantled or demolished property and a net amount of compensation is due the Government, and (b) if the contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments, and for the Government to transfer title to the contractor for increments of property, only upon receipt of those payments:

INCREMENTAL PAYMENT BY CONTRACTOR TO GOVERNMENT (APR 1984)

(a) The Contractor shall perform the work called for under this contract and within ..... days of receipt of notice of award, unless otherwise provided in the Schedule, and before proceeding with the work, shall pay ..... [fill in amount]. Thereafter, the Contractor shall make payment to the Government in the amount and frequency specified in the Schedule. Checks shall be made payable to the office designated in the contract and shall be forwarded to the Contracting Officer.

(b) Upon the Government's receipt of each increment of payment, the Contractor shall receive title to such property as the Contracting Officer determines to be fair and reasonable for that increment of payment. Upon receipt of the Contractor's final payment, all title that has not passed to the Contractor shall vest in the Contractor, unless specifically designated in the Schedule as being retained by the Government. The Government shall not be responsible for the condition of, or any loss or damage to, the property.

(c) The Contractor shall promptly remove from the site all property acquired by the Contractor. The Government will not permit storage of property on the site beyond the completion date. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition of the granting of this permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(End of clause)
(R 7-2101.3(b) 1976 OCT)

52.238 [Reserved].

52.239 [Reserved].

52.240 [Reserved].

52.241 [Reserved].

52.242-1 Notice of Intent to Disallow Costs.

As prescribed in 42.802, insert the following clause in solicitations and contracts when a cost-reimbursement contract, a fixed-price incentive contract, or a contract providing for price redetermination is contemplated:

NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)

(a) Notwithstanding any other clause of this contract—

(1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

(2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

(End of clause)
(R 7-203.35 1978 AUG)

52.242-2 Production Progress Reports.

As prescribed in 42.1107(a), insert the following clause in solicitations and contracts when production progress reporting is required; unless a facilities contract, a construction contract, or a Federal Supply Schedule contract is contemplated.

PRODUCTION PROGRESS REPORTS (APR 1984)

(a) The Contractor shall prepare and submit to the Contracting Officer the production progress reports specified in the contract Schedule.

(b) During any delay in furnishing a production progress report required under this contract, the Contracting Officer may withhold from payment an amount not exceeding $10,000 or 5 percent of the amount of this contract, whichever is less.

(End of clause)
(R 7-104.51 1971 APR)

52.242-3 [Reserved].

52.242-4 [Reserved].

52.242-5 [Reserved].

52.242-6 [Reserved].

52.242-7 [Reserved].

52.242-8 [Reserved].

52.242-9 [Reserved].

52.242-10 F.o.b. Origin—Government Bills of Lading or Prepaid Postage.

As prescribed in 42.1404-2(a), insert the following clause in solicitations and contracts when f.o.b origin shipments are to be made using Government bills of lading or prepaid postage:

F.O.B. ORIGIN—GOVERNMENT BILLS OF LADING OR PREPAID POSTAGE (APR 1984)

(a) F.o.b. origin shipments shall be made on Government bills of lading, or, if the supplies are mailable, via the U.S. Postal Service or a foreign postal system, as appropriate, with postage costs prepaid by the Contractor. Any direct charge for postage costs shall be listed as a separate item on invoices for the supplies shipped. Use of agency official indicia mail by Contractors is not authorized. Quantities shall not be divided into mailable lots for the express purpose of avoiding movement by other modes of transportation.

(b) If Government bills of lading are not furnished with the contract or applicable ordering document, the Contractor shall obtain them from the Contracting Officer or designated representative.

(c) Unless otherwise directed, the Contractor shall address overseas parcel post to an ultimate DOD consignee in care of a designated Army, Air Force, or Navy (fleet) post office and not to, or in care of, a transportation officer, or other activity at a CONUS water or aerial terminal for transshipment.

(End of clause)
(R 7-104.85(a) 1977 DEC)

52.242-11 F.o.b. Origin—Government Bills of Lading or Indicia Mail.

As prescribed in 42.1404-2(b), insert the following clause in solicitations and contracts when f.o.b. origin shipments are to be made using Government bills of lading or indicia mail, if indicia mail has been authorized by the U.S. Postal Service.

F.O.B.—GOVERNMENT BILLS OF LADING OR INDICIA MAIL (APR 1984)

(a) F.o.b. origin shipments shall be made on Government bills of lading, or, if the supplies

are mailable, via the U.S. Postal System, using "Postage and Fees Paid" indicia labels.

(b) If Government bills of lading are not furnished with the contract or applicable ordering document, the Contractor shall obtain them from the Contracting Officer or designated representative.

(c) Unless otherwise directed, the Contractor shall address overseas parcel post to an ultimate DOD consignee in care of a designated Army, Air Force, or Navy (fleet) post office and not to, or in care of, a transportation officer, or other activity at a CONUS water or aerial terminal for transshipment.

(End of clause)
(R 7-104.85(b) 1973 APR)

52.242-12 Report of Shipment (REPSHIP).

As prescribed in 42.1406-2, insert the following clause in solicitations and contracts when carload or truckload shipments will be made to DOD installations or, as required, civilian agency facilities:

REPORT OF SHIPMENT (REPSHIP)
(APR 1984)

Unless otherwise directed by the Contracting Officer, the Contractor shall send a prepaid notice of shipment to the consignee transportation officer when a truckload/carload shipment of supplies weighing 20,000 pounds or more, or a shipment of less weight that occupies the full visible capacity of a railway car or motor vehicle, is given to any carrier (common, contract or private) for transportation to a domestic (i.e., within the United States excluding Alaska or Hawaii, or if shipment originates in Alaska or Hawaii within Alaska or Hawaii, respectively) destination (other than a port for export). The notice shall be transmitted by rapid means (electrical if necessary) to be received by the consignee transportation officer at least 24 hours before the arrival of the shipment. When the length of time in transit will permit other than electrical means of transmission to provide the information 24 hours before the arrival of the shipment, the Government bill of lading, commercial bill of lading, or letter or other document that contains all of the following shall be addressed and sent promptly to the receiving transportation officer via United States mail. This document shall be prominently identified by the Contractor as being a "Report of Shipment" or "REPSHIP FOR T.O."

Message Example:

REPSHIP FOR T.O. 81 JUN 01
TRANSPORTATION OFFICER
DEFENSE DEPOT, MEMPHIS, TENN.
SHIPPED YOUR DEPOT 1981 JUN 1 540 CTNS MENS
COTTON TROUSERS, 30,240 LB, 1782 CUBE, VIA XX-YY*
IN CAR NO. XX 123456**-GBL***-C98000031****
CONTRACT DLA .....ETA*****-JUNE 5
JONES & CO., JERSEY CITY, N.J.

* Name of rail carrier, trucker, or other carrier.

** Vehicle identification.

*** Government bill of lading.

**** If not shipped by GBL, identify lading document and state whether paid by contractor.

***** Estimated time of arrival.

(End of clause)
(AV 7-105.4 1968 JUNE)

52.243-1 Changes—Fixed-Price.

As prescribed in 43.205(a)(1), insert the following clause in solicitations and contracts when a fixed-price contract for supplies is contemplated. The 30-day period may be varied according to agency procedures.

CHANGES—FIXED-PRICE (APR 1984)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must submit any "proposal for adjustment" (hereafter referred to as proposal) under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)
(R 7-103.2 1958 JAN)
(R 1-7.102-1)

Alternate I (APR 1984). If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(R 7-1902.2 1971 NOV)

Alternate II (APR 1984). If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(5) Method of shipment or packing of supplies.

(6) Place of delivery.

(R 7-1902.2 1971 NOV)
(R 7-103.2 1958 JAN)
(R 1-7.102-2)

Alternate III (APR 1984). If the requirement is for architect-engineer or other professional services, substitute the following paragraph (a) for paragraph (a) of the basic clause and add the following paragraph (f):

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed.

(f) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Contracting Officer.

(R 7-607.3 1972 APR)

Alternate IV (APR 1984). If the requirement is for transportation services, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Specifications.

(2) Work or services.

(3) Place of origin.

(4) Place of delivery.

(5) Tonnage to be shipped.

(6) Amount of Government-furnished property.

(R 1-7.703-2)

Alternate V (APR 1984). If the requirement is for research and development and it is desired to include the clause, substitute the following subparagraphs (a) (1) and (a)(3) and paragraph (b) for subparagraphs (a)(1) and (a)(3) and paragraph (b) of the basic clause:

(1) Drawings, designs, or specifications.
(3) Place of inspection, delivery, or acceptance.

(b) If any such change causes an increase or decrease in the cost of, or item required for, performing this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in (1) the contract price, the time of performance, or both; and (2) other affected terms of the contract, and shall modify the contract accordingly.

(R 7-304.1 1965 JUN)
(R 1-7.304-1)

52.243-2 Changes—Cost-Reimbursement.

As prescribed in 43.205(b)(1), insert the following clause in solicitations and contracts when a cost-reimbursement contract for supplies is contemplated. The 30-day period may be varied according to agency procedures.

CHANGES—COST-REIMBURSEMENT (APR 1984)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
(2) Method of shipment or packing.
(3) Place of delivery.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the contract accordingly.

(c) The Contractor must submit any "proposal for adjustment" (hereafter referred to as proposal) under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this contract.

(End of clause)
(R 7-203.2 1967 APR)
(R 1-7.202-2)

Alternate I (APR 1984). If the requirement is for services and no supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.
(2) Time of performance (i.e., hours of the day, days of the week, etc.).
(3) Place of performance of the services.

(R 7-1909.2 1971 NOV)

Alternate II (APR 1984). If the requirement is for services and supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.
(2) Time of performance (i.e., hours of the day, days of the week, etc.).
(3) Place of performance of the services.
(4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
(5) Method of shipment or packing of supplies.
(6) Place of delivery.

(R 7-1909.2 1971 NOV)
(R 7-103.2 1958 JAN)
(R 1-7.102-2)

Alternate III (APR 1984). If the requirement is for construction, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the plans and specifications or instructions incorporated in the contract.

(R 7-605.2 1967 APR)

Alternate IV (APR 1984). If a facilities contract is contemplated, substitute the following paragraphs (a) and (e) for paragraphs (a) and (e) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the facilities or work described in the schedule.

(e) Any related contract with the Contractor may be equitably adjusted if it provides for adjustment and is affected by a change ordered under this clause.

(R 7-702.4 1964 SEP)

Alternate V (APR 1984). If the requirement is for research and development, and it is desired to include the clause, substitute the following subparagraphs (a)(1) and (a)(3) for subparagraphs (a)(1) and (a)(3) of the basic clause:

(1) Drawings, designs, or specifications.
(3) Place of inspection, delivery, or acceptance.

(R 7-404.1 1967 APR)
(R 1-7.404-5)

52.243-3 Changes—Time-and-Materials or Labor-Hours.

As prescribed in 43.205(c), insert the following clause in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated. The 30-day period may be varied according to agency procedures.

CHANGES—TIME-AND-MATERIALS OR LABOR-HOURS (APR 1984)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications.
(2) Method of shipment or packing.
(3) Place of delivery.
(4) Amount of Government-furnished property.

(b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the (1) ceiling price, (2) hourly rates, (3) delivery schedule, and (4) other affected terms, and shall modify the contract accordingly.

(c) The Contractor must submit any "proposal for adjustment" (hereafter referred to as proposal) under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)
(R 7-901.2 1964 MAR)

52.243-4 Changes.

As prescribed in 43.205(d), insert the following clause in solicitations and contracts for (a) dismantling, demolition, or removal of improvements; and (b) construction, when a fixed-price contract is contemplated and the contract amount is expected to exceed the applicable small purchase limitation

in Part 13. The 30-day period may be varied according to agency procedures.

CHANGES (APR 1984)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes—

(1) In the specifications (including drawings and designs);

(2) In the method or manner of performance of the work;

(3) In the Government-furnished facilities, equipment, materials, services, or site; or

(4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; *provided*, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for a "proposal for adjustment" (hereafter referred to as proposal) based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must submit any proposal under this clause within 30 days after (1) receipt of a written change order under paragraph (a) above or (2) the furnishing of a written notice under paragraph (b) above, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(End of clause)
(AV 7-602.3 1968 FEB)
(AV 1-7.602-3)

52.243-5 Changes and Changed Conditions.

As prescribed in 43.205(e), insert the following clause in solicitations and contracts for construction, when the contract amount is not expected to exceed the applicable small purchase limitation in Part 13:

CHANGES AND CHANGED CONDITIONS (APR 1984)

(a) The Contracting Officer may, in writing, order changes in the drawings and specifications within the general scope of the contract.

(b) The Contractor shall promptly notify the Contracting Officer, in writing, of subsurface or latent physical conditions differing materially from those indicated in this contract or unknown unusual physical conditions at the site before proceeding with the work.

(c) If changes under paragraph (a) or conditions under paragraph (b) increase or decrease the cost of, or time required for performing the work, the Contracting Officer shall make an equitable adjustment (see paragraph (d)) upon submittal of a "proposal for adjustment" (hereafter referred to as proposal) by the Contractor before final payment under the contract.

(d) The Contracting Officer shall not make an equitable adjustment under paragraph (b) unless—

(1) The Contractor has submitted and the Contracting Officer has received the required written notice; or

(2) The Contracting Officer waives the requirement for the written notice.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause.

(End of clause)
(R SF-19)

52.243-6 Change Order Accounting.

As prescribed in 43.205(f), the contracting officer may insert a clause, substantially the same as follows, in solicitations and contracts for supply and research and development contracts of significant technical complexity, if numerous changes are anticipated.

CHANGE ORDER ACCOUNTING (APR 1984)

The Contracting Officer may require change order accounting whenever the estimated cost of a change or series of related changes exceeds $100,000. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the Contracting Officer or the matter is conclusively disposed of in accordance with the Disputes clause.

(End of clause)
(AV 7-104.90)

52.243-7 Notification of Changes.

As prescribed in 43.106, the contracting officer may insert a clause substantially the same as the following in solicitations and contracts. The clause is available for use primarily in negotiated research and development or supply contracts for the acquisition of major weapon systems or principal subsystems. If the contract amount is expected to be less than $1,000,000, the clause shall not be used, unless the contracting officer anticipates that situations will arise that may result in a contractor alleging that the Government has effected changes other than those identified as such in writing and signed by the contracting officer.

NOTIFICATION OF CHANGES (APR 1984)

(a) *Definitions.* "Contracting Officer," as used in this clause, does not include any representative of the Contracting Officer. "Specifically authorized representative (SAR)," as used in this clause, means any person the Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which shall refer to this subparagraph and shall be issued to the designated representative before the SAR exercises such authority.

(b) *Notice.* The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing promptly, within.....(*to be negotiated*) calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state—

(1) The date, nature, and circumstances of the conduct regarded as a change;

(2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;

(3) The identification of any documents and the substance of any oral communication involved in such conduct;

(4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;

(5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including—

(i) What contract line items have been or may be affected by the alleged change;

(ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;

(iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;

(iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and

(6) The Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.

(c) *Continued performance.* Following submission of the notice required by (b) above, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in either of which events the Contractor shall continue performance; *provided*, however, that if the Contractor regards the direction or communication as a change as described in (b) above, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing promptly and copies furnished to the Contractor and to the Contracting Officer. The Contracting Officer shall promptly countermand any action which exceeds the authority of the SAR.

(d) *Government response.* The Contracting Officer shall promptly, within..... (*to be negotiated*) calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either—

(1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;

(2) Countermand any communication regarded as a change;

(3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or

(4) In the event the Contractor's notice information is inadequate to make a decision under (1), (2), or (3) above, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.

(e) *Equitable adjustments.* (1) If the Contracting Officer confirms that Government conduct effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made—

(i) In the contract price or delivery schedule or both; and

(ii) In such other provisions of the contract as may be affected.

(2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Contracting Officer under this clause is included in the equitable adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in (b) and (c) above.

NOTE: The phrases "contract price" and "cost" wherever they appear in the clause, may be appropriately modified to apply to cost-reimbursement or incentive contracts, or to combinations thereof.

(End of clause)

(AV 7-104.86)

52.244-1 Subcontracts Under Fixed-Price Contracts.

As prescribed in 44.204(a)(1)(i), insert the following clause in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to exceed $500,000, unless the conditions in 44.204(a)(2) apply. As prescribed in 44.204(a)(1)(ii), the contracting officer may insert the clause in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is not expected to exceed $500,000, unless the conditions in 44.204(a)(2) apply. See also 44.205. The threshold in subparagraphs (b)(2) and (b)(3) of the clause may be lowered when closer surveillance of subcontracting is necessary because of the nature of the industry involved, criticality of the work expected to be subcontracted, absence of competition in placing the prime contract, uncertainties as to the adequacy of the contractor's purchasing system, or novelty of the supplies or services being purchased.

SUBCONTRACTS UNDER FIXED-PRICE CONTRACTS (APR 1984)

(a) This clause does not apply to firm-fixed-price contracts and fixed-price contracts with economic price adjustment. However, it does apply to subcontracts resulting from unpriced modifications to such contracts.

(b) "Subcontract," as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if the Contractor does not have an approved purchasing system and if the subcontract—

(1) Is to be a cost-reimbursement, time-and-materials, or labor-hour contract estimated to exceed $25,000 including any fee;

(2) Is proposed to exceed $100,000; or

(3) Is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services, that in the aggregate are expected to exceed $100,000.

(c) The advance notification required by paragraph (b) above shall include—

(1) A description of the supplies or services to be subcontracted;

(2) Identification of the type of subcontract to be used;

(3) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;

(4) The proposed subcontract price and the Contractor's cost or price analysis;

(5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions;

(6) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract; and

(7) A negotiation memorandum reflecting—

(i) The principal elements of the subcontract price negotiations;

(ii) The most significant considerations controlling establishment of initial or revised prices;

(iii) The reason cost or pricing data were or were not required;

(iv) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(v) The extent, if any, to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and subcontractor; and the effect of any such defective data on the total price negotiated;

(vi) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(d) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (b) above. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.

(e) Even if the Contractor's purchasing system has been approved, the Contractor shall obtain the Contracting Officer's written consent before placing subcontracts that have been selected for special surveillance and so identified in the Schedule of this contract.

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

subcontract nor approval of the Contractor's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in subsection 16.301-4 of the Federal Acquisition Regulation (FAR).

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

(End of clause)
(R 7-104.23(a) and (b) 1982 DEC)
(R 7-303.12)
(R 7-603.9)
(R 7-1703.5)
(R 7-1903.18)
(R 1-7.103-28)
(R 1-7.303-12)

Alternate I (APR 1984). If the Contracting Officer elects to delete the requirement for advance notification of, or consent to, any subcontracts that were evaluated during negotiations (this election is not authorized for acquisition of major systems and subsystems or their components), add the following paragraph (i) to the basic clause:

(i) Paragraphs (b) and (c) of this clause do not apply to the following subcontracts, which were evaluated during negotiations: [*list subcontracts*]

(R 23-201.1(b)(ii) 1977 APR)

52.244-2 Subcontracts Under Cost-Reimbursement and Letter Contracts.

As prescribed in 44.204(b), insert the following clause in solicitations and contracts when a cost-reimbursement or letter contract is contemplated. See also 44.205.

SUBCONTRACTS UNDER COST-REIMBURSEMENT AND LETTER CONTRACTS (APR 1984)

(a) "Subcontract," as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if—

(1) The proposed subcontract is of the cost-reimbursement, time-and-materials, or labor-hour type;

(2) The proposed subcontract is fixed-price and exceeds either $25,000 or 5 percent of the total estimated cost of this contract;

(3) The proposed subcontract has experimental, developmental, or research work as one of its purposes; or

(4) This contract is not a facilities contract and the proposed subcontract provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment valued in excess of $10,000 or of any items of industrial facilities.

(b) (1) In the case of a proposed subcontract that (i) is of the cost-reimbursement, time-and-materials, or labor-hour type and is estimated to exceed $10,000, including any fee, (ii) is proposed to exceed $100,000, or (iii) is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services that, in the aggregate, are expected to exceed $100,000, the advance notification required by paragraph (a) above shall include the information specified in subparagraph (2) below.

(2) (i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained.

(iv) The proposed subcontract price and the Contractor's cost or price analysis.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting—

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(c) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is requred under paragraph (a) above. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.

(d) If the Contractor has an approved purchasing system and the subcontract is within the scope of such approval, the Contractor may enter into the subcontracts described in subparagraphs (a)(1) and (a)(2) above without the consent of the Contracting Officer, unless this contract is for the acquisition of major systems, subsystems, or their components.

(e) Even if the Contractor's purchasing system has been approved, the Contractor shall obtain the Contracting Officer's written consent before placing subcontracts that have been selected for special surveillance and identified in the Schedule of this contract.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a deterimination (1) of the acceptability of any subcontract terms or conditions, (2) of the allowability of any cost under this contract, or (3) to relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in subsection 16.301-4 of the Federal Acquisition Regulation (FAR).

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

(i) (1) The Contractor shall insert in each price redetermination or incentive price revision subcontract under this contract the substance of the paragraph "Quarterly limitation on payments statement" of the clause at 52.216-5, Price Redetermination—Prospective, 52.216-6, Price Redetermination—Retroactive, 52.216-16, Incentive Price Revision—Firm Target, or 52.216-17 Incentive Price Revision—Successive Targets, as appropriate, modified in accordance with the paragraph entitled "Subcontracts" of that clause.

(2) Additionally, the Contractor shall include in each cost-reimbursement subcontract under this contract a requirement that the subcontractor insert the substance of the appropriate modified subparagraph referred to in subparagraph (1) above in each lower tier price redetermination or incentive price revision subcontract under that subcontract.

(j) To facilitate small business participation in subcontracting, the Contractor agrees to provide progress payments on subcontracts under this contract that are fixed-price subcontracts with small business concerns in conformity with the standards for customary progress payments stated in FAR 32.502-1 and 32.504(f), as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered a handicap or adverse factor in the award of subcontracts.

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

(End of clause)
(R 7-203.8(a) and (b) 1982 DEC)
(R 7-402.8(a) and (b) 1982 DEC)
(R 7-605.23)
(R 7-702.33)
(R 7-703.25)
(R 7-1703.5)
(R 7-1909.7)
(R 1-7.202-8)
(R 1-7.402-8(a) and (c))
(R 7-702.33 1977 APR)
(R 7-703.25 1977 APR)

52.244-3 Subcontracts Under Time-and-Materials and Labor-Hour Contracts.

As prescribed in 44.204(c), insert the following clause in solicitations and contracts when a time-and-materials and labor-hour contract is contemplated:

SUBCONTRACTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (APR 1984)

(a) "Subcontract," as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for furnishing any of the work called for in this contract, except for purchase of raw material or commercial stock items.

(b) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in subsection 16.301-4 of the Federal Acquisition Regulation (FAR).

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

(d) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the Contractor of any responsibility for performing this contract.

(End of clause)
(R 7-901.10 1979 MAR)

52.244-4 Subcontractors and Outside Associates and Consultants.

As prescribed in 44.204(d), insert the following clause in fixed-price architect-engineer contracts:

SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (APR 1984)

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

(End of clause)
(SS 7-607.16 1965 JAN)

52.244-5 Competition in Subcontracting.

As prescribed in 44.204(e), when contracting by negotiation, insert the following clause in solicitations and contracts when the contract amount is expected to exceed the appropriate small purchase limitation in Part 13, unless—

(a) A firm-fixed-price contract, awarded on the basis of adequate price competition or whose prices are set by law or regulation, is contemplated; or

(b) A contract of the type and/or purpose identified in 44.204(c) and (d) is contemplated.

COMPETITION IN SUBCONTRACTING (APR 1984)

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

(End of clause)
(V 7-104.40 1962 APR)
(V 1-7.202-30)
(V 7-303.27)
(V 7-402.29)
(V 7-603.18)
(V 7-605.37)
(V 7-702.50)
(V 7-703.43)
(V 7-704.35)
(V 7-1703.5)
(V 7-1903.28)
(V 7-1909.23)

52.245-1 Property Records.

As prescribed in 45.106(a), insert the following clause in solicitations and contracts when the conditions in 45.105(b) exist and the Government maintains the Government's official Government property records:

PROPERTY RECORDS (APR 1984)

The Government shall maintain the Government's official property records in connection with Government property under this contract. The Government Property clause is hereby modified by deleting the requirement for the Contractor to maintain such records.

(End of clause)
(AV 7-104.24(g) 1967 AUG)

52.245-2 Government Property (Fixed-Price Contracts).

As prescribed in 45.106(b)(1), insert the following clause in solicitations and contracts when a fixed-price contract is contemplated, except as provided in 45.106(d) and (e):

GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (APR 1984)

(a) *Government-furnished property.* (1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as-is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(3) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Government-furnished property is not delivered to the Contractor by the required time, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) *Changes in Government-furnished property.* (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract, or (ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make the property available for performing this contract and there is any—

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) *Title in Government property.* (1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as

"Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract—

(i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(ii) Title to all other material shall pass to and vest in the Government upon—

(A) Issuance of the material for use in contract performance;

(B) Commencement of processing of the material or its use in contract performance; or

(C) Reimbursement of the cost of the material by the Government, whichever occurs first.

(d) *Use of Government property.* The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) *Property administration.* (1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Contractor represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.

(f) *Access.* The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) *Risk of loss.* Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under paragraph (c) of this clause. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

(h) *Equitable adjustment.* When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for—

(1) Any delay in delivery of Government-furnished property;

(2) Delivery of Government-furnished property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished property; or

(4) Failure to repair or replace Government property for which the Government is responsible.

(i) *Final accounting and disposition of Government property.* Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

(j) *Abandonment and restoration of Contractor's premises.* Unless otherwise provided herein, the Government—

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) *Communications.* All communications under this clause shall be in writing.

(l) *Overseas contracts.* If this contract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(End of clause)
(R 7-104.24(a) 1968 SEP)
(R 7-104.24(b) 1968 SEP)
(R 7-104.24(d) 1968 SEP)
(R 7-303.7 1972 SEP)
(R 1-7.303-7(a))
(R 1-7.303-7(d))

Alternate I (APR 1984). If the contract is a negotiated fixed-price contract for which prices are not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, substitute the following paragraph (g) for paragraph (g) of the basic clause:

(g) *Limited risk of loss.* (1) The term "Contractor's managerial personnel," as used in this paragraph (g), means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; or

(iii) A separate and complete major industrial operation connected with performing this contract.

(2) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract (or, if an educational or nonprofit organization, for expenses incidental to such loss, destruction, or damage), except as provided in subparagraphs (3) and (4) below.

(3) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)—

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained, or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the

Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.

(4) (i) If the Contractor fails to act as provided in subdivision (g)(3)(v) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage—

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(5) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(6) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(7) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (g)(7) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (g) when making any such equitable adjustment.

(8) The Contractor represents that it is not including in the price and agrees it will not hereafter include in any price to the Government any charge or reserve for insurance (including any self- insurance fund or reserve) covering loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(9) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to or equitably reimburse the Government, as directed by the Contracting Officer.

(10) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(R 7-104.24(c) 1978 SEP)
(R 1-7.303-7(b))

Alternate II (APR 1984). If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research, substitute the following paragraphs (c) and (g) for paragraphs (c) and (g) of the basic clause:

(c) *Title in Government property.* (1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences, or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4) Title to equipment purchased with funds available for research and having an acquisition cost of less than $1,000 shall vest in the Contractor upon acquisition or as soon thereafter as feasible; *provided*, that the Contractor obtained the Contracting Officer's approval before each acquisition. Title to equipment purchased with funds available for research and having an acquisition cost of $1,000 or more shall vest as set forth in the contract. If title to equipment vests in the Contractor under this subparagraph (c)(4), the Contractor agrees that no charge will be made to the Government for any depreciation, amortization, or use under any existing or future Government contract or subcontract thereunder. The Contractor shall furnish the Contracting Officer a list of all equipment to which title is vested in the Contractor under this subparagraph (c)(4) within 10 days following the end of the calendar quarter during which it was received.

(5) Vesting title under this paragraph (c) is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested and by signing this contract, the Contractor accepts and agrees that—

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to equipment)."

(g) *Limited risk of loss.* (1) The term "Contractor's managerial personnel," as used in this paragraph (g), means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operation at any one plant, laboratory, or separate location at which the contract is being performed; or

(iii) A separate and complete major industrial operation connected with performing this contract.

(2) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this

contract (or, if an educational or nonprofit organization, for expenses incidental to such loss, destruction, or damage), except as provided in subparagraphs (3) and (4) below.

(3) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)—

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained, or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.

(4) (i) If the Contractor fails to act as provided in subdivision (g)(3)(v) above, after being notified (by certified mail adressed to one of the Contractor's managerial personel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) Furthermore, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage—

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(5) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(6) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(7) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (g)(7) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (g) when making any such equitable adjustment.

(8) The Contractor represents that it is not including in the price, and agrees it will not hereafter include in any price to the Government, any charge or reserve for insurance (including any self-insurance fund or reserve) covering loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(9) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, the Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to or equitably reimburse the Government, as directed by the Contracting Officer.

(10) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(R 7-303.7, clause paragraph (c) 1972 SEP)
(R 1-7.303-7(d), clause paragraph (c))
(R 7-104.24(c) 1978 SEP)
(R 1-7.303-7(b))

52.245-3 Identification of Government-Furnished Property.

As prescribed in 45.106(c), insert the following clause, in addition to the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price construction contract is contemplated under which the Government is to furnish Government property f.o.b. railroad cars at a specified destination or f.o.b. truck at the project site. The contract Schedule shall specify the point of delivery and may include special terms and conditions covering installation, preparation for operation, or equipment testing by the Government or by another contractor.

IDENTIFICATION OF GOVERNMENT-FURNISHED PROPERTY (APR 1984)

(a) The Government will furnish to the Contractor the property identified in the Schedule to be incorporated or installed into the work or used in performing the contract. The listed property will be furnished f.o.b. railroad cars at the place specified in the contract Schedule or f.o.b. truck at the project site. The Contractor is required to accept delivery, pay any demurrage or detention charges, and unload and transport the property to the job site at its own expense. When the property is delivered, the Contractor shall verify its quantity and condition and acknowledge receipt in writing to the Contracting Officer. The Contractor shall also report in writing to the Contracting Officer within 24 hours of delivery any damage to or shortage of the property as received. All such property shall be installed or incorporated into the work at the expense of the Contractor, unless otherwise indicated in this contract.

(b) Each item of property to be furnished under this clause shall be identified in the Schedule by quantity, item, and description.

(End of clause)
(R 7-603.28 1968 SEP)

52.245-4 Government-Furnished Property (Short Form).

As prescribed in 45.106(d), the contracting officer may insert the

following clause in solicitations and contracts when a fixed-price, time-and-material, or labor-hour contract is contemplated and (1) the acquisition cost of all Government-furnished property to be involved in the contract is $50,000 or less or (2) all Government-furnished property will be located at a Government-controlled worksite or installation and the contracting office will retain contract administration; unless a contract with an educational or nonprofit organization is contemplated:

GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) (APR 1984)

(a) The Government shall deliver to the Contractor, at the time and locations stated in this contract, the Government-furnished property described in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Contractor, the Contracting Officer shall equitably adjust affected provisions of this contract in accordance with the Changes clause when—

(1) The Contractor submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

(b) Title to Government-furnished property shall remain in the Government. The Contractor shall use the Government-furnished property only in connection with this contract. The Contractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for Government inspection at all reasonable times, unless the clause at Federal Acquisition Regulation 52.245-1, Property Records, is included in this contract.

(c) Upon delivery of Government-furnished property to the Contractor, the Contractor assumes the risk and responsibility for its loss or damage, except—

(1) For reasonable wear and tear;

(2) To the extent property is consumed in performing this contract; or

(3) As otherwise provided for by the provisions of this contract.

(d) Upon completing this contract, the Contractor shall follow the instructions of the Contracting Officer regarding the disposition of all Government-furnished property not consumed in performing this contract or previously delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as directed by the Contracting Officer.

(e) If this contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(End of clause)
(R 7-104.24(f) 1964 NOV)

52.245-5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).

As prescribed in 45.106(f)(1), insert the following clause in solicitations and contracts when a cost-reimbursement, time-and-material, or labor-hour contract is contemplated, except as provided in paragraph (d) of 45.106.

GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS) (APR 1984)

(a) *Government-furnished property.* (1) The term "Contractor's managerial personnel," as used in paragraph (g) of this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operation at any one plant, or separate location at which the contract is being performed; or

(iii) A separate and complete major industrial operation connected with performing this contract.

(2) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(3) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(4) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(5) If Government-furnished property is not delivered to the Contractor by the required time or times, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) *Changes in Government-furnished property.* (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract or (ii) substitute other Government-furnished property for the property to be provided by the Government or to be acquired by the Contractor for the Government under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by this notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make such property available for performing this contract and there is any—

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use property, if provided under any other contract or lease.

(c) *Title.* (1) The Government shall retain title to all Government-furnished property.

(2) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

(3) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon—

(i) Issuance of the property for use in contract performance;

(ii) Commencement of processing of the property or use in contract performance; or

(iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

(4) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(d) *Use of Government property.* The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) *Property administration.* (1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract, and which is hereby incorporated into this contract by reference.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the

Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(f) *Access.* The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) *Limited risk of loss.* (1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.

(2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)—

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.

(3) (i) If the Contractor fails to act as provided by subdivision (g)(2)(v) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage—

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(5) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (g) when making any such equitable adjustment.

(7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.

(9) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(h) *Equitable adjustment.* When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for—

(1) Any delay in delivery of Government-furnished property;

(2) Delivery of Government-furnished property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished property; or

(4) Failure to repair or replace Government property for which the Government is responsible.

(i) *Final accounting and disposition of Government property.* Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by this contract or paid to the Government as directed by the Contracting Officer. The foregoing provisions shall apply to scrap from Government property; *provided*, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings,

borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Contractor's established accounting procedures.

(j) *Abandonment and restoration of Contractor premises.* Unless otherwise provided herein, the Government—

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) *Communications.* All communications under this clause shall be in writing.

(l) *Overseas contracts.* If this contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(End of clause)
(R 7-203.21 1970 SEP)
(R 7-402.25, except clause paragraph (c) 1972 SEP)
(R 7-901.5 1970 SEP)
(R 1-7.203-21(a))
(R 1-7.402-25(a))
(R 1-7.402-25(b), except clause paragraph (c))

Alternate I (APR 1984). If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Title.* (1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract and that, under the provisions of this contract is to vest in the Government, shall pass to and vest in the Government upon the vendor's delivery of such property. Title to all other property, the cost of which is to be reimbursed to the Contractor under this contract and that under the provisions of this contract is to vest in the Government, shall pass to and vest in the Government upon—

(i) Issuance of the property for use in contract performance;

(ii) Commencement of processing of the property or its use in contract performance; or

(iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

(4) Title to equipment purchased with funds available for research and having an acquisition cost of less than $1,000 shall vest in the Contractor upon acquisition or as soon thereafter as feasible; *provided*, that the Contractor obtained the Contracting Officer's approval before each acquisition. Title to equipment purchased with funds available for research and having an acquisition cost of $1,000 or more shall vest as set forth in the contract. If title to equipment vests in the Contractor under this subparagraph (c)(4), the Contractor agrees that no charge will be made to the Government for any depreciation, amortization, or use under any existing or future Government contract or subcontract thereunder. The Contractor shall furnish the Contracting Officer a list of all equipment to which title is vested in the Contractor under this subparagraph (c)(4) within 10 days following the end of the calendar quarter during which it was received.

(5) Vesting title under this paragraph (c) is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested and by signing this contract, the Contractor accepts and agrees that—

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to equipment)."

(R 7-402.25, clause paragraph (c) only 1972 SEP)
(R 1-7.402-25(b), clause paragraph (c) only)

52.245-6 Liability for Government Property (Demolition Services Contracts).

As prescribed in 45.106(g) insert the following clause, in addition to the clauses prescribed at 37.304, in solicitations and contracts for dismantling, demolition, or removal of improvements:

LIABILITY FOR GOVERNMENT PROPERTY (DEMOLITION SERVICES CONTRACTS) (APR 1984)

Except for reasonable wear and tear incident to removal and delivery to the Government, the Contractor assumes the risk of and shall be responsible for any loss or destruction of, or damage to, items of property, title to which—

(a) Remains in the Government and that are to be delivered to the Government by the Contractor in performing the work; and

(b) Is vested in the Contractor but that under the Termination clauses of this contract is revested in the Government upon notice of termination.

(End of clause)
(R 7-2101.16 1976 OCT)

52.245-7 Government Property (Consolidated Facilities).

As prescribed in 45.302-6(a), insert the following clause in solicitations and contracts when a consolidated facilities contract is contemplated:

GOVERNMENT PROPERTY (CONSOLIDATED FACILITIES) (APR 1984)

(a) *Definitions.* For the purpose of this contract, the following definitions apply:

"Facilities," as used in this clause, means all property provided under this facilities contract.

"Related contract," as used in this clause, means a Government contract or subcontract for supplies or services under which the use of the facilities is or may be authorized.

(b) *Facilities to be provided.* (1) The Contractor, at Government expense and subject to the provisions of this contract, shall acquire, construct, or install the facilities and perform the related work as described in the Schedule.

(2) The Government, subject to the provisions of this contract, shall furnish to the Contractor the facilities identified in the Schedule as Government-furnished facilities. The Contractor, at Government expense, shall perform the work with respect to those facilities as is described in the Schedule.

(3) All shipments of the facilities shall be made on Government bills of lading, unless otherwise authorized by the Contracting Officer. The required number of such Government bills of lading will be furnished to the Contractor by, and the Contractor shall be accountable therefor to, the transportation activity designated by the Contracting Officer.

(c) *Period of this contract.* If not otherwise specified in the contract and if not previously terminated under paragraph (m), the use of the facilities authorized under this contract shall terminate 5 years after its effective date. Thereafter, if continued use of the facilities by the Contractor is mutually desired, the parties shall enter into a new contract that shall incorporate such provisions as may then be required by applicable laws and regulations. The parties may, by written agreement, extend the use of the facilities under this contract beyond this 5-year period to permit the completion of any then-existing related contracts and subcontracts.

(d) *Title in the facilities.* (1) The Government shall retain title to all Government-furnished property.

(2) Title to all facilities and components shall pass to and vest in the Government upon delivery by the vendor of all such items purchased by the Contractor for which it is entitled to be reimbursed as a direct item of cost under this contract.

(3) Title to replacement parts furnished by the Contractor in carrying out its normal maintenance obligations under paragraph (h) shall pass to and vest in the Government

upon completion of their installation in the facilities.

(4) Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon—

(i) Issuance of the property for use in performing this contract;

(ii) Commencement of processing or use of the property in performing this contract; or

(iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

(5) Title to the facilities shall not be affected by their incorporation into or attachment to any property not owned by the Government, nor shall any item of the facilities become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the facilities free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of, any of the facilities.

(6) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange, on Government-furnished premises, readily movable machinery, equipment, and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by the Government, unless the Contracting Officer determines that it is so permanently attached that removal would cause substantial injury to Government property.

(7) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Government buildings or other real property without advance written approval of the Contracting Officer. Fixed improvement or structural alterations, as used herein, means any alteration or improvement in the nature of the building or other real property, that, after completion, cannot be removed without substantial loss of value or damage to the premises. The term does not include foundations for production equipment.

(e) *Location of the facilities.* The Contractor may use the facilities at any of the locations specified in the Schedule and, with the prior written approval of the Contracting Officer, at any other location. In granting this approval, the Contracting Officer may prescribe such terms and conditions as may be deemed necessary for protecting the Government's interest in the facilities involved. Those terms and conditions shall take precedence over any conflicting provisions of this contract.

(f) *Notice of use of the facilities.* The Contractor shall notify the Contracting Officer in writing—

(1) Whenever use of all facilities for Government work in any quarterly period averages less than 75 percent of the total use of the facilities; or

(2) Whenever any item of the facilities is no longer needed or usable for performing existing related contracts that authorize such use.

(g) *Property control.* The Contractor shall maintain property control procedures and records and a system of identification of the facilities, in accordance with the provisions of Federal Acquisition Regulation (FAR) Subpart 45.5 in effect on the date of this contract. The provisions of FAR 45.5 are hereby incorporated by reference and made a part of this contract.

(h) *Maintenance.* (1) Except as otherwise provided in the Schedule, the Contractor shall perform normal maintenance of the facilities in accordance with sound industrial practice, including protection, preservation, and repair of the facilities and normal parts replacement for equipment.

(2) As soon as practicable after the execution of this contract, the Contractor shall submit to the Contracting Officer a written proposed maintenance program, including a maintenance records system, in sufficient detail to show its adequacy. If the Contracting Officer agrees to the proposed program, it shall become the normal maintenance obligation of the Contractor. The Contractor's performance according to the approved program shall satisfy the Contractor's obligations under subparagraphs (h)(1) and (h)(5) of this clause.

(3) The Contracting Officer may at any time direct the Contractor in writing to reduce the work required by the normal maintenance program. If such order reduces the cost of performing the maintenance, an appropriate equitable adjustment may be made in any affected related contract that so provides.

(4) The Contractor shall perform any maintenance work directed by the Contracting Officer in writing. Work in excess of the maintenance required under subparagraphs (h)(1) through (h)(3) of this clause shall be at Government expense. The Contractor shall notify the Contracting Officer in writing when sound industrial practice requires maintenance in excess of the normal maintenance program.

(5) The Contractor shall keep records of all work done on the facilities and shall give the Government reasonable opportunity to inspect these records. When facilities are disposed of under this contract, the Contractor shall deliver the related records to the Government or, if the Contracting Officer directs, to third persons.

(6) The Contractor's obligation under this clause for each item of facilities shall continue until the item is removed, abandoned, or disposed of; until the expiration of the 120-day period stated in subparagraph (n)(4) of this clause; and until the Contractor has discharged its other obligations under this contract with respect to such items.

(i) *Access.* The Government and any persons designated by it shall, at all reasonable times, have access to the premises where any of the facilities are located.

(j) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the facilities, except as specified in the clause at FAR 52.228-6, Insurance—Liability to Third Persons, or at FAR 52.228-7, Liability to Third Persons—Total Immunity. However, the provisions of the Contractor's related contracts shall govern any assumption of liability by the Government for claims arising under those contracts.

(k) *Late delivery, diversion, and substitution.* (1) The Government shall not be liable for breach of contract for any delay in delivery or nondelivery of facilities to be furnished under this contract.

(2) The Government has the right, at its expense, to divert the facilities under this contract by directing the Contractor to—

(i) Deliver any of the facilities to locations other than those specified in the Schedule; or

(ii) Assign purchase orders or subcontracts for any of the facilities to the Government or third parties.

(3) The Government may furnish any facilities instead of having the Contractor acquire or construct them. In such event, the Contractor is entitled to reimbursement for the cost related to the acquisition or construction of the facilities, including the cost of terminating purchase orders and subcontracts.

(4) Appropriate equitable adjustment may be made in any related contract that so provides and that is affected by any nondelivery, delay, diversion, or substitution under this paragraph (k).

(l) *Representations and warranties.* (1) The Government makes no warranty, express or implied, regarding the condition or fitness for use of any facilities. To the extent practical, the Contractor shall be allowed to inspect all the facilities to be furnished by the Government before their shipment.

(2) If the Contractor receives facilities in a condition not suitable for the intended use, the Contractor shall, within 30 days after receipt and installation thereof, so notify the Contracting Officer, detailing the facts and, as directed by the Contracting Officer and at Government expense, either (i) return such item or otherwise dispose of it or (ii) effect repairs or modifications. An appropriate equitable adjustment may be made in any related contract that so provides and that is affected by the return, disposition, repair, or modification of any facilities.

(m) *Termination of the use of the facilities.* (1) The Contractor may at any time, upon written notice to the Contracting Officer, terminate its authority to use any or all of the facilities. Termination under this paragraph (m) shall not relieve the Contractor of any of its obligations or liabilities under any related contract or subcontract affected by the termination.

(2) The Contracting Officer may at any time, upon written notice, terminate or limit the Contractor's authority to use any of the facilities. Except as otherwise provided in the Failure to Perform clause of this contract, an equitable adjustment may be made in any related contract of the Contractor that so provides and that is affected by such notice.

(n) *Disposition of the facilities.* (1) The provisions of this paragraph (n) shall apply to facilities for which use has been terminated by either the Contracting Officer or the Contractor under paragraph (m), except as provided in subparagraph (n)(2).

(2) Unless otherwise directed by the Contracting Officer, this paragraph shall not

apply to facilities terminated by the Contractor if—

(i) The facilities terminated do not comprise all of the facilities in the possession of the Contractor; and

(ii) The Contracting Officer determines that continued retention of the facilities will not interfere with the Contractor's operations.

(3) Within 60 days after the effective date of any notice of termination given under paragraph (m), or within such longer period as the Contracting Officer may approve in writing, the Contractor shall submit to the Contracting Officer, in a form satisfactory to the Contracting Officer, an accounting for all the facilities covered by the notice.

(4) Within 120 days after the Contractor accounts for any facilities under subparagraph (n)(3), the Contracting Officer shall give written notice to the Contractor as to the disposition of the facilities, except as otherwise provided in subparagraph (n)(6). In its disposition of the facilities, the Government may either—

(i) Abandon the facilities in place, in which case all obligations of the Government regarding such abandoned facilities and the restoration or rehabilitation of the premises in and on which they are located shall immediately cease; or

(ii) Require the Contractor to comply, at Government expense, with such directions as the Contracting Officer may give with respect to—

(A) The preparation, protection, removal, or shipment of the affected facilities;

(B) The retention or storage of the affected facilities; *provided*, that the Contracting Officer shall not direct the Contractor to retain or store any items of facilities in or on real property not owned by the Government if such retention or storage will interfere with the Contractor's operations;

(C) The restoration of Government-owned property incident to the removal of the facilities from such property; and

(D) The sale of any affected facilities in such manner, at such times, and at such price as may be approved by the Government, except that the Contractor shall not be required to extend credit to any purchaser.

(5) If the Contracting Officer fails to give the written notice required by subparagraph (n)(4) within the prescribed 120-day period, the Contractor may, upon not less than 30 days' written notice to the Government and at Government risk and expense, (i) retain the facilities in place or (ii) remove any of the affected severable facilities located in Contractor-owned property and store them at the Contractor's plant or in a public insured warehouse, in accordance with sound practice and in a manner compatible with their security classification. Except as provided in this subparagraph, the Government shall not be liable to the Contractor for failure to give the written notice required by subparagraph (n)(4).

(6) Nonseverable items of the facilities or items of the facilities subject to patent or proprietary rights shall be disposed of in such manner as the parties may have agreed to in writing.

(7) The Government, either directly or by third persons engaged by it, may remove or otherwise dispose of any facilities for which the Contractor's authority to use has been terminated, other than those for which specific provision is made in subparagraph (n)(6).

(8) The Contractor shall, within a reasonable time after the expiration of the 120-day period specified in subparagraph (n)(4), remove all of its property from the Government property and take such action as the Contracting Officer may direct in writing with respect to restoring that Government property (to the extent that it is affected by the installation of the Contractor's property) to its condition before such installation.

(9) Unless otherwise specifically provided in this contract, the Government shall not be obligated to the Contractor to restore or rehabilitate any property at the Contractor's plant, except for restoration or rehabilitation costs caused by removal of the facilities under subdivision (n)(4)(ii). The Contractor agrees to indemnify the Government against all suits or claims for damages arising out of the Government's failure to restore or rehabilitate any property at the Contractor's plant or property of its subcontractors, except any damage as may be caused by the negligence of the Government, its agents, or independent contractors.

(End of clause)
(R 7-702.1 1964 SEP)
(R 7-702.2 1964 SEP)
(R 7-702.25 1964 SEP)
(R 7-702.15 1964 SEP)
(R 7-705.7 1964 SEP)
(R 7-702.8 1964 SEP)
(AV 7-702.23 1968 JUN)
(R 7-702.17 1969 APR)
(R 7-702.14 1964 SEP)
(AV 7-702.16 1964 SEP)
(R 7-702.20 1964 SEP)
(R 7-702.3 1964 SEP)
(R 7-702.5 1964 SEP)
(AV 7-702.24 1964 SEP)
(R 7-702.26 1968 APR)

52.245-8 Liability for the Facilities.

As prescribed in 45.302-6(b), insert the following clause in solicitations and contracts when a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is contemplated.

LIABILITY FOR THE FACILITIES (APR 1984)

(a) The term "Contractor's managerial personnel," as used in this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant or separate location in which the facilities are installed or located; or

(3) A separate and complete major industrial operation in connection with which the facilities are used.

(b) The Contractor shall not be liable for any loss or destruction of, or damage to, the facilities, or for expenses incidental to such loss, destruction, or damage, except as provided in this clause.

(c) The Contractor shall be liable for loss or destruction of, or damage to, the facilities, and for expenses incidental to such loss, destruction, or damage—

(1) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained, or to the extent of insurance actually purchased and maintained, whichever is greater;

(2) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(3) For which the Contractor is otherwise responsible under the express terms of this contract;

(4) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(5) That results from a failure, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel—

(i) To establish, maintain, and administer a system for control of the facilities in accordance with the "Property administration" paragraph of the Government Property clause; or

(ii) To maintain and administer a program for maintenance, repair, protection, and preservation of the facilities, in accordance with the "Property administration" paragraph of the Government Property clause, or to take reasonable steps to comply with any appropriate written direction that the Contracting Officer may prescribe as reasonably necessary for the protection of the facilities. If the Government Property clause does not include the "Property administration" paragraph, then the Contractor shall exercise sound industrial practice in complying with the requirements of this subdivision (c)(5)(ii).

(d) (1) If the Contractor fails to act as provided by subparagraph (c)(5) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(2) Furthermore, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage—

(i) Did not result from the Contractor's failure to maintain an approved program or system; or

(ii) Occurred while an approved program or system was maintained by the Contractor.

(e) If the Contractor transfers facilities to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the facilities. However, the Contractor shall require the subcontractor to assume the risk of, and be

responsible for, any loss or destruction of, or damage to, the facilities while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all the facilities in as good condition as when received, except for reasonable wear and tear or for their utilization in accordance with the provisions of the prime contract.

(f) Unless expressly directed in writing by the Contracting Officer, the Contractor shall not include in the price or cost under any contract with the Government the cost of insurance (including self-insurance) against any form of loss, destruction, or damage to the facilities. Any insurance required under this clause shall be in such form, in such amounts, for such periods of time, and with such insurers (including the Contractor as self-insurer in appropriate circumstances) as the Contracting Officer shall require or approve. Such insurance shall provide for 30 days advance notice to the Contracting Officer, in the event of cancellation or material change in the policy coverage on the part of the insurer. A certificate of insurance or a certified copy of such insurance shall be deposited promptly with the Contracting Officer. The Contractor shall, not less than 30 days before the expiration of such insurance, deliver to the Contracting Officer a certificate of insurance or a certified copy of each renewal policy. The insurance shall be in the name of the United States of America (Agency Name), the Contractor, and such other interested parties as the Contracting Officer shall approve, and shall contain a loss payable clause reading substantially as follows:

"Any loss under this policy shall be adjusted with (Contractor) and the proceeds, at the direction of the Government, shall be paid to (Contractor). Proceeds not paid to (Contractor) shall be paid to the office designated by the Contracting Officer."

(g) When there is any loss or destruction of, or damage to, the facilities—

(1) The Contractor shall promptly notify the Contracting Officer and, with the assistance of the Contracting Officer, shall take all reasonable steps to protect the facilities from further damage, separate the damaged and undamaged facilities, put all the facilities in the best possible order, and promptly furnish to the Contracting Officer (and in any event within 30 days) a statement of—

(i) The facilities lost or damaged;

(ii) The time and origin of the loss or damage;

(iii) All known interests in commingled property of which the facilities are a part; and

(iv) Any insurance covering any part of or interest in such commingled property;

(2) The Contractor shall make such repairs, replacements, and renovations of the lost, destroyed, or damaged facilities, or take such other action as the Contracting Officer may direct in writing; and

(3) The Contractor shall perform its obligations under this paragraph (g) at Government expense, except to the extent that the Contractor is liable for such damage, destruction, or loss under the terms of this clause, and except as any damage, destruction, or loss is compensated by insurance.

(h) The Government is not obliged to replace or repair the facilities that have been lost, destroyed, or damaged. If the Government does not replace or repair the facilities, the right of the parties to an equitable adjustment in delivery or performance dates, price, or both, and in any other contractual condition of the related contracts affected shall be governed by the terms and conditions of those contracts.

(i) Except to the extent of any loss or destruction of, or damage to, the facilities for which the Contractor is relieved of liability, the facilities shall be returned to the Government or otherwise disposed of under the terms of this contract (1) in as good condition as when received by the Contractor, (2) improved, or (3) as required under the terms of this contract, less ordinary wear and tear.

(j) If the Contractor is in any way compensated (excepting proceeds from use and occupancy insurance, the cost of which is not borne directly or indirectly by the Government) for any loss or destruction of, or damage to, the facilities, the Contractor, as directed by the Contracting Officer, shall—

(1) Use the proceeds to repair, renovate, or replace the facilities involved; or

(2) Pay such proceeds to the Government.

(k) The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any loss or destruction of, or damage to, the facilities. Upon the request of the Contracting Officer, the Contractor shall furnish to the Government, at Government expense, all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(End of clause)
(R 7-702.18 1976 OCT)

52.245-9 Use and Charges.

As prescribed in 45.302-6(c), insert the following clause in solicitations and contracts (1) when a consolidated facilities contract or a facilities use contract or (2) when a fixed-price contract is contemplated, and Government production and research property is provided other than on a rent-free basis. If the conditions specified in 45.403(a) apply, the contracting officer shall modify the clause, as appropriate.

USE AND CHARGES (APR 1984)

(a) The Contractor may use the facilities without charge in the performance of—

(1) Contracts with the Government that specifically authorize such use without charge;

(2) Subcontracts of any tier under Government prime contracts if the Contracting Officer having cognizance of the prime contract (i) approves a subcontract specifically authorizing such use or (ii) otherwise authorizes such use in writing; and

(3) Other work, if the Contracting Officer specifically authorizes in writing use without charge for such work.

(b) If granted written permission by the Contracting Officer, or if it is specifically provided for in the Schedule, the Contractor may use the facilities for a rental fee for work other than that provided in paragraph (a). Authorizing such use of the facilities does not waive any rights of the Government to terminate the Contractor's right to use the facilities. The rental fee shall be determined in accordance with the following paragraphs.

(c) The following bases are or shall be established in writing for the rental computation prescribed in paragraphs (d) and (e) below in advance of any use of the facilities on a rental basis:

(1) The rental rates shall be those set forth in Table I.

(2) The acquisition cost of the facilities shall be the total cost to the Government, as determined by the Contracting Officer, and includes the cost of transportation and installation, if borne by the Government.

(i) When Government-owned special tooling or accessories are rented with any of the facilities, the acquisition cost of the facilities shall be increased by the total cost to the Government of such tooling or accessories, as determined by the Contracting Officer.

(ii) When any of the facilities are substantially improved at Government expense, the acquisition cost of the facilities shall be increased by the increase in value that the improvement represents, as determined by the Contracting Officer.

(iii) The determinations of the Contracting Officer under this subparagraph (c)(2) shall be final.

(3) For the purpose of determining the amount of rental due under paragraph (d), the rental period shall be not less than 1 month nor more than 6 months, as approved by the Contracting Officer.

(4) For the purpose of computing any credit under paragraph (e), the unit in determining the amount of use of the facilities shall be direct labor hours, sales, hours of use, or any other unit of measure that will result in an equitable apportionment of the rental charge, as approved by the Contracting Officer.

(d) The Contractor shall compute the amount of rentals to be paid for each rental period by applying the appropriate rental rates to the acquisition cost of such facilities as may have been authorized for use in advance for the rental period.

(e) The full rental charge for each period shall be reduced by a credit. The credit equals the rental amount that would otherwise be properly allocable to the work for which the facilities were used without charge under paragraph (a). The credit shall be computed by multiplying the full rental for the rental period by a fraction in which the numerator is the amount of use of the facilities by the Contractor without charge during the period, and the denominator is the total amount of use of the facilities by the Contractor during the period.

(f) Within 90 days after the close of each rental period, the Contractor shall submit to the Contracting Officer a written statement of

the use made of the facilities by the Contractor and the rental due the Government. At the same time, the Contractor shall make available such records and data as are determined by the Contracting Officer to be necessary to verify the information contained in the statement.

(g) If the Contractor fails to submit the information as required in paragraph (f) above, the Contractor shall be liable for the full rental for the period. However, if the Contractor's failure to submit was not the fault of the Contractor, the Contracting Officer shall grant to the Contractor in writing a reasonable extension of time to submit.

(h) Unless otherwise directed in writing by the Contracting Officer, the Contractor shall give priority in the use of the facilities to performing contracts and subcontracts of the Contracting Officer having cognizance of the facilities and shall not undertake any work involving the use of the facilities that would interfere with performing existing Government contracts or subcontracts.

(i) Concurrently with the submission of the written statement prescribed by paragraph (f) of this clause, the Contractor shall pay the rental due the Government under this clause. Payment shall be by check made payable to the office designated for contract administration and mailed or delivered to the Contracting Officer. Receipt and acceptance by the Government of the Contractor's check pursuant to this paragraph shall constitute an accord and satisfaction of the final amount due the Government hereunder, unless the Contractor is notified in writing within 180 days following receipt that the amount received is not regarded by the Government as the final amount due.

(j) If the Contractor uses any item of the facilities without authorization, the Contractor shall be liable for the full monthly rental, without credit, for such item for each month or part of a month in which such unauthorized use occurs; *provided*, however, that the agency head concerned may, in writing, waive the Contractor's liability for such unauthorized use if the agency head determines that without such a waiver gross inequity would result. The acceptance of any rental by the Government under this clause shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor growing out of the Contractor's unauthorized use of the facilities or any other failure to perform this contract according to its terms.

TABLE I

Rental Rates

(i) For real property and associated fixtures, a fair and reasonable rental shall be established, based on sound commercial practice.

(ii) For plant equipment of the types covered in Federal Supply classes 3405, 3408, 3410, and 3411 through 3419, machine tools; and in 3441 through 3449, secondary metal forming and cutting machines, the following monthly rates shall apply:

Age of Equipment	Monthly Rental Rate
Under 2 years old	3.0 percent
Over 2 to 3 years old	2.0 percent
Over 3 to 6 years old	1.5 percent
Over 6 to 10 years old	1.0 percent
Over 10 years old	0.75 percent

The age of each item of the equipment shall be based on the year in which it was manufactured, with a birthday on January 1 of each year thereafter. For example, an item of equipment manufactured on July 15, 1978, will be considered to be "over 1 year old" on and after January 1, 1979, and "over 2 years old" on and after January 1, 1980.

(iii) For personal property and equipment not covered in (i) or (ii) above, a rental shall be established at not less than the prevailing commercial rate, if any, or, in the absence of such rate, not less than 2 percent per month for electronic test equipment and automotive equipment and not less than 1 percent per month for all other property and equipment.

(End of clause)
(R 7-702.12 1976 OCT)

52.245-10 Government Property (Facilities Acquisition).

As prescribed in 45.302-6(d), insert the following clause in solicitations and contracts when a facilities acquisition contract is contemplated:

GOVERNMENT PROPERTY (FACILITIES ACQUISITION) (APR 1984)

(a) *Definitions.*

"Facilities," as used in this clause, means all property provided under this facilities contract.

"Related contract," as used in this clause, means a Government contract or subcontract for supplies or services under which the use of the facilities is or may be authorized.

(b) *Facilities to be provided.* (1) The Contractor, at Government expense and subject to the provisions of this contract, shall acquire, construct, or install the facilities and perform the related work as described in the Schedule.

(2) The Government, subject to the provisions of this contract, shall furnish to the Contractor the facilities identified in the Schedule as Government-furnished facilities. The Contractor, at Government expense, shall perform the work with respect to those Government-furnished facilities as is described in the Schedule.

(c) *Title in the facilities.* (1) The Government shall retain title to all Government-furnished property.

(2) Title to all facilities and components shall pass to and vest in the Government upon delivery by the vendor of all such items purchased by the Contractor for which it is entitled to be reimbursed as a direct item of cost under this contract.

(3) Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon—

(i) Issuance of the property for use in performing this contract;

(ii) Commencement of processing or use of the property in performing this contract; or

(iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

(4) Title to the facilities shall not be affected by their incorporation into, or attachment to, any property not owned by the Government, nor shall any item of the facilities become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the facilities free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of, any of the facilities.

(5) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange, on Government-furnished premises, readily movable machinery, equipment, and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by the Government, unless the Contracting Officer determines that it is so permanently attached that removal would cause substantial injury to Government property.

(6) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Government buildings or other real property without advance written approval of the Contracting Officer. Fixed improvement, or structural alterations, as used herein, means any alteration or improvement in the nature of the building or other real property, that, after completion, cannot be removed without substantial loss of value or damage to the premises. The term does not include foundations for production equipment.

(d) *Property control.* The Contractor shall maintain property control procedures and records and a system of identification of the facilities in accordance with the provisions of Federal Acquisition Regulation (FAR) Subpart 45.5 in effect on the date of this contract. The provisions of FAR 45.5 are hereby incorporated by reference and made a part of this contract.

(e) *Access.* The Government and any persons designated by it shall, at all reasonable times, have access to the premises where any of the facilities are located.

(f) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the facilities, except as specified in the clause at FAR 52.228-6, Insurance— Liability to Third Persons, or at FAR 52.228-7, Liability to Third Persons—Total Immunity. However, the provisions of the Contractor's related contracts shall govern any assumption of liability by the Government for claims arising under such related contracts.

(g) *Late delivery, diversion, and substitution.* (1) The Government shall not be liable for breach of contract for any delay in delivery or nondelivery of facilities to be furnished under this contract.

(2) The Government has the right, at its expense, to divert the facilities under this contract by directing the Contractor to—

(i) Deliver any of the facilities to locations other than those specified in the Schedule; or

(ii) Assign purchase orders or subcontracts for any of the facilities to the Government or third parties.

(3) The Government may furnish any facilities instead of having the Contractor acquire or construct them. In such event, the Contractor is entitled to reimbursement for the cost related to the acquisition or construction of the facilities, including the cost of terminating purchase orders and subcontracts.

(4) Appropriate equitable adjustment may be made in any related contract that so provides and that is affected by nondelivery, delay, diversion, or substitution under this paragraph (g).

(h) *Representations and warranties.* (1) The Government makes no warranty, express or implied, regarding the condition or fitness for use of any facilities. To the extent practical, the Contractor shall be allowed to inspect all the facilities to be furnished by the Government before their shipment.

(2) If the Contractor receives facilities in a condition not suitable for the intended use, the Contractor shall, within 30 days after receipt and installation thereof, so notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either (i) return such item or otherwise dispose of it or (ii) effect repairs or modifications. An appropriate equitable adjustment may be made in any related contract that so provides and that is affected by the return, disposition, repair, or modification of any facilities.

(i) *Supersedure.* Upon the acquisition, construction, or installation of the facilities called for by this contract, or any usable increment of the facilities, and acceptance by the Government, the facilities shall then be subject to the provisions of the facilities contract that authorizes the use of the items.

(End of clause)

(R 7-702.1 1964 SEP)
(AV 7-702.2 1964 SEP)
(R 7-702.15 1964 SEP)
(R 7-705.7 1964 SEP)
(R 7-702.17 1969 APR)
(AV 7-702.16 1964 SEP)
(R 7-702.20 1964 SEP)
(R 7-702.3 1964 SEP)
(R 7-702.5 1964 SEP)
(AV 7-703.39 1964 SEP)

52.245-11 Government Property (Facilities Use).

As prescribed in 45.302-6(e)(1), insert the following clause in solicitations and contracts when a facilities use contract is contemplated.

GOVERNMENT PROPERTY (FACILITIES USE) (APR 1984)

(a) *Definitions.* "Facilities," as used in this clause, means property provided under this facilities contract.

"Related contract," as used in this clause, means a Government contract or subcontract for supplies or services under which the use of the facilities is or may be authorized.

(b) *Period of this contract.* If not otherwise specified in this contract and if not previously terminated under paragraph (k), the use of the facilities authorized under this contract shall terminate 5 years after its effective date. Thereafter, if continued use of the facilities by the Contractor is mutually desired, the parties shall enter into a new contract that shall incorporate such provisions as may then be required by applicable laws and regulations. The parties may, by written agreement, extend the use of the facilities under this contract beyond this 5-year period to permit the completion of any then-existing related contracts and subcontracts.

(c) *Title in the facilities.* (1) Title to the facilities shall remain in the Government. Title to parts replaced by the Contractor in carrying out its normal maintenance obligations under paragraph (g) shall pass to and vest in the Government upon completion of their installation in the facilities.

(2) Title to the facilities shall not be affected by their incorporation into or attachment to any property not owned by the Government, nor shall any item of the facilities become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the facilities free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of, any of the facilities.

(3) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange, on Government-furnished premises, readily movable machinery, equipment, and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by the Government, unless the Contracting Officer determines that it is so permanently attached that removal would cause substantial injury to Government property.

(4) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Government buildings or other real property without advance written approval of the Contracting Officer. Fixed improvement or structural alterations, as used herein, means any alteration or improvement in the nature of the building or other real property that, after completion, cannot be removed without substantial loss of value or damage to the premises. The term does not include foundations for production equipment.

(d) *Location of the facilities.* The Contractor may use the facilities at any of the locations specified in the Schedule and, with the prior written approval of the Contracting Officer, at any other location. In granting this approval, the Contracting Officer may prescribe such terms and conditions as may be deemed necessary for protecting the Government's interest in the facilities involved. Those terms and conditions shall take precedence over any conflicting provisions of this contract.

(e) *Notice of use of the facilities.* The Contractor shall notify the Contracting Officer in writing—

(1) Whenever use of all facilities for Government work in any quarterly period averages less than 75 percent of the total use of the facilities; or

(2) Whenever any item of the facilities is no longer needed or usable for performing existing related contracts that authorize such use.

(f) *Property control.* The Contractor shall maintain property control procedures and records, and a system of identification of the facilities, in accordance with the provisions of Federal Acquisition Regulation (FAR) Subpart 45.5 in effect on the date of this contract. The provisions of FAR 45.5 are hereby incorporated by reference and made a part of this contract.

(g) *Maintenance.* (1) Except as otherwise provided in the Schedule, the Contractor shall protect, preserve, maintain (including normal parts replacement), and repair the facilities in accordance with sound industrial practice.

(2) As soon as practicable after the execution of this contract, the Contractor shall submit to the Contracting Officer a written proposed maintenance program, including a maintenance records system, in sufficient detail to show the adequacy of the proposed program. If the Contracting Officer agrees to the proposed program, it shall become the normal maintenance obligation of the Contractor. The Contractor's performance according to the approved program shall satisfy the Contractor's obligations under subparagraphs (g)(1) and (g)(5) of this clause.

(3) The Contracting Officer may at any time direct the Contractor in writing to reduce the work required by the normal maintenance program. If such order reduces the cost of performing the maintenance, an appropriate equitable adjustment may be made in any affected related contract that so provides.

(4) The Contractor shall perform any maintenance work directed by the Contracting Officer in writing. Work in excess of the maintenance required under subparagraphs (g)(1) through (g)(3) of this clause shall be at Government expense. The Contractor shall notify the Contracting Officer in writing when sound industrial practice requires maintenance in excess of the normal maintenance program.

(5) The Contractor shall keep records of all work done on the facilities and shall give the Government reasonable opportunity to inspect such records. When facilities are disposed of under this contract, the Contractor shall deliver the related records to the Government or, if directed by the Contracting Officer, to third persons.

(6) The Contractor's obligation under this clause for each item of facilities shall continue until the item is removed, abandoned, or disposed of at the expiration of the 120-day period stated in subparagraph (l)(4) of this clause and when the Contractor has discharged its other obligations under this contract with respect to such items.

(h) *Access.* The Government and any persons designated by it shall, at all reasonable times, have access to the

premises where any of the facilities are located.

(i) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the facilities under this contract. However, the provisions of the Contractor's related contracts shall govern any assumption of liability by the Government for claims arising under those contracts.

(j) *Representations and warranties.* (1) The Government makes no warranty, express or implied, regarding the condition or fitness for use of any facilities. To the extent practical, the Contractor shall be allowed to inspect all the facilities to be furnished by the Government before their shipment.

(2) If the Contractor receives facilities in a condition not suitable for the intended use, the Contractor shall, within 30 days after receipt and installation thereof, so notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either (i) return such item or otherwise dispose of it or (ii) effect repairs or modifications. An appropriate equitable adjustment may be made in any related contract that so provides and that is affected by the return, disposition, repair, or modification of any facilities.

(k) *Termination of use of the facilities.* (1) The Contractor may at any time, upon written notice to the Contracting Officer, terminate its authority to use any or all of the facilities. Termination under this paragraph (k) shall not relieve the Contractor of any of its obligations or liabilities under any related contract or subcontract affected by the termination.

(2) The Contracting Officer may at any time, upon written notice, terminate or limit the Contractor's authority to use any of the facilities. Except as otherwise provided in the Failure to Perform clause of this contract, an equitable adjustment may be made in any related contract of the Contractor that so provides and that is affected by such notice.

(l) *Disposition of the facilities.* (1) The provisions of this paragraph (l) shall apply to facilities whose use has been terminated by either the Contracting Officer or the Contractor under paragraph (k), except as provided in subparagraph (l)(2).

(2) Unless otherwise directed by the Contracting Officer, this paragraph (l) shall not apply to facilities terminated by the Contractor if—

(i) The facilities terminated do not comprise all of the facilities in the possession of the Contractor; and

(ii) The Contracting Officer determines that continued retention of the facilities will not interfere with the Contractor's operations.

(3) Within 60 days after the effective date of any notice of termination given under paragraph (k) or within such longer period as the Contracting Officer may approve in writing, the Contractor shall submit to the Contracting Officer an accounting for all the facilities covered by such notice. The submission of the Contractor shall be in a form satisfactory to the Contracting Officer.

(4) Within 120 days after the Contractor accounts for any facilities under subparagraph (l)(3), the Contracting Officer shall give written notice to the Contractor as to the disposition of the facilities, except as otherwise provided in subparagraph (l)(6). In its disposition of the facilities, the Government may either—

(i) Abandon the facilities in place, in which case all obligations of the Government regarding such abandoned facilities and the rehabilitation of the premises in and on which they are located shall immediately cease; or

(ii) Require the Contractor to comply, at Government expense, with such directions as the Contracting Officer may give with respect to—

(A) The preparation, protection, removal, or shipment of the affected facilities;

(B) The retention or storage of the affected facilities; *provided*, that the Contracting Officer shall not direct the Contractor to retain or store any items of facilities in or on real property not owned by the Government if such retention or storage will interfere with the Contractor's operations;

(C) The restoration of Government-owned property incident to the removal of the facilities from such property; and

(D) The sale of any affected facilities in such manner, at such times, and at such price as may be approved by the Government, except that the Contractor shall not be required to extend credit to any purchaser.

(5) If the Contracting Officer fails to give the written notice required by subparagraph (l)(4) of this clause within the prescribed 120-day period, the Contractor may, upon not less than 30 days' written notice to the Government, and at Government risk and expense, (i) retain the facilities in place or (ii) remove any of the affected severable facilities located in Contractor-owned property and store them at the Contractor's plant or in a public insured warehouse. Such removal and storage shall be in accordance with sound practice and in a manner compatible with the security classification of the facilities. Except as provided in this subparagraph (l)(5), the Government shall not be liable to the Contractor for failure to give the written notice required by subparagraph (l)(4).

(6) Nonseverable items of the facilities or items of the facilities subject to patent or proprietary rights shall be disposed of in such manner as the parties may have agreed to in writing.

(7) The Government, either directly or by third persons engaged by it, may remove or otherwise dispose of any facilities for which the Contractor's authority to use has been terminated, other than those for which specific provision is made in subparagraph (l)(6).

(8) The Contractor shall, within a reasonable time after the expiration of the 120-day period specified in subparagraph (l)(4), remove all of its property from the Government property and take such action as the Contracting Officer may direct in writing with respect to restoring such Government property, to the extent that it is affected by the installation of the Contractor's property, to its condition before such installation.

(9) Unless otherwise specifically provided in this contract, the Government shall not be obligated to the Contractor to restore or rehabilitate any property at the Contractor's plant, except for restoration or rehabilitation costs caused by removal of the facilities under subdivision (l)(4)(ii). The Contractor agrees to indemnify the Government against all suits or claims for damages arising out of the Government's failure to restore or rehabilitate any property at the Contractor's plant or property of its subcontractors, except any damage as may be caused by the negligence of the Government, its agents, or independent contractors.

(m) *Supersedure.* (1) Facilities previously provided to the Contractor under the contracts specified in the Schedule of this contract shall become subject to this contract upon its effective date. The terms of those contracts by which such facilities were previously provided to the Contractor are hereby superseded with respect to such facilities, except for rights and obligations that may have accrued under such other contract before the effective date of this contract.

(2) Facilities subsequently provided the Contractor under any contract shall, if that contract so specifies, be subject to this contract upon the completion of their construction, acquisition, and installation or upon their availability for use, whichever occurs first, except as otherwise provided in the contract or other document by which such facilities are provided to the Contractor.

(End of clause)

(R 7-702.1 1964 SEP)
(R 7-702.25 1964 SEP)
(R 7-702.15 1964 SEP)
(R 7-705.7 1964 SEP)
(R 7-702.23 1968 SEP)
(R 7-702.17 1969 APR)
(R 7-702.14 1964 SEP)
(AV 7-702.16 1964 SEP)
(R 7-702.20 1964 SEP)
(R 7-704.15 1964 SEP)
(R 7-702.3 1964 SEP)
(R 7-702.5 1964 SEP)
(R 7-706.7 1968 SEP)
(R 7-706.15 1968 SEP)
(AV 7-702.24 1964 SEP)
(R 7-702.26 1968 APR)
(R 7-704.31 1964 SEP)

Alternate I (APR 1984). If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education, or is awarded to a nonprofit organization whose primary purpose is the conduct of scientific research, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Title.* (1) Title to equipment having a unit acquisition cost of less than $1,000 purchased with funds available for research shall vest in the Contractor upon acquisition or as soon thereafter as feasible, provided that the Contractor received the Contracting Officer's approval before acquiring the equipment. Title to other equipment purchased with Government funds shall vest in the Government. The Government may at any time during the term of this contract or

upon its completion or termination transfer to the Contractor the title to any equipment purchased with funds available for research. Any such transfer shall be upon terms and conditions agreed to by the parties. The Contractor agrees that it shall not charge under any Government contract or subcontract any depreciation, amortization, or use of the equipment purchased or transferred under this paragraph. When title to equipment is vested in the Contractor or is transferred under this paragraph to the Contractor, the equipment ceases to be Government property. Within 10 days after the end of the calendar quarter in which such acquisition or transfer of title occurs, the Contractor shall furnish the Contracting Officer a list of all equipment, title to which is vested in the Contractor.

(2) (i) The Government shall retain title to all Government-furnished property.

(ii) Except as set forth in subparagraph (c)(1), title to all property shall pass to and vest in the Government upon delivery by the vendor of all such items purchased by the Contractor for which it is entitled to be reimbursed as a direct item of cost under this or a related contract.

(iii) Title to replacement parts furnished by the Contractor in performing its normal obligations under paragraph (g) shall pass to and vest in the Government upon completion of their installation in the facilities.

(iv) Title to other property, the cost of which is reimbursable to the contractor under this contract or a related contract, shall pass to and vest in the Government upon—

(A) Issuance of the property for use in performing this contract;

(B) Commencement of processing or use of the property in performing this contract; or

(C) Reimbursement of the cost of the property by the Government, whichever occurs first.

(3) Title to the facilities shall not be affected by their incorporation into or attachment to any property not owned by the Government, nor shall any item of the facilities become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the facilities free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of, any of the facilities.

(4) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange, on Government-furnished premises, readily movable machinery, equipment, and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by the Government, unless the Contracting Officer determines that it is so permanently attached that removal would cause substantial injury to Government property.

(5) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Government buildings or other real property without advance written approval of the Contracting Officer. Fixed improvement, as used herein, means any alteration or improvement in the nature of the building or other real property that, after completion, cannot be removed without substantial loss of value or damage to the premises. The term does not include foundations for production equipment.

(6) Vesting title under this paragraph (c) is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested and by signing this contract, the Contractor accepts and agrees that—

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to equipment)."

(R 7-706.10 1969 DEC)

52.245-12 Contract Purpose (Nonprofit Educational Institutions).

As prescribed in 45.302-7(a), the contracting officer may insert the following clause in solicitations and contracts when a facilities use contract is contemplated and award may be made to a nonprofit educational institution:

CONTRACT PURPOSE (NONPROFIT EDUCATIONAL INSTITUTIONS) (APR 1984)

This facilities use contract is designed specifically for nonprofit educational institutions to set forth provisions for the use and accountability of facilities furnished or acquired under related contracts identified elsewhere herein. There are no funds provided under this contract. Costs incurred for acquisition, maintenance, repair, replacement, disposition, or other purposes in connection with the facilities accountable hereunder will be subject to the reimbursement provisions of the related contracts; *provided*, however, that should no other contract be available for reimbursement of such costs, this contract may be appropriately modified to provide for such reimbursement.

(End of clause)
(AV 7-706.1 1968 SEP)

52.245-13 Accountable Facilities (Nonprofit Educational Institutions).

As prescribed in 45.302-7(b), the contracting officer may insert the following clause in solicitations and contracts when a facilities contract is contemplated and award may be made to a nonprofit educational institution:

ACCOUNTABLE FACILITIES (NONPROFIT EDUCATIONAL INSTITUTIONS) (APR 1984)

The facilities accountable under this contract are those facilities furnished or acquired under this contract and those facilities furnished or acquired under those related contracts that are specifically identified in this contract Schedule.

(End of clause)
(R 7-706.2 1968 SEP)

52.245-14 Use of Government Facilities.

As prescribed in 45.302-7(c), the contracting officer may insert the following clause in solicitations and contracts when a facilities use contract is contemplated and award may be made to a nonprofit educational institution:

USE OF GOVERNMENT FACILITIES (APR 1984)

The Contractor may use the facilities without charge in performing—

(a) Contracts with the Government which specifically authorize such use without charge;

(b) Subcontracts of any tier if the Contracting Officer having cognizance of the prime contract has authorized, in writing, use without charge; and

(c) Other work for which the Contracting Officer has specifically authorized use without charge in writing.

(End of clause)
(R 7-706.4 1968 SEP)

52.245-15 Transfer of Title to the Facilities.

As prescribed in 45.302-7(d), the contracting officer may, under a proper delegation of authority, insert the following clause in solicitations and contracts when a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is contemplated for the conduct of basic or applied research at nonprofit institutions of higher education, or at nonprofit organizations whose primary purpose is the conduct of scientific research:

TRANSFER OF TITLE TO THE FACILITIES (APR 1984)

(a) The Contracting Officer may, at any time during the term of this contract and acting under Public Law 95-224 (41 U.S.C. 506), transfer title to equipment to the Contractor upon mutually agreeable terms and conditions. This clause takes precedence over the title paragraph of the Government property clause of this contract. However, every agreement to transfer title to equipment shall provide that the Contractor will not include in the contract price or charge the Government in any manner for depreciation, amortization, or use of such equipment.

(b) Vesting title under paragraph (a) above is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested and by signing this contract, the contractor accepts and agrees that—

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to equipment)."

(End of clause)
(AV 7-705.4 1964 SEP)

52.245-16 Facilities Equipment Modernization.

As prescribed in 45.302-7(e), the contracting officer may insert the following clause in solicitations and contracts when a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is contemplated under which the Government will provide modernized or replacement facilities:

FACILITIES EQUIPMENT MODERNIZATION (APR 1984)

(a) The Contractor agrees to return to the Government the net cost savings realized from using modernized or replacement equipment provided by the Government under this contract. This applies to using such equipment on any contracts or subcontracts that are firm-fixed price, or that are fixed-price with economic price adjustment provisions, entered into within the 3 years following the date such equipment is placed into production. This provision does not apply to the use of such equipment in formally advertised contracts entered into after the equipment is placed in production or in contracts or subcontracts that specifically provide that they have been priced on the basis of anticipated use of such equipment.

(b) (1) The Contractor shall maintain adequate records for implementing this clause. The Contractor shall make such records available at its office for inspection, audit, or reproduction by any authorized representative of the Contracting Officer.

(2) When the Contractor authorizes a subcontractor to use the modernized or replacement equipment, the subcontractor shall be required to maintain records and make them and additional information available to the Contracting Officer.

(c) Records of equipment shall generally be acceptable if they are maintained under established accounting practices and permit a fair estimation of the net cost savings realized. Net cost savings realized shall be determined by a comparison of the Contractor's cost experience in the operation of the equipment before and after modernization.

(d) Amounts due the Government under this clause shall be returned by the Contractor, as directed by the Contracting Officer, by—

(1) Credits to, or adjustment of the prices of, the related contracts benefitting from using the modernized or replacement equipment;

(2) Payment to the Government through the Contracting Officer having cognizance of the equipment; or

(3) Any other means mutually agreed to.

(End of clause)
(R 7-705.22 1976 JUL)

52.245-17 Special Tooling.

As prescribed in 45.305(a)(1), when contracting by negotiation, insert the following clause in solicitations and contracts when a fixed-price contract is contemplated, the contracting officer decides to acquire rights to the contractor's special tooling, and it is not practical to identify the special tooling required:

SPECIAL TOOLING (APR 1984)

(a) *Definition.* "Special tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for installating special tooling), general or special machine tools, or similar capital items. Special tooling, for the purpose of this clause, does not include any item acquired by the Contractor before the effective date of this contract, or replacement of such items, whether or not altered or adapted for use in performing this contract, or items specifically excluded by the Schedule of this contract.

(b) *Use of special tooling.* The Contractor agrees to use the special tooling only in performing this contract or as otherwise approved by the Contracting Officer.

(c) *Initial list of special tooling.* If the Contracting Officer so requests, the Contractor shall furnish the Government an initial list of all special tooling acquired or manufactured by the Contractor for performing this contract (but see paragraph (d) for tooling that has become obsolete). The list shall specify the nomenclature, tool number, related product part number (or service performed), and unit or group cost of the special tooling. The list shall be furnished within 60 days after delivery of the first production end item under this contract unless a later date is prescribed.

(d) *Changes in design.* Changes in the design or specifications of the end items being produced under this contract may affect the interchangeability of end item parts. In such an event, unless otherwise agreed to by the Contracting Officer, the Contractor shall notify the Contracting Officer of any part not interchangeable with a new or superseding part. Pending disposition instructions, such usable tooling shall be retained and maintained by the Contractor.

(e) *Contractor's offer to retain special tooling.* The Contractor may indicate a desire to retain certain items of special tooling at the time it furnishes a list or notification pursuant to paragraphs (c), (d), or (h) of this clause. The Contractor shall furnish a written offer designating those items that it wishes to retain by specifically listing the items or by listing the particular products, parts, or services for which the items were used or designed. The offer shall be made on one of the following bases:

(1) An amount shall be offered for retention of the items free of any Government interest. This amount should ordinarily not be less than the current fair value of the items, considering, among other things, the value of the items to the Contractor for use in future work.

(2) Retention may be requested for a limited period of time and under terms as may be agreed to by the Government and the Contractor. This temporary retention is subject to final disposition pursuant to paragraph (i) of this clause.

(f) *Property control records.* The Contractor shall maintain adequate property control records of all special tooling in accordance with its normal industrial practice. The records shall be made available for Government inspection at all reasonable times. To the extent practicable, the Contractor shall identify all special tooling subject to this clause with an appropriate stamp, tag, or other mark.

(g) *Maintenance.* The Contractor shall take all reasonable steps necessary to maintain the identity and existing condition of usable items of special tooling from the date such items are no longer needed by the Contractor until final disposition under paragraph (i) of this clause. These maintenance requirements do not apply to those items designated by the Contracting Officer for disposal as scrap or identified as of no further interest to the Government under subparagraph (i)(4) of this clause. The Contractor is not required to keep unneeded items of special tooling in place.

(h) *Final list of special tooling.* When all or a substantial part of the work under this contract is completed or terminated, the Contractor shall furnish the Contracting Officer a final list of special tooling with the same information as required for the initial list under paragraph (c) of this clause. The final list shall include all items not previously reported under paragraph (c). The Contracting Officer may provide a written waiver of this requirement or grant an extension. The requirement may be extended until the completion of this contract together with the completion of other contracts and subcontracts authorizing the use of the special tooling under paragraph (b) of this clause. Special tooling that has become obsolete as a result of changes in design or specification need not be reported except as provided for in paragraph (d).

(i) *Disposition instructions.* The Contracting Officer shall provide the Contractor with disposition instructions for special tooling identified in a list or notice submitted under paragraphs (c), (d), or (h) of this clause. The instructions shall be provided within 90 days of receipt of the list or notice, unless the period is extended by mutual agreement. The Contracting Officer may direct disposition by any of the methods listed in subparagraphs (1) through (4) of this paragraph, or a combination of such methods. Any failure of the Contracting Officer to provide specific instructions within the 90-day period shall be construed as direction under subparagraph (i)(3).

(1) The Contracting Officer shall give the Contractor a list specifying the products, parts, or services for which the Government may require special tooling and request the Contractor to transfer title (to the extent not previously transferred under any other clause of this contract) and deliver to the

Government all usable items of special tooling that were designed for or used in the production or performance of such products, parts, or services and that were on hand when such production or performance ceased.

(2) The Contracting Officer may accept or reject any offer made by the Contractor under paragraph (e) of this clause to retain items of special tooling or may request further negotiation of the offer. The Contractor agrees to enter into the negotiations in good faith. The net proceeds from the Contracting Officer's acceptance of the Contractor's retention offer shall either be deducted from amounts due the Contractor under this contract or shall be otherwise paid to the Government as directed by the Contracting Officer.

(3) The Contracting Officer may direct the Contractor to sell, or dispose of as scrap, for the account of the Government, any special tooling reported by the Contractor under this clause. The net proceeds of all sales shall either be deducted from amounts due the Contractor under this contract or shall be otherwise paid to the Government as directed by the Contracting Officer. To the extent that the Contractor incurs any costs occasioned by compliance with such directions, for which it is not otherwise compensated, the contract price shall be equitably adjusted in accordance with the Changes clause of this contract.

(4) The Contracting Officer may furnish the Contractor with a statement disclaiming further Government interest or rights in any of the special tooling listed.

(j) *Storage or shipment.* The Contractor shall promptly transfer to the Government title to the special tooling specified by the Contracting Officer and arrange for either the shipment or the storage of such tooling in accordance with the final disposition instructions in subparagraph (i)(1) of this clause. Tooling to be shipped shall be properly packaged, packed, and marked in accordance with the directions of the Contracting Officer. Tooling to be stored shall be stored pursuant to a storage agreement between the Government and the Contractor, and as directed by the Contracting Officer. Tooling shipped or stored shall be accompanied by operation sheets or other appropriate data necessary to show the manufacturing operations or processes for which the items were used or designed. To the extent that the Contractor incurs costs for authorized storage or shipment under this paragraph and not otherwise compensated for, the contract price shall be equitably adjusted in accordance with the Changes clause of this contract.

(k) *Subcontract provisions.* In order to perform this contract, the Contractor may place subcontracts (including purchase orders) involving the use of special tooling. If the full cost of the tooling is charged to those subcontracts, the Contractor agrees to include in the subcontracts appropriate provisions to obtain Government rights comparable to the rights of the Government under this clause (unless the Contractor and the Contracting Officer agree that such rights are not of substantial interest to the Government). The Contractor agrees to exercise such rights for the benefit of the Government as directed by the Contracting Officer.

(End of clause)
(R 7-104.25 1967 OCT)

Alternate I (APR 1984). If the Government does not intend to acquire special tooling from subcontractors and an appropriate price reduction is obtained, delete paragraph (k) from the basic clause.

(R 13-305.2(c) 1976 JUL)

52.245-18 Special Test Equipment.

As prescribed in 45.305(b), insert the following clause in solicitations and contracts when contracting by negotiation and the contractor will acquire or fabricate special test equipment for the Government but the exact identification of the special test equipment to be acquired or fabricated is unknown:

SPECIAL TEST EQUIPMENT (APR 1984)

(a) "Special test equipment," as used in this clause, means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. These testing units comprise electrical, electronic, hydraulic, pneumatic, mechanical, or other items or assemblies of equipment that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in performing special purpose testing in the development or production of peculiar supplies or services. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.

(b) The Contractor may either acquire or fabricate special test equipment at Government expense when the equipment is not otherwise itemized in this contract and the prior approval of the Contracting Officer has been obtained. The Contractor shall provide the Contracting Officer with a written notice, at least 30 days in advance, of the Contractor's intention to acquire or fabricate the special test equipment. As a minimum, the notice shall also include an estimated aggregate cost of all items and components of the equipment the individual cost of which is less than $1,000, and the following information on each item or component of equipment costing $1,000 or more:

(1) The end use application and function of each proposed special test unit, identifying special characteristics and the reasons for the classification of the test unit as special test equipment.

(2) A complete description identifying the items to be acquired and the items to be fabricated by the Contractor.

(3) The estimated cost of the item of special test equipment or component.

(4) A statement that intra-plant screening of Contractor and Government-owned special test equipment and components has been accomplished and that none are available for use in performing this contract.

(c) The Government may furnish any special test equipment or components rather than approve their acquisition or fabrication by the Contractor. Such Government-furnished items shall be subject to the Government Property clause, except that the Government shall not be obligated to deliver such items any sooner than the Contractor could have acquired or fabricated them after expiration of the 30-day notice period in paragraph (b) of this clause. However, unless the Government notifies the Contractor of its decision to furnish the items within the 30-day notice period, the Contractor may proceed to acquire or fabricate the equipment or components subject to any other applicable provisions of this contract.

(d) The Contractor shall, in any subcontract that provides that special test equipment or components may be acquired or fabricated for the Government, insert provisions that conform substantially to the language of this clause, including this paragraph (d). The Contractor shall furnish the names of such subcontractors to the Contracting Officer.

(e) If an engineering change requires either the acquisition or fabrication of new special test equipment or substantial modification of existing special test equipment, the Contractor shall comply with paragraph (b) above. In so complying, the Contractor shall identify the change order which requires the proposed acquisition, fabrication, or modification.

(End of clause)
(R 7-104.26 1973 APR)

52.245-19 Government Property Furnished "As Is."

As prescribed in 45.305(c), insert the following clause in solicitations and contracts when a contract other than a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is contemplated and Government production and research property is to be furnished "as is." (See 45.106 for additional clauses that may be required):

GOVERNMENT PROPERTY FURNISHED "AS IS" (APR 1984)

(a) The Government makes no warranty whatsoever with respect to Government property furnished "as is," except that the property is in the same condition when placed at the f.o.b. point specified in the solicitation as when inspected by the Contractor pursuant to the solicitation or, if not inspected by the Contractor, as when last available for inspection under the solicitation.

(b) The Contractor may repair any property made available on an "as is" basis. Such repair will be at the Contractor's expense except as otherwise provided in this clause. Such property may be modified at the Contractor's expense, but only with the written permission of the Contracting Officer. Any repair or modification of property

furnished "as is" shall not affect the title of the Government.

(c) If there is any change in the condition of Government property furnished "as is" from the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation, and such change will adversely affect the Contractor, the Contractor shall, upon receipt of the property, notify the Contracting Officer detailing the facts and, as directed by the Contracting Officer, either (1) return such property at the Government's expense or otherwise dispose of the property or (2) effect repairs to return the property to its condition when inspected under the solicitation or, if not inspected, last available for inspection under the solicitation. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall equitably adjust any contractual provisions affected by the return, disposition, or repair in accordance with the procedures provided for in the Changes clause of this contract. The foregoing provisions for adjustment are the exclusive remedy available to the Contractor, and the Government shall not be otherwise liable for any delivery of Government property furnished "as is" in a condition other than that in which it was originally offered.

(d) Except as otherwise provided in this clause, Government property furnished "as is" shall be governed by the Government Property clause of this contract.

(End of clause)
(AV 7-104.24(e) 1965 APR)

52.246-1 Contractor Inspection Requirements.

As prescribed in 46.301, insert the following clause in solicitations and contracts for supplies or services when the contract amount is expected to be within the small purchase limitation and (a) inclusion of the clause is necessary to ensure an explicit understanding of the contractor's inspection responsibilities, or (b) inclusion of the clause is required under agency procedures. The clause shall not be used if the contracting officer has made the determination specified in 46.202-1(b).

CONTRACTOR INSPECTION REQUIREMENTS (APR 1984)

The Contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the supplies or services furnished under this contract conform to contract requirements, including any applicable technical requirements for specified manufacturers' parts. This clause takes precedence over any Government inspection and testing required in the contract's specifications, except for specialized inspections or tests specified to be performed solely by the Government.

(End of clause)
(R 7-103.24 1968 SEP)

52.246-2 Inspection of Supplies—Fixed-Price.

As prescribed in 46.302, insert the following clause in solicitations and contracts for supplies, or services that involve the furnishing of supplies, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The clause may be inserted in such solicitations and contracts when the contract amount is expected to be within the small purchase limitation and inclusion of the clause is in the Government's interest.

INSPECTION OF SUPPLIES—FIXED-PRICE (APR 1984)

(a) Definition. "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering supplies under this contract and shall tender to the Government for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Government during contract performance and for as long afterwards as the contract requires. The Government may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the contract.

(c) The Government has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Government shall perform inspections and tests in a manner that will not unduly delay the work. The Government assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.

(d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the Contractor's or subcontractor's premises; *provided*, that in case of rejection, the Government shall not be liable for any reduction in the value of inspection or test samples.

(e) (1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.

(2) The Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

(f) The Government has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The Government may reject nonconforming supplies with or without disposition instructions.

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

(h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Government may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

(i) (1) If this contract provides for the performance of Government quality assurance at source, and if requested by the Government, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract and (ii) when the supplies will be ready for Government inspection.

(2) The Government request shall specify the period and method of the advance notification and the Government representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if the Government representative is in residence in the Contractor's plant, nor more than 7 workdays in other instances.

(j) The Government shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. Government failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability on the Government, for nonconforming supplies.

(k) Inspections and tes by the Government do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered

before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(l) If acceptance is not conclusive for any of the reasons in paragraph (f) hereof, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; *provided*, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Government shall have the right to contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby.

(End of clause)
(R 7-103.5(a) 1958 MAY)
(R 7-103.5(d) 1977 SEP)
(R 1-7.102-5)

Alternate I (APR 1984). If a fixed-price incentive contract is contemplated, substitute paragraphs (g), (h), and (l) below for paragraphs (g), (h), and (l) of the basic clause.

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and when required shall disclose the corrective action taken. Cost of removal, replacement, or correction shall be considered a cost incurred, or to be incurred, in the total final negotiated cost fixed under the incentive price revision clause. However, replacements or corrections by the Contractor after the establishment of the total final price shall be at no increase in the total final price.

(h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Government may either (1) by contract or otherwise, remove, replace, or correct the supplies and equitably reduce the target price or, if established, the total final price or (2) may terminate the contract for default. Unless the Contractor corrects or replaces the nonconforming supplies within the delivery schedule, the Contracting Officer may require their delivery and equitably reduce any target price or, if it is established, the total final contract price. Failure to agree upon an equitable price reduction shall be a dispute.

(l) If acceptance is not conclusive for any of the reasons in paragraph (f) hereof, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in any target price or, if it is established, the total final price of this contract, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; *provided*, that the Contracting Officer may require a reduction in any target price, or, if it is established, the total final price of this contract, if the Contractor fails to meet such delivery schedule; or (2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the total final price as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation costs from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Government shall have the right by contract or otherwise to replace or correct such supplies and equitably reduce any target price or, if it is established, the total final price of this contract.

(R 7-103.5(b) 1982 NOV)

Alternate II (APR 1984). If a fixed-ceiling-price contract with retroactive price redetermination is contemplated, substitute paragraphs (g), (h), and (l) below for paragraphs (g), (h), and (l) of the basic clause:

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and when required shall disclose the corrective action taken. Cost of removal, replacement, or correction shall be considered a cost incurred, or to be incurred, when redetermining the prices under the price redetermination clause. However, replacements or corrections by the Contractor after the establishment of the redetermined prices shall be at no increase in the redetermined price.

(h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Government may either (1) by contract or otherwise, remove, replace, or correct the supplies and equitably reduce the initial contract prices or, if established, the redetermined contract prices or (2) terminate the contract for default. Unless the Contractor corrects or replaces the nonconforming supplies within the delivery schedule, the Contracting Officer may require their delivery and equitably reduce the initial contract price or, if it is established, the redetermined contract prices. Failure to agree upon an equitable price reduction shall be a dispute.

(l) If acceptance is not conclusive for any of the reasons in paragraph (f) hereof, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in the initial contract prices, or, if it is established, the redetermined prices of this contract, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; *provided*, that the Contracting Officer may require a reduction in the initial contract prices, or, if it is established, the redetermined prices of this contract, if the Contractor fails to meet such delivery schedule; or (2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the initial contract prices, or, if it is established, the redetermined prices of this contract, as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation costs from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Government shall have the right by contract or otherwise to replace or correct such supplies and equitably reduce the initial contract prices, or, if it is established, the redetermined prices of this contract.

(R 7-103.5(c) 1962 NOV)

52.246-3 Inspection of Supplies—Cost-Reimbursement.

As prescribed in 46.303, insert the following clause in solicitations and contracts for supplies, or services that involve the furnishing of supplies, when

a cost-reimbursement contract is contemplated:

INSPECTION OF SUPPLIES—COST-REIMBURSEMENT (APR 1984)

(a) Definitions.

"Contractor's managerial personnel," as used in this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operation at a plant or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with performing this contract.

"Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, lots of supplies, and, when the contract does not include the Warranty of Data clause, data.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies, fabricating methods, and special tooling under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test the contract supplies, to the extent practicable at all places and times, including the period of manufacture, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in the contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise specified in the contract, the Government shall accept supplies as promptly as practicable after delivery, and supplies shall be deemed accepted 60 days after delivery, unless accepted earlier.

(f) At any time during contract performance, but no later than 6 months (or such other time as may be specified in the contract) after acceptance of the supplies to be delivered under the contract, the Government may require the Contractor to replace or correct any supplies that are nonconforming at time of delivery. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. Except as otherwise provided in paragraph (h) below, the cost of replacement or correction shall be included in allowable cost, determined as provided in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Contractor shall not tender for acceptance supplies required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g) (1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the Government may—

(i) By contract or otherwise, perform the replacement or correction and charge to the Contractor any increased cost or make an equitable reduction in any fixed fee paid or payable under the contract;

(ii) Require delivery of undelivered supplies at an equitable reduction in any fixed fee paid or payable under the contract; or

(iii) Terminate the contract for default.

(2) Failure to agree on the amount of increased cost to be charged to the Contractor or to the reduction in the fixed fee shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to correct or replace, without cost to the Government, nonconforming supplies, if the nonconformances are due to (1) fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel or (2) the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause applies in the same manner to corrected or replacement supplies as to supplies originally delivered.

(j) The Contractor shall have no obligation or liability under this contract to replace supplies that were nonconforming at the time of delivery, except as provided in this clause or as may be otherwise provided in the contract.

(k) Except as otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(End of clause)
(R 7-203.5(a) 1974 OCT)
(R 1-7.202-5)

52.246-4 Inspection of Services—Fixed-Price.

As prescribed in 46.304, insert the following clause in solicitations and contracts for services, or supplies that involve the furnishing of services, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The clause may be inserted in such solicitations and contracts when the contract amount is expected to be within the small purchase limitation, and inclusion of the clause is in the Government's interest.

INSPECTION OF SERVICES—FIXED-PRICE (APR 1984)

(a) Definitions. "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the services performed.

(e) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service or (2) terminate the contract for default.

(End of clause)
(R 7-1902.4 1971 NOV)

52.246-5 Inspection of Services—Cost-Reimbursement.

As prescribed in 46.305, insert the following clause in solicitations and contracts for services, or supplies that involve the furnishing of services, when a cost-reimbursement contract is contemplated:

INSPECTION OF SERVICES—COST-REIMBURSEMENT (APR 1984)

(a) Definition. "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the

contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce any fee payable under the contract to reflect the reduced value of the services performed.

(e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or (2) terminate the contract for default.

(End of clause)
(R 7-1909.5 1971 NOV)

52.246-6 Inspection—Time-and-Material and Labor-Hour.

As prescribed in 46.306, insert the following clause in solicitations and contracts when a time-and-material contract or a labor-hour contract is contemplated:

INSPECTION—TIME-AND-MATERIAL AND LABOR-HOUR (APR 1984)

(a) Definitions. "Contractor's managerial personnel," as used in this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

"Materials," as used in this clause, includes data when the contract does not include the Warranty of Data clause.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the materjal, fabricating methods, work, and services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise specified in the contract, the Government shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(f) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (h) below, the cost of replacement or correction shall be determined under the Allowable Cost and Payment clause, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g) (1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may—

(i) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(ii) Terminate this contract for default.

(2) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to (1) fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel or (2) the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(j) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(k) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(End of clause)
(R 7-901.21 1974 OCT)

Alternate I (APR 1984). If Government inspection and acceptance are to be performed at the contractor's plant, paragraph (e) below may be substituted for paragraph (e) of the basic clause:

(e) The Government shall inspect for acceptance all items (other than aircraft to be flown away, if any) to be furnished under this contract at the Contractor's plant or plants specified in the contract, or at any other plant or plants approved for such purpose in writing by the Contracting Officer. The Contractor shall inform the contract administration office or Contracting Officer when the work is ready for inspection. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when items are not ready at the time for which inspection and test is requested by the Contractor.

(R 7-901.21 1974 OCT)

Alternate II (APR 1984). If a labor-hour contract is contemplated, and if no specific reimbursement for materials furnished is intended, the contracting officer may add the following paragraph (l) to the basic clause:

(l) The terms of this clause that govern reimbursement for materials furnished are considered to have been deleted.

52.246-7 Inspection of Research and Development—Fixed-Price.

As prescribed in 46.307(a), insert the following clause in solicitations and contracts for research and development when (a) the primary objective of the contract is the delivery of end items other than designs, drawings, or reports, (b) a fixed-price contract is contemplated, and (c) the contract amount is expected to exceed the small purchase limitation; unless use of the clause is impractical and the clause prescribed in 46.309 is considered to be more appropriate. The following clause may be used in such solicitations and contracts when the contract amount is expected to be within the small purchase limitation and its use is in the Government's interest.

INSPECTION OF RESEARCH AND DEVELOPMENT—FIXED-PRICE (APR 1984)

(a) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work under this

contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(b) The Government has the right to inspect and test all work called for by the contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the premises of the Contractor or any subcontractor engaged in contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(c) If the Government performs any inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the Contractor's or subcontractor's premises.

(d) The Government shall accept or reject the work as promptly as practicable after delivery, unless otherwise specified in the contract. Government failure to inspect and accept or reject the work shall not relieve the Contractor from responsibility, nor impose liability on the Government, for nonconforming work. Work is nonconforming when it is defective in material or workmanship or is otherwise not in conformity with contract requirements.

(e) The Government has the right to reject nonconforming work. If the Contractor fails or is unable to correct or to replace nonconforming work within the delivery schedule (or such later time as the Contracting Officer may authorize), the Contracting Officer may accept the work and make an equitable price reduction. Failure to agree on a price reduction shall be a dispute.

(f) Inspection and test by the Government does not relieve the Contractor from responsibility for defects or other failures to meet the contract requirements that may be discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise specified in the contract. If acceptance is not conclusive for any of these causes, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies (work) at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; *provided*, the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule; or (2) within a reasonable time after the Contractor's receipt of notice of defects or nonconformance, to repayment of such portion of the contract price as is equitable under the circumstances if the Government elects not to require correction or replacement. When supplies (work) are (is) returned to the Contractor, the Contractor shall bear transportation costs from the original point of delivery to the Contractor's plant and return to the original point of delivery when that point is not the Contractor's plant.

(End of clause)
(R 7-302.4(a) 1976 JUL)
(R 1-7.302-4(a))

52.246-8 Inspection of Research and Development—Cost-Reimbursement.

As prescribed in 46.308, insert the following clause in solicitations and contracts for research and development when (a) the primary objective is the delivery of end items other than designs, drawings, or reports, and (b) a cost-reimbursement contract is contemplated; unless use of the clause is impractical and the clause prescribed in 46.309 is considered to be more appropriate:

INSPECTION OF RESEARCH AND DEVELOPMENT— COST-REIMBURSEMENT (APR 1984)

(a) Definitions. "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with performing this contract.

"Work," as used in this clause, includes data when the contract does not include the Warranty of Data clause.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all work called for by the contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or its subcontractors engaged in the contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs any inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise provided in the contract, the Government shall accept work as promptly as practicable after delivery, and work shall be deemed accepted 90 days after delivery, unless accepted earlier.

(f) At any time during contract performance, but no later than 6 months (or such other time as may be specified in the contract) after acceptance of all of the end items (other than designs, drawings, or reports) to be delivered under the contract, the Government may require the Contractor to replace or correct work not meeting contract requirements. Time devoted to the replacement or correction of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph (h) below, the cost of replacement or correction shall be determined as specified in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Contractor shall not tender for acceptance work required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g) (1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the Government may—

(i) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or make an equitable reduction in any fixed fee paid or payable under the contract;

(ii) Require delivery of any undelivered articles and shall have the right to make an equitable reduction in any fixed fee paid or payable under the contract; or

(iii) Terminate the contract for default.

(2) Failure to agree on the amount of increased cost to be charged the Contractor or to the reduction in fixed fee shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to (1) fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel or (2) the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause shall apply in the same manner to a corrected or replacement end item or components as to work originally delivered.

(j) The Contractor has no obligation or liability under the contract to correct or replace articles not meeting contract requirements at time of delivery, except as provided in this clause or as may otherwise be specified in the contract.

(k) Unless otherwise provided in the contract, the Contractor's obligations to correct or replace Government-furnished

property shall be governed by the clause pertaining to Government property.

(End of clause)
(R 7-402.5(a)(1) 1974 OCT)
(R 1-7-402.5(a))

Alternate I (APR 1984). If it is contemplated that the contract will be on a no-fee basis, substitute paragraphs (f) and (g) below for paragraphs (f) and (g) of the basic clause.

(f) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of all of the end items (other than designs, drawings, or reports) to be delivered under the contract, the Government may require the Contractor to correct or replace work not meeting contract requirements. Time devoted to the correction or replacement of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph (g) below, the allowability of the cost of any such replacement or correction shall be determined as specified in the Allowable Cost and Payment clause. The Contractor shall not tender for acceptance corrected work without disclosing the former requirement for correction, and, when required, shall disclose the corrective action taken.

(g) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the Government may (1) by contract or otherwise, perform the replacement or correction and charge to the Contractor any increased cost, (2) require delivery of any undelivered articles, or (3) terminate the contract for default. Failure to agree on the amount of increased cost to be charged to the Contractor shall be a dispute.

(R 7-402.5(a)(3) 1974 OCT)
(R 1-7-402.5(b))

52.246-9 Inspection of Research and Development (Short Form).

As prescribed in 46.309, insert the following clause in solicitations and contracts for research and development when (a) the primary objective of the contract is the delivery of end items other than designs, drawings, or reports, and (b) the clause is considered to be more appropriate than the clause prescribed in 46.307 or the clause prescribed in 46.308:

INSPECTION OF RESEARCH AND DEVELOPMENT (SHORT FORM) (APR 1984)

The Government has the right to inspect and evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(End of clause)
(R 7-402.5(b) 1959 FEB)
(R 7-302.4(b) 1959 JUN)
(R 1-7.302-4(b))
(R 1-7.402-5(c))

52.246-10 Inspection of Facilities.

As precribed in 46.310, insert the following clause in solicitations and contracts when a facilities contract is contemplated:

INSPECTION OF FACILITIES (APR 1984)

(a) Definition. "Contractor's managerial personnel," as used in this clause, is defined in the Liability for the Facilities clause of this contract.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the facilities and work called for by this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test the facilities and work called for by the contract, to the extent practicable at all places and times, including the period of manufacture. The Government may also inspect the facilities and work at the plant or plants of the Contractor or its subcontractors engaged in the performance of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work to be performed by the Contractor under this contract or any related contract.

(d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) The Contracting Officer may, at any time, require the Contractor to correct or replace facilities or work that is defective or does not conform to contract requirements. Except as provided in paragraph (f) below, corrections and replacements shall be at Government expense if, under the terms of this contract, the facilities or work corrected or replaced were initially furnished, or required to be performed at Government expense.

(f) The Contracting Officer may, at any time, require the Contractor to correct or replace facilities or work that is defective or does not conform to contract requirements, without cost to the Government under this contract or any related contract or subcontract, if the defects or failures are due to fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or to the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(g) Corrected or replacement facilities or work shall be subject to this clause in the same manner as facilities or work originally completed under the contract.

(End of clause)
(R 7-702.6 1964 SEP)

52.246-11 Higher-Level Contract Quality Requirement (Government Specification).

As prescribed in 46.311, insert the following clause in solicitations and contracts when the inclusion of a higher-level contract quality requirement is appropriate (see 46.202-3):

HIGHER-LEVEL CONTRACT QUALITY REQUIREMENT (GOVERNMENT SPECIFICATION)(APR 1984)

(a) Definition. "Contract date," as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

(b) The Contractor shall comply with the specification titled .....
[*Contracting Officer insert the title and number of the specification*], in effect on the contract date, which is hereby incorporated into this contract.

(End of clause)
(R 7-104.28 1967 AUG)
(R 7-104.33 1967 AUG)
(R 7-703.44 1967 AUG)
(R 7-203.5(b) 1967 AUG)
(R 7-302.4(c) 1967 AUG)
(R 7-402.5(c) 1967 AUG)
(R 7-602.10(b) 1967 AUG
(R 7-901.25 1967 AUG)

52.246-12 Inspection of Construction.

As prescribed in 46.312, insert the following clause in solicitations and contracts for construction when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The clause may be used in such solicitations and contracts when the contract amount is expected to be within the small purchase limitation and its use is in the Government's interest.

INSPECTION OF CONSTRUCTION (APR 1984)

(a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work called for by this contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) Government inspections and tests are for the sole benefit of the Government and do not—

(1) Relieve the Contractor of responsibility for providing adequate quality control measures;

(2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;

(3) Constitute or imply acceptance; or

(4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) below.

(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

(e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the Government may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

(End of clause)
(R 7-602.11 1976 OCT)
(R 7-602.10(a) 1976 OCT)
(R 7.602.43 1965 JAN)
(R 1-7.602-11)

52.246-13 Inspection—Dismantling, Demolition, or Removal of Improvements.

As prescribed in 46.313, insert the following clause in solicitations and contracts for dismantling, demolition, or removal of improvements:

INSPECTION—DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS (APR 1984)

(a) Unless otherwise designated by the specifications, all workmanship performed under the contract is subject to Government inspection at all times and places where dismantling or demolition work is being performed. The Contractor shall furnish promptly and without additional charge all reasonable facilities, labor, and materials necessary for safe and convenient inspection by the Government. The Government shall perform inspections in a manner that will not unduly delay the work.

(b) The Contractor is responsible for damage to property caused by defective workmanship. The Contractor shall promptly segregate and remove from the premises any unsatisfactory facilities, materials, and equipment used in contract performance, and promptly replace them with satisfactory items. If the Contractor fails to proceed at once in a workmanlike manner with performance of the work or with the correction of defective workmanship, the Government may (1) by contract or otherwise, replace the facilities, materials, and equipment or correct the workmanship and charge the cost to the Contractor and (2) terminate for default the Contractor's right to proceed. The Contractor and any surety shall be liable, to the extent specified in the contract for any damage or cost of repair or replacement.

(End of clause)
(R 7-2101.19 1976 OCT)

52.246-14 Inspection of Transportation.

As prescribed in 46.314, insert the following clause in solicitations and contracts for freight transportation services (including local drayage) by rail, motor (including bus), domestic freight forwarder, and domestic water carriers (including inland, coastwise, and intercoastal). The contracting officer shall not use the clause for the acquisition of transportation services by domestic or international air carriers or by international ocean carriers, or to freight services provided under bills of lading or to those negotiated for reduced rates under 49 U.S.C. 1072(b)(1). (See Part 47, Transportation.)

INSPECTION OF TRANSPORTATION (APR 1984)

The Government has the right to inspect and test the Contractor's services, facilities, and equipment at all reasonable times. The Contractor shall furnish Government representatives with the free access and reasonable facilities and assistance required to accomplish their inspections and tests.

(End of clause)
(R 1-7.703-4)

52.246-15 Certificate of Conformance.

As prescribed in 46.315, insert the following clause in solicitations and contracts for supplies or services when the conditions in 46.504 apply:

CERTIFICATE OF CONFORMANCE (APR 1984)

(a) When authorized in writing by the cognizant Contract Administration Office (CAO), the Contractor shall ship with a Certificate of Conformance any supplies for which the contract would otherwise require inspection at source. In no case shall the Government's right to inspect supplies under the inspection provisions of this contract be prejudiced. Shipments of such supplies will not be made under this contract until use of the Certificate of Conformance has been authorized in writing by the CAO, or inspection or inspection and acceptance have occurred.

(b) The Contractor's signed certificate shall be attached to or included on the top copy of the inspection or receiving report distributed to the payment office or attached to the CAO copy when contract administration (Block 10 of the DD Form 250) is performed by the Defense Contract Administration Services. In addition, a copy of the signed certificate shall also be attached to or entered on copies of the inspection or receiving report accompanying the shipment.

(c) The Government has the right to reject defective supplies or services within a reasonable time after delivery by written notification to the Contractor. The Contractor shall in such event promptly replace, correct, or repair the rejected supplies or services at the Contractor's expense.

(d) The certificate shall read as follows:

"I certify that on ..... [*insert date*], the ..... [*insert Contractor's name*] furnished the supplies or services called for by Contract No. ..... via ..... *[Carrier]* on ..... *[identify the bill of lading or shipping document]* in accordance with all applicable requirements. I further certify that the supplies or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification (part number), and are in the quantity shown on this or on the attached acceptance document."

Date of Execution:.....
Signature:.....
Title:.....

(End of clause)
(R 7-104.100)

52.246-16 Responsibility for Supplies.

As prescribed in 46.316, insert the following clause in solicitations and contracts for (a) supplies, (b) services involving the furnishing of supplies, or (c) research and development, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may use the clause in such solicitations and contracts when the contract amount is not expected to exceed the small purchase limitation, and inclusion of the clause is authorized under agency procedures.

RESPONSIBILITY FOR SUPPLIES (APR 1984)

(a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies 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) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) above shall apply.

(d) Under paragraph (b) above, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

(End of clause)
(R 7-103.6 1968 JUN)
(R 1-7.102-6)

52.246-17 Warranty of Supplies of a Noncomplex Nature.

As prescribed in 46.710(a)(1), the contracting officer may insert a clause substantially as follows in solicitations and contracts for noncomplex items when a fixed-price supply contract is contemplated and the use of a warranty clause has been approved under agency procedures. If the contractor's design rather than the Government's design is to be used, insert the word "design" before "material" in paragraph (b)(1)(i).

WARRANTY OF SUPPLIES OF A NONCOMPLEX NATURE (APR 1984)

(a) *Definitions.* "Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract.

"Correction," as used in this clause, means the elimination of a defect.

"Supplies," as used in this clause, means the end item furnished by the Contractor and related services required under the contract. The word does not include "data."

(b) *Contractor's obligations.* (1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for .....[*Contracting Officer shall state specific period of time after delivery, or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combinations of any applicable events or periods of time*]—

(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with all requirements of this contract; and

(ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.

(2) When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in this contract and the Contractor's plant, and return.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(4) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this contract.

(c) *Remedies available to the Government.* (1) The Contracting Officer shall give written notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause within ..... [*Contracting Officer shall insert specific period of time; e.g., "45 days of the last delivery under this contract," or "45 days after discovery of the defect"*].

(2) Within a reasonable time after the notice, the Contracting Officer may either—

(i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (b)(1) of this clause; or

(ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances.

(3) (i) If the contract provides for inspection of supplies by sampling procedures, conformance of suppliers or components subject to warranty action shall be determined by the applicable sampling procedures in the contract. The Contracting Officer—

(A) May, for sampling purposes, group any supplies delivered under this contract;

(B) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;

(C) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; *provided*, that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and

(D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.

(ii) Within a reasonable time after notice of any breach of the warranties specified in paragraph (b)(1) of this clause, the Contracting Officer may exercise one or more of the following options:

(A) Require an equitable adjustment in the contract price for any group of supplies.

(B) Screen the supplies grouped for warranty action under this clause at the Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement.

(C) Require the Contractor to screen the supplies at locations designated by the Government within the continental United States and to correct or replace all nonconforming supplies.

(D) Return the supplies grouped for warranty action under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement.

(4) (i) The Contracting Officer may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Contractor the cost occasioned to the Government thereby if the Contractor—

(A) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or

(B) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(ii) Instead of correction or replacement by the Government, the Contracting Officer may require an equitable adjustment of the

contract price. In addition, if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner. The Government is entitled to reimbursement from the Contractor, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(5) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(End of clause)
(R 7-105.7(a) 1976 JUL)

Alternate I (APR 1984). If commercial items are to be acquired, delete paragraph (b)(4), and substitute a paragraph substantially the same as the following paragraph (b)(1) for paragraph (b)(1) of the basic clause:

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for.....[*Contracting Officer shall state the specific period of time after delivery, or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combinations of any applicable events or periods of time*] all supplies furnished—

(i) Are of a quality to pass without objection in the trade under the contract description;

(ii) Are fit for the ordinary purposes for which the supplies are used;

(iii) Are within the variations permitted by the contract, and are of an even kind, quality, and quantity within each unit and among all units;

(iv) Are adequately contained, packaged, and marked as the contract may require; and

(v) Conform to the promises or affirmations of fact made on the container.

(R 7-105.7(d)(2) 1976 JUL)

Alternate II (APR 1984). If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), substitute a paragraph substantially the same as the following paragraph (b)(2) for paragraph (b)(2) of the basic clause:

(2) If correction or replacement is required and transportation of supplies in connection with correction or replacement is necessary, transportation charges and responsibility for the supplies while in transit shall be borne by the Government.

(AV 7-105.7(d)(3) 1976 JUL)

Alternate III (APR 1984). If the supplies cannot be obtained from another source, substitute a paragraph substantially the same as the following paragraph (c)(4) for paragraph (c)(4) of the basic clause:

(4) If the Contractor does not agree as to responsibility to correct or replace the supplies delivered, the Contractor shall nevertheless proceed in accordance with the written request issued by the Contracting Officer under paragraph (c)(2) of this clause to correct or replace the defective or nonconforming supplies. In the event it is later determined that the supplies were not defective or nonconforming within the terms and conditions of this clause, the contract price will be equitably adjusted.

(AV 7-105.7(d)(4) 1976 JUL)

Alternate IV (APR 1984). If a fixed-price incentive contract is contemplated, add a paragraph substantially the same as the following paragraph(c)(6) to the basic clause:

(6) All costs incurred or estimated to be incurred by the Contractor in complying with this clause shall be considered when negotiating the total final price under the Incentive Price Revision clause of this contract. After establishment of the total final price, Contractor compliance with this clause shall be at no increase in the total final price. Any equitable adjustment made under paragraph (c)(2) of this clause shall be governed by the paragraph entitled "Equitable Adjustments Under Other Clauses" in the Incentive Price Revision clause of this contract.

(AV 7-105.7(d)(5) 1976 JUL)

Alternate V (APR 1984). If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, add a paragraph substantially the same as the following paragraph (c)(6) to the basic clause. Redesignate the additional paragraph as "(c)(7)" if Alternate IV is also being used.

(6) The Contractor shall be liable for the reasonable costs of disassembly and/or reassembly of larger items when it is necessary to remove the supplies to be inspected and/or returned for correction or replacement.

(AV 7-105.7(d)(6) 1976 JUL)

52.246-18 Warranty of Supplies of a Complex Nature.

As prescribed in 46.710(b)(1), the contracting officer may insert a clause substantially as follows in solicitations and contracts for deliverable complex items when a fixed-price supply or research and development contract is contemplated and the use of a warranty clause has been approved under agency procedures. If the contractor's design rather than the Government's design is to be used, insert the word "design" before "material" in paragraph (b)(1).

WARRANTY OF SUPPLIES OF A COMPLEX NATURE (APR 1984)

(a) *Definitions.* "Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the contract.

"Correction," as used in this clause, means the elimination of a defect.

"Supplies," as used in this clause, means the end items furnished by the Contractor and related services required under this contract. The word does not include "data."

(b) *Contractor's obligations.* (1) The Contractor warrants that for .....[*Contracting Officer shall state the specific warranty period after delivery, or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combinations of any applicable events or periods of time*] all supplies furnished under this contract will be free from defects in material and workmanship and will conform with all requirements of this contract; *provided, however,* that with respect to Government-furnished property, the Contractor's warranty shall extend only to its proper installation, unless the Contractor performs some modification or other work on the property, in which case the Contractor's warranty shall extend to the modification or other work.

(2) Any supplies or parts thereof corrected or furnished in replacement shall be subject to the conditions of this clause to the same extent as supplies initially delivered. This warranty shall be equal in duration to that set forth in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(3) The Contractor shall not be obligated to correct or replace supplies if the facilities, tooling, drawings, or other equipment or supplies necessary to accomplish the correction or replacement have been made unavailable to the Contractor by action of the Government. In the event that correction or replacement has been directed, the Contractor shall promptly notify the Contracting Officer, in writing, of the nonavailability.

(4) The Contractor shall also prepare and furnish to the Government data and reports applicable to any correction required (including revision and updating of all affected data called for under this contract) at no increase in the contract price.

(5) When supplies are returned to the Contractor, the Contractor shall bear the transportation costs from the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of acceptance) to the Contractor's plant and return.

(6) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this contract.

(c) *Remedies available to the Government.* (1) In the event of a breach of the Contractor's warranty in paragraph (b)(1) of this clause, the Government may, at no increase in contract price—

(i) Require the Contractor, at the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of acceptance) or at the Contractor's plant, to repair or replace, at the Contractor's election, defective or nonconforming supplies; or

(ii) Require the Contractor to furnish at the Contractor's plant the materials or parts and installation instructions required to successfully accomplish the correction.

(2) If the Contracting Officer does not require correction or replacement of defective or nonconforming supplies or the Contractor is not obligated to correct or replace under paragraph (b)(3) of this clause, the Government shall be entitled to an equitable reduction in the contract price.

(3) The Contracting Officer shall notify the Contractor in writing of any breach of the warranty in paragraph (b) of this clause within ..... [*Contracting Officer shall insert specific period of time in which notice shall be given to the Contractor; e.g., "45 days after delivery of the nonconforming supplies."; "45 days of the last delivery under this contract."; or "45 days after discovery of the defect."*] The Contractor shall submit to the Contracting Officer a written recommendation within ..... [*Contracting Officer shall insert period of time*] as to the corrective action required to remedy the breach. After the notice of breach, but not later than .....[*Contracting Officer shall insert period within which the warranty remedies should be exercised*] after receipt of the Contractor's recommendation for corrective action, the Contracting Officer may, in writing, direct correction or replacement as in paragraph (c)(1) of this clause, and the Contractor shall, notwithstanding any disagreement regarding the existence of a breach of warranty, comply with this direction. If it is later determined that the Contractor did not breach the warranty in paragraph (b)(1) of this clause, the contract price will be equitably adjusted.

(4) If supplies are corrected or replaced, the period for notification of a breach of the Contractor's warranty in paragraph (c)(3) of this clause shall be ..... [*Contracting Officer shall insert period within which the Contractor must be notified of a breach as to corrected or replaced supplies*] from the furnishing or return by the Contractor to the Government of the corrected or replaced supplies or parts thereof, or, if correction or replacement is effected by the Contractor at a Government or other activity, for ..... [*Contracting Officer shall insert period within which the Contractor must be notified of a breach of warranty as to corrected or replaced supplies*] thereafter.

(5) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of the contract.

(End of clause)

(R 7-105.7(b) 1976 JUL)

Alternate I (APR 1984). If commercial items are to be acquired, delete paragraph (b)(6), and substitute a paragraph substantially the same as the following paragraph (b)(1) for paragraph (b)(1) of the basic clause:

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under the contract or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that, at the time of delivery, all supplies—

(i) Are of a quality to pass without objection in the trade under the contract description;

(ii) Are fit for the ordinary purposes for which the supplies are used;

(iii) Are, within the variations permitted by the contract, if any, of an even kind, quality, and quantity within each unit and among all units;

(iv) Are adequately contained, packaged, and marked as the contract may require; and

(v) Conform to the promises or affirmations of fact made on the container.

(R 7-105.7(d)(2) 1976 JUL)

Alternate II (APR 1984). If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), substitute a paragraph substantially the same as the following paragraph (b)(5) for paragraph (b)(5) of the basic clause:

(5) If correction or replacement is required and transportation of supplies in connection with correction or replacement is necessary, transportation charges and responsibility for the supplies while in transit shall be borne by the Government.

(AV 7-105.7(d)(3) 1976 JUL)

Alternate III (APR 1984). If a fixed-price incentive contract is contemplated, add a paragraph substantially the same as the following paragraph (c)(6) to the basic clause:

(6) All costs incurred or estimated to be incurred by the Contractor in complying with this clause shall be considered when negotiating the total final price under the Incentive Price Revision clause of this contract. After establishment of the total final price, Contractor compliance with this clause shall be at no increase in the total final price. Any equitable adjustments made under paragraph (c)(2) of this clause shall be governed by the paragraph entitled "Equitable Ajdustments Under Other Clauses" in the Incentive Price Revision clause of this contract.

(AV 7-105.7(d)(5) 1976 JUL)

Alternate IV (APR 1984). If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, add a paragraph substantially the same as the following paragraph (c)(6) to the basic clause. Redesignate the additional paragraph as "(c)(7)" if Alternate III is also used:

(6) The Contractor shall be liable for the reasonable costs of disassembly and/or reassembly of larger items when it is necessary to remove the supplies to be inspected and/or returned for correction or replacement.

(AV 7-105.7(d)(6) 1976 JUL)

52.246-19 Warranty of Systems and Equipment under Performance Specifications or Design Criteria.

As prescribed in 46.710(c)(1), the contracting officer may insert a clause substantially as follows in solicitations and contracts when performance specifications or design are of major importance; a fixed-price supply, service, or research and development contract for systems and equipment is contemplated, and the use of a warranty clause has been approved under agency procedures.

WARRANTY OF SYSTEMS AND EQUIPMENT UNDER PERFORMANCE SPECIFICATIONS OR DESIGN CRITERIA (APR 1984)

(a) *Definitions.* "Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the contract.

"Correction," as used in this clause, means the elimination of a defect.

"Defect," as used in this clause, means any condition or characteristic in any supplies or services furnished by the Contractor under the contract that is not in compliance with the requirements of the contract.

"Supplies," as used in this clause, means the end items furnished by the Contractor and related services required under this contract. Except when this contract includes the clause entitled Warranty of Data, supplies also means "data."

(b) *Contractor's obligations.* (1) The Contractor's warranties under this clause shall apply only to those defects discovered by either the Government or the Contractor .....[*Contracting Officer shall state the warranty period; e.g., "at the time of delivery;" "within 45 days after delivery," or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combination of any applicable events or periods of time.*]

(2) If the Contractor becomes aware at any time before acceptance by the Government (whether before or after tender to the Government) that a defect exists in any supplies or services, the Contractor shall (i) promptly correct the defect or (ii) promptly notify the Contracting Officer, in writing, of the defect, using the same procedures prescribed in paragraph (b)(3) of this clause.

(3) If the Contracting Officer determines that a defect exists in any of the supplies or services accepted by the Government under this contract, the Contracting Officer shall promptly notify the Contractor of the defect, in writing, within .....[*Contracting Officer shall insert the specific period of time in which notice shall be given to the Contractor; e.g., "30 days after delivery of the*

nonconforming supplies;" "90 days of the last delivery under this contract;" or "90 days after discovery of the defect."] Upon timely notification of the existence of a defect, or if the Contractor independently discovers a defect in accepted supplies or services, the Contractor shall submit to the Contracting Officer, in writing, within .....[*Contracting Officer shall insert period of time*] a recommendation for corrective actions, together with supporting information in sufficient detail for the Contracting Officer to determine what corrective action, if any, shall be undertaken.

(4) The Contractor shall promptly comply with any timely written direction from the Contracting Officer to correct or partially correct a defect, at no increase in the contract price.

(5) The Contractor shall also prepare and furnish to the Contracting Officer data and reports applicable to any correction required under this clause (including revision and updating of all other affected data called for under this contract) at no increase in the contract price.

(6) In the event of timely notice of a decision not to correct or only to partially correct, the Contractor shall submit a technical and cost proposal within ..... [*Contracting Officer shall insert period of time*] to amend the contract to permit acceptance of the affected supplies or services in accordance with the revised requirement, and an equitable reduction in the contract price shall promptly be negotiated by the parties and be reflected in a supplemental agreement to this contract.

(7) Any supplies or parts thereof corrected or furnished in replacement and any services reperformed shall also be subject to the conditions of this clause to the same extent as supplies or services initially accepted. The warranty, with respect to these supplies, parts, or services, shall be equal in duration to that set forth in paragraph (b)(1) of this clause, and shall run from the date of delivery of the corrected or replaced supplies.

(8) The Contractor shall not be responsible under this clause for the correction of defects in Government-furnished property, except for defects in installation, unless the Contractor performs, or is obligated to perform, any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of defects that result from the modifications or other work.

(9) If the Government returns supplies to the Contractor for correction or replacement under this clause, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the place of delivery specified in this contract (irrespective of the f.o.b. point or the point of acceptance) to the Contractor's plant and return to the place of delivery specified in this contract. The Contractor shall also bear the responsibility for the supplies while in transit.

(10) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation under this contract.

(c) *Remedies available to the Government.* (1) The rights and remedies of the Government provided in this clause—

(i) Shall not be affected in any way by any terms or conditions of this contract concerning the conclusiveness of inspection and acceptance; and

(ii) Are in addition to, and do not limit, any rights afforded to the Government by any other clause of this contract.

(2) Within .....[*Contracting Officer shall insert period of time*] after receipt of the Contractor's recommendations for corrective action and adequate supporting information, the Contracting Officer, using sole discretion, shall give the Contractor written notice not to correct any defect, or to correct or partially correct any defect within a reasonable time at .....[*Contracting Officer shall insert locations where corrections may be performed*].

(3) In no event shall the Government be responsible for any extension or delays in the scheduled deliveries or periods of performance under this contract as a result of the Contractor's obligations to correct defects, nor shall there be any adjustment of the delivery schedule or period of performance as a result of the correction of defects unless provided by a supplemental agreement with adequate consideration.

(4) This clause shall not be construed as obligating the Government to increase the contract price.

(5) (i) The Contracting Officer shall give the Contractor a written notice as required in paragraph (c)(1)(ii) below, specifying any failure or refusal of the Contractor to—

(A) Present a detailed recommendation for corrective action as required by paragraph (b)(3) of this clause;

(B) Correct defects as directed under paragraph (b)(4) of this clause; or

(C) Prepare and furnish data and reports as required by paragraph (b)(5) of this clause.

(ii) The notice shall specify a period of time following receipt of the notice by the Contractor in which the Contractor must remedy the failure or refusal specified in the notice.

(6) If the Contractor does not comply with the Contracting Officer's written notice in paragraph (c)(5)(i) of this clause, the Contracting Officer may by contract or otherwise—

(i) Obtain detailed recommendations for corrective action and either—

(A) Correct the supplies or services; or

(B) Replace the supplies or services, and if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor, or from the proceeds, for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred;

(ii) Obtain applicable data and reports; and

(iii) Charge the Contractor for the costs incurred by the Government.

(End of clause)

(R 7-105.7(c) 1976 JUL)

Alternate I (APR 1984). If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), substitute a paragraph substantially the same as the following paragraph (b)(9) for paragraph (b)(9) of the basic clause:

(9) If correction or replacement is required, and transportation of supplies in connection with correction or replacement is necessary, transportation charges and responsibility for the supplies while in transit shall be borne by the Government.

(AV 7-105.7(d)(3) 1976 JUL)

Alternate II (APR 1984). If a fixed-price incentive contract is contemplated, add a paragraph substantially the same as the following paragraph (c)(7) to the basic clause:

(7) All costs incurred or estimated to be incurred by the Contractor in complying with this clause shall be considered when negotiating the total final price under the Incentive Price Revision clause of this contract. After establishment of the total final price, Contractor compliance with this clause shall be at no increase in the total final price. Any equitable adjustments made under paragraph (b)(6) of this clause shall be governed by the paragraph entitled "Equitable Adjustments Under Other Clauses" in the Incentive Price Revision clause of this contract.

(AV 7-105.7(d)(5) 1976 JUL)

Alternate III (APR 1984). If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, add a paragraph substantially the same as the following paragraph (c)(7) to the basic clause. Redesignate the additional paragraph as (c)(8) if Alternate II is also being used:

(7) The Contractor shall be liable for the reasonable costs of disassembly and/or reassembly of larger items when it is necessary to remove the supplies to be inspected and/or returned for correction or replacement.

(AV 7-105.7(d)(6) 1976 JUL)

52.246-20 Warranty of Services.

As prescribed in 46.710(d), the contracting officer may insert a clause substantially as follows in solicitations and contracts when a fixed-price contract for services is contemplated and the use of a warranty clause has been approved under agency procedures, unless a clause substantially the same as the clause at 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, has been used:

WARRANTY OF SERVICES (APR 1984)

(a) *Definitions.* "Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an

agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract.

"Correction," as used in this clause, means the elimination of a defect.

(b) Notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor .....[*Contracting Officer shall insert the specific period of time in which notice shall be given to the Contractor; e.g., "within 30 days from the date of acceptance by the Government."; within 1000 hours of use by the Government."; or other specified event whose occurrence will terminate the period of notice, or combination of any applicable events or period of time*]. This notice shall state either (1) that the Contractor shall correct or reperform any defective or nonconforming services, or (2) that the Government does not require correction or reperformance.

(c) If the Contractor is required to correct or reperform, it shall be at no cost to the Government, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Government thereby, or make an equitable adjustment in the contract price.

(d) If the Government does not require correction or reperformance, the Contracting Officer shall make an equitable adjustment in the contract price.

(End of clause)
(R 7-1904.5(b) 1979 SEP)

52.246-21 Warranty of Construction.

As prescribed in 46.710(e)(1), the contracting officer may insert a clause substantially as follows in solicitations and contracts when a fixed-price construction contract (see 46.705(c)) is contemplated, and the use of a warranty clause has been approved under agency procedures:

WARRANTY OF CONSTRUCTION
(APR 1984)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of—

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall—

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

(End of clause)
(R 7-604.4 1976 JUL)

Alternate I (APR 1984). If the Government specifies in the contract the use of any equipment by "brand name and model", the contracting officer may add a paragraph substantially the same as the following paragraph (k) to the basic clause:

(k) Defects in design or manufacture of equipment specified by the Government on a "brand name and model" basis, shall not be included in this warranty. In this event, the Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to the Government.

(AV 7-604.4(b) 1976 JUL)

52.246-22 [Reserved].

52.246-23 Limitation of Liability.

As prescribed in 46.805(a), insert the following clause in solicitations and contracts when (a) the contract amount is expected to be over $25,000, (b) the contract is subject to the requirements of Subpart 46.8 as indicated in 46.801 and (c) the contract requires delivery of end items that are not high-value items. This clause may also be used as prescribed in 46.805(b) in contracts of $25,000 or less.

LIMITATION OF LIABILITY (APR 1984)

(a) Except as provided in paragraphs (b) and (c) below, and except for remedies expressly provided elsewhere in this contract, the Contractor shall not be liable for loss of or damage to property of the Government (excluding the supplies delivered under this contract) that (1) occurs after Government acceptance of the supplies delivered under this contract and (2) results from any defects or deficiencies in the supplies.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through purchase or use of the supplies required to be delivered under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.

(d) The Contractor shall include this clause, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all subcontracts.

(End of clause)
(R 7-104.45(a) 1974 APR)

52.246-24 Limitation of Liability—High-Value Items.

As prescribed in 46.805(a), insert the following clause in solicitations and contracts when (a) the contract amount is expected to be over $25,000, (b) the contract is subject to the requirements of Subpart 46.8 as indicated in 46.801 and (c) the contract requires delivery of high-value items:

LIMITATION OF LIABILITY—HIGH-VALUE ITEMS (APR 1984)

(a) Except as provided in paragraphs (b) through (e) below, and notwithstanding any other provision of this contract, the Contractor shall not be liable for loss of or damage to property of the Government (including the supplies delivered under this contract) that (1) occurs after Government acceptance of the supplies delivered under this contract and (2) results from any defects or deficiencies in the supplies.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through purchase or use of the supplies required to be delivered under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.

(d) (1) This clause does not diminish the Contractor's obligations, to the extent that they arise otherwise under this contract, relating to correction, repair, replacement, or other relief for any defect or deficiency in supplies delivered under this contract.

(2) Unless this is a cost-reimbursement contract, if loss or damage occurs and correction, repair, or replacement is not feasible or desired by the Government, the Contractor shall, as determined by the Contracting Officer—

(i) Pay the Government the amount it would have cost the Contractor to make correction, repair, or replacement before the loss or damage occurred; or

(ii) Provide other equitable relief.

(e) This clause shall not limit or otherwise affect the Government's rights under clauses, if included in this contract, that cover—

(1) Warranty of technical data;

(2) Ground and flight risks or aircraft flight risks; or

(3) Government property.

(f) In each subcontract, except a subcontract covered by paragraph (g) below, the Contractor shall insert the appropriate clause, supplemented as necessary to reflect the relationship of the contracting parties, as follows:

(1) In subcontracts for high-value items only, after obtaining the Contracting Officer's advance written approval, insert this clause, including this paragraph (f).

(2) In subcontracts for other end items only, insert the clause at Federal Acquisition Regulation (FAR) subsection 52.246-23, Limitation of Liability.

(g) In any subcontract for both high-value items for which this clause is appropriate, and other end items for which the clause at FAR subsection 52.246-23 is appropriate, after obtaining the Contracting Officer's advance written approval to use this clause, the Contractor shall (1) include both clauses, (2) identify high-value items by line item, and (3) insert the following preamble before paragraph (a) of this clause as used in that subcontract:

(This clause shall apply only to those items identified in this contract as being subject to this clause.)

(End of clause)
(R 7-104.45(b) 1979 MAR)
(R 7-204.33(a) 1974 APR)

Alternate I (APR 1984). If the contract is for both high-value items and other end items, the contracting officer shall identify the high-value items by line item and insert the following preamble before paragraph (a):

(This clause shall apply only to those items identified in this contract as being subject to this clause.)

(R 7-104.45(c) 1979 MAR)
(R 7-204.33(b) 1974 APR)

52.246-25 Limitation of Liability—Services.

As prescribed in 46.805(a), insert the following clause in solicitations and contracts when (a) the contract amount is expected to be over $25,000, (b) the contract is subject to the requirements of Subpart 46.8 as indicated in 46.801 and (c) the contract is for services. This clause may also be used as prescribed in 46.805(b) in contracts of $25,000 or less.

LIMITATION OF LIABILITY—SERVICES (APR 1984)

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that (1) occurs after Government acceptance of services performed under this contract and (2) results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

(d) The Contractor shall include this clause, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all subcontracts over $25,000.

(End of clause)
(R 7-1912 1974 APR)

52.247-1 Commercial Bill of Lading Notations.

(a) As prescribed in 47.104-4(a), in order to ensure the application of section 10721 rates, insert the following clause in solicitations and contracts when the contracts will be—

(1) Cost-reimbursement contracts, including those that may involve the movement of household goods (see 47.104-3(b)); or

(2) Fixed-price f.o.b. origin contracts other than small purchases under Part 13 (see 47.104-2(b) and 47.104-3).

(b) As prescribed in 47.104-4(b), the contracting officer may insert the clause at 52.247-1, Commercial Bill of Lading Notations, in solicitations and contracts awarded under the small purchase procedures in Part 13 when it is contemplated that the delivery terms will be f.o.b. origin.

COMMERCIAL BILL OF LADING NOTATIONS (APR 1984)

If the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

(a) If the Government is shown as the consignor or the consignee, the annotation shall be:

"Transportation is for the ..... [*name the specific agency*] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government."

(b) If the Government is not shown as the consignor or the consignee, the annotation shall be:

"Transportation is for the ..... [*name the specific agency*] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No.... This may be confirmed by contacting ..... [*name and address of the contract administration office listed in the contract*]."

(End of clause)
(R 7-103.25 1969 DEC)
(R 7-203.14 1969 DEC) (R 1-19.109-1(b))

52.247-2 Permits, Authorities, or Franchises.

As prescribed in 47.207-1(a), insert the following clause in solicitations and contracts for transportation or for transportation-related services when regulated transportation is involved. The clause need not be used when a Federal office move is intrastate and the contracting officer determines that it is in the Government's interest not to apply the requirement for holding or obtaining State authority to operate within the State.

PERMITS, AUTHORITIES, OR FRANCHISES (APR 1984)

(a) The offeror certifies that the offeror does ☐, does not ☐, hold authorization from the Interstate Commerce Commission or other cognizant regulatory body. If authorization is held, it is as follows:

.....

(Name of regulatory body)

.....

(Authorization No.)

(b) The offeror shall furnish to the Government, if requested, copies of the authorization before moving the material under any contract awarded. In addition, the offeror shall, at the offeror's expense, obtain and maintain any permits, franchises, licenses, and other authorities issued by State and local governments.

(End of clause)
(R 1-7.701-2)

52.247-3 Capability to Perform a Contract for the Relocation of a Federal Office.

As prescribed in 47.207-1(b), insert the following clause in solicitations and contracts for transportation or for transportation-related services when a Federal office is relocated, to ensure that offerors are capable to perform interstate or intrastate moving contracts involving the relocation of Federal offices:

CAPABILITY TO PERFORM A CONTRACT FOR THE RELOCATION OF A FEDERAL OFFICE (APR 1984)

(a) If the move specified in this contract is to be performed by the Contractor as a carrier within the borders of more than one State, including the District of Columbia, (i.e., an interstate move), the Contractor shall have obtained and hold appropriate and current operating authority from the Interstate Commerce Commission.

(b) (1) If the move specified in this contract is to be performed by the Contractor as a carrier wholly within the borders of one State or the District of Columbia (i.e., an intrastate move), the Contractor shall, when required by the State, or the District of Columbia, in which the move is to take place, have obtained and hold appropriate and current operating authority from that jurisdiction in the form of a certificate, permit, or equivalent license to operate.

(2) If no authority to operate is required by the State or the District of Columbia, the Contractor as carrier shall maintain facilities, equipment, and a business address within the jurisdiction in which the move is to take place. However, if the move is to originate and/or terminate within an area of one State, or the District of Columbia, that comprises a part of a recognized Commercial Zone (see 49 CFR 1048) the boundaries of which encompass portions of more than one State or the District of Columbia, it shall be sufficient if the Contractor as carrier maintains facilities, equipment, and a business address within the Commercial Zone and holds appropriate operating authority, if required, from the jurisdiction within which the Contractor maintains the facilities, equipment, and business address.

(c) If the move specified in this contract will not be performed by the Contractor as carrier, it must be performed for the Contractor by a carrier operating under a subcontract with the Contractor. In this case, the Contractor shall not be subject to the requirements of paragraphs (a) and (b) above, but shall be responsible for requiring and ensuring that the subcontractor carrier complies with those requirements in every respect.

(d) The Contractor shall be in compliance with the applicable requirements of this clause at least 14 days before the date on which performance of the contract shall commence under the terms specified; *except* that, if the period from the date of award of the contract to the date that performance shall commence is less than 28 days, the Contractor shall comply with the applicable requirements of this clause midway between the time of award and the time of commencement of performance.

(End of clause)
(R 1-7.703-20)

Alternate I (APR 1984). If a Federal office move is intrastate and the contracting officer determines that it is in the Government's interest not to apply the requirements for holding or obtaining State authority to operate within the State, and to maintain a facility within the State or Commercial zone, delete paragraph (b) of the basic clause and redesignate the remaining paragraphs "(b) and (c)." In the 6th line of the new paragraph (b), delete the words "paragraphs (a) and (b) above" and replace them with "paragraph (a) above."

(R 1-7.703-20)

52.247-4 Inspection of Shipping and Receiving Facilities.

As prescribed in 47.207-1(c), insert the following provision in solicitations for transportation or for transportation-related services when it is desired for offerors to inspect the shipping, receiving, or other sites to ensure realistic bids:

INSPECTION OF SHIPPING AND RECEIVING FACILITIES (APR 1984)

(a) Offerors are urged to inspect the shipping and receiving facilities where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance.

(b) Site visits have been scheduled as follows:

.....

(locations)

.....

(dates)

.....

(times)

(c) For further information offerors may contact:

.....

(name)

.....

(telephone)

(End of provision)
(R 1-19.702-9)

52.247-5 Familiarization with Conditions.

As prescribed in 47.207-1(d), insert the following clause in solicitations and contracts for transportation or for

transportation-related services to ensure that offerors become familiar with conditions under which and where the services will be performed:

FAMILIARIZATION WITH CONDITIONS (APR 1984)

The offeror shall become familiar with all available information regarding difficulties that may be encountered and the conditions, including safety precautions, under which the work must be accomplished under the contract. The offeror shall not be relieved from assuming all responsibility for properly estimating the difficulties and the cost of performing the services required in this contract because the offeror failed to investigate the conditions or to become acquainted with all information concerning the services to be performed.

(End of clause)
(R 1-7.702(c)(2))

52.247-6 Financial Statement.

As prescribed in 47.207-1(e), insert the following provision in solicitations for transportation or for transportation-related services to ensure that offerors are prepared to furnish financial statements:

FINANCIAL STATEMENT (APR 1984)

The offeror shall, upon request, promptly furnish the Government with a current certified statement of the offeror's financial condition and such data as the Government may request with respect to the offeror's operations. The Government will use this information to determine the offeror's financial responsibility and ability to perform under the contract. Failure of an offeror to comply with a request for information will subject the offer to possible rejection on responsibility grounds.

(End of provision)
(R 1-7.702(c)(1))

52.247-7 Freight Excluded.

As prescribed in 47.207-3(d)(2), insert a clause substantially as follows in solicitations and contracts for transportation or for transportation-related services when any commodities or types of shipments have been indentified for exclusion:

FREIGHT EXCLUDED (APR 1984)

Excluded from the scope of this contract are shipments that can be more advantageously or economically moved via parcel post or small package carrier; shipments of unusual value, explosives and other dangerous articles, household goods, commodities in bulk, commodities injurious or contaminating to other freight; and shipments that the Government may elect to move in Government vehicles.

(End of clause)
(R 1-19.702-1(a)(3))

52.247-8 Estimated Weights or Quantities Not Guaranteed.

As prescribed in 47.207-3(e)(2), insert the following clause in solicitations and contracts for transportation or for transportation-related services when weights or quantities are estimates:

ESTIMATED WEIGHTS OR QUANTITIES NOT GUARANTEED (APR 1984)

The estimated weights or quantities are not a guarantee of actual weights or quantities, as the Government does not guarantee any particular volume of traffic described in this contract. However, to the extent services are required as described in this contract and in accordance with the terms of this contract, orders for these services will be placed with the Contractor.

(End of clause)
(R 1-19.702-1(a)(4))

52.247-9 Agreed Weight—General Freight.

As prescribed in 47.207-4(a)(1), insert the following clause in solicitations and contracts for transportation or for transportation-related services when the shipping activity determines the weight of shipments of freight other than household goods or office furniture:

AGREED WEIGHT—GENERAL FREIGHT (APR 1984)

The shipping activity shall determine the weight of each shipment. The weight shall be shown on the covering shipping document and shall be accepted by the Contractor as the agreed weight.

(End of clause)
(R 1-19.702-3(a))

52.247-10 Net Weight—General Freight.

As prescribed in 47.207-4(a)(2), insert the following clause in solicitations and contracts for transportation or for transportation-related services when the weight of shipments of freight other than household goods or office furniture is not known at the time of shipment and the contractor is responsible for determining the net weight of the shipments:

NET WEIGHT—GENERAL FREIGHT (APR 1984)

(a) The net weight of the shipment shall be determined by deducting the tare weight of the vehicle (determined by having the empty vehicle with a full tank of fuel weighed by a certified weighmaster on a certified scale) from the gross weight of the vehicle (determined by having the loaded vehicle with a full tank of fuel weighed by a certified weighmaster on a certified scale).

(b) The Contractor shall attach the original copies of the empty and loaded weight certificates to the invoice for services.

(End of clause)
(R 1-19.702-3(a))

52.247-11 Net Weight—Household Goods or Office Furniture.

As prescribed in 47.207-4(b), insert the following clause in contracts for transportation or for transportation-related services when movements of Government employees' household goods or relocations of Government offices are involved:

NET WEIGHT—HOUSEHOLD GOODS OR OFFICE FURNITURE (APR 1984)

(a) *Net weight—full loads.* The net weight of the shipment shall be determined by deducting the tare weight of the vehicle (determined by having a certified weighmaster weigh on a certified scale the empty vehicle with all blankets, pads, chains, dollies, hand trucks, and all other necessary equipment inside the vehicle) from the gross weight of the vehicle (determined by having a certified weighmaster weigh on a certified scale the fully loaded vehicle before arrival at destination).

(b) *Net weight—part loads.* The net weight of the first part load shall be determined in the same manner as specified for a full load. The net weight of the second part load shall be determined by using as the tare weight of the vehicle the gross weight of the vehicle containing the first part load and deducting this weight from the new gross weight (determined by having the loaded vehicle weighed again, in the same manner as specified for the full load). The same procedure shall apply for each succeeding part load.

(c) *Weight certificates.* The contractor shall attach the original copy of each weight certificate to the invoice for services.

(End of clause)
(R 1-19.702-3(b))

52.247-12 Supervision, Labor, or Materials.

As prescribed in 47.207-5(b), insert a clause substantially as follows in solicitations and contracts for transportation or for transportation-related services when the contractor is required to furnish supervision, labor, or materials:

SUPERVISION, LABOR, OR MATERIALS (APR 1984)

The Contractor shall furnish adequate supervision, labor, materials, supplies, and equipment necessary to perform all the services contemplated under this contract in an orderly, timely, and efficient manner.

(End of clause)
(R 1-19.702-2(b))

52.247-13 Accessorial Services—Moving Contracts.

As prescribed in 47.207-5(c), insert a clause substantially as follows in solicitations and contracts for the transportation of household goods or office furniture:

ACCESSORIAL SERVICES—MOVING CONTRACTS (APR 1984)

(a) *Packing and/or crating and padding.* The Contractor shall—

(1) Perform all of the packing and/or crating and padding necessary for the protection of the goods to be transported;

(2) Furnish packing containers, including, but not limited to, barrels, boxes, wardrobes,

and cartons; all crating materials; and all padding materials and equipment;

(3) Furnish or cause to be furnished, when necessary, padding or other protective material for the interior of the buildings, including elevators, from and to which the property will be moved under this contract; and

(4) Ensure that all containers and materials are clean and of quality sufficient for protection of the goods.

(b) *Disassembling and reassembling of property and servicing appliances.* The disassembling of property; e.g., beds and sectional bookcases, and the preparing of appliances; e.g., washers, driers, and record players, for shipment shall be performed by the Contractor. The Contractor shall reassemble the property and service the appliances upon delivery at the new location.

(c) *Unpacking and/or uncrating and placement of property.* The Contractor shall unpack and/or uncrate all property that was packed and/or crated for movement under this contract. The Contractor shall also place the property in the new location as instructed by the owner of the property or authorized representative, and shall remove all packing and similar or related material from the premises as requested by the owner.

(End of clause)
(R 1-19.702-2(b))

52.247-14 Contractor Responsibility for Receipt of Shipment.

As prescribed in 47.207-5(d), insert the following clause in solicitations and contracts for transportation or for transportation-related services:

CONTRACTOR RESPONSIBILITY FOR RECEIPT OF SHIPMENT (APR 1984)

The Contractor shall diligently count and examine all goods tendered for shipment, receipt for them, and make appropriate written exception for any goods not in apparent good order.

(End of clause)
(R 1-19.702-7)

52.247-15 Contractor Responsibility for Loading and Unloading.

As prescribed in 47.207-5(e), insert the following clause in solicitations and contracts for transportation or for transportation-related services when the contractor is responsible for loading and unloading shipments:

CONTRACTOR RESPONSIBILITY FOR LOADING AND UNLOADING (APR 1984)

(a) (1) Unless otherwise specified in this contract to cover store-door or inside delivery, the Contractor shall load and unload shipments at no additional expense to the Government.

(2) The Government or its agent will place or receive freight at the tailgate of the Contractor's vehicle. Tailgate delivery, for purposes of this contract, is defined as that which enables a forklift truck or similar equipment, with operator only, to place or remove cargo from the tailgate of the Contractor's vehicle.

(b) If loading is the responsibility of the Contractor, the Contractor shall perform all shoring, blocking, and bracing. The Contractor shall provide dunnage at the Contractor's expense.

(End of clause)
(R 1-19.702-7)

52.247-16 Contractor Responsibility for Returning Undelivered Freight.

As prescribed in 47.207-5(f), insert the following clause in solicitations and contracts for transportation or for transportation-related services when the contractor is responsible for returning undelivered freight:

CONTRACTOR RESPONSIBILITY FOR RETURNING UNDELIVERED FREIGHT (APR 1984)

(a) When, through no fault of the Contractor, a shipment cannot be delivered, the Contractor shall contact the shipper for disposition instructions. If the shipment is ordered returned to the origin point, the charges assessed for the return trip shall be the same as the charges assessed for the outbound trip. The shipper shall maintain a record of the goods that, through no fault of the Contractor, could not be delivered and are returned to the shipper. If, at a future date, the returned goods are determined to be related to a claim against the Contractor, the claim will be adjusted accordingly.

(b) When, through the fault of the Contractor, a shipment cannot be delivered, the Contractor shall return the shipment to the origin point at no charge to the Government. Any charges incurred for redelivery, which are in excess of the charges that would have been incurred under this contract, shall be for the Contractor's account in accordance with the Default clause of the contract.

(End of clause)
(R 1-19.702-7)

52.247-17 Charges.

As prescribed in 47.207-6(a)(2), insert the following clause in solicitations and contracts for transportation or for transportation-related services:

CHARGES (APR 1984)

In no event shall charges under this contract be in excess of charges based on the Contractor's lowest rate available to the general public, or be in excess of charges based on rates otherwise tendered to the Government by the Contractor for the same type of service.

(End of clause)
(R 1-19.702-10(a)(1))

52.247-18 Multiple Shipments.

As prescribed in 47.207-6(c)(5)(i), insert the following clause in solicitations and contracts for transportation or for transportation-related services when multiple shipments are tendered at one time to the contractor for transportation from one origin to two or more consignees at the same destination:

MULTIPLE SHIPMENTS (APR 1984)

When multiple shipments are tendered at one time to the Contractor for movement from one origin to multiple consignees at the same destination, the rate charged for each shipment shall be the rate applicable to the aggregate weight.

(End of clause)
(R 1-19.702-10(c))

52.247-19 Stopping in Transit for Partial Unloading.

As prescribed in 47.207-6(c)(5)(ii), insert the following clause in solicitations and contracts for transportation or for transportation-related services when multiple shipments are tendered at one time to the contractor for transportation from one origin to two or more consignees along the route between origin and last destination:

STOPPING IN TRANSIT FOR PARTIAL UNLOADING (APR 1984)

When multiple shipments are tendered at one time to the Contractor for movement from one orign to two or more consignees along the route between the origin and the last destination, the rate charged shall be the rate applicable to the aggregate weight, plus a charge of $..... for each shipment unloaded at an intermediate point en route to the last destination.

(End of clause)
(R 1-19.702-10(c))

52.247-20 Estimated Quantities or Weights for Evaluation of Offers.

As prescribed in 47.207-6(c)(6), insert the following provision in solicitations for transportation or for transportation-related services when quantities or weights of shipments between each origin and destination are not known, stating estimated quantity or weight for each origin/destination pair:

ESTIMATED QUANTITIES OR WEIGHTS FOR EVALUATION OF OFFERS (APR 1984)

For the purpose of evaluating offers, and for no other purpose, the following estimated quantities or weights will be considered as the quantities or weights to be shipped between each origin and destination listed:

Origin	Destination	Estimated quantity or weight

(End of provision)
(R 1-19.702-10(a)(5))

52.247-21 Contractor Liability for Personal Injury and/or Property Damage.

As prescribed in 47.207-7(c), insert the following clause in solicitations and

contracts for transportation or for transportation-related services:

CONTRACTOR LIABILITY FOR PERSONAL INJURY AND/OR PROPERTY DAMAGE (APR 1984)

(a) The Contractor assumes responsibility for all damage or injury to persons or property occasioned through the use, maintenance, and operation of the Contractor's vehicles or other equipment by, or the action of, the Contractor or the Contractor's employees and agents.

(b) The Contractor, at the Contractor's expense, shall maintain adequate public liability and property damage insurance during the continuance of this contract, insuring the Contractor against all claims for injury or damage.

(c) The Contractor shall maintain Workers' Compensation and other legally required insurance with respect to the Contractor's own employees and agents.

(d) The Government shall in no event be liable or responsible for damage or injury to any person or property occasioned through the use, maintenance, or operation of any vehicle or other equipment by, or the action of, the Contractor or the Contractor's employees and agents in performing under this contract, and the Government shall be indemnified and saved harmless against claims for damage or injury in such cases.

(End of clause)
(R 1-9.702-4(a) and (b))

52.247-22 Contractor Liability for Loss of and/or Damage to Freight other than Household Goods.

As prescribed in 47.207-7(d), insert the following clause in solicitations and contracts for the transportation of freight other than household goods:

CONTRACTOR LIABILITY FOR LOSS OF AND/OR DAMAGE TO FREIGHT OTHER THAN HOUSEHOLD GOODS (APR 1984)

Except when loss and/or damage arises out of causes beyond the control and without the fault or negligence of the Contractor, the Contractor shall assume full liability for any and all goods lost and/or damaged in the movement covered by this contract.

(End of clause)
(R 1-19.702-4(a))

52.247-23 Contractor Liability for Loss of and/or Damage to Household Goods.

As prescribed in 47.207-7(e), insert the following clause in solicitations and contracts for the transportation of household goods, including the rate per pound appropriate to the situation:

CONTRACTOR LIABILITY FOR LOSS OF AND/OR DAMAGE TO HOUSEHOLD GOODS (APR 1984)

(a) Except when loss and/or damage arise out of causes beyond the control and without the fault or negligence of the Contractor, the Contractor shall be liable to the owner for the loss of and/or damage to any article while being—

(1) Packed, picked up, loaded, transported, delivered, unloaded, or unpacked;

(2) Stored in transit; or

(3) Serviced (appliances, etc.) by a third person hired by the Contractor to perform the servicing.

(b) The Contractor shall be liable for loss and/or damage discovered by the owner within ..... days [*insert "30 days" or "45 days" at most*] after delivery if the owner notifies the Contractor of the loss and/or damage within ..... days [*insert "30 days" or "45 days" at most*] from the date of delivery.

(c) The Contractor shall indemnify the owner of the goods at a rate of ..... cents per pound per article.

(End of clause)
(R 1-19.702-4(b))

52.247-24 Advance Notification by the Government.

As prescribed in 47.207-8(a)(1), insert the following clause in solicitations and contracts for transportation or for transportation-related services when the Government is responsible for notifying the contractor of specific service times or unusual shipments:

ADVANCE NOTIFICATION BY THE GOVERNMENT (APR 1984)

The Government will notify the Contractor ..... hours in advance of the number of pieces and weight of all normal shipments and the time the shipment will be available for pickup. On other-than-normal shipments, the Government will furnish additional information; e.g., dimension of oversized pieces, as necessary to determine the amount of equipment and/or manpower needed to perform the required services.

(End of clause)
(R 1-19.702-8 DEC 1972)

52.247-25 Government-Furnished Equipment with or without Operators.

As prescribed in 47.207-8(a)(2)(i), insert the following clause in solicitations and contracts for transportation or for transportation-related services when the Government furnishes equipment with or without operators:

GOVERNMENT-FURNISHED EQUIPMENT WITH OR WITHOUT OPERATORS (APR 1984)

The Government will provide ..... [*insert equipment; e.g., forklifts*] with or without operators at ..... [*strike out "with" or "without", as applicable, and insert origin, destination, or both*] to assist in ....[*insert loading, unloading, or both*], when required.

(End of clause)
(R 1-19.702-8)

52.247-26 Government Direction and Marking.

As prescribed in 47.207-8(a)(3), insert the following clause in solicitations and contracts for transportation or for transportation-related services when office relocations are involved:

GOVERNMENT DIRECTION AND MARKING (APR 1984)

The agency being relocated shall tag or mark property, showing floor, room number, and location where property is to be placed in the new building. The agency shall provide sufficient personnel to direct the Contractor's personnel in the placement of the property at destination.

(End of clause)
(R 1-19.702-8)

52.247-27 Contract Not Affected by Oral Agreement.

As prescribed in 47.207-8(b), insert the following clause in solicitations and contracts for transportation or for transportation-related services:

CONTRACT NOT AFFECTED BY ORAL AGREEMENT (APR 1984)

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the Contracting Officer or an authorized representative.

(End of clause)
(R 1-7.703-17)

52.247-28 Contractor's Invoices.

As prescribed in 47.207-9(c), insert the following clause in solicitations and contracts for drayage or other term contracts for transportation or for transportation-related services:

CONTRACTOR'S INVOICES (APR 1984)

The Contractor shall submit itemized invoices as instructed by the agency ordering services under this contract. The Contractor shall annotate each invoice with the contract number and other ordering office document identification.

(End of clause)
(R 1-7.702(a))

52.247-29 F.o.b. Origin.

As prescribed in 47.303-1(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. origin:

F.O.B. ORIGIN (APR 1984)

(a) The term "f.o.b. origin," as used in this clause, means free of expense to the Government delivered—

(1) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipment will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(2) To, and placed on, the carrier's wharf (at shipside, within reach of the ship's loading tackle, when the shipping point is within a port area having water

transportation service) or the carrier's freight station;

(3) To a U.S. Postal Service facility; or

(4) If stated in the solicitation, to any Government-designated point located within the same commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR 1048).

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) (i) Order specified carrier equipment when requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier's conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods—

(i) Occurring before delivery to the carrier;

(ii) Resulting from improper packing and marking; or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier's conveyance;

(5) Complete the Government bill of lading supplied by the ordering agency or, when a Government bill of lading is not supplied, prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show—

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance with their serial numbers or other identification;

(iii) Lengths and capacities of cars or trucks ordered and furnished;

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; e.g., (A) "to be converted to a Government bill of lading," or (B) "this shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government"; and

(vi) The signature of the carrier's agent and the date the shipment is received by the carrier; and

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency.

(c) These Contractor responsibilities are specified for performance at the plant or plants at which the supplies are to be finally inspected and accepted, unless the facilities for shipment by carrier's equipment are not available at the Contractor's plant, in which case the responsibilities shall be performed f.o.b. the point or points in the same or nearest city where the specified carrier's facilities are available; subject, however, to the following qualifications:

(1) If the Contractor's shipping plant is located in the same city (or county) listed in the contract as a destination or port of loading, the Contractor shall deliver the supplies to that destination or port at Contractor's expense and that portion of the contract shall be "f.o.b. destination."

(2) If the Contractor's shipping plant is located in the State of Alaska or Hawaii, the Contractor shall deliver the supplies listed for shipment outside Alaska or Hawaii to the port of loading in Alaska or Hawaii, respectively, as specified in the contract, at Contractor's expense, and to that extent the contract shall be "f.o.b. destination."

(3) Notwithstanding subparagraph (c)(2) above, if the Contractor's shipping plant is located in the State of Hawaii, and the contract requires delivery to be made by container service, the Contractor shall deliver the supplies, at Contractor's expense, to the container yard in the same or nearest city where seavan container service is available.

(End of clause)
(R 1-19.302)
(R 7-104.70 1973 APR)

52.247-30 F.o.b. Origin, Contractor's Facility.

As prescribed in 47.303-2(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. origin, contractor's facility:

F.O.B. ORIGIN, CONTRACTOR'S FACILITY (APR 1984)

(a) The term "f.o.b. origin, contractor's facility," as used in this clause, means free of expense to the Government delivered on board the indicated type of conveyance of the carrier (or of the Government, if specified) at the designated facility, on the named street or highway, in the city, county, and State from which the shipment will be made.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) (i) Order specified carrier equipment when requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier's conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods—

(i) Occuring before delivery to the carrier;

(ii) Resulting from improper packing and marking; or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier's conveyance;

(5) Complete the Government bill of lading supplied by the ordering agency or, when a Government bill of lading is not supplied, prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show—

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance with their serial numbers or other identification;

(iii) Lengths and capacities of cars or trucks ordered and furnished;

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; e.g., (A) "to be converted to a Government bill of lading," or (B) "this shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government"; and

(vi) The signature of the carrier's agent and the date the shipment is received by the carrier; and

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency.

(End of clause)
(R 1-19.303)

52.247-31 F.o.b. Origin, Freight Allowed.

As prescribed in 47.303-3(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. origin, freight allowed:

F.O.B. ORIGIN, FREIGHT ALLOWED (APR 1984)

(a) The term "f.o.b. origin, freight allowed," as used in this clause, means—

(1) Free of expense to the Government delivered—

(i) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipments will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(ii) To, and placed on, the carrier's wharf (at shipside within reach of the ship's loading tackle when the shipping point is within a port area having water transportation service) or the carrier's freight station;

(iii) To a U.S. Postal Service facility; or

(iv) If stated in the solicitation, to any Government-designated point located within the same commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR 1048); and

(2) An allowance for freight, based on applicable published tariff rates (or Government rate tenders) between the points specified in the contract, is deducted from the contract price.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) (i) Order specified carrier equipment when requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier's conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods—

(i) Occurring before delivery to the carrier;

(ii) Resulting from improper packing and marking; or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier's conveyance;

(5) Complete the Government bill of lading supplied by the ordering agency, or when a Government bill of lading is not supplied, prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show—

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance with their serial numbers or other identification;

(iii) Lengths and capacities of cars or trucks ordered and furnished;

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; e.g., (A) "to be converted to a Government bill of lading," or (B) "this shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government"; and

(vi) The signature of the carrier's agent and the date the shipment is received by the carrier; and

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency.

(c) These Contractor responsibilities are specified for performance at the plant or plants at which the supplies are to be finally inspected and accepted, unless the facilities for shipment by carrier's equipment are not available at the Contractor's plant, in which case the responsibilities shall be performed f.o.b. the point or points in the same or nearest city where the specified carrier's facilites are available; subject, however, to the following qualifications:

(1) If the Contractor's shipping plant is located in the same city (or county) listed in the contract as a destination or port of loading, the Contractor shall deliver the supplies to that destination or port at Contractor's expense and that portion of the contract shall be "f.o.b destination."

(2) If the Contractor's shipping plant is located in the State of Alaska or Hawaii, the Contractor shall deliver the supplies listed for shipment outside Alaska or Hawaii to the port of loading in Alaska or Hawaii, respectively, as specified in the contract, at Contractor's expense, and to that extent the contract shall be "f.o.b. destination."

(3) Notwithstanding subparagraph (c)(2) above, if the Contractor's shipping plant is located in the State of Hawaii, and the contract requires delivery to be made by container service, the Contractor shall deliver the supplies, at Contractor's expense, to the container yard in the same or nearest city where seavan container service is available.

(End of clause)
(R 1-19.304)
(R 7-104.70 1973 APR)

52.247-32 F.o.b. Origin, Freight Prepaid.

As prescribed in 47.303-4(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. origin, freight prepaid:

F.O.B. ORIGIN, FREIGHT PREPAID
(APR 1984)

(a) The term "f.o.b. origin, freight prepaid," as used in this clause, means—

(1) Free of expense to the Government delivered—

(i) On board the indicated type of conveyance of the carrier (or of the Government if specified) at a designated point in the city, county, and State from which the shipments will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(ii) To, and placed on, the carrier's wharf (at shipside, within reach of the ship's loading tackle, when the shipping point is within a port area having water transportation service) or the carrier's freight station;

(iii) To a U.S. Postal Service facility; or

(iv) If stated in the solicitation, to any Government-designated point located within the same commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR 1048); and

(2) The cost of transportation, ultimately the Government's obligation, is prepaid by the contractor to the point specified in the contract.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) (i) Order specified carrier equipment when requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier's conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods—

(i) Occuring before delivery to the carrier;

(ii) Resulting from improper packing or marking; or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier's conveyance;

(5) Prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show—

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance with their serial numbers or other identification;

(iii) Lengths and capacities of cars or trucks ordered and furnished;

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; e.g., (A) "to be converted to a Government bill of lading," or (B) "this shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government"; and

(vi) The signature of the carrier's agent and the date the shipment is received by the carrier;

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency; and

(7) Prepay all freight charges to the extent specified in the contract.

(c) These Contractor responsibilities are specified for performance at the plant or plants at which these supplies are to be finally inspected and accepted, unless the facilities for shipment by carrier's equipment are not available at the Contractor's plant, in which case the responsibilities shall be performed f.o.b. the point or points in the same or nearest city where the specified carrier's facilities are available; subject, however, to the following qualifications:

(1) If the Contractor's shipping plant is located in the same city (or county) listed in the contract as a destination or port of loading, the Contractor shall deliver the supplies to that destination or port at Contractor's expense and that portion of the contract shall be "f.o.b destination."

(2) If the Contractor's shipping plant is located in the State of Alaska or Hawaii, the Contractor shall deliver the supplies listed for shipment outside Alaska or Hawaii to the port of loading in Alaska or Hawaii, respectively, as specified in the contract, at Contractor's expense, and to that extent the contract shall be "f.o.b. destination."

(3) Notwithstanding subparagraph (c)(2) above, if the Contractor's shipping plant is located in the State of Hawaii, and the contract requires delivery to be made by

container service, the Contractor shall deliver the supplies, at Contractor's expense to the container yard in the same or nearest city where seavan container service is available.

(End of clause)
(R 1-19.305)
(R 7-104.70 1973 APR)

52.247-33 F.o.b. Origin, with Differentials.

As prescribed in 47.303-5(c), insert the following clause in solicitations and contracts when it is likely that offerors may include in f.o.b. origin offers a contingency to compensate for unfavorable routing conditions by the Government at the time of shipment:

F.O.B. ORIGIN, WITH DIFFERENTIALS (APR 1984)

(a) The term "f.o.b. origin, with differentials," as used in this clause, means—

(1) Free of expense to the Government delivered—

(i) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipments will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(ii) To, and placed on, the carrier's wharf (at shipside, within reach of the ship's loading tackle, when the shipping point is within a port area having water transportation service) or the carrier's freight station;

(iii) To a U.S. Postal Service facility; or

(iv) If stated in the solicitation, to any Government-designated point located within the same commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR 1048); and

(2) Differentials for mode of transportation, type of vehicle, or place of delivery as indicated in Contractor's offer may be added to the contract price.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specification; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) (i) Order specified carrier equipment when requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier's conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods—

(i) Occurring before delivery to the carrier;

(ii) Resulting from improper packing and marking; or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier's conveyance;

(5) Complete the Government bill of lading supplied by the ordering agency or, when a Government bill of lading is not supplied, prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show—

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance with their serial numbers or other identification;

(iii) Lengths and capacities of cars or trucks ordered and furnished;

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; e.g., (A) "to be converted to a Government bill of lading," or (B) "this shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government"; and

(vi) The signature of the carrier's agent and the date the shipment is received by carrier; and

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency.

(c) (1) It may be advantageous to the offeror to submit f.o.b. origin prices that include only the lowest cost to the Contractor for loading of shipment at the Contractor's plant or most favorable shipping point. The cost beyond that plant or point of bringing the supplies to the place of delivery and the cost of loading, blocking, and bracing on the type vehicle specified by the Government at the time of shipment may exceed the offeror's lowest cost when the offeror ships for the offeror's account. Accordingly, the offeror may indicate differentials that may be added to the offered price. These differentials shall be expressed as a rate in cents for each 100 pounds (CWT) of the supplies for one or more of the options under this clause that the Government may specify at the time of shipment.

(2) These differential(s) will be considered in the evaluation of offers to determine the lowest overall cost to the Government. If, at the time of shipment, the Government specifies (normally on a Government bill of lading) a mode of transportation, type of vehicle, or place of delivery for which the offeror has set forth a differential, the Contractor shall include the total of such differential costs (the applicable differential multiplied by the actual weight on the Government bill of lading) as a separate reimbursable item on the Contractor's invoice for the supplies.

(3) The Government shall have the option of performing or arranging at its own expense any transportation from Contractor's shipping plant or point to carrier's facility at the time of shipment and, whenever this option is exercised, the Government shall make no reimbursement based on a quoted differential.

(4) Offeror's differentials in cents for each 100 pounds for optional mode of transportation, types of vehicle, transportation within a mode, or place of delivery, specified by the Government at the time of shipment and not included in the f.o.b. origin price indicated in the Schedule by the offeror, are as follows:

.....*(carload, truckload, less-load,*
.....*wharf, flatcar, driveaway, etc.)*

(End of clause)
(R-1-19.302)
(R 7-104.19 1973 APR)
(R 7-2003.19)

52.247-34 F.o.b. Destination.

As prescribed in 47.303-6(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. destination:

F.O.B. DESTINATION (APR 1984)

(a) The term "f.o.b. destination," as used in this clause, means—

(1) Free of expense to the Government, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee. If the Contractor uses rail carrier or freight forwarder for less than carload shipments, the Contractor shall assure that the carrier will furnish tailgate delivery if transfer to truck is required to complete delivery to consignee.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

(2) Prepare and distribute commercial bills of lading;

(3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and

(6) Pay and bear all charges to the specified point of delivery.

(End of clause)
(R 1-19.306(a)(1) and (b))
(R 7-104.71 1969 APR)

52.247-35 F.o.b. Destination, within Consignee's Premises.

As prescribed in 47.303-7(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. destination, within consignee's premises:

F.O.B. DESTINATION, WITHIN CONSIGNEE'S PREMISES (APR 1984)

(a) The term "f.o.b. destination, within consignee's premises," as used in this clause, means free of expense to the Government delivered and laid down within the doors of the consignee's premises, including delivery to specific rooms within a building if so specified.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

(2) Prepare and distribute commercial bills of lading;

(3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and

(6) Pay and bear all charges to the specified point of delivery.

(End of clause)
(R 1-19.306(a)(2) and (b))

52.247-36 F.a.s. Vessel, Port of Shipment

As prescribed in 47.303-8(c), insert the following clause in solicitations and contracts when the delivery term is f.a.s. vessel, port of shipment:

F.A.S. VESSEL, PORT OF SHIPMENT (APR 1984)

(a) The term "f.a.s. vessel, port of shipment," as used in this clause, means free of expense to the Government delivered alongside the ocean vessel and within reach of its loading tackle at the specified port of shipment.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) (i) Deliver the shipment in good order and condition alongside the ocean vessel and within reach of its loading tackle, at the point of delivery and on the date or within the period specified in the contract; and

(ii) Pay and bear all applicable charges, including transportation costs, wharfage, handling, and heavy lift charges, if necessary, up to this point;

(3) Provide a clean dock or ship's receipt;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point specified in the contract; and

(5) At the Government's request and expense, assist obtaining the documents required for (i) exportation or (ii) importation at destination.

(End of clause)
(R 1-19.308)

52.247-37 F.o.b. Vessel, Port of Shipment.

As prescribed in 47.303-9(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. vessel, port of shipment:

F.O.B. VESSEL, PORT OF SHIPMENT (APR 1984)

(a) The term "f.o.b. vessel, port of shipment," as used in this clause, means free of expense to the Government loaded, stowed, and trimmed on board the ocean vessel at the specified port of shipment.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) (i) Deliver the shipment on board the ocean vessel in good order and condition on the date or within the period fixed; and

(ii) Pay and bear all charges incurred in placing the shipment actually on board;

(3) Provide a clean ship's receipt or on-board ocean bill of lading;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment on board the ocean vessel; and

(5) At the Government's request and expense, assist in obtaining the documents required for (i) exportation or (ii) importation at destination.

(End of clause)
(R 1-19.307)

52.247-38 F.o.b. Inland Carrier, Point of Exportation.

As prescribed in 47.303-10(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. inland carrier, point of exportation:

F.O.B. INLAND CARRIER, POINT OF EXPORTATION (APR 1984)

(a) The term "f.o.b. inland carrier, point of exportation," as used in this clause, means free of expense to the Government, on board the conveyance of the inland carrier, delivered to the specified point of exportation.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) Prepare and distribute commercial bills of lading;

(3) (i) Deliver the shipment in good order and condition in or on the conveyance of the carrier on the date or within the period specified; and

(ii) Pay and bear all applicable charges, including transportation costs, to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point of delivery in the contract; and

(5) At the Government's request and expense, assist in obtaining the documents required for (i) exportation or (ii) importation at destination.

(End of clause)
(R 1-19.309)

52.247-39 F.o.b. Inland Point, Country of Importation.

As prescribed in 47.303-11(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. inland point, country of importation:

F.O.B. INLAND POINT, COUNTRY OF IMPORTATION (APR 1984)

(a) The term "f.o.b. inland point, country of importation," as used in this clause, means free of expense to the Government, on board the indicated type of conveyance of the carrier, delivered to the specified inland point where the consignee's facility is located.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods;

(2) (i) Deliver, in or on the inland carrier's conveyance, the shipment in good order and condition to the specified inland point where the consignee's facility is located; and

(ii) Pay and bear all applicable charges incurred up to the point of delivery, including transportation costs; export, import, or other fees or taxes; costs of landing; wharfage costs; customs duties and costs of certificates of origin; consular invoices; and other documents that may be required for importation; and

(3) Be responsible for any loss of and/or damage to the goods until their arrival on or in the carrier's conveyance at the specified inland point.

(End of clause)
(R 1-19.310)

52.247-40 Ex Dock, Pier, or Warehouse, Port of Importation.

As prescribed in 47.303-12(c), insert the following clause in solicitations and contracts when the delivery term is ex dock, pier, or warehouse, port of importation:

EX DOCK, PIER, OR WAREHOUSE, PORT OF IMPORTATION (APR 1984)

(a) The term "ex dock, pier, or warehouse, port of importation," as used in this clause, means free of expense to the Government delivered on the designated dock or pier or in the warehouse at the specified port of importation.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods;

(2) (i) Deliver shipment in good order and condition; and

(ii) Pay and bear all charges up to the point of delivery specified in the contract, including transportation costs; export, import, or other fees or taxes; costs of wharfage and landing, if any; customs duties; and costs of certificates of origin, consular invoices, or other documents that may be required for exportation or importation; and

(3) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point of delivery specified in the contract.

(End of clause)
(R 1-19.311)

52.247-41 C.& f. Destination.

As prescribed in 47.303-13(c), insert the following clause in solicitations and contracts when the delivery term is c.&f. destination:

C.& F. DESTINATION (APR 1984)

(a) The term "c.& f. destination," as used in this clause, means free of expense to the Government delivered on board the ocean vessel to the specified point of destination, with the cost of transportation paid by the Contractor.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements;

(2) (i) Deliver the shipment in good order and condition; and

(ii) Pay and bear all applicable charges to the point of destination specified in the contract, including transportation costs and export taxes or other fees or charges levied because of exportation;

(3) Obtain and dispatch promptly to the Government clean on-board ocean bills of lading to the specified point of destination;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery; and

(5) At the Government's request and expense, provide certificates of origin, consular invoices, or any other documents issued in the country of origin or of shipment, or both, that may be required for importation into the country of destination.

(End of clause)
(R 1-19.312)

52.247-42 C.i.f. Destination.

As prescribed in 47.303-14(c), insert the following clause in solicitations and contracts when the delivery term is c.i.f. destination:

C.I.F. DESTINATION (APR 1984)

(a) The term "c.i.f. destination," as used in this clause, means free of expense to the Government delivered on board the ocean vessel to the specified point of destination, with the cost of transportation and marine insurance paid by the Contractor.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements;

(2) (i) Deliver the shipment in good order and condition; and

(ii) Pay and bear all applicable charges to the point of destination specified in the contract, including transportation costs and export taxes or other fees or charges levied because of exportation;

(3) Obtain and dispatch promptly to the Government clean on-board ocean bills of lading to the specified point of destination;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery;

(5) At the Government's request and expense, provide certificates of origin, consular invoices, or any other documents issued in the country of origin or of shipment, or both, that may be required for importation into the country of destination; and

(6) Obtain and dispatch to the Government an insurance policy or certificate providing the amount and extent of marine insurance coverage specified in the contract or agreed upon by the Government Contracting Officer.

(End of clause)
(R 1-19.313)

52.247-43 F.o.b. Designated Air Carrier's Terminal, Point of Exportation.

As prescribed in 47.303-15(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. designated air carrier's terminal, point of exportation:

F.O.B. DESIGNATED AIR CARRIER'S TERMINAL, POINT OF EXPORTATION (APR 1984)

(a) The term "f.o.b. designated air carrier's terminal, point of exportation," as used in this clause, means free of expense to the Government loaded aboard the aircraft, or delivered to the custody of the air carrier (if only the air carrier performs the loading), at the air carrier's terminal specified in the contract.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for air transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) (i) Deliver the shipment in good order and condition into the conveyance of the carrier, or to the custody of the carrier (if only the carrier performs the loading), at the point of delivery and on the date or within the period specified in the contract; and

(ii) Pay and bear all applicable charges up to this point;

(3) Provide a clean Government bill of lading and/or air waybill;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the goods to the point specified in the contract; and

(5) At the Government's request and expense, assist in obtaining the documents required for the purpose of exportation.

(End of clause)
(R 1-19.314)

52.247-44 F.o.b. Designated Air Carrier's Terminal, Point of Importation.

As prescribed in 47.303-16(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. designated air carrier's terminal, point of importation:

F.O.B. DESIGNATED AIR CARRIER'S TERMINAL, POINT OF IMPORTATION (APR 1984)

(a) The term "f.o.b. designated air carrier's terminal, point of importation," as used in this clause, means free of expense to the Government delivered to the air carrier's terminal at the point of importation specified in the contract.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for air transportation in conformance with carrier requirements to protect the goods;

(2) Prepare and distribute bills of lading or air waybills;

(3) (i) Deliver the shipment in good order and condition to the point of delivery specified in the contract; and

(ii) Pay and bear all charges incurred up to the point of delivery specified in the contract, including transportation costs; export, import, or other fees or taxes; cost of landing, if any; customs duties; and costs of certificates of origin, consular invoices, or other documents that may be required for exportation or importation; and

(4) Be responsible for any loss of and/or damage to the goods until delivery of the goods to the Government at the designated air carrier's terminal.

(End of clause)
(R 1-19.315)

52.247-45 F.o.b. Origin and/or F.o.b. Destination Evaluation.

As prescribed in 47.305-2(b), insert the following provision in solicitations when offers are solicited on the basis of both f.o.b. origin and f.o.b. destination:

F.O.B. ORIGIN AND/OR F.O.B. DESTINATION EVALUATION (APR 1984)

Offers are invited on the basis of both f.o.b. origin and f.o.b. destination, and the Government will award on the basis the Contracting Officer determines to be most advantageous to the Government. An offer on the basis of f.o.b. origin only or f.o.b. destination only is acceptable, but will be evaluated only on the basis submitted.

(End of provision)
(R 7-2003.24(d) 1968 JUN)

52.247-46 Shipping Point(s) Used in Evaluation of F.o.b. Origin Offers.

As prescribed in 47.305-3(b)(4)(ii), insert the following provision in f.o.b. origin solicitations when price evaluation for shipments from various shipping points is contemplated:

SHIPPING POINT(S) USED IN EVALUATION OF F.O.B. ORIGIN OFFERS (APR 1984)

(a) If more than one shipping point or plant is designated by the offeror and the offeror fails to indicate the quantity per shipping point or plant before bid opening, the Government will evaluate the offer on the basis of delivery of the entire quantity from the point or plant where cost of transportation is most favorable to the Government.

(b) If the offeror, before bid opening (or the closing date specified for receipt of offers) fails to indicate any shipping point or plant, the Government will evaluate the offer on the basis of delivery from the plant at which the contract will be performed, as indicated in the offer. If no plant is indicated in the offer, the offer will be evaluated on the basis of delivery from the Contractor's business address indicated in the offer.

(c) If the offeror uses a shipping point other than that which has been used by the Government as a basis for the evaluation of offers, any increase of transportation costs shall be borne by the Contractor and any savings shall revert to the Government.

(End of provision)
(R 7-2003.24(c) 1968 JUN)

52.247-47 Evaluation—F.o.b. Origin.

As prescribed in 47.305-3(f)(2), insert the following provision in solicitations that require prices f.o.b. origin for the purpose of establishing the basis on which offers will be evaluated. Transportation methods other than land may be substituted when evaluating offers; e.g., air, pipeline, barge, or ocean tanker.

EVALUATION—F.O.B. ORIGIN (APR 1984)

Land methods of transportation by regulated common carrier are the normal means of transportation used by the Government for shipment within the United States (excluding Alaska and Hawaii). Accordingly, for the purpose of evaluating offers, only these methods will be considered in establishing the cost of transportation between offeror's shipping point and destination (tentative or firm, whichever is applicable) in the United States (excluding Alaska and Hawaii). This transportation cost will be added to the offer price in determining the overall cost of the supplies to the Government. When tentative destinations are indicated, they will be used only for evaluation purposes, the Government having the right to use any other means of transportation or any other destination at the time of shipment.

(End of provision)
(R 7-2003.23(d) 1974 APR)

52.247-48 F.o.b. Destination—Evidence of Shipment.

As prescribed in 47.305-4(c), insert the following clause in solicitations and contracts when supplies will or may be purchased f.o.b. destination but inspection and acceptance will be at origin:

F.O.B. DESTINATION—EVIDENCE OF SHIPMENT (APR 1984)

If this contract is awarded on an f.o.b. destination basis and if transportation is accomplished by—

(a) Common carrier, the Contractor agrees to furnish in support of the Contractor's invoice, a copy of the signed commercial bill of lading indicating the carrier's receipt of the supplies covered by the invoice for transportation to the destination specified in the contract;

(b) Parcel post, the Contractor agrees to furnish a certificate of mailing with the Contractor's invoice; and

(c) Other than common carrier or parcel post, the Contractor agrees to attach to the Contractor's invoice a receipted copy of the appropriate delivery document showing receipt at the destination specified in the contract.

(End of clause)
(R 7-104.76 1968 JUN)

52.247-49 Destination Unknown.

As prescribed in 47.305-5(b)(2), insert the following provision in solicitations when destinations are tentative and only for the purpose of evaluating offers:

DESTINATION UNKNOWN (APR 1984)

For the purpose of evaluating offers and for no other purpose, the final destination(s) for the supplies will be considered to be as follows:.....

.....

(End of provision)
(R 7-2003.24(a) 1968 JUN)

52.247-50 No Evaluation of Transportation Costs.

As prescribed in 47.305-5(c)(1), insert the following provision in solicitations when exact destinations are not known and it is impractical to establish tentative or general delivery places for the purpose of evaluating transportation costs:

NO EVALUATION OF TRANSPORTATION COSTS (APR 1984)

Costs of transporting supplies to be delivered under this contract will not be an evaluation factor for award.

(End of provision)
(R 7-2003.70 1974 APR)

52.247-51 Evaluation of Export Offers.

As prescribed in 47.305-6(e), insert the following provision in solicitations when supplies are to be exported through CONUS ports and offers are solicited on an f.o.b. origin or f.o.b. destination basis:

EVALUATION OF EXPORT OFFERS (APR 1984)

(a) *Port handling and ocean charges—other than DOD water terminals.* Port handling and ocean charges in tariffs on file with the Federal Maritime Commission or other appropriate regulatory authorities as of the date of bid opening (or the closing date specified for receipt offers) and effective for the date of the expected initial shipment shall be used in the evaluation of offers.

(b) *F.o.b. origin, transportation under Government bill of lading.* (1) Offers shall be evaluated and awards made on the basis of the lowest laid down cost to the Government at the overseas port of discharge, via methods and ports compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Included in this evaluation, in addition to the f.o.b. origin price of the item, shall be the inland transportation costs from the point of origin in the United States to the port of loading, port handling charges at the port of loading, and ocean shipping costs from the United States port of loading (see paragraph (d) below) to the overseas port of discharge. The Government may designate the mode of routing of shipment and may load from other than those ports specified for evaluation purposes.

(2) Offers shall be evaluated on the basis of shipment through one of the ports set forth in paragraph (d) below to the overseas port of discharge. Evaluation shall be made on the basis of shipment through the port that will result in the lowest cost to the Government.

(3) Ports of loading shall be considered as destinations within the meaning of the term "f.o.b. destination" as that term is used in the F.o.b. Origin clause of this contract.

(c) *F.o.b. port of loading with inspection and acceptance at origin.* (1) *F.o.b. port of loading with inspection and acceptance at origin.* Offers shall be evaluated on the basis of the lowest laid down cost to the Government at the overseas port of discharge via methods compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Included in this evaluation, in addition to the price to the United States port of loading (see paragraph (2) below), shall be the port handling charges at the port of loading and the ocean shipping cost from the port of loading (see paragraph (d) below) to the overseas port of discharge.

(2) Unless offers are applicable only to f.o.b. origin delivery under Government bills

of lading (see paragraph (b) above), offerors shall designate below at least one of the ports of loading listed in paragraph (d) below as their place of delivery. Failure to designate at least one of the ports as the point to which delivery will be made by the Contractor may render the offer nonresponsive.

PLACE OF DELIVERY: .....

[Offerors insert at least one of the ports listed in paragraph (d) below.]

(d) *Ports of loading for evaluation of offers.* Ports to be used by the Government in evaluating offers are as follows:

.....

[Contracting Officer list ports of loading.]

(e) *Ports of loading nominated by offeror.* The ports of loading named in paragraph (d) above are considered by the Government to be appropriate for this solicitation due to their compatibility with methods and facilities required to handle the cargo and types of vessels and to meet the required overseas delivery dates. Notwithstanding the foregoing, offerors may nominate additional ports of loading that the offeror considers to be more favorable to the Government. The Government may disregard such nominated ports if, after considering the quantity and nature of the supplies concerned, the requisite cargo handling capability, the available sailings on U.S.-flag vessels, and other pertinent transportation factors, it determines that use of the nominated ports is not compatible with the required overseas delivery date. United States Great Lakes ports of loading may be considered in the evaluation of offers only for those items scheduled in this provision for delivery during the ice-free or navigable period as proclaimed by the authorities of the St. Lawrence Seaway (normal period is between April 15 and November 30 annually). All ports named, including those nominated by offerors and determined to be eligible as provided in this provision, shall be considered in evaluating all offers received in order to establish the lowest laid down cost to the Government at the overseas port of discharge. All determinations shall be based on availability of ocean services by U.S.-flag vessels only. Additional U.S. port(s) of loading nominated by offeror, if any: .....

(f) *Price basis:* Offeror shall indicate whether prices are based on—

( ) Paragraph (b), f.o.b. origin, transportation by GBL to port listed in paragraph (d);

( ) Paragraph (c), f.o.b. destination (i.e., a port listed in paragraph (d));

( ) Paragraph (e), f.o.b. origin, transportation by GBL to port nominated in paragraph (e); and/or

( ) Paragraph (e), f.o.b. destination (i.e., a port nominated in paragraph (e)).

(End of provision)

(R 7-2003.20 1968 JUN)

Alternate I (APR 1984). When the CONUS ports of export are DOD water terminals, delete paragraph (a) from the basic provision and substitute for it the following paragraph (a):

(a) *Port handling and ocean charges—DOD water terminals.* Port handling and ocean charges published by the Military Traffic Management Command and on file as of the date of bid opening (or the closing date specified for receipt of offers) and effective for the date of the expected initial shipment shall be used for the evaluation of offers.

(R 7-2003.20 1968 JUN)

Alternate II (APR 1984). When offers are solicited on an f.o.b. origin only basis, delete paragraphs (c) and (f) from the basic provision, but do not redesignate the ensuing paragraphs. Add the following basic paragraph (g) to the provision:

(g) Paragraphs (c) and (f) have been deleted but ensuing paragraphs have not been redesignated.

(R 7-2003.20 1968 JUN)

Alternate III (APR 1984). When offers are solicited on an f.o.b. destination only basis, delete paragraph (b) from the basic provision but do not redesignate the ensuing paragraphs. Delete subparagraph (c)(2) and paragraph (f) from the provision and substitute the following subparagraph (c)(2) and paragraph (f). Add paragraph (g) below.

(c)(2) Offerors shall designate below at least one of the ports of loading listed in paragraph (d) below as their place of delivery. Failure to designate at least one of the ports as the point to which delivery will be made by the Contractor may render the offer nonresponsive.

PLACE OF DELIVERY: .....

[Offerors insert at least one of the ports listed in paragraph (d) below.]

(f) *Price basis.* Offerors shall indicate whether prices are based on—

☐ Paragraph (c), f.o.b. destination (i.e., a port listed in paragraph (d)); or

☐ Paragraph (e), f.o.b. destination (i.e., a port nominated in paragraph (e)).

(g) Paragraph (b) has been deleted, but ensuing paragraphs have not been redesignated.

(R 7-2003.20 1968 JUN)

52.247-52 Clearance and Documentation Requirements—Shipments to DOD Air or Water Terminal Transshipment Points.

As prescribed in 47.305-6(f)(2), insert the following clause in solicitations and contracts when shipments will be consigned to DOD air or water terminal transshipment points:

CLEARANCE AND DOCUMENTATION REQUIREMENTS—SHIPMENTS TO DOD AIR OR WATER TERMINAL TRANSSHIPMENT POINTS (APR 1984)

All shipments to water or air ports for transshipment to overseas destinations are subject to the following requirements unless clearance and documentation requirements have been expressly delegated to the Contractor:

(a) At least 10 days before shipping cargo to a water port, the Contractor shall obtain an Export Release from the Government transportation office for—

(1) Each shipment weighing 10,000 pounds or more; and

(2) Each shipment weighing less than 10,000 pounds; if the cargo either—

(i) Is classified TOP SECRET, SECRET, OR CONFIDENTIAL;

(ii) Will require exclusive use of a motor vehicle;

(iii) Will occupy full visible capacity of a railway car or motor vehicle;

(iv) Is less than a carload or truckload, but will be tendered as a carload or truckload; or

(v) Is to be shipped to an ammunition outloading port for water shipment; or

(3) Each shipment weighing less than 10,000 pounds if the cargo consists of—

(i) Narcotics;

(ii) Perishable biological material;

(iii) Vehicles to be offered for driveaway service;

(iv) Explosives, or other dangerous articles classified as A, B, or C explosives;

(v) Poisons, classes A, B, or C; or

(vi) Radioactive material, as defined in 49 CFR 170-179.

(b) The Contractor is cautioned not to order railway cars or motor vehicles for loading until an Export Release has been received.

(c) If the Contracting Officer directs delivery within a shorter period than 10 days, the Contractor shall advise the transportation office of the date on which the cargo will be ready for shipment.

(d) At least 5 days before shipping cargo to either a water port or an air port (regardless of the weight, security classification, or the commodity description), the Contractor shall provide the Government transportation office the information shown in paragraph (e) below to permit preparation of a Transportation Control and Movement Document (TCMD).

(e) When applying for the Export Release in paragraph (a) above or when providing information for preparation of the TCMD in accordance with paragraph (d) above, the Contractor shall furnish the—

(1) Proposed date or dates of shipment;

(2) Number and type of containers;

(3) Gross weight and cube of the shipment;

(4) Number of cars or trucks that will be involved;

(5) Transportation Control Number(s)(TCN) as required for marking under MIL-STD-129 or Federal Standard 123; and

(6) Proper shipping name as specified in 46 CFR 146.05 for all items classified as dangerous substances as required for marking under MIL-STD-129.

(f) All movement documents (Government or commercial bills of lading or other delivery documents) shall be annotated by the Contractor with the—

(1) Transportation Control Number, Consignor Code of activity directing the shipment; i.e., cognizant contract administration office, purchasing office when contract administration has been retained, or a Contractor specifically delegated MILSTAMP responsibilities in the contract, whichever is appropriate, Consignee Code, and Transportation Priority for each shipment unit;

(2) Export Release Number and valid shipping period, if stated (if expired, the Contractor shall request a renewal); and

(3) Cubic foot measurement of each shipment unit.

(g) All annotations on the movement documents shall be made in the "Description of Articles" space *except*, on Government bills of lading the Export Release number and shipping period shall be entered in the space entitled "Route Order/Release No."

(h) The Contractor shall (1) mail a copy of the commercial bill of lading or other movement document to the transshipment point and (2) give a copy of the commercial bill of lading or other movement document to the carrier for presentation to the transshipment point with delivery of the shipment.

(End of clause)
(R 7-104.74 1974 APR)

52.247-53 Freight Classification Description.

As prescribed in 47.305-9(b)(1), insert the following provision in solicitations when the supplies being acquired are new to the supply system, nonstandard, or modifications of previously shipped items, and different freight classifications may apply:

FREIGHT CLASSIFICATION DESCRIPTION (APR 1984)

Offerors are requested to indicate below the full Uniform Freight Classification (rail) description, or the National Motor Freight Classification description applicable to the supplies, the same as offeror uses for commercial shipment. This description should include the packing of the commodity (box, crate, bundle, loose, setup, knocked down, compressed, unwrapped, etc.), the container material (fiberboard, wooden, etc.), unusual shipping dimensions, and other conditions affecting traffic descriptions. The Government will use these descriptions as well as other information available to determine the classification description most appropriate and advantageous to the Government. Offeror understands that shipments on any f.o.b. origin contract awarded, as a result of this solicitation, will be made in conformity with the shipping classification description specified by the Government, which may be different from the classification description furnished below.

FOR FREIGHT CLASSIFICATION PURPOSES, OFFEROR DESCRIBES THIS COMMODITY AS .....

(End of provision)
(R 7-2003.17 1968 JUN)

52.247-54 Diversion of Shipment under F.o.b. Destination Contracts.

As prescribed in 47.305-11(b)(2), insert the following clause in solicitations and contracts when transportation charges are for the account of the contractor and may need adjustments because of diversion of shipments:

DIVERSION OF SHIPMENT UNDER F.O.B. DESTINATION CONTRACTS (APR 1984)

(a) When a place of delivery is changed in accordance with the Changes clause of this contract, the contract price shall be adjusted pursuant to that clause for any resulting increase or decrease in the cost of performance. No adjustment shall be made for changes in transportation costs when supplies are identically priced for delivery regionally or nationally and the place of delivery is changed within the area to which the identical price applies. In all other cases, price adjustments due to changes in transportation costs shall be determined by comparing the cost of—

(1) Shipments to the new destinations as evidenced by copy of paid freight bills to be supplied by the Contractor with the invoice; and

(2) Shipments to the original or old destination as evidenced by copy of the appropriate paid freight bills to be supplied by the Contractor, or, in the event no shipments were made, as evidenced by the applicable rates of a common or contract carrier.

(b) If (1) shipments to the new destination are made by the Contractor's owned or leased trucks and/or (2) shipments to the original destination were made or would have been made by the Contractor's owned or leased trucks, the Contractor shall so certify. The Government shall make an appropriate adjustment in contract prices for payment purposes by substituting a rate equal to 70 percent of the lowest applicable rate published in common carrier tariffs as of the date of shipment for the Contractor's actual rate or contemplated transportation costs.

(c) If any or all of the following data are not clearly shown on, or available from, copies of paid freight bills for each diverted shipment, the Contractor shall supply a statement showing the—

(1) Full name of the carrier or carriers in the routing;

(2) Number of containers;

(3) Gross shipping weight;

(4) Actual date of shipment; and

(5) Freight description for the supplies as indicated in the "National Motor Freight Classification" or the "Uniform Freight Classification" (Rail).

(End of clause)
(R 7-104.75 1971 NOV)

52.247-55 F.o.b. Point for Delivery of Government-Furnished Property.

As prescribed in 47.305-12(a)(2), insert the following clause in solicitations and contracts when Government property is to be furnished under a contract and the Government will be responsible for transportation arrangements and costs:

F.O.B. POINT FOR DELIVERY OF GOVERNMENT-FURNISHED PROPERTY (APR 1984)

(a) Unless otherwise specified in this solicitation, any Government property furnished to the Contractor for use within the United States (excluding Alaska and Hawaii) or Canada will be delivered by the Government at a point to be specified by the Contractor in the offer. Should the Government elect to make delivery by railroad, the f.o.b. point shall be private siding, Contractor's plant. If the Contractor's plant is not served by rail, the f.o.b. point shall be railroad cars in the same or nearest city having rail service. All line-haul transportation costs to the specified destination shall be borne by the Government. The Government may choose the mode of transportation and the carriers.

(b) If the destination of such Government-furnished property is a Contractor's plant located outside the 48 contiguous states, the District of Columbia or Canada, the f.o.b. point for Government delivery of Government-furnished property shall be a location in the United States (excluding Alaska and Hawaii) specified by the Contractor. If the Contractor fails to name a point, then the f.o.b. point shall be the port city in the United States nearest to the Government source of the Government-furnished property that has regular commercial water transportation services to the offshore port nearest Contractor's plant.

(c) Unless otherwise directed by the Contracting Officer or provided in the contract, the Contractor shall return all Government-furnished equipment, supplies, and property, including all property not returned in the form of acceptable end items, to the point at which the Government property was originally furnished to the Contractor under the contract. Notwithstanding the fact that the Government may have furnished the property at the Contractor's plant, the Contracting Officer may direct the Contractor to deliver the Government property being returned to, and load, block, and brace it in, railway cars in the city in which the Contractor's plant is located, or, if the Contractor's city is not served by rail service, in the nearest city having rail service. Unless otherwise specified in the contract, all property shall be packed in containers conforming with the rules of common carrier published tariffs so as to be free of penalty charges by the carrier designated for shipment by the Government.

(End of clause)
(R 7-104.69 1968 JUN)

52.247-56 Transit Arrangements.

As prescribed in 47.305-13(a)(3)(ii), insert the following provision in solicitations when benefits may accrue to the Government because transit arrangements may apply:

TRANSIT ARRANGEMENTS (APR 1984)

The lowest appropriate common carrier transportation costs, including offeror's through transit rates and charges when applicable, from offeror's shipping points, via the transit point, to the ultimate destination will be used in evaluating offers.

Transit point(s)	Destination(s)

(End of provision)
(R 7-2003.23(c) 1968 JUN)

52.247-57 Transportation Transit Privilege Credits.

As prescribed in 47.305-13(b)(4), insert the following clause in solicitations and contracts when supplies are of such a nature, or when it is the custom of the trade, that offerors may have potential transit credits available and the Government may reduce transportation costs through the use of transit credits:

TRANSPORTATION TRANSIT PRIVILEGE CREDITS (APR 1984)

(a) If the offeror has established with regulated common carriers transit privileges that can be applied to the supplies when shipped from the original source, the offeror is invited to propose to use these credits for shipping the supplies to the designated Government destinations. The offeror will ship these supplies under commercial bills of lading, paying all remaining transportation charges connected with the shipment, subject to reimbursement by the Government in an amount equal to the remaining charges but not exceeding the amount quoted by the offeror.

(b) After loading on the carrier's equipment and acceptance by the carrier, these shipments under paid commercial bills of lading will move for the account of and at the risk of the Government (unless, pursuant to the Changes clause, the office administering the contract directs use of Government bills of lading).

(c) The amount quoted below by the offeror represents the transportation costs in cents per 100 pounds (freight rate) for full carload/truckload shipments of the supplies from offeror's original source, via offeror's transit plant or point, to the Government destination(s) including the carrier's transit privilege charge, less the applicable transit credit (i.e., the amount (rate) initially paid to the carrier for shipment from original source to offeror's transit plant or point).

(d) The rate per CWT quoted will be used by the Government to evaluate the offered f.o.b. origin price unless a lower rate is applicable on the date of bid opening (or closing date specified for receipt of offers). To have the offer evaluated on this basis, the offeror must insert below the remaining transportation charges that the offeror agrees to pay, including any transit charges, subject to reimbursement by the Government, as explained in this clause, to destinations listed in the Schedule as follows:

RATE PER CWT IN CENTS.....
TO DESTINATION.....

(End of clause)
(R 7-2003.18 1968 JUN)

52.247-58 Loading, Blocking, and Bracing of Freight Car Shipments.

As prescribed in 47.305-15(a)(2), insert the following clause in solicitations and contracts when supplies may be shipped in carload lots by rail:

LOADING, BLOCKING, AND BRACING OF FREIGHT CAR SHIPMENTS (APR 1984)

(a) Upon receipt of shipping instructions, as provided in this contract, the supplies to be included in any carload shipment by rail shall be loaded, blocked, and braced by the Contractor in accordance with the standards published by the Association of American Railroads and effective at the time of shipment.

(b) Shipments, for which the Association of American Railroads has published no such standards, shall be loaded, blocked, and braced in accordance with standards established by the shipper as evidenced by written acceptance of an authorized representative of the carrier.

(c) The Contractor shall be liable for payment of any damage to any supplies caused by the failure to load, block, and brace in accordance with acceptable standards set forth herein.

(d) A copy of the appropriate pamphlet of the Association of American Railroads may be obtained from that Association.

(End of clause)
(R 7-104.73 1975 OCT)

52.247-59 F.o.b. Origin—Carload and Truckload Shipments.

As prescribed in 47.305-16(a), insert the following clause in solicitations and contracts when it is contemplated that they may result in f.o.b. origin contracts with shipments in carloads or truckloads. This will facilitate realistic freight cost evaluations of offers and ensure that contractors produce economical shipments of agreed size.

F.O.B. ORIGIN—CARLOAD AND TRUCKLOAD SHIPMENTS (APR 1984)

(a) The Contractor agrees that shipment shall be made in carload or truckload lots when the quantity to be delivered to any one destination in any delivery period pursuant to the contract schedule of deliveries is sufficient to constitute a carload or truckload shipment, except as may otherwise be permitted or directed, in writing, by the Contracting Officer.

(b) For evaluation purposes, the agreed weight of a carload or truckload shall be the highest applicable minimum weight that will result in the lowest freight rate (or per car charge) on file or published in common carrier tariffs or tenders as of the date of bid opening (or the closing date specified for receipt of proposals).

(c) For purposes of actual delivery, the agreed weight of a carload or truckload will be the highest applicable minimum weight that will result in the lowest possible freight rate (or per car charge) on file or published as of date of shipment.

(d) If the total weight of any scheduled quantity to a destination is less than the highest carload/truckload minimum weight used for evaluation of offers, the Contractor agrees to ship such scheduled quantity in one shipment.

(e) The Contractor shall be liable to the Government for any increased costs to the Government resulting from failure to comply with the above requirements.

(End of clause)
(R 7-2003.24(b) 1968 JUN)

52.247-60 Guaranteed Maximum Shipping Weights and Dimensions.

As prescribed in 47.305-16(b)(1), insert the following clause in solicitations and contracts when maximum shipping weights and dimensions of the supplies are required to evaluate offers as to transportation costs:

GUARANTEED MAXIMUM SHIPPING WEIGHTS AND DIMENSIONS (APR 1984)

(a) Each offer will be evaluated to the destination specified by adding to the f.o.b. origin price all transportation costs to said destination. The guaranteed maximum shipping weights and dimensions of the supplies are required for determination of transportation costs. The offeror is requested to state weights and dimensions as part of the offer. If separate containers are to be banded and/or skidded into a single unit, details must be described. If delivered supplies exceed the guaranteed maximum shipping weights or dimensions, the contract price shall be reduced by an amount equal to the difference between the transportation costs computed for evaluation purposes based on offeror's guaranteed maximum shipping weights or dimensions and the transportation costs that should have been used for offer evaluation purposes based on correct shipping data.

(b) If the offeror fails to state guaranteed weights and dimensions, the offer will be rejected.

(End of clause)
(R 7-2003.16)
(R 1-19.202-3)

Alternate I (APR 1984). When the contracting officer determines that offers not containing guaranteed maximum weights and dimensions will be considered, delete paragraph (b) from the basic clause and substitute the following paragraph (b):

(b) If the offeror fails to state guaranteed maximum shipping weights and dimensions for the supplies as requested, the Government will use the estimated weights and dimensions, below, for evaluation; and the Contractor agrees this will be the basis for any reduction in contract prices as provided in this clause. The Government's estimated weights (and dimensions, if applicable) are as follows:.....

.....

(R 7-2003.16)

52.247-61 F.o.b. Origin—Minimum Size of Shipments.

As prescribed in 47.305-16(c), insert the following clause in solicitations and contracts when volume rates may apply:

F.O.B. ORIGIN—MINIMUM SIZE OF SHIPMENTS (APR 1984)

The Contractor agrees that shipment will be made in carload and truckload lots when the quantity to be delivered to any one destination in any delivery period pursuant to the contract schedule of deliveries is sufficient to constitute a carload or truckload shipment, except as may otherwise be permitted or directed in writing by the Contracting Officer. The agreed weight of a carload or truckload will be the highest applicable minimum weight which will result in the lowest freight rate (or per car charge) on file or published in common carrier tariffs or tenders as of date of shipment. In the event the total weight of any scheduled quantity to a destination is less than the highest carload/truckload minimum weight, the Contractor agrees to ship such scheduled quantity in one shipment. The Contractor shall be liable to the Government for any increased costs to the Government resulting from failure to comply with the above requirements. This liability shall not attach if supplies are outsized or of such nature that they cannot be loaded at the highest minimum weight bracket.

(End of clause)
(R 7-104.72 1968 JUN)
(R 1-19.202-4(b))

52.247-62 Specific Quantities Unknown.

As prescribed in 47.305-16(d)(2), insert the following clause in solicitations and contracts when total requirements and destinations to which shipments will be made are known, but the specific quantity to be shipped to each destination cannot be predetermined. This clause protects the interests of both the Government and the contractor during the course of the performance of the contract.

SPECIFIC QUANTITIES UNKNOWN (APR 1984)

(a) For the purpose of evaluating "f.o.b. destination" offers, the Government estimates that the quantity specified will be shipped to the destinations indicated:

Estimated quantity	Destination
.....	.....
.....	.....
.....	.....

(b) If the quantity shipped to each destination varies from the quantity estimated, and if the variation results in a change in the transportation costs, appropriate adjustment shall be made.

(End of clause)
(R 1-19.202-7(b)(1)(iii))

52.247-63 Preference for U.S.-Flag Air Carriers.

As prescribed in 47.405, insert the following clause in solicitations and contracts whenever it is possible that U.S. Government-financed international air transportation of personnel (and their personal effects) or property will be required in the performance of the contract. This clause does not apply to small purchases made under Part 13.

PREFERENCE FOR U.S.-FLAG AIR CARRIERS (APR 1984)

(a) "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) The Contractor agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a certification on vouchers involving such transportation essentially as follows:

CERTIFICATION OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

I hereby certify that international air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [*State reasons*]: .....

.....

(End of certification)

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

(End of clause)
(R 7-104.95 1979 NOV)
(R 1-1.323-2)

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels.

As prescribed in 47.507(a), insert the following clause in solicitations and contracts that may involve ocean transportation of supplies subject to the Cargo Preference Act of 1954. (For application of the Cargo Preference Act of 1954, see 47.502(a)(3), 47.503(a), and 47.504.)

PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (APR 1984)

(a) The Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—

(2) Acquired for a U.S. Government agency account;

(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c) (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer and (ii) the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590. Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

(A) Sponsoring U.S. Government agency.

(B) Name of vessel.
(C) Vessel flag of registry.
(D) Date of loading.
(E) Port of loading.
(F) Port of final discharge.
(G) Description of commodity.
(H) Gross weight in pounds and cubic feet if available.
(I) Total ocean freight revenue in U.S. dollars.

(d) Except for small purchases as described in 48 CFR 13, the Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.

(e) The requirement in paragraph (a) does not apply to—

(1) Small purchases as defined in 48 CFR 13;

(2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;

(3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and

(4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, Phone: 202-426-4610.

(End of clause)
(R 1-19.108-2(b))

Alternate I (APR 1984). If an applicable statute requires, or if it has been determined under agency procedures, that supplies to be furnished under contracts shall be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.507(b)), delete paragraphs (a) and (b) from the clause and substitute for them the following paragraphs (a) and (b):

(a) Except as provided in paragraph (b) below, the Contractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this contract.

(b) If such vessels are not available for timely shipment at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels, the Contractor shall notify the Contracting Officer and request (1) authorization to ship in foreign-flag vessels or (2) designation of available U.S.-flag vessels. If the Contractor is authorized in writing by the Contracting Officer to ship the supplies in foreign-flag vessels, the contract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and in foreign-flag vessels.

(R 7-104.19, Clause paragraph (c) 1979 MAR)

Alternate II (APR 1984). If an applicable statute requires, or if it has been determined under agency procedures, that supplies, materials, or equipment to be shipped under construction contracts shall be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.507(c)), delete paragraphs (a) and (b) from the clause and substitute for them the following paragraphs (a) and (b):

(a) When ocean transportation is required to bring supplies, materials, or equipment to the construction site from the United States either for use in performance of, or for incorporation in, the work called for by this contract, the Contractor shall use privately owned U.S.-flag commercial vessels to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(b) The Contractor shall not make any shipment exceeding 10 measurement tons (400 cubic feet) by vessels other than privately owned U.S.-flag commercial vessels without (1) notifying the Contracting Officer that U.S.-flag commercial vessels are not available at rates that are fair and reasonable for such vessels and (2) obtaining permission to ship in other vessels. If permission is granted, the contract price shall be equitably adjusted to reflect the difference in cost.

(R 7-603.41 1979 JUNE)

52.248-1 Value Engineering.

As prescribed in 48.201, insert the following clause in supply or service contracts to provide a value engineering incentive under the conditions specified in 48.201. In solicitations and contracts for items requiring an extended period for production (e.g., ship construction, major system acquisition), if agency procedures prescribe sharing of future contract savings on all units to be delivered under contracts awarded during the sharing period, the contracting officer shall modify subdivision (i)(3)(i) and the first sentence under subparagraph (3) of the definition of acquisition savings by substituting "under contracts awarded during the sharing period" for "during the sharing period." For engineering-development and low-rate-initial-production solicitations and contracts, the contracting officer shall modify subdivision (i)(3)(i) and the first sentence under subparagraph (3) of the definition of acquisition savings by substituting for "the number of future contract units scheduled for delivery during the sharing period," "a number equal to the quantity required over the highest 36 consecutive months of planned production, based on planning or production documentation at the time the VECP is accepted."

VALUE ENGINEERING (APR 1984)

(a) *General.* The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any net acquisition savings realized from accepted VECP's, in accordance with the incentive sharing rates in paragraph (f) below.

(b) *Definitions.* "Acquisition savings," as used in this clause, means savings resulting from the application of a VECP to contracts awarded by the same contracting office or its successor (and by other contracting offices if included in an extended sharing base specified in the Schedule) for essentially the same unit. Acquisition savings include—

(1) Instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the Contractor's allowable development and implementation costs;

(2) Concurrent contract savings, which are measurable net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and

(3) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units scheduled for delivery during the sharing period. If this contract is a multiyear contract, future contract savings include savings on all quantities funded after VECP acceptance.

"Collateral costs," as used in this clause, means agency cost of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contracting office" includes any contracting office that the acquisition is transferred to, such as another branch of the agency or another agency's office that is performing a joint acquisition action.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Future unit cost reduction," as used in this clause, means the instant unit cost reduction adjusted as the Contracting Officer considers necessary for projected learning or changes in quantity during the sharing period. It is calculated at the time the VECP is accepted and applies either (1) throughout the sharing period, unless the Contracting Officer decides that recalculation is necessary because conditions are significantly different from those previously anticipated or (2) to the calculation of a lump-sum payment, which cannot later be revised.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing

the VECP or any increase in this contract's cost or price resulting from negative instant contract savings.

"Instant contract," as used in this clause, means this contract, under which the VECP is submitted. It does not include increases in quantities after acceptance of the VECP that are due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, the term does not include quantities funded after VECP acceptance. If this contract is a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

"Instant unit cost reduction" means the amount of the decrease in unit cost of performance (without deducting any Contractor's development or implementation costs) resulting from using the VECP on this, the instant contract. If this is a service contract, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on this contract, multiplied by the appropriate contract labor rate.

"Negative instant contract savings" means the increase in the cost or price of this contract when the acceptance of a VECP results in an excess of the Contractor's allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

"Net acquisition savings" means total acquisition savings, including instant, concurrent, and future contract savings, less Government costs.

"Sharing base," as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP or, if the sharing base has been extended under paragraph 48.102(e) of the Federal Acquisition Regulation (48 CFR Chapter 1), the number of affected end items on contracts of contracting offices included in the extended base specified in the Schedule.

"Sharing period," as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending at the later of (1) 3 years after the first unit affected by the VECP is accepted or (2) the last scheduled delivery date of an item affected by the VECP under this contract's delivery schedule in effect at the time the VECP is accepted.

"Unit," as used in this clause, means the item or task to which the Contracting Officer and the Contractor agree the VECP applies.

"Value engineering change proposal (VECP)" means a proposal that—

(1) Requires a change to this, the instant contract, to implement; and

(2) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics; *provided*, that it does not involve a change—

(i) In deliverable end item quantities only;

(ii) In research and development (R&D) end items or R&D test quantities that is due solely to results of previous testing under this contract; or

(iii) To the contract type only.

(c) *VECP preparation.* As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (8) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, the effect of the change on the end item's performance, and any pertinent objective test data.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) Identification of the unit to which the VECP applies.

(4) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under the Subcontracts paragraph of this clause, below.

(5) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(6) A prediction of any effects the proposed change would have on collateral costs to the agency.

(7) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(8) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) *Submission.* The Contractor shall submit VECP's to the Contracting Officer, unless this contract states otherwise. If this contract is administered by other than the contracting office, the Contractor shall submit a copy of the VECP simultaneously to the Contracting Officer and to the Administrative Contracting Officer.

(e) *Government action.* (1) The Contracting Officer shall notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer shall notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause and made either before or within a reasonable time after contract performance is completed. Until such a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The Contracting Officer's decision to accept or reject all or part of any VECP and the decision as to which of the sharing rates applies shall be final and not subject to the Disputes clause or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

(f) *Sharing rates.* If a VECP is accepted, the Contractor shall share in net acquisition savings according to the percentages shown in the table below. The percentage paid the Contractor depends upon (1) this contract's type (fixed-price, incentive, or cost-reimbursement), (2) the sharing arrangement specified in paragraph (a) above (incentive, program requirement, or a combination as delineated in the Schedule), and (3) the source of the savings (the instant contract, or concurrent and future contracts), as follows:

CONTRACTOR'S SHARE OF NET ACQUISITION SAVINGS

(figures in percent)

Contract Type	Sharing Arrangement			
	Incentive (voluntary)		Program requirement (mandatory)	
	Instant contract rate	Concurrent and future contract rate	Instant contract rate	Concurrent and future contract rate
Fixed-price (other than incentive)	50	50	25	25
Incentive (fixed-price or cost)	*	50	*	25
Cost-reimbursement (other than incentive)**	25	25	15	15

*Same sharing arrangement as the contract's profit or fee adjustment formula.

**Includes cost-plus-award-fee contracts.

(g) *Calculating net acquisition savings.* (1) Acquisition savings are realized when (i) the cost or price is reduced on the instant contract, (ii) reductions are negotiated in concurrent contracts, (iii) future contracts are awarded, or (iv) agreement is reached on a lump-sum payment for future contract savings (see subparagraph (i)(4) below). Net acquisition savings are first realized, and the Contractor shall be paid a share, when Government costs and any negative instant contract savings have been fully offset against acquisition savings.

(2) Except in incentive contracts, Government costs and any price or cost increases resulting from negative instant contract savings shall be offset against acquisition savings each time such savings are realized until they are fully offset. Then, the Contractor's share is calculated by

multiplying net acquisition savings by the appropriate Contractor's percentage sharing rate (see paragraph (f) above). Additional Contractor shares of net acquisition savings shall be paid to the Contractor at the time realized.

(3) If this is an incentive contract, recovery of Government costs on the instant contract shall be deferred and offset against concurrent and future contract savings. The Contractor shall share through the contract incentive structure in savings on the instant contract items affected. Any negative instant contract savings shall be added to the target cost or to the target price and ceiling price, and the amount shall be offset against concurrent and future contract savings.

(4) If the Government does not receive and accept all items on which it paid the Contractor's share, the Contractor shall reimburse the Government for the proportionate share of these payments.

(h) *Contract adjustment.* The modification accepting the VECP (or a subsequent modification issued as soon as possible after any negotiations are completed) shall—

(1) Reduce the contract price or estimated cost by the amount of instant contract savings, unless this is an incentive contract;

(2) When the amount of instant contract savings is negative, increase the contract price, target price and ceiling price, target cost, or estimated cost by that amount;

(3) Specify the Contractor's dollar share per unit on future contracts, or provide the lump-sum payment;

(4) Specify the amount of any Government costs or negative instant contract savings to be offset in determining net acquisition savings realized from concurrent or future contract savings; and

(5) Provide the Contractor's share of any net acquisition savings under the instant contract in accordance with the following:

(i) Fixed-price contracts—add to contract price.

(ii) Cost-reimbursement contracts—add to contract fee.

(i) *Concurrent and future contract savings.* (1) Payments of the Contractor's share of concurrent and future contract savings shall be made by a modification to the instant contract in accordance with subparagraph (h)(5) above. For incentive contracts, shares shall be added as a separate firm-fixed-price line item on the instant contract. The Contractor shall maintain records adequate to identify the first delivered unit for 3 years after final payment under this contract.

(2) The Contracting Officer shall calculate the Contractor's share of concurrent contract savings by (i) subtracting from the reduction in price negotiated on the concurrent contract any Government costs or negative instant contract savings not yet offset and (ii) multiplying the result by the Contractor's sharing rate.

(3) The Contracting Officer shall calculate the Contractor's share of future contract savings by (i) multiplying the future unit cost reduction by the number of future contract units scheduled for delivery during the sharing period, (ii) subtracting any Government costs or negative instant contract savings not yet offset, and (iii) multiplying the result by the Contractor's sharing rate.

(4) When the Government wishes and the Contractor agrees, the Contractor's share of future contract savings may be paid in a single lump sum rather than in a series of payments over time as future contracts are awarded. Under this alternate procedure, the future contract savings may be calculated when the VECP is accepted, on the basis of the Contracting Officer's forecast of the number of units that will be delivered during the sharing period. The Contractor's share shall be included in a modification to this contract (see subparagraph (h)(3) above) and shall not be subject to subsequent adjustment.

(5) Alternate no-cost settlement method. When, in accordance with subsection 48.104-3 of the Federal Acquisition Regulation, the Government and the Contractor mutually agree to use the no-cost settlement method, the following applies:

(i) The Contractor will keep all the savings on the instant contract and on its concurrent contracts only.

(ii) The Government will keep all the savings resulting from concurrent contracts placed on other sources, savings from all future contracts, and all collateral savings.

(j) *Collateral savings.* If a VECP is accepted, the instant contract amount shall be increased, as specified in subparagraph (h)(5) above, by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings shall not exceed (1) the contract's firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted, or (2) $100,000, whichever is greater. The Contracting Officer shall be the sole determiner of the amount of collateral savings, and that amount shall not be subject to the Disputes clause or otherwise subject to litigation under 41 U.S.C. 601-613.

(k) *Relationship to other incentives.* Only those benefits of an accepted VECP not rewardable under performance, design-to-cost (production unit cost, operating and support costs, reliability and maintainability), or similar incentives shall be rewarded under this clause. However, the targets of such incentives affected by the VECP shall not be adjusted because of VECP acceptance. If this contract specifies targets but provides no incentive to surpass them, the value engineering sharing shall apply only to the amount of achievement better than target.

(l) *Subcontracts.* The Contractor shall include an appropriate value engineering clause in any subcontract of $100,000 or more and may include one in subcontracts of lesser value. In calculating any adjustment in this contract's price for instant contract savings (or negative instant contract savings), the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs, and any value engineering incentive payments to a subcontractor, clearly resulting from a VECP accepted by the Government under this contract. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; *provided*, that the payments shall not reduce the Government's share of concurrent or future contract savings or collateral savings.

(m) *Data.* The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value Engineering clause of contract....., shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Goverment's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

(End of clause)
(R 7-104.44(a)(1) 1977 SEP)
(R 7-104.44(a)(2) 1976 JUL)
(R 7-104.44(a)(3) 1976 JUL)
(R 7-104.44(a)(4) 1976 JUL)
(R 7-104.44(a)(5) 1976 JUL)
(R 7-104.44(a)(6)(i)(A) 1976 FEB)
(R 7-104.44(a)(6)(i)(B) 1976 FEB)
(R 7-104.44(a)(6)(i)(D) 1976 FEB)
(R 7-104.44(a)(6)(ii)(A) 1976 FEB)
(R 7-104.44(a)(6)(ii)(B) 1976 FEB)
(R 7-104.44(a)(6)(ii)(D) 1976 FEB)
(R 7-204.32(b) 1976 JUL)
(R 7-204.32(c) 1976 JUL)
(R 7-204.32(d)(i) 1976 FEB)
(R 7-204.32(d)(ii) 1976 FEB)
(R 7-204.32(d)(iii) 1976 JUL)
(R 7-204.32(d)(iv) 1976 FEB)
(R 7-1903.51 1976 JUL)

Alternate I (APR 1984). If the contracting officer selects a mandatory value engineering program requirement, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) *General.* The Contractor shall (1) engage in a value engineering program, and submit value engineering progress reports, as specified in the Schedule and (2) submit to the Contracting Officer any resulting value engineering change proposals (VECP's). In addition to being paid as the Schedule specifies for this mandatory program, the Contractor shall share in any net acquisition savings realized from accepted VECP's, in accordance with the program requirement sharing rates in paragraph (f) below.

(R 7-104.44(b) 1974 APR)

Alternate II (APR 1984). If the contracting officer selects *both* a value engineering incentive and mandatory value engineering program requirement,

substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) *General.* For those contract line items designated in the Schedule as subject to the value engineering program requirement, the Contractor shall (1) engage in a value engineering program, and submit value engineering progress reports, as specified in the Schedule and (2) submit to the Contracting Officer any resulting VECP's. In addition to being paid as the Schedule specifies for this mandatory program, the Contractor shall share in any net acquisition savings realized from VECP's accepted under the program, in accordance with the program requirement sharing rates in paragraph (f) below. For remaining areas of the contract, the Contractor is encouraged to develop, prepare, and submit VECP's voluntarily; for VECP's accepted under these remaining areas, the incentive sharing rates apply.

(NM)

Alternate III (APR 1984). When the head of the contracting activity determines that the cost of calculating and tracking collateral savings will exceed the benefits to be derived in a contract calling for a value engineering incentive, delete paragraph (j) from the basic clause and redesignate the remaining paragraphs accordingly.

52.248-2 Value Engineering Program—Architect-Engineer.

As prescribed in 48.201(f), insert the following clause in solicitations and contracts for architect-engineer services if a mandatory value engineering program requirement is desired:

VALUE ENGINEERING PROGRAM—ARCHITECT-ENGINEER (APR 1984)

(a) *General.* The Contractor shall (1) engage in a value engineering program, and submit value engineering progress reports, as specified in the Schedule and (2) submit to the Contracting Officer any resulting value engineering change proposals (VECP's). The Contractor shall be paid as the Schedule specifies for this mandatory program.

(b) *Definitions.* "Collateral costs," as used in this clause, means agency cost of operation, maintenance, logistic support, or Government-furnished property.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP.

"Value engineering change proposal (VECP)" means a proposal that—

(1) Requires a change to this, the instant contract, to implement; and

(2) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics; *provided*, that it does not involve a change—

(i) In deliverable end item quantities only; or

(ii) To the contract type only.

(c) *VECP preparation.* As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (7) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, the effect of the change on the end item's performance, and any pertinent objective test data.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs.

(4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(5) A prediction of any effects the proposed change would have on collateral costs to the agency.

(6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) *Submission.* The Contractor shall submit VECP's to the Contracting Officer, unless this contract states otherwise. If this contract is administered by other than the contracting office, the Contractor shall submit a copy of the VECP simultaneously to the Contracting Officer and to the Administrative Contracting Officer.

(e) *Government action.* (1) The Contracting Officer shall notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer shall notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer shall notify the contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted in whole or in part by the Contracting Officer's award of a modification to this contract citing this clause and made either before or within a reasonable time after contract performance is completed. Until such a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The Contracting Officer's decision to accept or reject all or part of any VECP shall be final and not subject to the Disputes clause or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

(f) *Data.* The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value Engineering Program—Architect-Engineer clause of contract....., shall not be disclosed in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

(End of clause)

(NM)

52.248-3 Value Engineering—Construction.

As prescribed in 48.202, insert the following clause in construction solicitations and contracts of $100,000 or more, except incentive contracts. The contracting officer may include the clause in contracts of lesser value if the contracting officer sees a potential for significant savings. The contracting officer shall not include the clause in incentive-type construction contracts.

VALUE ENGINEERING—CONSTRUCTION (APR 1984)

(a) *General.* The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from

accepted VECP's, in accordance with paragraph (f) below.

(b) *Definitions.* "Collateral costs," as used in this clause, means agency costs of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exlcusive of acquisition savings, whether or not the acquisition cost changes.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

"Instant contract savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development and implementation costs (see paragraph (h) below).

"Value engineering change proposal (VECP)" means a proposal that—

(1) Requires a change to this, the instant contract, to implement; and

(2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; *provided*, that it does not involve a change—

(i) In deliverable end item quantities only; or

(ii) To the contract type only.

(c) *VECP preparation.* As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (7) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) below.

(4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(5) A prediction of any effects the proposed change would have on collateral costs to the agency.

(6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) *Submission.* The Contractor shall submit VECP's to the Resident Engineer at the worksite, with a copy to the Contracting Officer.

(e) *Government action.* (1) The Contracting Officer shall notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer shall notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The Contracting Officer's decision to accept or reject all or part of any VECP shall be final and not subject to the Disputes clause or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

(f) *Sharing.* (1) *Rates.* The Contractor's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by (i) 55 percent for fixed-price contracts or (ii) 25 percent for cost-reimbursement contracts.

(2) *Payment.* Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to—

(i) Accept the VECP;

(ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and

(iii) Provide the Contractor's share of savings by adding the amount calculated under subparagraph (1) above to the contract price or fee.

(g) *Collateral savings.* If a VECP is accepted, the instant contract amount shall be increased by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings shall not exceed (1) the contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or (2) $100,000, whichever is greater. The Contracting Officer shall be the sole determiner of the amount of collateral savings, and that amount shall not be subject to the Disputes clause or otherwise subject to litigation under 41 U.S.C. 601-613.

(h) *Subcontracts.* The Contractor shall include an appropriate value engineering clause in any subcontract of $50,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph (f) above, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Government under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; *provided*, that these payments shall not reduce the Government's share of the savings resulting from the VECP.

(i) *Data.* The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value Engineering—Construction clause of contract....., shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

(End of clause)
(R 7-602.50 1977 AUG)

Alternate I (APR 1984). When the head of the contracting activity determines that the cost of calculating and tracking collateral savings will

exceed the benefits to be derived in a construction contract, delete paragraph (g) from the basic clause and redesignate the remaining paragraphs accordingly.

52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form).

As prescribed in 49.502(a)(1), insert the following clause in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to be $100,000 or less, except (a) if use of the clause at 52.249-4, Termination for Convenience of the Government (Services) (Short Form) is appropriate (b), in contracts for research and development work with an educational or nonprofit institution on a no-profit basis, (c) in contracts for architect-engineer services, or (d) if one of the clauses prescribed or cited at 49.505(a), (b), or (e), is appropriate:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SHORT FORM) (APR 1984)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the rights, duties, and obligations of the parties, including compensation to the Contractor, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)
(R 1-8.705-1)
(R 1-8.705-2)
(R 7-103.21(a) 1968 FEB)
(R 7-602.29(b) 1965 JAN)

Alternate I (APR 1984). If the contract is for dismantling, demolition, or removal of improvements, designate the basic clause as paragraph (a) and add the following paragraph (b):

(b) Upon receipt of the termination notice, if title to property is vested in the Contractor under this contract, it shall revest in the Government regardless of any other clause of the contract, except for property that the Contractor (a) disposed of by bona fide sale or (b) removed from the site.

(R 7-2101.8(b) 1976 OCT)

52.249-2 Termination for Convenience of the Government (Fixed-Price).

As prescribed in 49.502(b)(1)(i), insert the following clause in solicitations and contracts when a fixed-price contract is contemplated, and the contract amount is expected to be over $100,000, except in contracts for (a) dismantling and demolition, (b) research and development work with an educational or nonprofit institution on a no-profit basis, or (c) architect-engineer services. It shall not be used if the clause at 52.249-4, Termination for Convenience of the Government (Services) (Short Form), is appropriate (see 49.502(c)), or one of the clauses prescribed or cited at 49.505(a), (b), or (e), is appropriate.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (APR 1984)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; *provided*, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(e) Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total contract price as reduced by (a) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(f) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (e) above:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of—

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto,

but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) above;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and

(iii) A sum, as profit on subdivision (i) above, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or dispostion of the termination inventory.

(g) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(h) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(i) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (d), (f), or (k), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (k), and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (d), (f), or (k), the Government shall pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(j) In arriving at the amount due the Contractor under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(k) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(l) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(m) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

(R 1-8.701)

(R 7-103.21(b) 1974 OCT)

Alternate I (APR 1984). If the contract is for construction, substitute the following paragraph (f) for paragraph (f) of the basic clause:

(f) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (e) above:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and

(iii) A sum, as profit on (i) above, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(R 1-8.703)

(R 7-602.29(a) 1974 APR)

Alternate II (APR 1984). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the Contracting Officer determines that the requirement to pay interest on excess partial payments is inappropriate, delete subparagraph (a)(2) of the basic clause.

(R 8-701(c))

Alternate III (APR 1984). If the contract is for construction and with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, substitute the following paragraph (f) for paragraph (f) of the basic clause. Subparagraph (l)(2) may be deleted from the basic clause if the Contracting Officer determines that the requirement to pay interest on excess partial payments is inappropriate.

(f) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (e) above:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and

(iii) A sum, as profit on (i) above, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation,

in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(R 1-8.703)
(R 7-602.29(a) 1974 APR)
(R 8-701(c))

52.249-3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).

As prescribed in 49.502(b)(2), insert the following clause in solicitations and contracts for dismantling, demolition, or removal of improvements when a fixed-price contract is contemplated and the contract amount is expected to be over $100,000:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS) (APR 1984)

(a) The Government may terminate performance of work under this contract, in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date. Upon receipt of the notice, if title to property is vested in the Contractor under this contract, it shall revest in the Government regardless of any other clause of this contract, except for property that the Contractor disposed of by bona fide sale or removed from the site.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract has been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; *provided, however,* that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(e) Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of settlement costs, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(f) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (e) above:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract, if not included in subdivision (i) above; and

(iii) A sum, as profit on subdivision (i) above, determined by the Contracting Officer under section 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the amount of the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Preservation and protection of property under subparagraph (b)(8) above.

(g) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(h) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall

govern all costs claimed, agreed to, or determined under this clause.

(i) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (d), (f), or (k), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (k) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (d), (f), or (k), the Government shall pay the Contractor (1) the amount determined by the Contracting Officer, if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(j) In arriving at the amount due the Contractor under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(k) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(l) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against cost incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(m) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)
(R 7-2101.8(a) 1976 OCT)

Alternate I (APR 1984). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, delete subparagraph (l)(2) from the basic clause.

(R 7-2101.8(a) 1976 OCT)

52.249-4 Termination for Convenience of the Government (Services) (Short Form).

As prescribed in 49.502(c), insert the following clause in solicitations and contracts for services, regardless of value, when a fixed-price contract is contemplated and the Contracting Officer determines that because of the kind of services required, the successful offeror will not incur substantial charges in preparation for and in carrying out the contract, and would, if terminated for the convenience of the Government, limit termination settlement charges to services rendered before the date of termination:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (SERVICES) (SHORT FORM) (APR 1984)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Government shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

(End of clause)
(R 7-1902.16 1968 FEB)
(R 1-8.705-1)

52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).

As prescribed in 49.502(d), insert the following clause in solicitations and contracts when either a fixed-price or cost-reimbursement contract is contemplated for research and development work with an educational or nonprofit institution on a no-profit or no-fee basis:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS) (APR 1984)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all applicable subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government any information and items that, if the contract had been completed, would have been required to be furnished, including (i) materials or equipment produced, in process, or acquired for the work terminated and (ii) completed or partially completed plans, drawings, and information.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, termination inventory other than that retained by the Government under subparagraph (6) above; *provided, however,* that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly but no later than 1 year from the effective date of

termination unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. If the Contractor fails to submit the termination settlement proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(d) Subject to paragraph (c) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Contractor and any reasonable loss on outstanding commitments for personal services that the Contractor is unable to cancel; *provided*, that the Contractor exercised reasonable diligence in diverting such commitments to other operations. The contract shall be amended and the Contractor paid the agreed amount.

(e) The cost principles and procedures in Subpart 31.3 of the Federal Acquisition Regulation (FAR), in effect on the date of the contract, shall govern all costs claimed, agreed to, or determined under this clause; however, if the Contractor is not an educational institution, and is a nonprofit organization under Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Nonprofit Organizations," July 8, 1980, those cost principles shall apply; *provided*, that if the Contractor is a nonprofit institution listed in Attachment C of OMB Circular A-122, the cost principles at FAR 31.2 for commercial organizations shall apply to such contractor.

(f) The Government may, under the terms and conditions it prescribes, make partial payments against costs incurred by the Contractor for the terminated portion of this contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(g) The Contractor has the right of appeal as provided under the Disputes clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (c) and failed to request a time extension, there is no right of appeal.

(End of clause)
(R 1-8.704-1)
(R 7-302.10(b) 1973 APR)
(R 7-302.10(c) 1974 APR)

52.249-6 Termination (Cost-Reimbursement).

As prescribed in 49.503(a)(1), insert the following clause in solicitations and contracts when a cost-reimbursement contract is contemplated, except in contracts for architect-engineer services and for research and development with an educational or nonprofit institution on a no-fee basis:

TERMINATION (COST-REIMBURSEMENT) (APR 1984)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if—

(1) The Contracting Officer determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) above, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(g) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and part of those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (1) above.

(3) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the contract, determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under subparagraph (g)(4) above.

(h) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(i) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e) or (g) above or paragraph (k) below, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (e) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (e), (g) or (k), the Government shall pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(j) In arriving at the amount due the Contractor under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(k) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(l) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(m) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

(End of clause)
(R 1-8.702)
(R 7-203.10 1973 APR)

Alternate I (APR 1984). If the contract is for construction, substitute the following subparagraph (g)(4) for subparagraph (g)(4) of the basic clause:

(4) A portion of the fee payable under the contract determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination settlement proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the actual work in place is to the total work in place required by the contract.

(R 7-605.26 1974 APR)
(R 1-8.700-2(a)(3))

Alternate II (APR 1984). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, delete subparagraph (1)(2) from the basic clause.

(R 8-702(d))

Alternate III (APR 1984). If the contract is for construction with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, the following subparagraph (g)(4) shall be substituted for subparagraph (g)(4) of the basic clause. Subparagraph (l)(2) may be deleted from the basic clause if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate.

(4) A portion of the fee payable under the contract determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination settlement proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the actual work in place is to the total work in place required by the contract.

(R 7-605.26 1974 APR)
(R 1-8.700-2(a)(3))
(R 8-702(d))

Alternate IV (APR 1984). If the contract is a time-and-material or labor-hour contract, substitute the following paragraphs (g) and (k) for paragraphs (g) and (k) of the basic clause:

(g) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor and shall pay the amount determined as follows:

(1) If the termination is for the convenience of the Government, include—

(i) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the contractor;

(ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Contractor;

(iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue these expenses as rapidly as practicable;

(iv) If not included in (i), (ii), or (iii) above, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and

(v) The reasonable costs of settlement of the work terminated, including—

(A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(C) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.

(2) If the termination is for default of the Contractor, include the amounts computed under (1) above but omit—

(i) Any amount for preparation of the Contractor's termination settlement proposal; and

(ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Government.

(k) If the termination is partial, the Contractor may file with the Contracting Officer a proposal for an equitable adjustment of the price(s) for the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination, unless extended in writing by the Contracting Officer.

(R 7-901.4 1974 OCT)

Alternate V (APR 1984). If the contract is a time-and-material or labor-hour contract with an agency of the U.S. Government or with State, local or foreign governments or their agencies, substitute the following paragraphs (g) and (k) for paragraphs (g) and (k) of the basic clause. Subparagraph (l)(2) may be deleted from the basic clause if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate.

(g) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor and shall pay the amount determined as follows:

(1) If the termination is for the convenience of the Government, include—

(i) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the Contractor;

(ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Contractor;

(iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination, if they are reasonably incurred after the effective date with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue these expenses as rapidly as practicable;

(iv) If not included in (i), (ii), or (iii) above, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and

(v) The reasonable costs of settlement of the work terminated, including—

(A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(C) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.

(2) If the termination is for default of the Contractor, include the amounts computed under (1) above but omit—

(i) Any amount for preparation of the Contractor's termination settlement proposal; and

(ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Government.

(k) If the termination is partial, the Contractor may file with the Contracting Officer a proposal for an equitable adjustment of the price(s) for the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination, unless extended in writing by the Contracting Officer.

(R 7-901.4 1974 OCT)

52.249-7 Termination (Fixed-Price Architect-Engineer).

As prescribed in 49.503(b), insert the following clause in solicitations and contracts for architect-engineer services when a fixed-price contract is contemplated:

TERMINATION (FIXED-PRICE ARCHITECT-ENGINEER) (APR 1984)

(a) The Government may terminate this contract in whole or, from time to time, in part, for the Government's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

(b) If the termination is for the convenience of the Government, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

(c) If the termination is for failure of the Contractor to fulfill the contract obligations, the Government may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Government.

(d) If, after termination for failure to fulfill contract obligations, it is determined that the Contractor had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(e) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

(R 7-607.4 1972 APR)

52.249-8 Default (Fixed-Price Supply and Service).

As prescribed in 49.504(a)(1), insert the following clause in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The clause may also be used when the contract amount is not expected to exceed the small purchase limitation, if appropriate (e.g., if the acquisition involves items with a history of unsatisfactory quality).

DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984)

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)
(R 1-8.707)
(R 7-103.11 1959 AUG)

Alternate I (APR 1984). If the contract is for transportation or transportation-related services, delete paragraph (f) of the basic clause, redesignate the remaining paragraphs accordingly, and substitute the following paragraphs (a) and (e) for paragraphs (a) and (e) of the basic clause:

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

(i) Pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(e) If this contract is terminated while the Contractor has possession of Government goods, the Contractor shall, upon direction of the Contracting Officer, protect and preserve the goods until surrendered to the Government or its agent. The Contractor and Contracting Officer shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be a dispute under the Disputes clause.

(R 1-7.703-8)

52.249-9 Default (Fixed-Price Research and Development).

As prescribed in 49.504(b), insert the following clause in solicitations and contracts for research and development when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation, except those with educational or nonprofit institutions on a no-profit basis. This clause may also be used when the contract amount is not expected to exceed the small purchase limitation, if appropriate (e.g., if the contracting officer believes that key personnel essential to the work may be diverted to other programs).

DEFAULT (FIXED-PRICE RESEARCH AND DEVELOPMENT) (APR 1984)

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written Notice of Default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

(i) Perform the work under the contract within the time specified in this contract or any extension;

(ii) Prosecute the work so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) of this paragraph may be exercised if the Contractor does not cure such failure within 10 days (or more, if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, work similar to the work terminated, and the Contractor will be liable to the Government for any excess costs for the similar work. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule or other performance requirements.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed or partially completed work not previously delivered to, and accepted by, the Government and (2) other property, including contract rights, specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay the contract price, if separately stated, for completed work it has accepted and the amount agreed upon by the Contractor and the Contracting Officer for (1) completed work for which no separate price is stated, (2) partially completed work, (3) other property described above that it accepts, and (4) the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss from outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as

if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)
(R 1-8.710)
(R 7-302.9(a) 1969 AUG)

52.249-10 Default (Fixed-Price Construction).

As prescribed in 49.504(c)(1), insert the following clause in solicitations and contracts for construction when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The clause may also be used when the contract amount is not expected to exceed the small purchase limitation, if appropriate (e.g., if completion dates are essential).

DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if—

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Contractor in the performance of a contract with the Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

(d) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)
(R 1-8.709-1)
(R 7-602.5 1969 AUG)

Alternate I (APR 1984). If the contract is for dismantling, demolition, or removal of improvements, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) (1) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract, including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work or the part of the work that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work.

(2) If title to property is vested in the Contractor under this contract, it shall revest in the Government regardless of any other clause of this contract, except for property that the Contractor has disposed of by bona fide sale or removed from the site.

(3) The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(R 7-2101.7 1976 OCT)

Alternate II (APR 1984). If the contract is to be awarded during a period of national emergency, subparagraph (b)(1) below may be substituted for subparagraph (b)(1) of the basic clause:

(1) The delay in completing the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Contractor in the performance of a contract with the Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(R 7-602.5 1969 AUG)
(R 1-16.404(e))

Alternate III (APR 1984). If the contract is for dismantling, demolition, or removal of improvements and is to be awarded during a period of national emergency, substitute the following paragraph (a) for paragraph (a) of the basic clause. The following subparagraph (b)(1) may be substituted for subparagraph (b)(1) of the basic clause:

(a) (1) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract, including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work or the part of the work that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work.

(2) If title to property is vested in the Contractor under this contract, it shall revest in the Government regardless of any other clause of this contract, except for property that the Contractor has disposed of by bona fide sale or removed from the site.

(3) The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this this clause, if—

(1) The delay in completing the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Contractor in the performance of a contract with the Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(R 7-2101.7 1976 OCT)

52.249-11 Termination of Work (Consolidated Facilities or Facilities Acquisition).

As prescribed in 49.505(a), insert the following clause in consolidated facilities contracts and facilities acquisition contracts:

TERMINATION OF WORK (CONSOLIDATED FACILITIES OR FACILITIES ACQUISITION) (APR 1984)

(a) The Government may terminate performance of work under this contract in whole, or from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining any item of reimbursable cost under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or pay any termination settlement proposal arising out of those terminations.

(5) With the approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part under this contract; the approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; *provided, however,* that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit a list, to the Contracting Officer certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove these items or enter into an agreement for their storage. Within 15 days, the Government shall accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items or, if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay that amount.

(e) Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(f) If the Contractor and the Contracting Officer fail to agree on the whole amount of costs to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay the amount, determined as follows:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and part of those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract, if not included in subparagraph (1) above.

(3) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts; and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(g) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(h) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (d) or (f) above, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) above, and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (d) or (f) above, the Government shall pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(i) In arriving at the amount due the Contractor under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(j) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(k) Any related contract of the Contractor may be equitably adjusted if it provides for

such an adjustment and if it is affected by a Notice of Termination under this clause. The Government shall not be liable to the Contractor for damages or loss of profits because of any Notice of Termination issued under this clause.

(End of clause)
(R 7-702.22 1973 APR)

Alternate I (APR 1984). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, delete subparagraph (j)(2) from the basic clause.

(R 7-702.22 1973 APR)

52.249-12 Termination (Personal Services).

As prescribed in 49.505(b), insert the following clause in solicitations and contracts for personal services (see Part 37):

TERMINATION (PERSONAL SERVICES) (APR 1984)

The Government may terminate this contract at any time upon at least 15 days' written notice by the Contracting Officer to the Contractor. The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer.

(End of clause)
(R 7-503.7 1953 JAN)

52.249-13 Failure to Perform.

As prescribed in 49.505(c), insert the following clause in facilities contracts except facilities use contracts with nonprofit educational institutions:

FAILURE TO PERFORM (APR 1984)

(a) Subject to the Excusable Delays clause (if included in this contract), if the Contractor fails to perform this contract under its terms, the Contracting Officer shall give the Contractor written notice stating the failure. Thereafter, regardless of any other provision of this contract, the Contractor shall not be entitled to an equitable adjustment under either this contract or any related contract, to the extent the equitable adjustment arises from the Contractor's failure to perform or from any reasonable remedial action taken by the Contracting Officer based upon the failure.

(b) The failure of the Government to insist, in one or more instances, upon the performance of any term of this contract is not a waiver of the Government's right to future performance of such term, and the Contractor's obligation for future performance of such term shall continue in effect.

(c) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)
(R 7-702.27 1964 SEP)

52.249-14 Excusable Delays.

As prescribed in 49.505(d), insert the following clause in solicitations and contracts for supplies, services, construction, and research and development on a fee basis whenever a cost-reimbursement contract is contemplated. Also insert the clause in time-and-material contracts, labor-hour contracts, consolidated facilities contracts, and facilities acquisition contracts. When used in construction contracts, substitute the words "completion time" for "delivery schedule" in the last sentence of the clause. When used in facilities contracts, substitute the words "termination of work" for "termination" in the last sentence of the clause.

EXCUSABLE DELAYS (APR 1984)

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless—

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

(End of clause)
(R 7-203.11 1969 AUG)
(R 1-8.708)
(R 7-605.39)
(R 1-7.403-5)
(R 7-702.7)
(R 7-703.7)
(R 1-7.202-11)
(R 1-8.700-2(c))

52.250-1 Indemnification Under Public Law 85-804.

As prescribed in 50.403-3, insert the following clause in contracts whenever the approving official determines that the contractor shall be indemnified against unusually hazardous or nuclear risks (also see 50.403-2(c)):

INDEMNIFICATION UNDER PUBLIC LAW 85-804 (APR 1984)

(a) "Contractor's principal officials," as used in this clause, means directors, officers, managers, superintendents, or other representatives supervising or directing—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this contract.

(b) Under Public Law 85-804 (50 U.S.C 1431-1435) and Executive Order 10789, as amended, and regardless of any other provisions of this contract, the Government shall, subject to the limitations contained in the other paragraphs of this clause, indemnify the Contractor against—

(1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death; personal injury; or loss of, damage to, or loss of use of property;

(2) Loss of, damage to, or loss of use of Contractor property, excluding loss of profit; and

(3) Loss of, damage to, or loss of use of Government property, excluding loss of profit.

(c) This indemnification applies only to the extent that the claim, loss, or damage (1) arises out of or results from a risk defined in this contract as unusually hazardous or nuclear and (2) is not compensated for by insurance or otherwise. Any such claim, loss, or damage, to the extent that it is within the deductible amounts of the Contractor's insurance, is not covered under this clause. If insurance coverage or other financial protection in effect on the date the approving official authorizes use of this clause is reduced, the Government's liability under this clause shall not increase as a result.

(d) When the claim, loss, or damage is caused by willful misconduct or lack of good faith on the part of any of the Contractor's principal officials, the Contractor shall not be indemnified for—

(1) Government claims against the Contractor (other than those arising through subrogation); or

(2) Loss or damage affecting the Contractor's property.

(e) With the Contracting Officer's prior written approval, the Contractor may, in any subcontract under this contract, indemnify the subcontractor against any risk defined in this contract as unusually hazardous or nuclear. This indemnification shall provide, between the Contractor and the subcontractor, the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and Government settlement or defense of claims as this clause provides. The Contracting Officer may also approve indemnification of subcontractors at any lower tier, under the same terms and conditions. The Government shall indemnify the Contractor against liability to subcontractors incurred under subcontract provisions approved by the Contracting Officer.

(f) The rights and obligations of the parties under this clause shall survive this contract's termination, expiration, or completion. The Government shall make no payment under this clause unless the agency head determines that the amount is just and reasonable. The Government may pay the Contractor or subcontractors, or may directly pay parties to whom the Contractor or subcontractors may be liable.

(g) The Contractor shall—

(1) Promptly notify the Contracting Officer of any claim or action against, or any loss by, the Contractor or any subcontractors that may reasonably be expected to involve indemnification under this clause;

(2) Immediately furnish to the Government copies of all pertinent papers the Contractor receives;

(3) Furnish evidence or proof of any claim, loss, or damage covered by this clause in the manner and form the Government requires; and

(4) Comply with the Government's directions and execute any authorizations required in connection with settlement or defense of claims or actions.

(h) The Government may direct, control, or assist in settling or defending any claim or action that may involve indemnification under this clause.

(End of clause)
(R 7-303.62 1977 JAN)

Alternate I (APR 1984). In cost-reimbursement contracts, add the following paragraph (i) to the basic clause:

(i) The cost of insurance (including self-insurance programs) covering a risk defined in this contract as unusually hazardous or nuclear shall not be reimbursed except to the extent that the Contracting Officer has required or approved this insurance. The Government's obligations under this clause are—

(1) Excepted from the release required under this contract's clause relating to allowable cost; and

(2) Not affected by this contract's Limitation of Cost or Limitation of Funds clause.

(R 7-403.57 1974 APR)

52.251-1 Government Supply Sources.

As prescribed in 51.107, insert the following clause in solicitations and contracts when the contracting officer may authorize the contractor to acquire supplies or services from a Government supply source:

GOVERNMENT SUPPLY SOURCES (APR 1984)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be "Government-furnished property," as distinguished from "Government property." The provisions of the clause entitled "Government Property," except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

(End of clause)
(R 7-204.28, 1977 AUG)
(R 1-7.203-13)

Alternate I (APR 1984) If a facilities contract is contemplated, delete the last sentence from the basic clause.
(R 7-204.28, 1977 AUG)

52.251-2 Interagency Motor Pool Vehicles and Related Services.

As prescribed in 51.205, insert the following clause in solicitations and contracts when a cost-reimbursement contract is contemplated and the contracting officer may authorize the contractor to use interagency motor pool vehicles and related services:

INTERAGENCY MOTOR POOL VEHICLES AND RELATED SERVICES (APR 1984)

The Contracting Officer may issue the Contractor an authorization to obtain interagency motor pool vehicles and related services for use in the performance of this contract. The use, service, and maintenance of interagency motor pool vehicles and the use of related services by the Contractor shall be in accordance with 41 CFR 101-39.

(End of clause)
(AV 1-7.203-14)

52.252-1 Solicitation Provisions Incorporated by Reference.

As prescribed in 52.107(a), insert the following provision in solicitations in order to incorporate provisions by reference. List each of these provisions by number, title, and date.

SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (APR 1984)

This solicitation incorporates the following solicitation provisions 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.

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) SOLICITATION PROVISIONS

II. .....[*insert regulation name*](48 CFR CHAPTER.....) SOLICITATION PROVISIONS

(End of provision)
(R 7-001)

52.252-2 Clauses Incorporated by Reference.

As prescribed in 52.107(b), insert the following clause in solicitations and contracts in order to incorporate clauses by reference. List each of these clauses by number, title, and date.

CLAUSES INCORPORATED BY REFERENCE (APR 1984)

This contract incorporates the following 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.

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

II. .....[*insert regulation name*](48 CFR CHAPTER.....) CLAUSES

(End of clause)
(R 7-001)

52.252-3 Alterations in Solicitation.

As prescribed in 52.107(c), insert the following provision in solicitations in order to revise or supplement, as necessary, other parts of the solicitation that apply to the solicitation phase only, except for any provision authorized for use with a deviation. Include clear identification of what is being altered.

ALTERATIONS IN SOLICITATION (APR 1984)

Portions of this solicitation are altered as follows:

(End of provision)
(NM)

52.252-4 Alterations in Contract.

As prescribed in 52.107(d), insert the following clause in solicitations and contracts in order to revise or supplement, as necessary, other parts of the contract, or parts of the solicitation that apply after contract award, except for any clause authorized for use with a deviation. Include clear identification of what is being altered.

ALTERATIONS IN CONTRACT (APR 1984)

Portions of this contract are altered as follows:

(End of clause)
(R 7-105.1(a) 1949 JUL)

52.252-5 Authorized Deviations in Provisions.

As prescribed in 52.107(e), insert the following provision in solicitations that include any FAR or supplemental provision with an authorized deviation. Whenever any FAR or supplemental provision is used with an authorized deviation, the contracting officer shall identify it by the same number, title, and date assigned to the provision when it is used without deviation, include regulation name for any supplemental provision, except that the contracting officer shall insert "(DEVIATION)" after the date of the provision.

AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)

(a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the provision.

(b) The use in this solicitation of any ..... [insert regulation name] (48 CFR Chapter.....) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of provision)
(NM)

52.252-6 Authorized Deviations in Clauses

As prescribed in 52.107(f), insert the following clause in solicitations and contracts that include any FAR or supplemental clause with an authorized deviation. Whenever any FAR or supplemental clause is used with an authorized deviation, the contracting officer shall identify it by the same number, title, and date assigned to the clause when it is used without deviation, include regulation name for any supplemental clause, except that the contracting officer shall insert "(DEVIATION)" after the date of the clause.

AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(b) The use in this solicitation or contract of any ..... [insert regulation name] (48 CFR .....) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of clause)
(NM)

SUBPART 52.3—PROVISION AND CLAUSE MATRICES

52.300 Scope of subpart.

This subpart consists of a series of matrices, one for each principal type and/or purpose of contract (see 52.101(e)).

PART 53—FORMS

Sec.	
53.301-25-B	Standard Form 25-B, Continuation Sheet (For Standard Forms 24, 25, and 25-A).
53.301-26	Standard Form 26, Award/Contract.
53.301-28	Standard Form 28, Affidavit of Individual Surety.
53.301-30	Standard Form 30, Amendment of Solicitation/ Modification of Contract.
53.301-33	Standard Form 33, Solicitation, Offer and Award.
53.301-34	Standard Form 34, Annual Bid Bond.
53.301-35	Standard Form 35, Annual Performance Bond.
53.301-36	Standard Form 36, Continuation Sheet.
53.301-44	Standard Form 44, Purchase Order - Invoice - Voucher.
53.301-98	Standard Form 98, Notice of Intention to Make a Service Contract and Response to Notice.
53.301-98a	Standard Form 98a, Notice of Intention to Make a Service Contract and Response to Notice (Attachment A).
53.301-99	Standard Form 99, Notice of Award of Contract.
53.301-119	Standard Form 119, Statement of Contingent or Other Fees.
53.301-120	Standard Form 120, Report of Excess Personal Property.
53.301-120-A	Standard Form 120-A, Continuation Sheet (Report of Excess Personal Property).
53.301-126	Standard Form 126, Report of Personal Property for Sale.
53.301-126-A	Standard Form 126-A, Report of Personal Property for Sale (Continuation Sheet).
53.301-129	Standard Form 129, Solicitation Mailing List Application.
53.301-252	Standard Form 252, Architect-Engineer Contract.
53.301-254	Standard Form 254, Architect-Engineer and Related Services Questionnaire.
53.301-255	Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project.
53.301-273	Standard Form 273, Reinsurance Agreement for a Miller Act Performance Bond.
53.301-274	Standard Form 274, Reinsurance Agreement for a Miller Act Payment Bond.
53.301-275	Standard Form 275, Reinsurance Agreement in Favor of the United States.
53.301-279	Standard Form 279, FPDS-Individual Contract Action Report (Over $10,000).
53.301-281	Standard Form 281, FPDS-Summary of Contract Actions of $10,000 or Less.
53.301-294	Standard Form 294, Subcontracting Report for Individual Contracts.
53.301-295	Standard Form 295, Summary Subcontract Report.
53.301-308	Standard Form 308, Request for Determination and Response to Request.
53.301-1034	Standard Form 1034, Public Voucher for Purchases and Services Other Than Personal.
53.301-1034A	Standard Form 1034A, Public Voucher for Purchases and Services Other Than Personal — Memorandum Copy.
53.301-1035	Standard Form 1035, Public Voucher for Purchases and Services Other Than Personal, Continuation Sheet.
53.301-1035A	Standard Form 1035A, Public Voucher for Purchases and Services Other Than Personal - Memorandum, Continuation Sheet.
53.301-1093	Standard Form 1093, Schedule of Withholdings Under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act.
53.301-1094	Standard Form 1094, U.S. Tax Exemption Certificate.
53.301-1094-A	Standard Form 1094-A, Tax Exemption Certificates Accountability Record.
53.301-1165	Standard Form 1165, Receipt for Cash-Subvoucher.
53.301-1402	Standard Form 1402, Certificate of Appointment.
53.301-1403	Standard Form 1403, Preaward Survey of Prospective Contractor (General).
53.301-1404	Standard Form 1404, Preaward Survey of Prospective Contractor - Technical.
53.301-1405	Standard Form 1405, Preaward Survey of Prospective Contractor - Production.
53.301-1406	Standard Form 1406, Preaward Survey of Prospective Contractor - Quality Assurance.
53.301-1407	Standard Form 1407, Preaward Survey of Prospective Contractor - Financial Capability.
53.301-1408	Standard Form 1408, Preaward Survey of Prospective Contractor - Accounting System.
53.301-1409	Standard Form 1409, Abstract of Offers.
53.301-1411	Standard Form 1411, Contract Pricing Proposal Cover Sheet.
53.301-1412	Standard Form 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data.
53.301-1413	Standard Form 1413, Statement and Acknowledgment.
53.301-1414	Standard Form 1414, Consent of Surety.
53.301-1415	Standard Form 1415, Consent of Surety and Increase of Penalty.
53.301-1416	Standard Form 1416, Payment Bond for Other than Construction Contracts.
53.301-1417	Standard Form 1417, Pre-solicitation Notice (Construction Contract).
53.301-1419	Standard Form 1419, Abstract of Offers - Construction.
53.301-1420	Standard Form 1420, Performance Evaluation - Construction Contracts.
53.301-1421	Standard Form 1421, Performance Evaluation (Architect-Engineer).
53.301-1423	Standard Form 1423, Inventory Verification Survey.
53.301-1424	Standard Form 1424, Inventory Disposal Report.
53.301-1428	Standard Form 1428, Inventory Schedule A (Metals in Mill Product Form).

Sec.	
53.301-1427	Standard Form 1427, Inventory Schedule A - Continuation Sheet (Metals in Mill Product Form).
53.301-1428	Standard Form 1428, Inventory Schedule B.
53.301-1429	Standard Form 1429, Inventory Schedule B - Continuation Sheet.
53.301-1430	Standard Form 1430, Inventory Schedule C (Work-in-Process).
53.301-1431	Standard Form 1431, Inventory Schedule C - Continuation Sheet (Work-in-Process).
53.301-1432	Standard Form 1432, Inventory Schedule D (Special Tooling and Special Test Equipment).
53.301-1433	Standard Form 1433, Inventory Schedule D - Continuation Sheet (Special Tooling and Special Test Equipment).
53.301-1434	Standard Form 1434, Termination Inventory Schedule E (Short Form For Use With SF 1438 Only).
53.301-1435	Standard Form 1435, Settlement Proposal (Inventory Basis).
53.301-1436	Standard Form 1436, Settlement Proposal (Total Cost Basis).
53.301-1437	Standard Form 1437, Settlement Proposal for Cost-Reimbursement Type Contracts.
53.301-1438	Standard Form 1438, Settlement Proposal (Short Form).
53.301-1439	Standard Form 1439, Schedule of Accounting Information.
53.301-1440	Standard Form 1440, Application for Partial Payment.
53.301-1442	Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair).
53.301-1443	Standard Form 1443, Contractor's Request for Progress Payment.
53.302-17	Optional Form 17, Sealed Bid Label.
53.302-347	Optional Form 347, Order for Supplies or Services.
53.302-348	Optional Form 348, Order for Supplies or Services Schedule—Continuation.
53.303-DD-254	Department of Defense DD Form 254, Contract Security Classification Specification.
53.303-DD-441	Department of Defense DD Form 441, Security Agreement.
53.303-DJ-1500	Department of Justice Form DJ-1500, Identical Bid Report for Procurement.
53.303-WH-347	Department of Labor Form WH-347, Payroll (For Contractor's Optional Use).

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C. 2453(c).

53.000 Scope of part.

This part (a) prescribes standard forms (SF's) and references optional forms (OF's) and agency-prescribed forms for use in acquisition, (b) contains requirements and information generally applicable to the forms, and (c) illustrates the forms.

53.001 Definitions.

"Exception," as used in this part, means an approved departure from the established design, content, printing specifications, or conditions for use of any standard form.

SUBPART 53.1—GENERAL

53.100 Scope of subpart.

This subpart contains requirements and information generally applicable to the forms prescribed in this regulation.

53.101 Requirements for use of forms.

The requirements for use of the forms prescribed or referenced in this part are contained in Parts 1 through 52, where the subject matter applicable to each form is addressed. The specific location of each requirement is identified in Subpart 53.2 and under "Forms" in the FAR Index.

53.102 Current editions.

The form prescriptions in Subpart 53.2 and the illustrations in Subpart 53.3 contain current edition dates. Contracting officers shall use the current editions unless otherwise authorized under this regulation.

53.103 Exceptions.

Agencies shall not (a) alter a standard form prescribed by this regulation or (b) use for the same purpose any form other than the standard form prescribed by this regulation without receiving in advance an exception to the form. Agencies may request exceptions to standard forms by submitting three copies of SF 152, Request for Clearance, Procurement, or Cancellation of Standard and Optional Forms, and justification for the request to the General Services Administration through the FAR Secretariat.

53.104 Overprinting.

Standard and optional forms (obtained as required by 53.107) may be overprinted with names, addresses, and other uniform entries that are consistent with the purpose of the form and that do not alter the form in any way. Exception approval for overprinting is not needed.

53.105 Computer preparation.

Agencies may request exceptions (see 53.103) to adapt for computer preparation the forms that are prescribed by this regulation. Such forms should correspond exactly with all other specifications pertaining to that standard form, including overall size, wording, and arrangement. Computer-adapted forms shall be obtained as required in 53.107(a).

53.106 Special construction and printing.

Contracting offices may request exceptions (see 53.103) to standard forms for special construction and printing. Examples of common exceptions are as follows:

Standard Forms	Special Construction and Printing
(a) SF 18—	(1) With vertical lines omitted (for listing of supplies and services, unit, etc.). (2) As reproducible masters; and/or (3) In carbon interleaved pads or sets.
(b) SF's 26,30,33,36—	As die-cut stencils or reproducible masters.
(c) SF 44—	(1) With serial numbers and contracting office name and address; and/or (2) On special weight of paper and with the type of construction, number of sets per book, and number of parts per set as specified by the contracting officer. (Executive agencies may supplement the administrative instructions on the inside front cover of the book.)
(d) SF 1442—	(1) As die-cut stencils or reproducible masters; and/or (2) With additional wording as required by the executive agency. (However, the sequence and wording of the items appearing on the prescribed form should not be altered.)

53.107 Obtaining forms.

(a) Executive agencies shall obtain standard and optional forms from the General Services Administration (GSA) by using GSA Supply Catalog - Office Products (see 41 CFR 101-26.302). Standard forms adapted for computer preparation (see 53.105) or with special construction and printing (see 53.106) that are not available from GSA may be ordered directly from the Government Printing Office (GPO).

(b) Contractors and other parties may obtain standard and optional forms from the Superintendent of Documents, GPO, Washington, DC 20402. Standard and optional forms not available from the Superintendent of Documents may be obtained from the prescribing agency.

(c) Agency forms may be obtained from the prescribing agency.

53.108 Recommendations concerning forms.

Users of this regulation may recommend new forms or the revision, elimination, or consolidation of the forms prescribed or referenced in this regulation. Recommendations from within an executive agency shall be submitted to the cognizant council in accordance with agency procedures. Recommendations from other than executive agencies should be submitted directly to the FAR Secretariat.

53.109 Forms prescribed by other regulations.

Certain forms referred to in Subpart 53.2 are prescribed in other regulations and are specified by the FAR for use in acquisition. For each of these forms, the prescribing agency is identified by means of a parenthetical notation after the form number. For example, SF 1165, which is prescribed by the General Accounting Office (GAO), is identified as SF 1165(GAO).

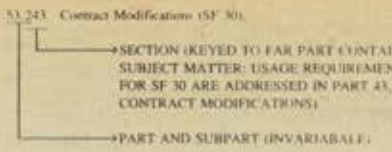
53.110 Continuation sheets.

Except as may be otherwise indicated in the FAR, all standard forms prescribed by the FAR may be continued on (a) plain paper of similar specification, or (b) specially constructed continuation sheets (e.g., SF 36). Continuation sheets shall be annotated in the upper right-hand corner with the reference number of the document being continued and the serial page number of the total pages being prepared (e.g., page 5 of 15).

SUBPART 53.2—PRESCRIPTION OF FORMS

53.200 Scope of subpart.

This subpart prescribes standard forms and references optional forms and agency-prescribed forms for use in acquisition. Consistent with the approach used in Subpart 52.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the FAR in which the form usage requirements are addressed. For example, forms addressed in FAR Part 14, Formal Advertising, are treated in this subpart in section 53.214, Formal advertising; forms addressed in FAR Part 43, Contract Modifications, are treated in this subpart in section 53.243, Contract modifications. The following example illustrates how the subjects are keyed to the parts in which they are addressed:



53.201 Federal acquisition system.

53.201-1 Contracting authority and responsibilities (SF 1402).

SF 1402 (10/83), Certificate of Appointment. SF 1402 is prescribed for use in appointing contracting officers, as specified in 1.603-3.

53.202 [Reserved].

53.203 Improper business practices and personal conflicts of interest (SF 119, DJ-1500).

(a) *SF 119 (REV. 10/83), Statement of Contingent or Other Fees.* SF 119 is prescribed for use in obtaining information as to whether improper influence has been used in obtaining Government contracts, as specified in 3.405(b)(5).

(b) *Form DJ-1500, Identical Bid Report for Procurement.* Form DJ-1500 (Department of Justice) shall be used in reporting identical bids, as specified in 3.302-2(e).

53.204 Administrative matters.

53.204-1 Safeguarding classified information within industry (DD Form 254, DD Form 441).

The following forms, which are prescribed by the Department of Defense, shall be used by agencies covered by the Defense Industrial Security Program if contractor access to classified information is required, as specified in Subpart 4.4 and the clause at 52.204-2:

(a) *DD Form 254 (Department of Defense (DOD)), Contract Security Classification Specification.* (See 4.403(c)(1).)

(b) *DD Form 441 (DOD), Security Agreement.* (See paragraph (b) of the clause at 52.204-2.)

53.204-2 Contract reporting (SF's 279, 281).

The following forms are prescribed for use by executive agencies in reporting contract actions, as specified in 4.601(c):

(a) *SF 279 (REV. 10/82), Individual Contract Action Report (Over $10,000).* (See 4.601(c).)

(b) *SF 281 (REV. 10/82), Summary of Contract Actions of $10,000 or Less.* (See 4.601(c).)

53.205 Publicizing contract actions.

53.205-1 Paid advertisements (SF 26, OF 347).

SF 26, Award/Contract, or OF 347, Order for Supplies or Services. SF 26, prescribed in 53.214(a), or OF 347 (or an approved agency form), prescribed in 53.213(e), shall be used to place orders for paid advertisements, within the dollar limitations and as otherwise specified in 5.503(c).

53.206 [Reserved].

53.207 [Reserved].

53.208 [Reserved].

53.209 Contractor qualifications.

53.209-1 Responsible prospective contractors (SF's 1403 through 1408).

The following forms are prescribed for use in conducting preaward surveys of prospective contractors, as specified in 9.106-1, 9.106-2, and 9.106-4.

(a) *SF 1403 (10/83), Preaward Survey of Prospective Contractor (General).*

(b) *SF 1404 (10/83), Preaward Survey of Prospective Contractor - Technical.*

(c) *SF 1405 (10/83), Preaward Survey of Prospective Contractor - Production.*

(d) *SF 1406 (10/83), Preaward Survey of Prospective Contractor - Quality Assurance.*

(e) *SF 1407 (10/83), Preaward Survey of Prospective Contractor - Financial Capability.*

(f) *SF 1408 (10/83), Preaward Survey of Prospective Contractor - Accounting System.*

53.210 [Reserved].

53.211 [Reserved].

53.212 [Reserved].

53.213 Small purchase and other simplified purchase procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

The following forms are prescribed as stated below for use in small purchases, orders under existing contracts or agreements, and orders from required sources of supplies and services:

(a) *SF 18, Request for Quotation.* SF 18, prescribed in 53.215-1(a), shall be used in obtaining price, cost, delivery, and related information from suppliers for small purchases, as specified in 13.107(a).

(b) *SF 30, Amendment of Solicitation/Modification of Contract.* SF 30, prescribed in 53.243, may be used for modifying purchase orders, as specified in 13.503(b).

(c) *SF 44 (REV. 10/83), Purchase Order-Invoice-Voucher.* SF 44 is prescribed for use in small purchases, as specified in 13.505-3.

(d) *SF 1165, Receipt for Cash-Subvoucher.* SF 1165 (GAO) may be used for imprest fund purchases, as specified in 13.405(e).

(e) *OF 347 (10/83), Order for Supplies or Services, and OF 348 (10/83), Order for Supplies or Services —Schedule Continuation.* OF's 347 and 348 (or approved agency forms) may be used as follows:

(1) To accomplish small purchases, as specified in 13.505-1(a)(2).

(2) To establish blanket purchase agreements (BPA's), as specified in 13.203, and to make purchases under BPA's, as specified in 13.204(e)(3).

(3) To issue orders under basic ordering agreements, as specified in 16.703(d)(2)(i).

(4) As otherwise specified in this regulation (e.g., see 5.503(c), 8.405-2, 36.701(c), and 51.102(e)(3)(ii)).

53.214 Formal advertising (SF's 26, 30, 33, 36, 129, 1409, OF 17).

The following forms are prescribed for use in contracting by formal advertising (except for construction and architect-engineer services):

(a) *SF 26, Award/Contract.* SF 26, prescribed in 53.215-1(b), shall be used in awarding formally advertised contracts for supplies or services in which bids were obtained on SF 33, Solicitation, Offer, and Award, as specified in 14.407-1(d).

(b) *SF 30, Amendment of Solicitation/Modification of Contract.* SF 30, prescribed in 53.243, shall be used in amending invitations for bids, as specified in 14.208(a).

(c) *SF 33 (REV. 10/83), Solicitation, Offer and Award.* SF 33 is prescribed for use in soliciting bids for supplies or services and for awarding the contracts that result from the bids, as specified in 14.201-2(a)(1), unless award is accomplished by SF 26.

(d) *SF 36 (REV. 10/83), Continuation Sheet.* SF 36 is prescribed for use as a continuation sheet in solicitations, as specified in 14.201-2(b).

(e) *SF 129 (REV. 10/83), Solicitation Mailing List Application.* SF 129 is prescribed for use in establishing and maintaining lists of potential sources, as specified in 14.205-1(d).

(f) *SF 1409 (10/83), Abstract of Offers.* SF 1409 is prescribed for use in recording bids, as specified in 14.403(a).

(g) *OF 17 (REV. 10/83), Sealed Bid Label.* OF 17 may be furnished with each invitation for bids to facilitate identification and handling of bids, as specified in 14.202-3(b).

53.215 Contracting by negotiation.

53.215-1 Solicitation and receipt of proposals and quotations (SF's 18, 26, 30, 33, 36, 129).

The following forms are prescribed, as stated below, for use in contracting by negotiation (except for construction, architect-engineer services, or small purchases):

(a) *SF 18 (REV. 10/83), Request For Quotation.* SF 18 is prescribed for use in obtaining price, cost, delivery, and related information from suppliers for negotiated acquisitions, as specified in 15.406-2(a)(2).

(b) *SF 26 (REV. 10/83), Award/Contract.* SF 26 is prescribed for use in entering into negotiated contracts in which the signature of both parties on a single document is appropriate, as specified in 15.414(b).

(c) *SF 30, Amendment of Solicitation/Modification of Contract.* SF 30, prescribed in 53.243, shall be used for amending requests for proposals, and may be used for amending requests for quotations, as specified in 15.410.

(d) *SF 33, Solicitation, Offer, and Award.* SF 33, prescribed in 53.214(c), shall be used in connection with the negotiation of fixed-price contracts for supplies or nonpersonal services if it is desirable to commence negotiations by soliciting written offers that, if accepted by the Government, would create a binding contract without further action. Award of such contracts may be made by either SF 33 or SF 26, as specified in 15.406-1(b) and 15.414(a).

(e) *SF 36, Continuation sheet.* SF 36, prescribed in 53.214(d), shall be used as a continuation sheet in solicitations, as specified in 15.406-2(b).

(f) *SF 129, Solicitation Mailing List Application.* SF 129, prescribed in 53.214(e), shall be used in establishing and maintaining lists of potential sources, as specified in 14.205-1(d).

53.215-2 Price negotiation (SF's 1411, 1412).

The following standard forms are prescribed for use in connection with requirements for obtaining cost or pricing data from offerors or contractors, as specified in 15.804:

(a) *SF 1411 (10/83), Contract Pricing Proposal Cover Sheet.* (See 15.804-6(b).)

(b) *SF 1412 (10/83), Claim for Exemption from Submission of Certified Cost or Pricing Data.* (See 15.804-3(e).)

53.216 Types of contracts.

53.216-1 Delivery orders and orders under basic ordering agreements (OF 347).

OF 347, Order for Supplies or Services. OF 347, prescribed in 53.213(e), (or an approved agency form) may be used to place orders under indefinite delivery contracts and basic ordering agreements, as specified in 16.703(d)(2)(i).

53.217 [Reserved].

53.218 [Reserved].

53.219 Small business and small disadvantaged business concerns (SF's 294, 295).

The following standard forms are prescribed for use in reporting small business subcontracting data, as specified in Part 19:

(a) *SF 294 (REV. 10/83), Subcontracting Report for Individual Contracts.* (See 19.704(a)(5).)

(b) *SF 295 (REV. 10/83), Summary Subcontract Report.* (See 19.704(a)(5).)

53.220 [Reserved].

53.221 [Reserved].

53.222 Application of labor laws to Government acquisitions (SF's 98, 98a, 99, 308, 1093, 1413, WH-347).

The following forms are prescribed as stated below, for use in connection with the application of labor laws:

(a) *SF 98 (Department of Labor (DOL)), Notice of Intention to Make a Service Contract and Response to Notice, and SF 98a (DOL), Notice of Intention to Make a Service Contract and Response to Notice (Attachment A).* (See 22.1007(a).)

(b) *SF 99 (DOL), Notice of Award of Contract.* (See 22.608-5(b) and 22.1009.)

(c) *SF 308 (DOL), Request for Determination and Response to Request.* (See 22.404-2(b) and (c).)

(d) *SF 1093 (GAO), Schedule of Withholdings under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act.* (See 22.405-10(c).)

(e) *SF 1413 (10/83), Statement and Acknowledgment.* SF 1413 is prescribed for use in obtaining contractor acknowledgment of inclusion of required clauses in subcontracts, as specified in 22.405-5.

(f) *Form WH-347 (DOL), Payroll (For Contractor's Optional Use).* (See 22.405-6(a).)

53.223 [Reserved].

53.224 [Reserved].

53.225 [Reserved].

53.226 [Reserved].

53.227 [Reserved].

53.228 Bonds and insurance (SF's 24, 25, 25-A, 25-B, 28, 34, 35, 273, 274, 275, 1414, 1415, 1416).

The following standard forms are prescribed for use for bond and insurance requirements, as specified in Part 28:

(a) *SF 24 (REV. 10/83), Bid Bond.* (See 28.106-1.)

(b) *SF 25 (REV. 10/83), Performance Bond.* (See 28.106-1(b).)

(c) *SF 25-A (REV. 10/83), Payment Bond.* (See 28.106-3(c).)

(d) *SF 25-B (REV. 10/83), Continuation Sheet (For Standard Forms 24, 25, and 25-A).* (See 28.106-1(d).)

(e) *SF 28 (REV. 10/83), Affidavit of Individual Surety.* (See 28.106-1(e) and 28.202-2(b).)

(f) *SF 34 (REV. 10/83), Annual Bid Bond.* (See 28.106-1(f).)

(g) *SF 35 (REV. 10/83), Annual Performance Bond.* (See 28.106-1.)

(h) *SF 273 (REV. 10/83), Reinsurance Agreement for a Miller Act Performance Bond.* (See 28.106-1(h) and 28.202-1(a)(4).)

(i) *SF 274 (REV. 10/83), Reinsurance Agreement for a Miller Act Payment Bond.* (See 28.106-1(i) and 28.202-1(a)(4).)

(j) *SF 275 (REV. 10/83), Reinsurance Agreement in Favor of the United States.* (See 28.106-1(j) and 28.202-1(a)(4).)

(k) *SF 1414 (10/83), Consent of Surety.* (See 28.106-1(k).)

(l) *SF 1415 (10/83), Consent of Surety and Increase of Penalty.* (See 28.106-1(l).)

(m) *SF 1416 (10/83), Payment Bond for Other than Construction Contracts.* (See 28.106-1(m).)

53.229 Taxes (SF's 1094, 1094-A).

SF 1094 (REV. 10/83), U.S. Tax Exemption Certificate, and SF 1094-A (REV. 10/83), Tax Exemption Certificates Accountability Record. SF's 1094 and 1094-A are prescribed for use in establishing exemption from State or local taxes, as specified in 29.302(b).

53.230 [Reserved].

53.231 [Reserved].

53.232 Contract financing (SF 1443).

SF 1443 (10/82), Contractor's Request for Progress Payment. SF 1443 is prescribed for use in obtaining contractors' requests for progress payments, as specified in 32.503-1.

53.233 [Reserved].

53.234 [Reserved].

53.235 [Reserved].

53.236 Construction and architect-engineer contracts.

53.236-1 Construction (SF's 1417, 1419, 1420, 1442, OF 347).

The following forms are prescribed, as stated below, for use in contracting for (1) construction, alteration, or repair, or (2) dismantling, demolition, or removal of improvements.

(a) *SF 1417 (10/83), Presolicitation Notice (Construction Contract).* SF 1417 is prescribed for use in notifying prospective offerors of solicitations estimated to be $100,000 or more and may be used if the proposed contract is estimated to be less than $100,000, as specified in 36.701(a).

(b) *SF 1419 (10/83), Abstract of Offers - Construction.* SF 1419 is prescribed for use in recording bids (and may be used for recording proposal evaluation information), as specified in 36.701(d).

(c) *SF 1420 (10/83), Performance Evaluation - Construction Contracts.* SF 1420 is prescribed for use in evaluating and reporting on the performance of construction contractors within approved dollar thresholds and as otherwise specified in 36.701(e).

(d) *SF 1442 (10/83), Solicitation, Offer and Award (Construction, Alteration, or Repair).* SF 1442 is prescribed for use in soliciting offers and awarding contracts expected to exceed the small purchase limitation for (1) construction, alteration, or repair, or (2) dismantling, demolition, or removal of improvements (and may be used for contracts within the small purchase limitation), as specified in 36.701(b).

(e) *OF 347, Order for Supplies or Services.* OF 347, prescribed in 53.213(e), (or an approved agency form) may be used for contracts of $10,000 or less for (1) construction, alteration, or repair, or (2) dismantling, demolition, or removal of improvements, as specified in 36.701(c).

53.236-2 Architect-engineer services (SF's 252, 254, 255, 1421).

The following forms are prescribed for use in contracting for architect-engineer and related services:

(a) *SF 252 (REV. 10/83), Architect-Engineer Contract.* SF 252 is prescribed for use in awarding fixed-price contracts for architect-engineer services, as specified in 36.702(a).

(b) *SF 254 (REV. 10/83), Architect-Engineer and Related Services Questionnaire.* SF 254 is prescribed for use to obtain information from architect-engineer firms regarding their professional qualifications, as specified in 36.702(b)(1).

(c) *SF 255 (REV. 10/83), Architect-Engineer and Related Services Questionnaire for Specific Project.* SF 255 is prescribed for use within approved dollar thresholds and as otherwise specified in 36.702(b)(2), whenever an agency requires information to supplement the SF 254 regarding the prospective firm's qualifications for a particular architect-engineer project.

(d) *SF 1421 (10/83), Performance Evaluation (Architect-Engineer).* SF 1421 is prescribed for use in evaluating and reporting on the performance of architect-engineer contractors within approved dollar thresholds and as otherwise specified in 36.702(c).

53.237 [Reserved].

53.238 [Reserved].

53.239 [Reserved].

53.240 [Reserved].

53.241 [Reserved].

53.242 Contract administration.

53.242-1 Novation and change-of-name agreements (SF 30).

SF 30, Amendment of Solicitation/Modification of Contract. SF 30, prescribed in 53.243, shall be used in connection with novation and change of name agreements, as specified in 42.1203(f).

53.243 Contract modifications (SF 30).

SF 30 (REV. 10/83), Amendment of Solicitation/Modification of Contract. SF 30 is prescribed for use in (a) amending solicitations, whether advertised or negotiated, as specified in 14.208, 15.410, and 43.301, (b) modifying purchase and delivery orders, as specified in 13.503(b), and (c) modifying contracts, as specified in 42.1203(f), 43.301, 49.602-5, and elsewhere in this regulation. Pending the publication of a new edition of the form, Instruction (b), Item 3 (effective date), is revised in paragraphs (3) and (5) as follows:

(b) Item 3 (effective date).

(3) For a modification issued as a confirming notice of termination for the convenience of the Government, the effective date of the confirming notice shall be the same as the effective date of the initial notice.

(5) For a modification confirming the termination contracting officer's previous letter determination of the amount due in settlement of a contract termination for convenience, the effective date shall be the same as the

effective date of the previous letter determination.

53.244 [Reserved].

53.245 Government Property (SF's 120, 120-A, 126, 126-A, 1423, 1424, 1426 through 1434).

The following forms are prescribed, as specified below, for use in reporting, redistribution, and disposal of contractor inventory (defined in 45.601) and in accounting for this property:

(a) *SF 120 (GSA), Report of Excess Personal Property, and SF 120-A (GSA), Continuation Sheet (Report of Excess Personal Property).* (See 45.608-2(b)(2), 45.608-5(d)(1), and 45.608-8.)

(b) *SF 126 (GSA), Report of Personal Property for Sale, and SF 126-A (GSA), Report of Personal Property for Sale (Continuation Sheet).* (See 45.610-1(c).)

(c) *SF 1423 (10/83), Inventory Verification Survey.* (See 45.606-3(b).)

(d) *SF 1424 (10/83), Inventory Disposal Report.* (See 45.615.)

(e) *Reserved.*

(f) *SF 1426 (10/83), Inventory Schedule A (Metals in Mill Product Form), and SF 1427 (10/83), Inventory Schedule A - Continuation Sheet (Metals in Mill Product Form).* (See 45.606 and 49.602-2(a).) Pending publication of a new edition of SF 1426, the reference to SF 1425 is deleted and replaced by a reference to FAR section 45.606.

(g) *SF 1428 (10/83), Inventory Schedule B, and SF 1429 (10/83), Inventory Schedule B - Continuation Sheet.* (See 45.606 and 49.602-2(b).) Pending publication of a new edition of SF 1428, the reference to SF 1425 is deleted and replaced by a reference to FAR section 45.606.

(h) *SF 1430 (10/83), Inventory Schedule C (Work-in-Process) and SF 1431 (10/83), Inventory Schedule C - Continuation Sheet (Work-in-Process).* (See 45.606 and 49.602-2(c).) Pending publication of a new edition of SF 1430, the reference to SF 1425 is deleted and replaced by a reference to FAR section 45.606.

(i) *SF 1432 (10/83), Inventory Schedule D (Special Tooling and Special Test Equipment), and SF 1433 (10/83), Inventory Schedule D - Continuation Sheet (Special Tooling and Special Test Equipment).* (See 45.606 and 49.602-2(d).) Pending publication of a new edition of SF 1432, reference to SF 1425 is deleted and replaced by a reference to FAR section 45.606.

(j) *SF 1434 (10/83), Termination Inventory Schedule E (Short Form For Use With SF 1438 Only).* (See 45.606 and 49.602-2(e).) Pending publication of a new edition of SF 1434, the reference to SF 1425 is deleted and replaced by a reference to FAR section 45.606.

53.246 [Reserved].

53.247 Transportation (U.S. Government Bill of Lading).

The U.S. Government Bill of Lading, prescribed in 41 CFR 101-41.304, shall be used for transportation of property, as specified in 47.103.

53.248 [Reserved].

53.249 Termination of contracts (SF's 1034 and 1435 through 1440).

(a) The following forms are prescribed for use in connection with the termination of contracts, as specified in Subpart 49.6:

(1) *SF 1034 (GAO), Public Voucher for Purchases and Services Other Than Personal.* (See 49.302(a).)

(2) *SF 1435 (10/83), Settlement Proposal (Inventory Basis).* (See 49.602-1(a).)

(3) *SF 1436 (10/83), Settlement Proposal (Total Cost Basis).* (See 49.602-1(b).)

(4) *SF 1437 (10/83), Settlement Proposal for Cost-Reimbursement Type Contracts.* (See 49.602-1(c) and 49.302.)

(5) *SF 1438 (10/83), Settlement Proposal (Short Form).* (See 49.602-1(d).)

(6) *SF 1439 (10/83), Schedule of Accounting Information.* (See 49.602-3.)

(7) *SF 1440 (10/83), Application for Partial Payment.* (See 49.602-4.)

(b) The inventory schedule forms prescribed in 53.245(f) through (j) shall be used to support termination settlement proposals listed in paragraph (a), above, as specified in 49.602-2.

53.250 [Reserved].

53.251 Contractor use of Government supply sources (OF 347).

OF 347, Order for Supplies or Services. OF 347, prescribed in 53.213(e), may be used by contractors when requisitioning from the VA, as specified in 51.102(e)(3)(ii).

SUBPART 53.3—ILLUSTRATIONS OF FORMS

53.300 Scope of subpart.

This subpart contains illustrations of forms used in acquisitions.

53.301 Standard forms.

This section illustrates the standard forms that are specified by the FAR for use in acquisitions. The forms are illustrated in numerical order. The subsection numbers correspond with the standard form numbers (e.g., Standard Form 18 appears as 53.301-18).

53.302 Optional forms.

This section illustrates the optional forms that are specified by the FAR for use in acquisitions. The numbering system is as indicated in 53.301.

53.303 Agency forms.

This section illustrates agency forms that are specified by the FAR for use in acquisitions. The forms are arranged numerically by agency. The numbering system is as indicated in 53.301.

REQUEST FOR QUOTATIONS (THIS IS NOT AN ORDER)	The Notice of Small Business-Small Purchase Set-Aside on the reverse of this form ☐ is ☐ is not applicable.			PAGE OF PAGES
1. REQUEST NO.	2. DATE ISSUED	3. REQUISITION/PURCHASE REQUEST NO.	4. CERT. FOR NAT. DEF. UNDER BDSA REG. 2 AND/OR DMS REG. 1 ▶	RATING
5A. ISSUED BY			6. DELIVER BY (Date)	
5B. FOR INFORMATION CALL: (Name and telephone no.) (No collect calls)			7. DELIVERY ☐ FOB DESTINATION ☐ OTHER (See Schedule)	
8. TO: NAME AND ADDRESS, INCLUDING ZIP CODE			9. DESTINATION (Consignee and address, including ZIP Code)	
10. PLEASE FURNISH QUOTATIONS TO THE ISSUING OFFICE ON OR BEFORE CLOSE OF BUSINESS (Date)	11. BUSINESS CLASSIFICATION (Check appropriate boxes) ☐ SMALL ☐ OTHER THAN SMALL ☐ DISADVANTAGED ☐ WOMEN-OWNED			

IMPORTANT: This is a request for information, and quotations furnished are not offers. If you are unable to quote, please so indicate on this form and return it. This request does not commit the Government to pay any costs incurred in the preparation of the submission of this quotation or to contract for supplies or services. Supplies are of domestic origin unless otherwise indicated by quoter. Any representations and/or certifications attached to this Request for Quotations must be completed by the quoter.

12. SCHEDULE (Include applicable Federal, State and local taxes)

ITEM NO. (a)	SUPPLIES/SERVICES (b)	QUANTITY (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)

13. DISCOUNT FOR PROMPT PAYMENT ▶	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %

NOTE: Reverse must also be completed by the quoter.

14. NAME AND ADDRESS OF QUOTER (Street, city, county, State and ZIP Code)	15. SIGNATURE OF PERSON AUTHORIZED TO SIGN QUOTATION	16. DATE OF QUOTATION
	17. NAME AND TITLE OF SIGNER (Type or print)	18. TELEPHONE NO. (Include area code)

REPRESENTATIONS, CERTIFICATIONS, AND PROVISIONS

The following representation applies when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

52.219-1 SMALL BUSINESS CONCERN REPRESENTATION (Apr 84)

The quoter represents and certifies as part of its quotation that it ☐ is, ☐ is not a small business concern and that ☐ all, ☐ not all supplies to be furnished will be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

The following provision is applicable if required on the face of the form:

52.219-2 Notice of Small Business-Small Purchase Set-Aside (Apr 84)

Quotations under this acquisition are solicited from small business concerns only. Any acquisition resulting from this solicitation will be from a small business concern. Quotations received from concerns that are not small businesses shall not be considered and shall be rejected.

BID BOND *(See Instructions on reverse)*	DATE BOND EXECUTED *(Must be same or later than bid opening date)*
PRINCIPAL *(Legal name and business address)*	TYPE OF ORGANIZATION *("X" one)* ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION
SURETY(IES) *(Name and business address)*	

PENAL SUM OF BOND					BID IDENTIFICATION	
PERCENT OF BID PRICE	AMOUNT NOT TO EXCEED				BID DATE	INVITATION NO.
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS	FOR *(Construction, Supplies or Services)*	

OBLIGATION

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS

The Principal has submitted the bid identified above.

THEREFORE

The above obligation is void if the Principal — (a) upon acceptance by the Government of the bid identified above, within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of the forms by the principal, or (b) in the event of failure so to execute such further contractual documents and give such bonds, pays the Government for any cost of procuring the work which exceeds the amount of the bid.

Each Surety executing this instrument agrees that its obligation is not impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the Government. Notice to the surety(ies) of extension(s) are waived. However, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.

WITNESS

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

PRINCIPAL			
Signature(s)	1. *(Seal)*	2. *(Seal)*	*Corporate Seal*
Name(s) & Title(s) *(Typed)*	1.	2.	

INDIVIDUAL SURETIES		
Signature(s)	1. *(Seal)*	2. *(Seal)*
Name(s) *(Typed)*	1.	2.

CORPORATE SURETY(IES)					
SURETY A	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		

CORPORATE SURETY(IES) *(Continued)*					
SURETY B	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY C	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY D	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY E	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY F	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY G	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		

INSTRUCTIONS

1. This form is authorized for use when a bid guaranty is required. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. The bond may express penal sum as a percentage of the bid price. In these cases, the bond may state a maximum dollar limitation (e.g., 20% of the bid price but the amount not to exceed _____ dollars).

4. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)". In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, two or more responsible persons shall execute the bond. A completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require these sureties to furnish additional substantiating information concerning their financial capability.

5. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

6. Type the name and title of each person signing this bond in the space provided.

7. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror".

PERFORMANCE BOND *(See Instructions on reverse)*	DATE BOND EXECUTED *(Must be same or later than date of contract)*
PRINCIPAL *(Legal name and business address)*	TYPE OF ORGANIZATION *("X" one)* ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION
SURETY(IES) *(Name(s) and business address(es))*	PENAL SUM OF BOND MILLION(S) | THOUSAND(S) | HUNDRED(S) | CENTS CONTRACT DATE | CONTRACT NO.

OBLIGATION

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS

The Principal has entered into the contract identified above.

THEREFORE

The above obligation is void if the Principal –

(a)(1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) perform and fulfills all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Miller Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contract with respect to which this bond is furnished.

WITNESS

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

PRINCIPAL			
Signature(s)	1. *(Seal)*	2. *(Seal)*	*Corporate Seal*
Name(s) & Title(s) *(Typed)*	1.	2.	
INDIVIDUAL SURETY(IES)			
Signature(s)	1. *(Seal)*	2. *(Seal)*	
Name(s) *(Typed)*	1.	2.	
CORPORATE SURETY(IES)			
SURETY A — Name & Address		STATE OF INC.	LIABILITY LIMIT $
SURETY A — Signature(s)	1.	2.	*Corporate Seal*
SURETY A — Name(s) & Title(s) *(Typed)*	1.	2.	

CORPORATE SURETY(IES) *(Continued)*					
SURETY B	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY C	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY D	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY E	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY F	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY G	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		

BOND PREMIUM ▶	RATE PER THOUSAND $	TOTAL $

INSTRUCTIONS

1 This form is authorized for use in connection with Government contracts Any deviation from this form will require the written approval of the Administrator of General Services

2 Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form An authorization person shall sign the bond Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved

3 (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc) headed "CORPORATE SURETY(IES)" In the space designated "SURETY(IES)" on the face of the form insert only the letter identification of the sureties

(b) Where individual sureties are involved, two or more responsible persons shall execute the bond A completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond The Government may require these sureties to furnish additional substantiating information concerning their financial capability

4 Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals

5 Type the name and title of each person signing this bond in the space provided.

PAYMENT BOND *(See Instructions on reverse)*	DATE BOND EXECUTED *(Must be same or later than date of contract)*
PRINCIPAL *(Legal name and business address)*	TYPE OF ORGANIZATION *("X" one)* ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION
SURETY(IES) *(Name(s) and business address(es))*	PENAL SUM OF BOND MILLION(S) | THOUSAND(S) | HUNDRED(S) | CENTS CONTRACT DATE | CONTRACT NO.

OBLIGATION

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

WITNESS

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

PRINCIPAL			
Signature(s)	1. *(Seal)*	2. *(Seal)*	*Corporate Seal*
Name(s) & Title(s) *(Typed)*	1.	2.	
INDIVIDUAL SURETY(IES)			
Signature(s)	1. *(Seal)*	2. *(Seal)*	
Name(s) *(Typed)*	1.	2.	
CORPORATE SURETY(IES)			
SURETY A — Name & Address		STATE OF INC.	LIABILITY LIMIT $
SURETY A — Signature(s)	1.	2.	*Corporate Seal*
SURETY A — Name(s) & Title(s) *(Typed)*	1.	2.	

CORPORATE SURETY(IES) *(Continued)*

SURETY B	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY C	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY D	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY E	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY F	Name & Address		STATE OF INC.	LIABILITY LIMIT $.	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY G	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		

INSTRUCTIONS

1. This form, for the protection of persons supplying labor and material, is used when a payment bond is required under the Act of August 24, 1935, 49 Stat. 793 (40 U.S.C. 270a–270e). Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)". In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, two or more responsible persons shall execute the bond. A completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require these sureties to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction regarding adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

CONTINUATION SHEET

(For Standard Forms 24, 25 and 25-A)

NAME OF PRINCIPAL *(Legal name and business address)*	TYPE OF BOND ☐ BID ☐ PERFORMANCE ☐ PAYMENT FURNISHED IN CONNECTION WITH – ☐ BID ☐ CONTRACT DATED –

CORPORATE SURETY(IES)

SURETY H	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY I	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY J	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY K	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURELY L	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY M	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY N	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY O	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		

CORPORATE SURETY(IES) *(Continued)*

SURETY P	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY Q	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY R	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY S	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY T	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY U	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY V	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY W	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY X	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY Y	Name & Address		STATE OF INC.	LIABILITY LIMIT $	*Corporate Seal*
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		

STANDARD FORM 25-B BACK (REV. 10-83)

AWARD/CONTRACT	1 CERTIFIED FOR NATIONAL DEFENSE UNDER BDSA REG. 2 AND/OR DMS REG. 1 ▶	RATING	PAGE OF PAGES
2. CONTRACT (Proc. Inst. Ident.) NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQUEST/PROJECT NO.	

5. ISSUED BY	CODE	6. ADMINISTERED BY (If other than Item 5)	CODE

7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, State and ZIP Code)	8. DELIVERY ☐ FOB ORIGIN ☐ OTHER (See below)
	9. DISCOUNT FOR PROMPT PAYMENT
	10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN ▶ ITEM
CODE FACILITY CODE	

11. SHIP TO/MARK FOR	CODE	12. PAYMENT WILL BE MADE BY	CODE

13. THIS ACQUISITION WAS: (Check appl. box(es))	A. ADVERTISED B. NEGOTIATED PURSUANT TO: ☐ 10 USC 2304(a)( ) ☐ 41 USC 252(c)( )	14. ACCOUNTING AND APPROPRIATION DATA

15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
				15G. TOTAL AMOUNT OF CONTRACT ▶	$

16. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
		PART I — THE SCHEDULE				PART II — CONTRACT CLAUSES	
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS				PART III — LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				PART IV — REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE					
	G	CONTRACT ADMINISTRATION DATA			L	INSTRS., CONDS., AND NOTICES TO OFFER	
	H	SPECIAL CONTRACT REQUIREMENTS			M	EVALUATION FACTORS FOR AWARD	

CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE

17. ☐ CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)

18. ☐ AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____ including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.

19A. NAME AND TITLE OF SIGNER (Type or print)	20A. NAME OF CONTRACTING OFFICER
19B. NAME OF CONTRACTOR / 19C. DATE SIGNED	20B. UNITED STATES OF AMERICA / 20C. DATE SIGNED
BY _____ (Signature of person authorized to sign)	BY _____ (Signature of Contracting Officer)

AFFIDAVIT OF INDIVIDUAL SURETY

(See Instructions on reverse)

FORM APPROVED OMB NO. 3090-0005

STATE OF

COUNTY OF SS.

I, the undersigned, being duly sworn, depose and say that I am (1) one of the sureties to the attached bond; (2) a citizen of the United States for a permanent resident of the place where the contract and bond are executed as provided in paragraph 3 of the instructions on reverse; (3) of full age and legally competent; and (4) not a partner in any business of the principal on the bond or bonds on which I appear as surety. The information furnished below is true and complete to the best of my knowledge. This affidavit is made to induce the United States of America to accept me as surety on the attached bond.

1. NAME *(First, middle, last) (Type or print)*

2. HOME ADDRESS *(Number, Street, City, State, ZIP Code)*

3. TYPE AND DURATION OF OCCUPATION

4. NAME OF EMPLOYER *(If self-employed, so state)*

5. BUSINESS ADDRESS *(Number, Street, City, State, ZIP Code)*

6. TELEPHONE NO.
HOME –
BUSINESS –

7. THE FOLLOWING IS A TRUE REPRESENTATION OF MY PRESENT ASSETS, LIABILITIES, AND NET WORTH AND DOES NOT INCLUDE ANY FINANCIAL INTEREST I HAVE IN THE ASSETS OF THE PRINCIPAL ON THE ATTACHED BOND.

a. Fair value of solely-owned real estate*	$
b. All mortgages or other encumbranches on the real estate included in Line a	
c. Real estate equity (subtract Line b from Line a)	
d. Fair value of all solely-owned property other than real estate*	
e. Total of the amounts on Lines c and d	
f. All other liabilities owing or incurred not included in Line b	
g. Net worth (subtract Line f from Line e)	$

**Do not include property exempt from execution and sale for any reason including homestead exemption. Surety's interest in community property may be included if not exempted.*

8. LOCATION AND DESCRIPTION OF REAL ESTATE OF WHICH I AM SOLE OWNER, THE VALUE OF WHICH IS INCLUDED IN LINE a, ITEM 7 ABOVE

Amount of assessed valuation of above real estate for taxation purposes: $

9. DESCRIPTION OF PROPERTY INCLUDED IN LINE d, ITEM 7 ABOVE *(List the value of each category of property separately)*

10. ALL OTHER BONDS ON WHICH I AM SURETY *(State character and amount of each bond; if none, so state)*

11. SIGNATURE

12. BOND AND CONTRACT TO WHICH THIS AFFIDAVIT RELATES *(Where appropriate)*

13. SUBSCRIBED AND SWORN TO BEFORE ME AS FOLLOWS:

a. DATE OATH ADMINISTERED
MONTH DAY YEAR

b. CITY AND STATE *(Or other jurisdiction)*

Official Seal

c. NAME AND TITLE OF OFFICIAL ADMINISTERING OATH *(Type or print)*

d. SIGNATURE

e. MY COMMISSION EXPIRES

NSN 7540-01-152-8063
PREVIOUS EDITION USABLE

28-105

STANDARD FORM 28 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR 53.228(e))

14. CERTIFICATE OF SUFFICIENCY

I Hereby Certify, That the surety named herein is personally known to me; that, in my judgment, said surety is responsible, and qualified to act as such; and that, to the best of my knowledge, the facts stated by said surety in the foregoing affidavit are true.

a. NAME *(Typewritten)*	b. SIGNATURE

c. OFFICIAL TITLE

d. ADDRESS *(Number, Street, City, State, ZIP Code)*

INSTRUCTIONS

1. Individual sureties on bonds executed in connection with Government contracts, shall complete and submit this form with the bond. (See 48 CFR 28.202-2, 53.228(e).) Any deviation from this form will require the written approval of the Administrator of General Services.

2. No corporation, partnership, or other unincorporated associations or firms, as such, are acceptable as individual sureties. Likewise members of a partnership are not acceptable as sureties on bonds which partnership or associations, or any co-partner or member thereof is the principal obligor,. However, stockholders of corporate principal is acceptable provided (a) their qualifications are independent of their stockholdings or financial interest therein, and (b) that the fact is expressed in the affidavit of justification. In determining the net worth (Item 7g) on the face of this form, an individual surety will not include any financial interest in assets connected with the principal on the bond which this affidavit supports.

3. A United States citizenship is a requirement for individual sureties. However, only a permanent resident of the place of execution of the contract and bond is required for individual sureties in the following locations — any foreign country; the Commonwealth of Puerto Rico; the Virgin Islands; the Canal Zone; Guam; or any other territory or possession of the United States.

4. The individual surety shall show a net worth not less than the penal amount of the bond by supplying information required on this form. The surety shall have the completed form notarized.

5. The certificate of sufficiency shall be signed by an officer of a bank or trust company, a judge or clerk of a court of record, a United States district attorney or commissioner, a postmaster, a collector or deputy collector of internal revenue, or any other officer of the United States acceptable to the department or establishment concerned. Further certificates showing additional assets, or a new surety, may be required to assure protection of the Government's interest. Such certificates must be based on the personal investigation of the certifying officer at the time of the making thereof, and not upon prior certifications.

6. All signatures on the affidavit submitted must be originals. Affidavits bearing reproduced signatures are not acceptable.

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE OF PAGES

2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. *(If applicable)*

6. ISSUED BY	CODE	7. ADMINISTERED BY *(If other than Item 6)*	CODE

8. NAME AND ADDRESS OF CONTRACTOR *(No., street, county, State and ZIP Code)*	(√)	9A. AMENDMENT OF SOLICITATION NO.
		9B. DATED *(SEE ITEM 11)*
		10A. MODIFICATION OF CONTRACT/ORDER NO.
		10B. DATED *(SEE ITEM 13)*
CODE / FACILITY CODE		

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA *(If required)*

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(√)	
	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: *(Specify authority)* THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES *(such as changes in paying office, appropriation date, etc.)* SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER *(Specify type of modification and authority)*

E. IMPORTANT: Contractor ☐ is not, ☐ is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION *(Organized by UCF section headings, including solicitation/contract subject matter where feasible.)*

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER *(Type or print)*		16A. NAME AND TITLE OF CONTRACTING OFFICER *(Type or print)*	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
(Signature of person authorized to sign)		BY *(Signature of Contracting Officer)*	

NSN 7540-01-152-8070
PREVIOUS EDITION UNUSABLE

30-105

STANDARD FORM 30 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.243

INSTRUCTIONS

Instructions for items other than those that are self-explanatory, are as follows:

(a) Item 1 (Contract ID Code). Insert the contract type identification code that appears in the title block of the contract being modified.

(b) Item 3 (Effective date).

(1) For a solicitation amendment, change order, or administrative change, the effective date shall be the issue date of the amendment, change order, or administrative change.

(2) For a supplemental agreement, the effective date shall be the date agreed to by the contracting parties.

(3) For a modification issued as an initial or confirming notice of termination for the convenience of the Government, the effective date and the modification number of the confirming notice shall be the same as the effective date and modification number of the initial notice.

(4) For a modification converting a termination for default to a termination for the convenience of the Government, the effective date shall be the same as the effective date of the termination for default.

(5) For a modification confirming the contracting officer's determination of the amount due in settlement of a contract termination, the effective date shall be the same as the effective date of the initial decision.

(c) Item 6 (Issued By). Insert the name and address of the issuing office. If applicable, insert the appropriate issuing office code in the code block.

(d) Item 8 (Name and Address of Contractor). For modifications to a contract or order, enter the contractor's name, address, and code as shown in the original contract or order, unless changed by this or a previous modification.

(e) Items 9, (Amendment of Solicitation No.–Dated), and 10, (Modification of Contract/Order No.–Dated). Check the appropriate box and in the corresponding blanks insert the number and date of the original solicitation, contract, or order.

(f) Item 12 (Accounting and Appropriation Data). When appropriate, indicate the impact of the modification on each affected accounting classification by inserting one of the following entries:

(1) Accounting classification .....
Net increase $.....

(2) Accounting classification .....
Net decrease $.....

NOTE: If there are changes to multiple accounting classifications that cannot be placed in block 12, insert an asterisk and the words "See continuation sheet".

(g) Item 13. Check the appropriate box to indicate the type of modification. Insert in the corresponding blank the authority under which the modification is issued. Check whether or not contractor must sign this document. (See FAR 43.103.)

(h) Item 14 (Description of Amendment/Modification).

(1) Organize amendments or modifications under the appropriate Uniform Contract Format (UCF) section headings from the applicable solicitation or contract. The UCF table of contents, however, shall not be set forth in this document.

(2) Indicate the impact of the modification on the overall total contract price by inserting one of the following entries.

(i) Total contract price increased by $ .....

(ii) Total contract price decreased by $ .....

(iii) Total contract price unchanged.

(3) State reason for modification.

(4) When removing, reinstating, or adding funds, identify the contract items and accounting classifications.

(5) When the SF 30 is used to reflect a determination by the contracting officer of the amount due in settlement of a contract terminated for the convenience of the Government, the entry in Item 14 of the modification may be limited to –

(i) A reference to the letter determination, and

(ii) A statement of the net amount determined to be due in settlement of the contract.

(6) Include subject matter or short title of solicitation/contract where feasible.

(i) Item 16B. The contracting officer's signature is not required on solicitation amendments. The contracting officer's signature is normally affixed last on supplemental agreements.

SOLICITATION, OFFER AND AWARD

1. CERTIFIED FOR NATIONAL DEFENSE UNDER BDSA REG. 2 AND/OR DMS REG. 1 ▶ | RATING | PAGE OF PAGES

2. CONTRACT NO.	3. SOLICITATION NO.	4. TYPE OF SOLICITATION ☐ ADVERTISED (IFB) ☐ NEGOTIATED (RFP)	5. DATE ISSUED	6. REQUISITION/PURCHASE NO.

7. ISSUED BY | CODE | 8. ADDRESS OFFER TO *(If other than Item 7)*

NOTE: In advertised solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9 Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository listed in _____ until _____ *(Hour)* local time _____ *(Date)*

CAUTION – LATE Submissions, Modifications, and Withdrawals: See Section I, Provision No. 52.214-7 or 52.215-10. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL. ▶	A. NAME	B. TELEPHONE NO. *(Include area code)* *(NO COLLECT CALLS)*

11. TABLE OF CONTENTS

(V)	SEC.	DESCRIPTION	PAGE(S)	(V)	SEC.	DESCRIPTION	PAGE(S)
		PART I – THE SCHEDULE				PART II – CONTRACT CLAUSES	
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS				PART III – LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				PART IV – REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE			L	INSTRS., CONDS., AND NOTICES TO OFFER	
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD	
	H	SPECIAL CONTRACT REQUIREMENTS					

OFFER *(Must be fully completed by offeror)*

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12 In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days *(60 calendar days unless a different period is inserted by the offeror)* from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT *(See Section I, Clause No. 52-232-8)* ▶	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %

14 ACKNOWLEDGMENT OF AMENDMENTS *(The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated:*	AMENDMENT NO	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER *(Type or print)*

15B. TELEPHONE NO. *(Include area code)*	15C. ☐ CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE	17. SIGNATURE	18. OFFER DATE

AWARD *(To be completed by Government)*

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION

22. SUBMIT INVOICES TO ADDRESS SHOWN IN ▶ *(4 copies unless otherwise specified)*	ITEM	23. NEGOTIATED PURSUANT TO ☐ 10 U.S.C. 2304(a) ( ) ☐ 41 U.S.C. 252(c) ( )

24. ADMINISTERED BY *(If other than Item 7)*	CODE	25. PAYMENT WILL BE MADE BY	CODE

26. NAME OF CONTRACTING OFFICER *(Type or print)*	27. UNITED STATES OF AMERICA *(Signature of Contracting Officer)*	28. AWARD DATE

IMPORTANT – Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

NSN 7540-01-152-8064
PREVIOUS EDITION NOT USABLE

33-132

STANDARD FORM 33 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.214(c)

ANNUAL BID BOND *(See Instructions on reverse)*	DATE BOND EXECUTED
PRINCIPAL *(Legal name and business address)*	TYPE OF ORGANIZATION *("X" one)* ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION
SURETY(IES) *(Name, business address, and State of incorporation)*	
AGENCY TO WHICH BIDS ARE TO BE SUBMITTED	BIDS TO BE SUBMITTED DURING FISCAL YEAR ENDING September 30, 19 ____

OBLIGATION

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the penal sum or sums that is sufficient to indemnify the Government in case of the default of the Principal as provided herein. For payment of the penal sum or sums, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally.

CONDITIONS

The Principal contemplates submitting bids from time to time during the fiscal year shown above to the department or agency named above for furnishing supplies or services to the Government. The Principal desires that all of those bids submitted for opening during the fiscal year be covered by a single bond instead of by a separate bid bond for each bid.

THEREFORE

The above obligation is void and of no effect if the Principal – (a) upon acceptance by the Government of any such bid within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of forms by him; or (b) in the event of failure to execute the further contractual documents and give the bond(s), pays the Government for any cost of acquiring the work which exceeds the amount of the bid.

WITNESS

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

SIGNATURES	NAMES AND TITLES *(Typed)*	
PRINCIPAL		
1. *(Seal)*	1.	*Corporate Seal*
2. *(Seal)*	2.	
INDIVIDUAL SURETIES		
1. *(Seal)*	1.	
2. *(Seal)*	2.	
CORPORATE SURETY		
1.	1.	*Corporate Seal*
2.	2.	

INSTRUCTIONS

1. This form is authorized for use in the acquisition of supplies and services, excluding construction, in lieu of Standard Form 24 (Bid Bond). Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein.

(b) Where individual sureties are involved, two or more responsible persons shall execute the bond. A completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require these sureties to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

6. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

ANNUAL PERFORMANCE BOND

(See Instructions on reverse)

DATE BOND EXECUTED

PRINCIPAL *(Legal name and business address)*

TYPE OF ORGANIZATION *("X" one)*

☐ INDIVIDUAL ☐ PARTNERSHIP

☐ JOINT VENTURE ☐ CORPORATION

STATE OF INCORPORATION

SURETY(IES) *(Name, business address and State of incorporation)*

PENAL SUM OF BOND

MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS

FISCAL YEAR ENDING

September 30, 19 ____

AGENCY REPRESENTING THE GOVERNMENT

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally.

CONDITIONS:

The Principal contemplates entering into contracts, from time to time during the fiscal year shown above, with the Government department or agency shown above, for furnishing supplies or services to the Government. The Principal desires that all of those contracts be covered by one bond instead of by a separate performance bond for each contract.

THEREFORE

The above obligation is void if the Principal – (a) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all of those contracts entered into during the original term and any extensions granted by the Government, with or without notice to the surety(ies) and during the life of any guaranty required under the contracts; and (b) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of those contracts, that subsequently are made. Notice of those modifications to the surety(ies) is waived.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

SIGNATURES	NAMES AND TITLES *(Typed)*	
PRINCIPAL		
1.	1.	
2. *(Seal)*	2.	*Corporate Seal*
2. *(Seal)*	2.	
INDIVIDUAL SURETIES		
1. *(Seal)*	1.	
2. *(Seal)*	2.	
CORPORATE SURETY		
1.	1.	*Corporate Seal*
2.	2.	

NSN 7540-01-152-8066
PREVIOUS EDITION USABLE

35-104

STANDARD FORM 35 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR 53.228(g))

INSTRUCTIONS

1. This form is authorized for use in the acquisition of supplies and services, excluding construction, in lieu of Standard Form 25 (Performance Bond). Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein.

(b) Where individual sureties are involved, two or more responsible persons shall execute the bond. A completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require these sureties to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

6. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror".

CONTINUATION SHEET	REFERENCE NO. OF DOCUMENT BEING CONTINUED	PAGE OF PAGES

NAME OF OFFEROR OR CONTRACTOR

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT

U.S. GOVERNMENT

PURCHASE ORDER—INVOICE—VOUCHER

Anyone who finds this booklet, please notify:

OFFICE:

TELEPHONE NUMBER:

NSN 7540-01-152-8068
PREVIOUS EDITION USABLE
44-108

STANDARD FORM 44 (Rev. 10-83)
PRESCRIBED BY GSA,
FAR (48 CFR) 53.213(c)

INSTRUCTIONS

(This form is for official Government use only)

1. Filling in the Form

(a) All copies of the form must be legible. To insure legibility, indelible pencil or ball-point pen should be used. SELLER'S NAME AND ADDRESS MUST BE PRINTED.

(b) Items ordered will be individually listed. General descriptions such as "hardware" are not acceptable. Show discount terms.

(c) Enter project reference or other identifying description in space captioned "PURPOSE." Also, enter proper accounting information, if known.

2. Distribution Copies

Copy No. 1—Give to seller for use as the invoice or as an attachment to his commercial invoice.

Copy No. 2—Give to seller for use as a record of the order.

Copy No. 3—

(1) On over-the-counter transactions where delivery has been made, complete receiving report section and forward this copy to the proper administrative office.

(2) On other than completed over-the-counter transactions, forward this copy to location specified for delivery. (Upon delivery, receiving report section is to be completed and this copy then forwarded to the proper administrative office.)

Copy No. 4—Retain in the book, unless otherwise instructed.

3. When Paying Cash at Time of Purchase

(a) Enter the amount of cash paid and obtain seller's signature in the space provided in the Seller section of Copy No. 1. If seller prefers to provide a commercial cash receipt, attach it to Copy No. 1 and check the "paid in cash" block at the bottom of the form.

(b) Distribution of copies when payment is by cash is the same as described above, except that Copy No. 1 is retained by Government representative when cash payment is made. Copy No. 1 is used thereafter in accordance with agency instructions pertaining to handling receipts for cash payment.

U.S. GOVERNMENT

PURCHASE ORDER—INVOICE—VOUCHER

DATE OF ORDER | ORDER NO.

PRINT NAME AND ADDRESS OF SELLER (*Number, Street, City, and State*)*

PAYEE

FURNISH SUPPLIES OR SERVICES TO (*Name and address*)*

SUPPLIES OR SERVICES	QUANTITY	UNIT PRICE	AMOUNT

AGENCY NAME AND BILLING ADDRESS*

PAYOR

TOTAL

DISCOUNT TERMS

..... % ..... DAYS

DATE INVOICE RECEIVED

ORDERED BY (*Signature and title*)

PURPOSE AND ACCOUNTING DATA

PURCHASER—*To sign below for over-the-counter delivery of items*

RECEIVED BY

TITLE | DATE

SELLER—*Please read instructions on Copy 2*

☐ PAYMENT RECEIVED $..... ☐ PAYMENT REQUESTED $.....

NO FURTHER INVOICE NEED BE SUBMITTED

SELLER | DATE

BY ..... (*Signature*)

I certify that this account is correct and proper for payment in the amount of

$ .....

DIFFERENCES

ACCOUNT VERIFIED CORRECT FOR

..... (*Authorized certifying officer*)

BY .....

PAID BY ☐ CASH | DATE PAID | VOUCHER NO.

OR ..... (*Check No.*)

* PLEASE INCLUDE ZIP CODE

1. SELLER'S INVOICE (*See Instructions on Copy 2*)

STANDARD FORM 44a (Rev. 10-83) PRESCRIBED BY GSA. FAR (48 CFR) 53.213(c)

SELLER'S INVOICE

U.S. GOVERNMENT

PURCHASE ORDER—INVOICE—VOUCHER

DATE OF ORDER | ORDER NO.

PRINT NAME AND ADDRESS OF SELLER (*Number, Street, City, and State*)*

PAYEE

FURNISH SUPPLIES OR SERVICES TO (*Name and address*)*

SUPPLIES OR SERVICES	QUANTITY	UNIT PRICE	AMOUNT

AGENCY NAME AND BILLING ADDRESS*

PAYOR

TOTAL

DISCOUNT TERMS

% ..... DAYS

DATE INVOICE RECEIVED

ORDERED BY (*Signature and title*)

PURPOSE AND ACCOUNTING DATA

PURCHASER—*To sign below for over-the-counter delivery of items*

RECEIVED BY

TITLE | DATE

SELLER—*Please read instructions on Copy 2*

☐ PAYMENT RECEIVED $..... | ☐ PAYMENT REQUESTED $.....

NO FURTHER INVOICE NEED BE SUBMITTED

SELLER | DATE

BY (*Signature*)

INSTRUCTIONS TO SELLER

After satisfactory identification of the Government representative presenting this purchase order, verify the itemization, including quantity, unit price, amount, total and discount sections.

This form is so designed that Copy 1 may be used as a cash payment receipt or as your invoice by completing, as appropriate, either the Payment Received or Payment Request blocks and signing the Seller Section.

If you would rather submit your own invoice, DO NOT SIGN COPY 1, but attach it unsigned to your invoice to expedite verification and processing for payment.

2. SELLER'S COPY OF ORDER

STANDARD FORM 44b (Rev. 10-83)
PRESCRIBED BY GSA,
FAR (48 CFR) 53.213(c)

U.S. GOVERNMENT

PURCHASE ORDER—INVOICE—VOUCHER

DATE OF ORDER | ORDER NO.

PRINT NAME AND ADDRESS OF SELLER (*Number, Street, City, and State*)*

PAYEE

FURNISH SUPPLIES OR SERVICES TO (*Name and address*)*

SUPPLIES OR SERVICES | QUANTITY | UNIT PRICE | AMOUNT

AGENCY NAME AND BILLING ADDRESS*

PAYOR

TOTAL

DISCOUNT TERMS

% ..... DAYS

DATE INVOICE RECEIVED

ORDERED BY (*Signature and title*)

PURPOSE AND ACCOUNTING DATA

PURCHASER—*To sign below for over-the-counter delivery of items*

RECEIVED BY

TITLE | DATE

SELLER—*Please read instructions on Copy 2*

☐ PAYMENT RECEIVED $..... | ☐ PAYMENT REQUESTED $.....

NO FURTHER INVOICE NEED BE SUBMITTED

SELLER | DATE

BY (*Signature*)

REMARKS | DIFFERENCES

ACCOUNT VERIFIED | CORRECT FOR

BY

3. RECEIVING REPORT—ACCOUNTING COPY

STANDARD FORM 44c (Rev. 10-83)
PRESCRIBED BY GSA,
FAR (48 CFR) 53.213(c)

U.S. GOVERNMENT

PURCHASE ORDER—INVOICE—VOUCHER

DATE OF ORDER | ORDER NO.

PRINT NAME AND ADDRESS OF SELLER (Number, Street, City, and State)*

PAYEE

FURNISH SUPPLIES OR SERVICES TO (Name and address)*

SUPPLIES OR SERVICES	QUANTITY	UNIT PRICE	AMOUNT

SPECIMEN

AGENCY NAME AND BILLING ADDRESS*

PAYOR

TOTAL

DISCOUNT TERMS

% DAYS

DATE INVOICE RECEIVED

ORDERED BY (Signature and title)

PURPOSE AND ACCOUNTING DATA

PURCHASER—*To sign below for over-the-counter delivery of items*

RECEIVED BY

TITLE | DATE

SELLER—*Please read instructions on Copy 2*

☐ PAYMENT RECEIVED $..... ☐ PAYMENT REQUESTED $.....

NO FURTHER INVOICE NEED BE SUBMITTED

SELLER | DATE

BY ..... (Signature)

REMARKS

4. MEMORANDUM COPY *(Optional Use)*

STANDARD FORM 44d (Rev. 10-83)
PRESCRIBED BY GSA,
FAR (48 CFR) 53.213(c)

RECORD OF PURCHASES

ORDER NO.	NAME OF CONTRACTOR	DATE OF PURCHASE	AMOUNT

SPECIMEN

STANDARD FORM 98
Rev. Feb. 1973
U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION

NOTICE OF INTENTION TO MAKE A SERVICE CONTRACT AND RESPONSE TO NOTICE

(See Instructions on Reverse)

1. NOTICE NO.

MAIL TO:

Administrator
Wage and Hour Division
U.S. Department of Labor
Washington, D.C. 20210

2. Estimated solicitation date (use numerals)

Month	Day	Year

3. Estimated date bids or proposals to be opened or negotiations begun (use numerals)

Month	Day	Year

4. Date contract performance to begin (use numerals)

Month	Day	Year

5. PLACE(S) OF PERFORMANCE

6. SERVICES TO BE PERFORMED *(describe)*

7. INFORMATION ABOUT PERFORMANCE

A. ☐ Services now performed by a contractor

B. ☐ Services now performed by Federal employees

C. ☐ Services not presently being performed

8. IF BOX A IN ITEM 7 IS MARKED, COMPLETE ITEM 8 AS APPLICABLE

a. Name and address of incumbent contractor

b. Number(s) of any wage determination(s) in incumbent's contract

c. Name(s) of union(s) if services are being performed under collective bargaining agreement(s). *Important:* Attach copies of current applicable collective bargaining agreements

9. OFFICIAL SUBMITTING NOTICE

SIGNED:

DATE

TYPE OR PRINT NAME

TELEPHONE NO.

10. TYPE OR PRINT NAME AND TITLE OF PERSON TO WHOM RESPONSE IS TO BE SENT AND NAME AND ADDRESS OF DEPARTMENT OR AGENCY, BUREAU, DIVISION, ETC.

RESPONSE TO NOTICE

(by Department of Labor)

A. ☐ The attached wage determination(s) listed below apply to procurement.

B. ☐ As of this date, no wage determination applicable to the specified locality and classes of employees is in effect.

C. ☐ From information supplied, the Service Contract Act does not apply *(see attached explanation)*.

D. ☐ Notice returned for additional information *(see attached explanation)*.

Signed: _____
(U.S. Department of Labor)

_____
(Date)

98-103

GENERAL EXPLANATION

The amended Service Contract Act requires the Secretary of Labor to issue wage determinations applicable to employees engaged in the performance of service contracts in excess of $2,500. Standard Form 98, Notice of Intention to Make a Service Contract, with Attachment A, provides an orderly procedure for a contracting agency to request such a wage determination and for the Department of Labor to respond. Any questions as to whether a notice is required in a particular procurement situation should be resolved by reference to Title 29, Part 4, Code of Federal Regulations, or by submission of the question to the Department of Labor.

Under normal circumstances the Department of Labor will respond to a notice within 30 days of receipt. If there is urgent need for more expeditious handling, this should be explained when the notice is submitted. In the event the necessary response is not received by the contracting agency on a timely basis, the Department of Labor should be contacted.

In any case where section 4(c) of the Act requires adherence to compensation provisions of a collective bargaining agreement applicable under a predecessor contract and the agency desires to request a hearing on the issue of substantial variance between the wages and fringe benefits provided under such agreement and those prevailing in the locality, the request should be submitted with the notice of intent, in accordance with the provisions of 29 CFR 4.10, and sufficiently far in advance of the need for the wage determination to allow time for appropriate action as provided in that section of the regulations.

The notice is divided along functional lines: (1) that part which must be completed by the contracting agency, Items 2 through 10 of the basic form and Items 11 through 14 of the attachment; and (2) the Response to Notice to be completed by the Department of Labor. The basic form and its attachment are provided in quadruplicate sets with carbon inserts. The original and two copies of the basic form and of each set of attachments used (with snap-out carbons removed and the forms fastened together) are to be sent to the address preprinted on the basic form. One copy of the basic form and one copy of the attachment are to be retained by the agency.

INSTRUCTIONS—AGENCY PORTION OF NOTICE

Entries on Basic Form

Item 1—This number is preprinted on the basic form for identification and control purposes. Refer to this number when contacting the Department of Labor about the notice.

Item 2—Enter the estimated solicitation date.

Item 3—Enter the date the bids or proposals are expected to be opened or the negotiations started.

Item 4—Enter the date contract performance is expected to begin.

Item 5—The entry as to place of performance depends on a variety of factors. If the place of performance is fixed, as with a contract for janitorial services at a particular installation, enter the appropriate city, county and State. If performance is to be at several known places, attach a list. If the contract is for transportation services between points, enter the city, county and State of origin and of destination. If the place of performance may be anywhere, depending on who is awarded the contract (as, for example, certain laundry contracts), enter "unknown." If necessary for clarity, attach a brief explanation of the entry in Item 5.

Item 6—Describe the services to be performed in such a manner that it will be clear what type or types of services are called for by the contract. In many instances simple entries will suffice: "Janitorial services at Headquarters Building, Fort Sill." "Food service and kitchen police service at Enlisted Mess, Camp A. P. Hill," "Laundry and drycleaning services for Base Hospital, Eglin AFB," "Garbage collection at Ft. Hood." Unusual types of services must be described in more detail.

Item 7—Mark the appropriate box.

Item 8—It is very important under the amended Service Contract Act that appropriate entries be made in Item 8 if Box A of Item 7 has been marked.

a. Enter the name and address of the incumbent contractor.

b. Enter the number(s) of any wage determination(s) made part of the incumbent's contract. For example: 71–69 (Rev. 3) and 69–43 (Rev. 4).

c. Enter the name(s) of union(s) if any of the services are being performed by the incumbent contractor under collective bargaining agreement(s). If an entry is required in c., a copy of all current applicable collective bargaining agreements must be furnished with the notice. The notice will be returned without action by the Department of Labor if this is not done.

Item 9—It is often necessary for the Department of Labor to get in touch with the contracting official who submitted the notice in order to clarify particular points and expedite a response. The name of this official should be printed or typed in the space provided and he should sign his name above. The telephone number, including area code, should be entered. Enter the date the notice is submitted.

Item 10—Print or type this entry in the space provided within the brackets. This is used by the Department of Labor to identify the contracting agency and for mailing purposes.

ENTRIES ON ATTACHMENT A

Item 11—Enter the notice number found in Item 1 of the basic form.

Item 12—Enter the classes of service employees to be employed in performing the contract. A simple entry may suffice: "Janitor," "Window cleaner," "Automotive mechanic," "Guard," "Stenographer," "Typist," "Warehouseman," "File clerk." Where more complex jobs are involved, it will expedite handling to use a few lines below the entry for a class to describe briefly what the employee will do—a sort of capsule job description. The entries in Item 12 are crucial as they enable the Department of Labor to "match" the job to be performed against existing wage determinations or available wage payment data.

Item 13—Enter the number of employees to be employed in each class listed in Item 12. Do not omit this figure even though it may be necessary to use a rough estimate.

Item 14—The amended Service Contract Act (section 2(a)(5)) requires the contracting agency to include in the contract; "A statement of the rates that would be paid by the Federal agency to the various classes of service employees if section 5341 of Title 5, United States Code, were applicable to them." The Secretary of Labor is required to give "due consideration" to such rates in making wage and fringe benefit determinations.

For purposes of the entries in Item 14, assume that each class of employees listed in Item 12 is to be Federally employed: that is, to be employed directly as "wage board" or "blue collar" employees by the contracting agency and who, if so employed, would receive wages as provided in 5 United States Code 5341. Enter the hourly wage rate that each such listed class would be paid. The agency's personnel office may be of help in determining the appropriate hourly rate entries.

While the "statement" made part of the contract must include both the hourly wage rates *and* fringe benefits that would be paid to the various classes, it is not necessary to furnish fringe benefit information as part of the notice. In giving "due consideration" to the fringe benefits that would be paid, the Department of Labor will consult the formula previously made available to all contracting agencies for use in preparing the "statement" required to be made part of the contract.

INSTRUCTIONS—RESPONSE PORTION OF NOTICE

(Completed by Department of Labor)

The original copy of the basic form and the original copy of the attachment will be returned to the contracting agency with appropriate entries *by the Department of Labor* in that portion of the basic form reserved for Response to Notice.

A. If this box is marked, the wage determination(s) applicable will be listed by number and attached. The wage rates and fringe benefits reflected in the attached wage determination(s) are applicable to the procurement and must be made part of the contract. (If wage rates and fringe benefits are not provided in the wage determination(s) for particular classes of service employees to be employed on the contract, conforming action must be taken as provided in Title 29, Part 4, section 4.6(b)(2), Code of Federal Regulations.)

B. If this box is marked, no wage determination applicable to the specified locality and classes of employees is in effect. However, successor contractors may not pay less than the collectively bargained wage rates and fringe benefits, including any prospective increases, applicable to employees of the predecessor contractor except where, upon a hearing, it is found that such wage rates and fringe benefits are substantially at variance with those that prevail in the locality. In no case may an employee be paid less than the minimum wage under section 6(a)(1) of the Fair Labor Standards Act.

C. From time to time the Department of Labor receives a notice with respect to a proposed contract which, on the basis of the information supplied by the contracting agency, is not subject to the Service Contract Act. If box C is marked, an explanation will be attached.

D. This box will be marked if the notice must be returned for additional information. An explanation will be attached so that the contracting agency will know what action to take.

ADDITIONAL WAGE DATA

The Department of Labor welcomes any wage rate and fringe benefits data the contracting agency may submit in connection with a notice, as well as any explanatory information that will assist in understanding the proposed procurement.

STANDARD FORM 98a February 1973 U.S. DEPARTMENT OF LABOR Employment Standards Administration	NOTICE OF INTENTION TO MAKE A SERVICE CONTRACT AND RESPONSE TO NOTICE (Attachment A)	11. NOTICE NO.

12. CLASSES OF SERVICE EMPLOYEES TO BE EMPLOYED ON CONTRACT	13. NUMBER OF EMPLOYEES IN EACH CLASS	14. HOURLY WAGE RATE THAT WOULD BE PAID IF FEDERALLY EMPLOYED

98--201

Standard Form 99
Revised May 1965
DEPARTMENT OF LABOR
Wage and Hour and Public Contracts Divisions

99-104

This notice of award is required pursuant to Article 201.1201 of Regulations Part 201, issued under 41 U.S.C. 35-45

NOTICE OF AWARD OF CONTRACT

1. Department or Agency			2. Branch, Bureau, Division, etc.		
3. Address	*(Street)*	*(City)*	*(State)*	*(ZIP code)*	4. Contract No.
5. Contractor	*(Name)*				6. Invitation for Bids No.
7. Address	*(Street)*	*(City)*	*(State)*	*(ZIP code)*	8. Manufacturer ☐ (check one) Dealer ☐

9. To be manufactured or supplied by: (other establishments subject to Act)

(Firm name)	*(Street)*	*(City)*	*(State)*	*(ZIP code)*
(a)				
(b)				
(c)				
(d)				

10. Commodity description *(Indicate also Federal Supply Class No.)*

11. Amount of Contract	12. Date of Award	13. Completion Date	14. Date Form WH-12 and Poster PC-13 mailed

STATEMENT OF CONTINGENT OR OTHER FEES

(FOR SOLICTING OR OBTAINING, OR RESULTING FROM AWARD OF A CONTRACT.)

FORM APPROVED OMB NO. 3090-0017

1. SOLICITATION NO. *(If any)*	2. CONTRACT NO. *(or other identification)*	3. GOVERNMENT CONTRACTING OFFICE

The following information is furnished by the undersigned offeror concerning any company or person employed or retained to solicit or obtain the above identified contract, or concerning any company or person to whom the offeror has paid or agreed to pay any, commission, percentage, brokerage, or other fee, contingent upon or resulting from the award of that contract.

4. FULL NAME AND BUSINESS ADDRESS OF SUCH COMPANY OR PERSON *(If more than one, identify all)* AND INDICATE WHETHER CORPORATION, PARTNERSHIP, INDIVIDUAL, ETC.: *(Include ZIP Code(s))*

5A. DESCRIBE RELATIONSHIP TO OFFEROR OF THE COMPANY OR PERSON LISTED IN ITEM 4. *(For example, is the company or person a sales agent or representative? A purchasing agent or representative? A broker? An employee? A corporate officer or principal?)*

B. IF THERE IS A WRITTEN CONTRACT OR AGREEMENT COVERING SUCH RELATIONSHIP, ATTACH A COPY. IF NOT, STATE IN DETAIL THE TERMS OF SUCH ARRANGEMENT. *(Include the amount and method of computation of compensation and expenses.)*

(IF ADDITIONAL SPACE IS NECESSARY, USE ITEM 11 OR ATTACH A SEPARATE SHEET WHICH ALSO MUST BE SIGNED.)

NSN 7540-01-152-8071
PREVIOUS EDITION USABLE

119-105

STANDARD FORM 119 (REV. 10-83)
Prescribed by GSA, FAR (48 CFR) 53.203(a)
FPMR (41 CFR) 101-45.313-5

NOTE: Complete Items 6A through 6D only if person listed in Item 4 is an employee.

6A. DURATION OF EMPLOYMENT *(Dates)*		6B. IS THE PERSON ON THE OFFEROR'S PAYROLL FOR PURPOSES OF SOCIAL SECURITY AND FEDERAL INCOME TAX WITHHOLDING?
FROM	TO	☐ YES ☐ NO
6C. IS THE PERSON EMPLOYED BY ANY OTHER CONCERN? ☐ YES ☐ NO *(If "YES" complete)* ▶	CAPACITY	NAME AND ADDRESS OF OTHER CONCERN
6D. DOES THE PERSON REPRESENT ANY OTHER CONCERN? ☐ YES ☐ NO *(If "YES" complete)* ▶	CAPACITY	NAME AND ADDRESS OF OTHER CONCERN

7. DOES THE COMPANY OR PERSON, LISTED IN ITEM 4 REPRESENT THE OFFEROR ON:	YES (Y)	NO (N)	E. IF ITEM 7D CHECKED "YES," SPECIFY OFFICES
A. BOTH COMMERCIAL AND GOVERNMENT BUSINESS?			
B. ONLY GOVERNMENT BUSINESS?			
C. ONLY THIS CONTRACT?			
D. CONTRACTS OF PARTICULAR GOVERNMENT ACQUISITION OR SALES OFFICES?			

8. REGARDING THE CONTRACT, ARE THE DUTIES OF THE COMPANY OR PERSON LISTED IN ITEM 4 CONFINED TO SOLICITING, OBTAINING OR ASSISTING IN OBTAINING THE CONTRACT?
☐ YES ☐ NO *(If "NO," describe other services included in the company or person's duties)*

9. IS IT THE OFFEROR'S REGULAR PRACTICE TO HAVE AN ARRANGEMENT OF THE TYPE SPECIFIED IN ITEM 8?	10. HOW LONG HAS THE COMPANY OR PERSON SPECIFIED IN ITEM 4:	
	A. BEEN ENGAGED IN THIS TYPE OF WORK *(I.e., Sales or Purchasing representative, etc.)*?	B. PERFORMED THIS TYPE OF WORK FOR THE OFFEROR?
☐ YES ☐ NO		

11. ADDITIONAL COMMENTS *(Key comments to item numbers)*

IMPORTANT	12A. OFFEROR *(To be signed only by authorized principal, such as corporate officer of offeror, i.e., may not be signed by sales or purchasing agent, etc.)*
U.S. Code, Title 18 ***(Crimes and Criminal Procedure)*** Section 1001 makes it a criminal offense to make willfully false statements or representations on this form or any attachment to it.	BY ▶
	12B. TITLE / 12C. DATE
	12D. ADDRESS OF OFFEROR *(Include ZIP code)*

STANDARD FORM 119 BACK (REV. 10-83)

PAGE 1 OF _____

STANDARD FORM 120 REV.
APRIL 1957
GEN. SERV. ADMIN.
FPMR (41 CFR) 101-43.311

REPORT OF EXCESS PERSONAL PROPERTY

1. REPORT NO.	2. DATE MAILED	3. TOTAL COST $

4. TYPE OF REPORT (Check one only of "a," "b," "c," or "d") (Also check "e" and/or "f" if appropriate)

- ☐ a. ORIGINAL
- ☐ b. CORRECTED
- ☐ c. PARTIAL W/D
- ☐ d. TOTAL W/D
- ☐ e. OVERSEAS
- ☐ f. CONTRACTORS INV

5. TO (Name and Address of Agency to which report is made) THRU

6. APPROP. OR FUND TO BE REIMBURSED (if any)

7. FROM (Name and Address of Reporting Agency)

8. REPORT APPROVED BY (Name and Title)

9. FOR FURTHER INFORMATION CONTACT (Title, Address and Telephone No.)

10. AGENCY APPROVAL (If applicable)

11. SEND PURCHASE ORDERS OR DISPOSAL INSTRUCTIONS TO (Title, Address and Telephone No.)

12. GSA CONTROL NO.

13. FSC GROUP NO.	14. LOCATION OF PROPERTY (If location is to be abandoned give date)	15. REIM/REQD YES	15. REIM/REQD NO	16. AGENCY CONTROL NO.	17. SURPLUS RELEASE DATE

18. EXCESS PROPERTY LIST

ITEM NO. (a)	DESCRIPTION (b)	COND. (c)	UNIT (d)	NUMBER OF UNITS (e)	ACQUISITION COST PER UNIT (f)	ACQUISITION COST TOTAL (g)	FAIR VALUE % (h)

STANDARD FORM 120 REV.
APRIL 1957 EDITION

(Use Standard Form 120A for Continuation Sheets)
NSN 7540-00-634-4074

120-105

PREVIOUS EDITION USABLE

STANDARD FORM 120–A
APRIL 1957
GEN SERV. ADMIN
FPMR (41 CFR) 101–43.311

CONTINUATION SHEET

(Report of Excess Personal Property)

PAGE_____

FROM *(Name and Address of Reporting Agency)*

REPORT NO

AGENCY CONTROL NO.

EXCESS PROPERTY LIST *(Continued)*							
ITEM NO. (a)	DESCRIPTION (b)	COND. (c)	UNIT (d)	NUMBER OF UNITS (e)	ACQUISITION COST PER UNIT (f)	ACQUISITION COST TOTAL (g)	FAIR VALUE % (h)

STANDARD FORM 120A
APRIL 1957 EDITION

120-204

REPORT OF PERSONAL PROPERTY FOR SALE

PAGE 1 OF

1. FROM *(NAME, ADDRESS AND ZIP CODE OF OWNING AGENCY)*

2. REPORT NO.

3. DATE

4. FSC GROUP

5. TOTAL ACQUISITION COST

6. PUBLIC MAY INSPECT PROPERTY BY CONTACTING *(NAME, ADDRESS, ZIP CODE AND TELEPHONE NO.)*

7. PROPERTY LOCATED AT

8. TO

General Services Administration

9. LOADING BY GOV'T

a. ACTIVITY WILL LOAD FOR PURCHASER ☐ (1) YES ☐ (2) NO

b. EXTENT *(IF CHECKED "YES")*

10. PROPERTY IS EXCHANGE/SALE ☐ a. YES ☐ b. NO

11. PROPERTY IS REIMBURSABLE ☐ a. YES ☐ b. NO

12. SEND EXECUTED SALES DOCUMENTS TO *(NAME, ADDRESS AND ZIP CODE)*

13. DEPOSIT PROCEEDS TO *(APPROPRIATE FUND SYMBOL AND TITLE)*

14. STATION DEPOSIT SYMBOL OR STATION ACCOUNT NUMBER

15. UTILIZATION AND DONATION SCREENING REQUIREMENTS COMPLETED. PROPERTY IS AVAILABLE FOR SALE ► BY *(SIGNATURE AND TITLE)*

16. **PROPERTY LIST** ***(USE CONTINUATION SHEET, IF NECESSARY)***

ITEM NO. (a)	ITEM NO. ASSIGNED BY GSA (b)	COMMERCIAL DESCRIPTION AND CONDITION (c)	UNIT (d)	NUMBER OF UNITS (e)	ACQUISITION COST PER UNIT (f)	ACQUISITION COST TOTAL (g)

17. RECEIPT OF PROPERTY AT GSA SALES SITE OR CENTER ACKNOWLEDGED

SIGNATURE AND TITLE | DATE

18. RECEIPT OF REPORT IS HEREBY ACKNOWLEDGED

SIGNATURE AND TITLE | DATE

FOR GSA INTERNAL USE ONLY

19. SALE NO. | 20. TYPE OF SALE | 21. INSPECTION DATES | 22. BID OPENING DATE AND TIME

126-103

STANDARD FORM 126 (REV. 7-78)
Prescribed by GSA, FPMR (41 CFR) 101-45.303

Standard Form 126-A February 1965 Prescribed by General Services Administration FPMR (41 CFR) 101-45.303	REPORT OF PERSONAL PROPERTY FOR SALE (CONTINUATION SHEET)	PAGE ..... OF ..... PAGES
FROM (Name and address of owning agency. Please include ZIP Code)	FSC GROUP	REPORT NO.

PROPERTY LIST

ITEM NO. (a)	ITEM NO. ASSIGNED BY GSA (b)	COMMERCIAL DESCRIPTION AND CONDITION (c)	UNIT (d)	NUMBER OF UNITS (e)	ACQUISITION COST	
					PER UNIT (f)	TOTAL (g)

126-201

SOLICITATION MAILING LIST APPLICATION

1. TYPE OF APPLICATION ☐ INITIAL ☐ REVISION | 2. DATE | FORM APPROVED OMB NO. 3090-0009

NOTE—Please complete all items on this form. Insert N/A in items not applicable. See reverse for Instructions.

3. NAME AND ADDRESS OF FEDERAL AGENCY TO WHICH FORM IS SUBMITTED *(Include ZIP code)*

4. NAME AND ADDRESS OF APPLICANT *(Include county and ZIP code)*

5. TYPE OF ORGANIZATION *(Check one)*

☐ INDIVIDUAL ☐ NON-PROFIT ORGANIZATION

☐ PARTNERSHIP ☐ CORPORATION, INCORPORATED UNDER THE LAWS OF THE STATE OF:

6. ADDRESS TO WHICH SOLICITATIONS ARE TO BE MAILED *(If different than Item 4)*

7. NAMES OF OFFICERS, OWNERS, OR PARTNERS

A. PRESIDENT	B. VICE PRESIDENT	C. SECRETARY
D. TREASURER	E. OWNERS OR PARTNERS	

8. AFFILIATES OF APPLICANT *(Names, locations and nature of affiliation. See definition on reverse.)*

9. PERSONS AUTHORIZED TO SIGN OFFERS AND CONTRACTS IN YOUR NAME *(Indicate if agent)*

NAME	OFFICIAL CAPACITY	TELE. NO. *(Include area code)*

10. IDENTIFY EQUIPMENT, SUPPLIES, AND/OR SERVICES ON WHICH YOU DESIRE TO MAKE AN OFFER *(See attached Federal agency's supplemental listing and instructions, if any)*

11A. SIZE OF BUSINESS *(See definitions on reverse)*

☐ SMALL BUSINESS *(If checked, complete items 11B and 11C)* ☐ OTHER THAN SMALL BUSINESS

11B. AVERAGE NUMBER OF EMPLOYEES *(Including affiliates)* FOR FOUR PRECEDING CALENDAR QUARTERS

11C. AVERAGE ANNUAL SALES OR RECEIPTS FOR PRECEDING THREE FISCAL YEARS

$

12. TYPE OF OWNERSHIP *(See definitions on reverse) (Not applicable for other than small businesses)*

☐ DISADVANTAGED BUSINESS ☐ WOMAN-OWNED BUSINESS

13. TYPE OF BUSINESS *(See definitions on reverse)*

☐ MANUFACTURER OR PRODUCER ☐ REGULAR DEALER *(Type 1)* ☐ CONSTRUCTION CONCERN ☐ SURPLUS DEALER

☐ SERVICE ESTABLISHMENT ☐ REGULAR DEALER *(Type 2)* ☐ RESEARCH AND DEVELOPMENT

14. DUNS NO. *(If available)*

15. HOW LONG IN PRESENT BUSINESS?

16. FLOOR SPACE *(Square feet)*

A. MANUFACTURING	B. WAREHOUSE

17. NET WORTH

A. DATE	B. AMOUNT
	$

18. SECURITY CLEARANCE *(If applicable, check highest clearance authorized)*

FOR	TOP SECRET	SECRET	CONFIDENTIAL
A. KEY PERSONNEL			
B. PLANT ONLY			

C. NAMES OF AGENCIES WHICH GRANTED SECURITY CLEARANCES *(Include dates)*

CERTIFICATION – I certify that information supplied herein *(Including all pages attached)* is correct and that neither the applicant nor any person *(Or concern)* in any connection with the applicant as a principal or officer, so far as is known, is now debarred or otherwise declared ineligible by any agency of the Federal Government from making offers for furnishing materials, supplies, or services to the Government or any agency thereof.

19. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN *(Type or print)*	20. SIGNATURE	21. DATE SIGNED

NSN 7540-01-152-8086
PREVIOUS EDITIONS UNUSABLE

129-106

STANDARD FORM 129 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.214(c)

INSTRUCTIONS

Persons or concerns wishing to be added to a particular agency's bidder's mailing list for supplies or services shall file this properly completed and certified Solicitation Mailing List Application, together with such other lists as may be attached to this application form, with each procurement office of the Federal agency with which they desire to do business. If a Federal agency has attached a Supplemental Commodity list with instructions, complete the application as instructed. Otherwise, identify in Item 10 the equipment supplies and/or services on which you desire to bid. (Provide Federal Supply Class or Standard Industrial Classification Codes if available.) The application shall be submitted and signed by the principal as distinguished from an agent, however constituted.

After placement on the bidder's mailing list of an agency, your failure to respond (submission of bid, or notice in writing, that you are unable to bid on that particular transaction but wish to remain on the active bidder's mailing list for that particular item) to solicitations will be understood by the agency to indicate lack of interest and concurrence in the removal of your name from the purchasing activity's solicitation mailing list for the items concerned.

SIZE OF BUSINESS DEFINITIONS
(See Item 11A.)

a. Small business concern—A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is competing for Government contracts and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration. (See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed industry definitions and related procedures.)

b. Affiliates—Business concerns are affiliates of each other when either directly or indirectly (i) one concern controls or has the power to control the other, or (ii) a third party controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationship. (See Items 8 and 11A.)

c. Number of employees—(Item 11B) In connection with the determination of small business status, "number of employees" means the average employment of any concern, 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 concern 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.

TYPE OF OWNERSHIP DEFINITIONS
(See Item 12.)

a. "Disadvantaged business concern"—means any business concern (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals.

b. "Women-owned business"—means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

TYPE OF BUSINESS DEFINITIONS
(See Item 13.)

a. Manufacturer or producer—means a person (or concern) owning, operating, or maintaining a store, warehouse, or other establishment that produces, on the premises, the materials, supplies, articles, or equipment of the general character of those listed in Item 10, or in the Federal Agency's Supplemental Commodity List, if attached.

b. Service establishment—means a concern (or person) which owns, operates, or maintains any type of business which is principally engaged in the furnishing of nonpersonal services, such as (but not limited to) repairing, cleaning, redecorating, or rental of personal property, including the furnishing of necessary repair parts or other supplies as part of the services performed.

c. Regular dealer (Type 1)—means a person (or concern) who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character listed in Item 10, or in the Federal Agency's Supplemental Commodity List, if attached, are bought, kept in stock, and sold to the public in the usual course of business.

d. Regular dealer (Type 2)—In the case of supplies of particular kinds (at present, petroleum, lumber and timber products, machine tools, raw cotton, green coffee, hay, grain, feed, or straw, agricultural liming materials, tea, raw or unmanufactured cotton linters and used ADPE), Regular dealer means a person (or concern) satisfying the requirements of the regulations (Code of Federal Regulations, Title 41, 50-201.101(a)(2)) as amended from time to time, prescribed by the Secretary of Labor under the Walsh-Healey Public Contracts Act (Title 41 U.S. Code 35-45). For coal dealers see Code of Federal Regulations, Title 41, 50-201.604(a).

- COMMERCE BUSINESS DAILY—The Commerce Business Daily, published by the Department of Commerce, contains information concerning proposed procurements, sales, and contract awards. For further information concerning this publication, contact your local Commerce Field Office.

ARCHITECT-ENGINEER CONTRACT

1. CONTRACT NO.

2. DATE OF CONTRACT

3A. NAME OF ARCHITECT-ENGINEER

3B. TELEPHONE NO. *(Include Area Code)*

3C. ADDRESS OF ARCHITECT-ENGINEER *(Include ZIP Code)*

4. DEPARTMENT OR AGENCY AND ADDRESS *(Include ZIP Code)*

5. PROJECT TITLE AND LOCATION

6. CONTRACT FOR *(General description of services to be provided)*

7. CONTRACT AMOUNT *(Express in words and figures)*

8. NEGOTIATION AUTHORITY

9. ADMINISTRATIVE, APPROPRIATION, AND ACCOUNTING DATA

10. The United States of America (called the Government) represented by the Contracting Officer executing this contract, and the Architect-Engineer agree to perform this contract in strict accordance with the clauses and the documents identified as follows, all of which are made a part of this contract:

If the parties to this contract are comprised of more than one legal entity, each entity shall be jointly and severally liable under this contract. The parties hereto have executed this contract as of the date recorded in Item 2.

	SIGNATURES	NAMES AND TITLES *(Typed)*
	11. ARCHITECT-ENGINEER OR OTHER PROFESSIONAL SERVICES CONTRACTOR	
A		
B		
C		
D		
	12. THE UNITED STATES OF AMERICA	
		Contracting Officer

STANDARD FORM 252 BACK (REV. 10-83)

STANDARD FORM (SF)

254

Architect-Engineer and Related Services Questionnaire

Form Approved
OMB No. 3090-0028

Purpose:

The policy of the Federal Government in acquiring architectural, engineering, and related professional services is to encourage firms lawfully engaged in the practice of those professions to submit annually a statement of qualifications and performance data. Standard Form 254, "Architect-Engineer and Related Services Questionnaire" is provided for that purpose. Interested A-E firms (including new, small, and/or minority firms) should complete and file SF 254's with each Federal agency and with appropriate regional or district offices for which the A-E is qualified to perform services. The agency head for each proposed project shall evaluate these qualification resumes, together with any other performance data on file or requested by the agency, in relation to the proposed project. The SF 254 may be used as a basis for selecting firms for discussions, or for screening firms preliminary to inviting submission of additional information.

Definitions:

"Architect-engineer and related services" are those professional services associated with research, development, design and construction, alteration, or repair of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals, and other related services.

"Parent Company" is that firm, company, corporation, association or conglomerate which is the major stockholder or highest tier owner of the firm completing this questionnaire; i.e. Firm A is owned by Firm B which is, in turn, a subsidiary of Corporation C. The "parent company" of Firm A is Corporation C.

"Principals" are those individuals in a firm who possess legal responsibility for its management. They may be owners, partners, corporate officers, associates, administrators, etc.

"Discipline", as used in this questionnaire, refers to the primary technological capability of individuals in the responding firm. Possession of an academic degree, professional registration, certification, or extensive experience in a particular field of practice normally reflects an individual's primary technical discipline.

"Joint Venture" is a collaborative undertaking by two or more firms or individuals for which the participants are both jointly and individually responsible.

"Consultant", as used in this questionnaire, is a highly specialized individual or firm having significant input and responsibility for certain aspects of a project and possessing unusual or unique capabilities for assuring success of the finished work.

"Prime" refers to that firm which may be coordinating the concerted and complementary inputs of several firms, individuals or related services to produce a completed study or facility. The "prime" would normally be regarded as having full responsibility and liability for quality of performance by itself as well as by subcontractor professionals under its jurisdiction.

"Branch Office" is a satellite, or subsidiary extension, of a headquarters office of a company, regardless of any differences in name or legal structure of such a branch due to local or state laws. "Branch offices" are normally subject to the management decisions, bookkeeping, and policies of the main office.

Instructions for Filing (Numbers below correspond to numbers contained in form):

1. Type accurate and complete name of submitting firm, its address, and zip code.

   1a. Indicate whether form is being submitted in behalf of a parent firm or a branch office. (Branch office submissions should list only personnel in, and experience of, that office.)

2. Provide date the firm was established under the name shown in question 1.
3. Show date on which form is prepared. All information submitted shall be current and accurate as of this date.
4. Enter type of ownership, or legal structure, of firm (sole proprietor, partnership, corporation, joint venture, etc.)

   Check appropriate boxes indicating if firm is (a) a small business concern; (b) a small business concern owned and operated by socially and economically disadvantaged individuals; and (c) Women-owned; (See 48 CFR 19.101 and 52.219-9).

5. Branches of subsidiaries of large or parent companies, or conglomerates, should insert name and addresss of highest-tier owner.

   5a. If present firm is the successor to, or outgrowth of, one or more predecessor firms, show name(s) of former entity(ies) and the year(s) of their orginal establishment.

6. List not more than two principals from submitting firm who may be contacted by the agency receiving this form. (Different principals may be listed on forms going to another agency.) Listed principals must be empowered to speak for the firm on policy and contractual matters.
7. Beginning with the submitting office, list name, location, total number of personnel and telephone numbers for all associated or branch offices, (including any headquarters or foreign offices) which provide A-E and related services.

   7a. Show total personnel in all offices. (Should be sum of all personnel, all branches.)

8. Show total number of employees, by discipline, in submitting office. (If form is being submitted by main or headquarters office, firm should list total employees, by discipline, in all offices.) While some personnel may be qualified in several disciplines, each person should be counted only once in accord with his or her primary function. Include clerical personnel as "administrative." Write in any additional disciplines—sociologists, biologists, etc.—and number of people in each, in blank spaces.
9. Using chart (below) insert appropriate index number to indicate range of professional services fees received by submitting firm each calendar year for last five years, most recent year first. Fee summaries should be broken down to

STANDARD FORM (SF)

254 Architect-Engineer and Related Services Questionnaire

reflect the fees received each year for (a) work performed directly for the Federal Government (not including grant and loan projects) or as a sub to other professionals performing work directly for the Federal Government; (b) all other domestic work, U.S. and possessions, including Federally-assisted projects, and (c) all other foreign work.

Ranges of Professional Services Fees

INDEX		INDEX	
1.	Less than $100,000	5.	$1 million to $2 million
2.	$100,000 to $250,000	6.	$2 million to $5 million
3.	$250,000 to $500,000	7.	$5 million to $10 million
4.	$500,000 to $1 million	8.	$10 million or greater

10. Select and enter, in numerical sequence, **not more than thirty** (30) "Experience Profile Code" numbers from the listing (next page) which most accurately reflect submitting firm's demonstrated technical capabilities and project experience. **Carefully review list.** (It is recognized some profile codes may be part of other services or projects contained on list; firms are encouraged to select profile codes which best indicate type and scope of services provided on past projects.) For each code number, show total number of projects and gross fees (in thousands) received for profile projects performed by firm during past few years. If firm has one or more capabilities not included on list, insert same in blank spaces at end of list and show numbers in question 10 on the form. In such cases, the filled-in listing **must** accompany the complete SF 254 when submitted to the Federal agencies.

11. Using the "Experience Profile Code" numbers in the same sequence as entered in item 10, give details of at least one recent (within last five years) representative project for each code number, up to a **maximum** of thirty (30) separate projects, or portions of projects, for which firm was responsible. (Project examples may be used more than once to illustrate different services rendered on the same job. Example: a dining hall may be part of an auditorium or educational facility.) Firms which select less than thirty "profile codes" may list two or more project examples (to illustrate specialization) for each code number so long as total of all project examples does not exceed thirty (30). After each code number in question 11, show: (a) whether firm was "P," the prime professional, or "C," a consultant, or "JV," part of a joint venture on that particular project (New firms, in existence less than five (5) years may use the symbol "IE" to indicate "Individual Experience" as opposed to firm experience); (b) provide name and location of the specific project which typifies firm's (or individual's) performance under that code category; (c) give name and address of the owner of that project (if government agency indicate responsible office); (d) show the estimated construction cost (or other applicable cost) for that portion of the project for which the firm was primarily responsible. (Where no construction was involved, show approximate cost of firm's work); and (e) state year work on that particular project was, or will be, completed.

12. The completed SF 254 should be signed by a principal of the firm, preferably the chief executive officer.

13. Additional data, brochures, photos, etc. should not accompany this form unless specifically requested.

NEW FIRMS (not reorganized or recently-amalgamated firms) are eligible and encouraged to seek work from the Federal Government in connection with performance of projects for which they are qualified. Such firms are encouraged to complete and submit Standard Form 254 to appropriate agencies. Questions on the form dealing with personnel or experience may be answered by citing experience and capabilities of individuals in the firm, based on performance and responsibility while in the employ of others. In so doing, notation of this fact should be made on the form. In question 9, write in "N/A" to indicate "not applicable" for those years prior to firm's organization.

Experience Profile Code Numbers for use with questions 10 and 11

001 Acoustics; Noise Abatement
002 Aerial Photogrammetry
003 Agricultural Development; Grain Storage; Farm Mechanization
004 Air Pollution Control
005 Airports; Navaids; Airport Lighting; Aircraft Fueling
006 Airports; Terminals & Hangars; Freight Handling
007 Arctic Facilities
008 Auditoriums & Theatres
009 Automation; Controls; Instrumentation
010 Barracks; Dormitories
011 Bridges
012 Cemeteries *(Planning & Relocation)*
013 Chemical Processing & Storage
014 Churches; Chapels
015 Codes; Standards; Ordinances
016 Cold Storage; Refrigeration; Fast Freeze
017 Commercial Buildings *(low rise)*; Shopping Centers
018 Communications Systems; TV; Microwave
019 Computer Facilities; Computer Service
020 Conservation and Resource Management
021 Construction Management
022 Corrosion Control; Cathodic Protection; Electrolysis
023 Cost Estimating
024 Dams *(Concrete; Arch)*
025 Dams *(Earth; Rock)*; Dikes; Levees
026 Desalinization *(Process & Facilities)*
027 Dining Halls; Clubs; Restaurants
028 Ecological & Archeological Investigations
029 Educational Facilities; Classrooms
030 Electronics
031 Elevators; Escalators; People-Movers
032 Energy Conservation; New Energy Sources
033 Environmental Impact Studies, Assessments or Statements
034 Fallout Shelters; Blast-Resistant Design
035 Field Houses; Gyms; Stadiums
036 Fire Protection
037 Fisheries; Fish Ladders
038 Forestry & Forest Products
039 Garages; Vehicle Maintenance Facilities; Parking Decks
040 Gas Systems *(Propane; Natural, Etc.)*
041 Graphic Design
042 Harbors; Jetties; Piers; Ship Terminal Facilities
043 Heating; Ventilating; Air Conditioning
044 Health Systems Planning
045 Highrise; Air-Rights-Type Buildings
046 Highways; Streets; Airfield Paving; Parking Lots
047 Historical Preservation
048 Hospital & Medical Facilities
049 Hotels; Models
050 Housing *(Residential, Multi-Family; Apartments; Condominiums)*
051 Hydraulics & Pneumatics
052 Industrial Buildings; Manufacturing Plants
053 Industrial Processes; Quality Control
054 Industrial Waste Treatment
055 Interior Design; Space Planning
056 Irrigation; Drainage
057 Judicial and Courtroom Facilities
058 Laboratories; Medical Research Facilities
059 Landscape Architecture
060 Libraries; Museums; Galleries
061 Lighting *(Interiors; Display; Theatre, Etc.)*
062 Lighting *(Exteriors; Streets; Memorials; Athletic Fields, Etc.)*
063 Materials Handling Systems; Conveyors; Sorters
064 Metallurgy
065 Microclimatology; Tropical Engineering
066 Military Design Standards
067 Mining & Mineralogy
068 Missile Facilities *(Silos; Fuels; Transport)*
069 Modular Systems Design; Pre-Fabricated Structures or Components
070 Naval Architecture; Off-Shore Platforms
071 Nuclear Facilities; Nuclear Shielding
072 Office Buildings; Industrial Parks
073 Oceanographic Engineering
074 Ordnance; Munitions; Special Weapons
075 Petroleum Exploration; Refining
076 Petroleum and Fuel *(Storage and Distribution)*
077 Pipelines *(Cross-Country—Liquid & Gas)*
078 Planning *(Community, Regional, Areawide and State)*
079 Planning *(Site, Installation, and Project)*
080 Plumbing & Piping Design
081 Pneumatic Structures; Air-Support Buildings
082 Postal Facilities
083 Power Generation, Transmission, Distribution
084 Prisons & Correctional Facilities
085 Product, Machine & Equipment Design
086 Radar; Sonar; Radio & Radar Telescopes
087 Railroad; Rapid Transit
088 Recreation Facilities *(Parks, Marinas, Etc.)*
089 Rehabilitation *(Buildings; Structures; Facilities)*
090 Resource Recovery; Recycling
091 Radio Frequency Systems & Shieldings
092 Rivers; Canals; Waterways; Flood Control
093 Safety Engineering; Accident Studies; OSHA Studies
094 Security Systems; Intruder & Smoke Detection
095 Seismic Designs & Studies
096 Sewage Collection, Treatment and Disposal
097 Soils & Geologic Studies; Foundations
098 Solar Energy Utilization
099 Solid Wastes; Incineration; Land Fill
100 Special Environments; Clean Rooms, Etc.
101 Structural Design; Special Structures
102 Surveying; Platting; Mapping; Flood Plain Studies
103 Swimming Pools
104 Storm Water Handling & Facilities
105 Telephone Systems *(Rural; Mobile; Intercom, Etc.)*
106 Testing & Inspection Services
107 Traffic & Transportation Engineering
108 Towers *(Self-Supporting & Guyed Systems)*
109 Tunnels & Subways
110 Urban Renewals; Community Development
111 Utilities *(Gas & Steam)*
112 Value Analysis; Life-Cycle Costing
113 Warehouses & Depots
114 Water Resources; Hydrology; Ground Water
115 Water Supply, Treatment and Distribution
116 Wind Tunnels; Research/Testing Facilities Design
117 Zoning; Land Use Studies
201 _____
202 _____
203 _____
204 _____
205 _____

STANDARD FORM (SF)

254

Architect-Engineer and Related Services Questionnaire

1. Firm Name / Business Address:

2. Year Present Firm Established:

3. Date Prepared:

4. Specify type of ownership *and* check below, if applicable.

- A. Small Business
- B. Small Disadvantaged Business
- C. Woman-owned Business

1a. Submittal is for ☐ Parent Company ☐ Branch or Subsidiary Office

5. Name of Parent Company, if any:

5a. Former Parent Company Name(s), if any, and Year(s) Established:

6. Names of not more than Two Principals to Contact: Title / Telephone

1)
2)

7. Present Offices: City / State / Telephone / No. Personnel Each Office

7a. Total Personnel _____

8. Personnel by Discipline: *(List each person only once, by primary function.)*

____ Administrative	____ Electrical Engineers	____ Oceanographers	____ _____
____ Architects	____ Estimators	____ Planners: Urban/Regional	____ _____
____ Chemical Engineers	____ Geologists	____ Sanitary Engineers	____ _____
____ Civil Engineers	____ Hydrologists	____ Soils Engineers	____ _____
____ Construction Inspectors	____ Interior Designers	____ Specification Writers	____ _____
____ Draftsmen	____ Landscape Architects	____ Structural Engineers	____ _____
____ Ecologists	____ Mechanical Engineers	____ Surveyors	____ _____
____ Economists	____ Mining Engineers	____ Transportation Engineers	____ _____

9. Summary of Professional Services Fees Received: (Insert index number)

	Last 5 Years (most recent year first)				
	19____	19____	19____	19____	19____
Direct Federal contract work, including overseas					
All other domestic work					
All other foreign work*					

*Firms interested in foreign work, but without such experience, check here: ☐

Ranges of Professional Services Fees

INDEX
1. Less than $100,000
2. $100,000 to $250,000
3. $250,000 to $500,000
4. $500,000 to $1 million
5. $1 million to $2 million
6. $2 million to $5 million
7. $5 million to $10 million
8. $10 million or greater

STANDARD FORM 254 (REV. 10-83)

10. Profile of Firm's Project Experience, Last 5 Years

Profile Code	Number of Projects	Total Gross Fees (in thousands)	Profile Code	Number of Projects	Total Gross Fees (in thousands)	Profile Code	Number of Projects	Total Gross Fees (in thousands)
1)			11)			21)		
2)			12)			22)		
3)			13)			23)		
4)			14)			24)		
5)			15)			25)		
6)			16)			26)		
7)			17)			27)		
8)			18)			28)		
9)			19)			29)		
10)			20)			30)		

11. Project Examples, Last 5 Years

Profile Code	"P", "C", "JV", or "IE"	Project Name and Location	Owner Name and Address	Cost of Work (in thousands)	Completion Date (Actual or Estimated)
		1			
		2			
		3			
		4			
		5			
		6			
		7			

8	9	10	11	12	13	14	15	16	17	18	19

STANDARD FORM 254 (REV. 10-83)

6

		20			
		21			
		22			
		23			
		24			
		25			
		26			
		27			
		28			
		29			
		30			

12. The foregoing is a statement of facts

Signature: _____ Typed Name and Title: _____

Date:

STANDARD FORM 254 (REV. 10-83)

STANDARD FORM (SF)

255

Architect-Engineer and Related Services Questionnaire for Specific Project

Form Approved
OMB No. 3090-0029

Purpose:

This form is a supplement to the "Architect-Engineer and Related Services Questionnaire" (SF 254). Its purpose is to provide additional information regarding the qualifications of interested firms to undertake a specific Federal A-E project. Firms, or branch offices of firms, submitting this form should enclose (or already have on file with the appropriate office of the agency) a current (within the past year) and accurate copy of the SF 254 for that office.

The procurement official responsible for each proposed project may request submission of the SF 255 "Architect-Engineer and Related Services Questionnaire for Specific Project" in accord with applicable civilian and military procurement regulations and shall evaluate such submissions, as well as related information contained on the Standard Form 254, and any other performance data on file with the agency, and shall select firms for subsequent discussions leading to contract award in conformance with Public Law 92-582. This form should only be filed by an architect-engineer or related services firm when requested to do so by the agency or by a public announcement. Responses should be as complete and accurate as possible, contain data relative to the specific project for which you wish to be considered, and should be provided, by the required due date, to the office specified in the request or public announcement.

This form will be used only for the specified project. Do not refer to this submittal in response to other requests or public announcements.

Definitions:

"Architect-engineer and related services" are those professional services associated with research, development, design and construction, alteration, or repair of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals, and other related services.

"Principals" are those individuals in a firm who possess legal responsibility for its management. They may be owners, partners, corporate officers, associates, administrators, etc.

"Discipline", as used in this questionnaire, refers to the primary technological capability of individuals in the responding firm. Possession of an academic degree, professional registration, certification, or extensive experience in a particular field of practice normally reflects an individual's primary technical discipline.

"Joint Venture", is a collaborative undertaking of two or more firms or individuals for which the participants are both jointly and individually responsible.

"Key Persons, Specialists, and Individual Consultants", as used in this questionnaire, refer to individuals who will have **major** project responsibility or will provide **unusual or unique** capabilities for the project under consideration.

Instructions for Filing (Numbers below correspond to numbers contained in form):

1. Give name and location of the project for which this form is being submitted.

2. Provide appropriate data from the *Commerce Business Daily* (CBD) identifying the particular project for which this form is being filed.

   2a. Give the date of the *Commerce Business Daily* in which the project announcement appeared, or indicate "not applicable" (N/A) if the source of the announcement is other than the CBD.

   2b. Indicate Agency identification or contract number as provided in the CBD announcement.

3. Show name and address of the individual or firm (or joint venture) which is submitting this form for the project.

   3a. List the name, title, and telephone number of that principal who will serve as the point of contact. Such an individual must be empowered to speak for the firm on policy and contractual matters and should be familiar with the programs and procedures of the agency to which this form is directed.

   3b. Give the address of the specific office which will have responsibility for performing the announced work.

4. Insert the number of personnel by discipline presently employed (on date of this form) at office specified in block 3b. While some personnel may be qualified in several disciplines, each person should be counted only once in accord with his or her primary function. Include clerical personnel as "administrative." Write in any additional disciplines—sociologists, biologists, etc.—and number of people in each, in blank spaces.

5. Answer only if this form is being submitted by a joint venture of two or more collaborating firms. Show the names and addresses of all individuals or organizations expected to be included as part of the joint venture and describe their particular areas of anticipated responsibility, (i.e., technical disciplines, administration, financial, sociological, environmental, etc.)

   5a. Indicate, by checking the appropriate box, whether this particular joint venture has worked together on other projects.

NSN 7540-01-152-8074

STANDARD FORM 255 (Rev. 10-83)
PRESCRIBED BY GSA, FAR (48 CFR) 53.236-2(c)

STANDARD FORM (SF)

255

Architect-Engineer and Related Services Questionnaire for Specific Project

Standard Form 255
General Services Administration,
Washington, D. C. 20405
Fed. Proc. Reg.(41 CFR) 1-16 . 803
Armed Svc. Proc. Reg. 18-403

Each firm participating in the joint venture should have a Standard Form 254 on file with the contracting office receiving this form. Firms which do not have such forms on file should provide same immediately along with a notation at the top of page 1 of the form regarding their association with this joint venture submittal.

6. If respondent is not a joint venture, but intends to use outside (as opposed to in-house or permanently and formally affiliated) consultants or associates, he should provide names and addresses of all such individuals or firms, as well as their particular areas of technical/professional expertise, as it relates to this project. Existence of previous working relationships should be noted. If more than eight outside consultants or associates are anticipated, attach an additional sheet containing requested information.

7. Regardless of whether respondent is a joint venture or an independent firm, provide brief resumes of key personnel expected to participate on this project. Care should be taken to limit resumes to only those personnel and specialists who will have major project responsibilities. Each resume must include: (a) name of each key person and specialist and his or her title, (b) the project assignment or role which that person will be expected to fulfill in connection with this project, (c) the name of the firm or organization, if any, with whom that individual is presently associated, (d) years of relevant experience with present firm and other firms, (e) the highest academic degree achieved and the discipline covered (if more than one highest degree, such as two Ph.D.'s, list both), the year received and the particular technical/professional discipline which that individual will bring to the project, (f) if registered as an architect, engineer, surveyor, etc., show only the field of registration and the year that such registration was first acquired. If registered in several states, do not list states, and (g) a synopsis of experience, training, or other qualities which reflect individual's potential contribution to this project. Include such data as: familiarity with Government or agency procedures, similar type of work performed in the past, management abilities, familiarity with the geographic area, relevant foreign language capabilities, etc. Please limit synopsis of experience to directly relevant information.

8. List up to ten projects which demonstrate the firm's or joint venture's competence to perform work similar to that likely to be required on this project. The more recent such projects, the better. Prime consideration will be given to projects which illustrate respondent's capability for performing work similar to that being sought. Required information must include: (a) name and location of project, (b) brief description of type and extent of services provided for each project (submissions by joint ventures should indicate which member of the joint venture was the prime on that particular project and what role it played), (c) name and address of the owner of that project (if Government agency, indicate responsible office), (d) completion date (actual when available, otherwise estimated), (e) total construction cost of completed project (or where no construction was involved, the approximate cost of your work) and that portion of the cost of the project for which the named firm was/is responsible.

9. List only those projects which the A-E firm or joint venture, or members of the joint venture, are currently performing under direct contract with an agency or department of the Federal Government. Exclude any grant or loan projects being financed by the Federal Government but being performed under contract to other non Federal governmental entities. Information provided under each heading is similar to that requested in the preceding Item 8, except for (d) "Percent Complete." Indicate in this item the percentage of A-E work completed upon filing this form.

10. Through narrative discussion, show reason why the firm or joint venture submitting this questionnaire believes it is especially qualified to undertake the project. Information provided should include, but not be limited to, such data as: specialized equipment available for this work, any awards or recognition received by a firm or individuals for similar work, required security clearances, special approaches or concepts developed by the firm relevant to this project, etc. Respondents may say anything they wish in support of their qualifications. When appropriate, respondents may supplement this proposal with graphic material and photographs which best demonstrate design capabilities of the team proposed for this project.

11. Completed forms should be signed by the chief executive officer of the joint venture (thereby attesting to the concurrence and commitment of all members of the joint venture), or by the architect-engineer principal responsible for the conduct of the work in the event it is awarded to the organization submitting this form. Joint ventures selected for subsequent discussions regarding this project must make available a statement of participation signed by a principal of each member of the joint venture. ALL INFORMATION CONTAINED IN THE FORM SHOULD BE CURRENT AND FACTUAL.

OMB Approval No. 3090-0029

STANDARD FORM (SF) 255
Architect-Engineer Related Services for Specific Project

1. Project Name / Location for which Firm is Filing:

2a. ***Commerce Business Daily*** Announcement Date, if any:

2b. Agency Identification Number, if any:

3. Firm (or Joint-Venture) Name & Address

3a. Name, Title & Telephone Number of Principal to Contact

3b. Address of office to perform work, if different from Item 3

4. Personnel by Discipline: (List each person only once, by primary function.)

___ Administrative	___ Electrical Engineers	___ Oceanographers	___ _____
___ Architects	___ Estimators	___ Planners: Urban/Regional	___ _____
___ Chemical Engineers	___ Geologists	___ Sanitary Engineers	___ _____
___ Civil Engineers	___ Hydrologists	___ Soils Engineers	___ _____
___ Construction Inspectors	___ Interior Designers	___ Specification Writers	___ _____
___ Draftsmen	___ Landscape Architects	___ Structural Engineers	___ _____
___ Ecologists	___ Mechanical Engineers	___ Surveyors	___ _____
___ Economists	___ Mining Engineers	___ Transportation Engineers	___ Total Personnel

5. If submittal is by JOINT-VENTURE list participating firms and outline specific areas of responsibility (including administrative, technical and financial) for each firm: (Attach SF 254 for each if not on file with Procuring Office.)

5a. Has this Joint-Venture previously worked together? ☐ yes ☐ no

STANDARD FORM 255 (Rev. 10-83)

6. If respondent is not a joint-venture, list outside key Consultants/Associates anticipated for this project (Attach SF 254 for Consultants/Associates listed, if not already on file with the Contracting Office).

Name & Address	Specialty	Worked with Prime before (Yes or No)
1)		
2)		
3)		
4)		
5)		
6)		
7)		
8)		

STANDARD FORM 255 (Rev. 10-83)

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm ___ With Other Firms ___	d. Years experience: With This Firm ___ With Other Firms ___
e. Education: Degree(s) / Year / Specialization	e. Education: Degree(s) / Years / Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

STANDARD FORM 255 (Rev. 10-83)

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm ___ With Other Firms ___	d. Years experience: With This Firm ___ With Other Firms ___
e. Education: Degree(s) / Year / Specialization	e. Education: Degree(s) / Years / Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

STANDARD FORM 255 (Rev. 10-83)

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm ___ With Other Firms ___	d. Years experience: With This Firm ___ With Other Firms ___
e. Education: Degree(s) / Year / Specialization	e. Education: Degree(s) / Years / Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

STANDARD FORM 255 (Rev. 10-83)

7. Brief resume of key persons, specialists, and individual consultants anticipated for this project.	
a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm ___ With Other Firms ___	d. Years experience: With This Firm ___ With Other Firms ___
e. Education: Degree(s) / Year / Specialization	e. Education: Degree(s) / Years / Specialization
f. Active Registration: Year First Registered/Discipline	f. Active Registration: Year First Registered/Discipline
g. Other Experience and Qualifications relevant to the proposed project:	g. Other Experience and Qualifications relevant to the proposed project:

STANDARD FORM 255 (Rev. 10-83)

8. Work by firm or joint-venture members which best illustrates current qualifications relevant to this project (list not more than 10 projects).

a. Project Name & Location	b. Nature of Firm's Responsibility	c. Project Owner's Name & Address	d. Completion Date (actual or estimated)	e. Estimated Cost (in thousands)	
				Entire Project	Work for which Firm was/is responsible
(1)					
(2)					
(3)					
(4)					
(5)					
(6)					
(7)					
(8)					
(9)					
(10)					

STANDARD FORM 255 (Rev. 10-83)

9. All work by firms or joint-venture members currently being performed directly for Federal agencies.

a. Project Name & Location	b. Nature of Firm's Responsibility	c. Agency (Responsible Office) Name & Address	d. Percent complete	e. Estimated Cost (In Thousands)	
				Entire Project	Work for which firm is responsible

STANDARD FORM 255 (Rev. 10-83)

10. Use this space to provide any additional information or description of resources (including any computer design capabilities) supporting your firm's qualifications for the proposed project.

11. The foregoing is a statement of facts.

Signature: _____ Typed Name and Title: _____

Date:

STANDARD FORM 255 (Rev. 10-83)

REINSURANCE AGREEMENT FOR A MILLER ACT PERFORMANCE BOND

(See Instructions on reverse)

1. DIRECT WRITING COMPANY *	1A. DATE DIRECT WRITING COMPANY EXECUTES THIS AGREEMENT
	1B. STATE OF INCORPORATION
2. REINSURING COMPANY *	2A. AMOUNT OF THIS REINSURANCE $
	2B. DATE REINSURING COMPANY EXECUTES THIS AGREEMENT
	2C. STATE OF INCORPORATION

3. DESCRIPTION OF CONTRACT		4. DESCRIPTION OF BOND	
3A. AMOUNT OF CONTRACT		4A. PENAL SUM OF BOND	
3B. CONTRACT DATE	3C. CONTRACT NO.	4B. DATE OF BOND	4C. BOND NO.
3D. DESCRIPTION OF CONTRACT		4D. PRINCIPAL *	
3E. CONTRACTING AGENCY		4E. STATE OF INCORPORATION *(If Corporate Principal)*	

AGREEMENT:

(a) The Direct Writing Company named above is bound as a surety to the United States of America on the performance bond described above, wherein the above described is the principal, for the protection of the United States on the contract described above. The contract is for the construction, alteration, or repair of a public building or public work of the United States and the performance bond was furnished to the United States under the Act of August 24, 1935, as amended (40 U.S.C. 270a-270e), known as the Miller Act. The Direct Writing Company has applied to the Reinsuring Company named above to be reinsured and countersecured in the amount shown opposite the name of the Reinsuring Company (referred to as the "Amount of this Reinsurance"), or for whatever amount less than the "Amount of this Reinsurance" the Direct Writing Company is liable to pay under or by virtue of the performance bond.

(b) For a sum mutually agreed upon, paid the the Direct Writing Company to the Reinsuring Company which acknowledges its receipt, the parties to this Agreement covenant and agree to the terms and conditions of this agreement.

TERMS AND CONDITIONS:

(a) The purpose and intent of this agreement is to guarantee and indemnify the United States against loss under the performance bond to the extent of the "Amount of this Reinsurance," or any sum less than the "Amount of this Reinsurance" that is owing and unpaid by the Direct Writing Company to the United States under the performance bond.

(b) If the Direct Writing Company fails to pay any default under the performance bond equal to or in excess of the "Amount of this Reinsurance," the Reinsuring Company covenants and agrees to pay to the United States, the obligee on the performance bond, the "Amount of this Reinsurance." If the Direct Writing Company fails to pay to the United States any default for a sum less than the "Amount of this Reinsurance" the Reinsuring Company covenants and agrees to pay to the United States the full amount of the default, or so such thereof that is not paid to the United States by the Direct Writing Company.

(c) If there is a default on the performance bond for the "Amount of this Reinsurance," or more, the Reinsuring Company and the Direct Writing Company hereby covenant and agree that the United States may bring suit against the Reinsuring Company for the "Amount of this Reinsurance" or, in the case the amount of the default is for less than the "Amount of this Reinsurance," for the full amount of the default.

WITNESS:

The Direct Writing Company and the Reinsuring Company, respectively, have caused this Agreement to be signed and impressed with their respective corporate seals by offices possessing power to sign this instrument, and to be duly attested by officers empowered thereto, on the day and date above written opposite their respective names.

* *Items 1, 2, 4D—Furnish legal name, business address and ZIP Code.*

NSN 7540-01-152-8075
PREVIOUS EDITION USABLE
273-102

STANDARD FORM 273 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.228(h)

5. DIRECT WRITING COMPANY		
5A. (1) SIGNATURE	(2) ATTEST: SIGNATURE	*Corporate Seal*
5B. (1) NAME AND TITLE *(Typed)*	(2) NAME AND TITLE *(Typed)*	
6. REINSURING COMPANY		
6A. (1) SIGNATURE	(2) ATTEST: SIGNATURE	*Corporate Seal*
6B. (1) NAME AND TITLE *(Typed)*	(2) NAME AND TITLE *(Typed)*	

INSTRUCTIONS

This form is to be used in cases where it is desired to cover the excess of a Direct Writing Company's underwriting limitation by reinsurance instead of co-insurance on Miller Act performance bonds running to the United States. See FAR (48 CFR) 28.202-1 and 53.228(h).

Execute and file this form as follows:

Original and copies (as specified by the bond-approving officer), signed and sealed, shall accompany the bond or be filed within the time period shown in the bid or proposal.

One carbon copy, signed and sealed, shall accompany the Direct Writing Company's quarterly Schedule of Excess Risks filed with the Department of the Treasury.

Other copies may be prepared for the use of the Direct Writing Company and the Reinsuring Company. Each Reinsuring Company should use a separate form.

REINSURANCE AGREEMENT FOR A MILLER ACT PAYMENT BOND

(See Instructions on reverse)

1. DIRECT WRITING COMPANY *	1A. DATE DIRECT WRITING COMPANY EXECUTES THIS AGREEMENT
	1B. STATE OF INCORPORATION
2. REINSURING COMPANY *	2A. AMOUNT OF THIS REINSURANCE $
	2B. DATE REINSURING COMPANY EXECUTES THIS AGREEMENT
	2C. STATE OF INCORPORATION

3. DESCRIPTION OF CONTRACT		4. DESCRIPTION OF BOND	
3A. AMOUNT OF CONTRACT		4A. PENAL SUM OF BOND	
3B. CONTRACT DATE	3C. CONTRACT NO.	4B. DATE OF BOND	4C. BOND NO.
3D. DESCRIPTION OF CONTRACT		4D. PRINCIPAL *	
3E. CONTRACTING AGENCY		4E. STATE OF INCORPORATION *(If Corporate Principal)*	

AGREEMENT:

(a) The Direct Writing Company named above is bound as a surety on the payment bond described above, wherein the above described is the principal, for the protection of all persons supplying labor and material on the contract described above, which is for the construction, alteration, or repair of a public building or public work of the United States. The payment bond is for the use of persons supplying labor or material, and is furnished to the United States under the Act of August 24, 1935, as amended (40 U.S.C. 270a-270e), known as the Miller Act. The Direct Writing Company has applied to the Reinsuring Company named above to be reinsured and counter-secured in the amount above opposite the name of the Reinsuring Company (referred to as "Amount of this Reinsurance"), or for whatever amount less than the "Amount of this Reinsurance" the Direct Writing Company is liable to pay under or by virtue of the payments bond.

(b) For a sum mutually agreed upon, paid by the Direct Writing Company to the Reinsuring Company which acknowledges its receipt, the parties to this Agreement covenant and agree to the terms and conditions of this agreement.

TERMS AND CONDITIONS:

The purpose and intent of this agreement is (a) to guarantee and indemnify the persons who have furnished or supplied labor or material in the prosecution of the work provided for in the contract referred to above (hereinafter referred to as "laborers and materialmen," the term "materialmen" including persons having a direct contractual relation with a subcontractor but no contractual relationship expressed or implied with the contractor who has furnished the said payment bond) against loss under the payment bond to the extent of the "Amount of this Reinsurance," or for any sum less than the "Amount of this Reinsurance," that is owing and unpaid by the Direct Writing Company to the "laborers and materialmen" on the payment bond; and (b) to make the "laborers and materialmen" obligees under this Reinsurance Agreement to the same extent as if their respective names were written herein.

THEREFORE:

1. The Reinsuring Company covenants and agrees —

(a) To pay the "Amount of this Reinsurance" to the "laborers and materialmen" in the event of the District Writing Company's failure to pay to the "laborers and materialmen" any default under the payment bond equal to or in excess of the "Amount of this Reinsurance"; and

(b) To pay (1) the full amount to the "laborers and materialmen," or (2) the amount not paid to them by the Direct Writing Company; in case the Direct Writing Company fails to pay the "laborers or materialmen" any default under the payment bond less than the "Amount of this Reinsurance."

(Over)

* *Items 1, 2, 4D—Furnish legal name, business address and ZIP Code.*

NSN 7540-01-152-8076
PREVIOUS EDITION USABLE

274-102

STANDARD FORM 274 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.228(l)

2. The Reinsuring Company and the Direct Writing Company covenant and agree that, in the case of default on the payment bond for the "Amount of this Reinsurance," or more, the persons given a "right of action" or a "right to sue" on the payment bond by section 2(a) of the Miller Act (40 U.S.C. 270b(a)) may bring suit against the Reinsuring Company in the United States District Court for the district in which the contract described above is to be performed and executed for the "Amount of this Reinsurance" or, if the amount of the default is for less than the "Amount of this Reinsurance," for whatever the full amount of the default may be. The Reinsuring Company further covenants and agrees to comply with all requirements necessary to give such court jurisdiction, and to consent to determination of matters arising under this Reinsurance Agreement in accord with the law and practice of the court. It is expressly understood by the parties that the rights, powers, and privileges given in this paragraph to persons are in addition to or supplemental to or in accordance with other rights, powers, and privileges which they might have under the statutes of the United States, any States, or the other laws of either, and should not be construed as limitations.

3. The Reinsuring Company and the Direct Writing Company further covenant and agree that the Reinsuring Company designates the process agent, appointed by the Direct Writing Company in the district in which the contract is to be performed and executed, as an agent to accept service of process in any suit instituted on this Reinsurance Agreement, and that the process agent shall send, by registered mail, to the Reinsuring Company at its principal place of business shown above, a copy of the process.

4. The Reinsuring Company and the Direct Writing Company further covenant and agree that this Reinsurance Agreement is an integral part of the payment bond.

WITNESS

The Direct Writing Company and the Reinsuring Company, respectively, have caused this Agreement to be signed and impressed with their respective corporate seals by officers possessing the power to sign this instrument, and to be duly attested to by officers empowered thereto, on the day and date in Item 1A written opposite their respective names.

5. DIRECT WRITING COMPANY		
5A. (1) SIGNATURE	(2) ATTEST: SIGNATURE	*Corporate Seal*
5B. (1) NAME AND TITLE *(Typed)*	(2) NAME AND TITLE *(Typed)*	
6. REINSURING COMPANY		
6A. (1) SIGNATURE	(2) ATTEST: SIGNATURE	*Corporate Seal*
6B. (1) NAME AND TITLE *(Typed)*	(2) NAME AND TITLE *(Typed)*	

INSTRUCTIONS

This form is to be used in cases where it is desired to cover the excess of a Direct Writing Company's underwriting limitation by reinsurance instead of co-insurance on Miller Act payment bonds running to the United States. See FAR (48 CFR) 28.202-1 and 53.228(i).

Execute and file this form as follows:

Original and copies (as specified by the bond-approving officer), signed and sealed, shall accompany the bond or be filed within the time period shown in the bid or proposal.

One carbon copy, signed and sealed, shall accompany the Direct Writing Company's quarterly Schedule of Excess Risks filed with the Department of Treasury.

Other copies may be prepared for the use of the Direct Writing Company and the Reinsuring Company. Each Reinsuring Company should use a separate form.

REINSURANCE AGREEMENT IN FAVOR OF THE UNITED STATES

(See Instructions on reverse)

1. DIRECT WRITING COMPANY *	1A. DATE DIRECT WRITING COMPANY EXECUTES THIS AGREEMENT
	1B. STATE OF INCORPORATION
2. REINSURING COMPANY *	2A. AMOUNT OF THIS REINSURANCE $
	2B. DATE REINSURING COMPANY EXECUTES THIS AGREEMENT
	2C. STATE OF INCORPORATION

3. DESCRIPTION OF BOND

3A. DESCRIPTION OF BOND *(Type, purpose, etc.) (If associated with contract number, date, amount, etc., include name of Government agency involved.)*	3B. PENAL SUM OF BOND $	
	3C. DATE OF BOND	3D. BOND NO.
	3E. PRINCIPAL *	
	3F. STATE OF INCORPORATION *(If Corporate Principal)*	

AGREEMENT:

(a) The Direct Writing Company named above is bound as a surety to the United States of America, on the bond described above, wherein the above-named is the principal. The bond is given for the protection of the United States and the Direct Writing Company has applied to the above Reinsuring Company to be reinsured and counter-secured in the amount shown opposite the name of the Reinsuring Company (referred to as the "Amount of this Reinsurance"), or for whatever amount less than the "Amount of this Reinsurance" the Direct Writing Company is liable to pay under or by virtue of the bond.

(b) For a sum mutually agreed upon, paid by the Direct Writing Company to the Reinsuring Company which acknowledges its receipt, the parties to this Agreement covenant and agree to the terms and conditions of this agreement.

TERMS AND CONDITIONS:

The purpose and intent of this agreement is to guarantee and indemnify the United States against loss under the bond to the extent of the "Amount of this Reinsurance," or for any less sum than the "Amount of this Reinsurance," that is owing and unpaid by the Direct Writing Company to the United States.

THEREFORE:

1. If the Direct Writing Company fails to pay any default under the bond equal to or in excess of the "Amount of this Reinsurance," the Reinsuring Company covenants and agrees to pay to the United States, the obligee on the bond, the "Amount of this Reinsurance." If the Direct Writing Company fails to pay to the United States any default for a sum less than the "Amount of this Reinsurance," the Reinsuring Company covenants and agrees to pay to the United States the full amount of the default, or so much thereof that is not paid to the United States by the Direct Writing Company.

2. The Reinsuring Company further covenants and agrees that in case of default on the bond for the "Amount of this Reinsurance," or more, the United States may sue the Reinsuring Company for the "Amount of this Reinsurance" or for the full amount of the default when the default is less than the "Amount of this Reinsurance."

WITNESS:

The Direct Writing Company and the Reinsuring Company, respectively, have caused this Agreement to be signed and impressed with their respective corporate seals by officers possessing power to sign this instruments, and to be duly attested to by officers empowered thereto, on the day and date above-written opposite their respective names.

4. DIRECT WRITING COMPANY		
4A. (1) SIGNATURE	(2) ATTEST: SIGNATURE	*Corporate Seal*
4B. (1) NAME AND TITLE *(Typed)*	(2) NAME AND TITLE *(Typed)*	
5. REINSURING COMPANY		
5A. (1) SIGNATURE	(2) ATTEST: SIGNATURE	*Corporate Seal*
5B. (1) NAME AND TITLE *(Typed)*	(2) NAME AND TITLE *(Typed)*	

INSTRUCTIONS

This form is to be used in cases where it is desired to cover the excess of a Direct Writing Company's underwriting limitation by reinsurance instead of co-insurance on bonds running to the United States except Miller Act Performance and Payment Bonds. See FAR (48 CFR) 28.202-1 and 53.228(j) and 31 CFR 223.11(b)(i). If this form is used to reinsure a bid bond, the "Penal Sum of Bond" and "Amount of this Reinsurance" may be expressed as a percentage of the bid provided the actual amounts will not exceed the companies' respective underwriting limitations.

Execute and file this form as follows:

Original and copies (as specified by the bond-approving officer), signed and sealed, shall accompany the bond or be filed within the time period shown in the bid or proposal.

One carbon copy, signed and sealed, shall accompany the Direct Writing Company's quarterly Schedule of Excess Risks filed with the Department of the Treasury.

Other copies may be prepared for the use of the Direct Writing Company and the Reinsuring Company. Each Reinsuring Company should use a separate form.

OMB No. 3090-0095

FPDS--INDIVIDUAL CONTRACT ACTION REPORT (OVER $10,000)

INTERAGENCY REPORT CONTROL NO. 0205-GSA-GU

1. REPORTING AGENCY *(FPDS Organization Designation Code Manual)* (1 2 3 4)
2. CONTRACT NUMBER *(Left justified)* (5 6 7 8 9 10 11 12 13 14 15 16 17 18 19)
3. MODIFICATION NUMBER (20 21 22 23)
1a. NAME OF REPORTING AGENCY
4. CONTRACTING OFFICE ORDER NUMBER (24 25 26 27 28 29 30 31 32 33 34 35 36 37 38)
5. PURCHASING OR CONTRACTING OFFICE *(FPDS Purchase Office Code Manual)* Code (39 40 41 42 43)
5a. NAME
6. DATE OF THIS ACTION CY (44 45) Mo. (46 47)
7. TYPE OF DATA ENTRY (48) Ø = ORIGINAL; 1 = REVERSING; 2 = CORRECTING
Items Being Changed:
8. REPORT PERIOD FY (49 50) Qtr (51)
9. D-U-N-S CONTRACTOR ESTABLISHMENT CODE (52 53 54 55 56 57 58 59 60)
9a. ESTABLISHMENT AND COMPLETE ADDRESS
Contractor Name:
Division Name:
Street Address:
City & State or Country
10. PRINCIPAL PLACE OF PERFORMANCE (STATE OR U.S. OUTLYING AREA OR COUNTRY--*FIPS 5 or NBS LC 1067*) -- (CITY OR PLACE IN 50 STATES ONLY--*FIPS 55*)
State (61 62) City (63 64 65 66 67)
10a. NAME OF PRINCIPAL PLACE OF PERFORMANCE
11. TOTAL DOLLARS OBLIGATED OR DEOBLIGATED *(Round to nearest whole dollar; right justified for report to NDQTRS)* *(Round to thousands for report to FPDS)* *(use lead zeros)* (68 69 70 71 72 73 74 75)
11a. TYPE OF OBLIGATION (76) 1 = OBLIGATED; 2 = DEOBLIGATED; * = INITIAL LOAD OF SOA TYPE CONTRACT (NO DOLLARS)
12. SUBJECT TO STATUTORY REQUIREMENTS
A. Walsh-Healey Act, Manufacturer
B. Walsh-Healey Act, Regular Dealer
C. Service Contract Act
D. Davis-Bacon Act
E. Not subject to Walsh-Healey, Service Contract, or Davis-Bacon Act
13. *For Agency Use* (77)
14. KIND OF CONTRACT ACTION (79)
1. Initial Letter Contract
2. Definitive Contract Superseding Letter Contract
3. New Definitive Contract
4. Order Under Reporting Agency's Contract
5. Modification
6. GSA Schedule
7. Order under another Agency's Contract
8. Termination for Default
9. Termination for Convenience
15. MULTI-YEAR CONTRACT (80) 1 = Yes; 2 = No
16. LABOR SURPLUS AREA (LSA) PREFERENCE (81)
2. Partial Labor Surplus Area Set-Aside Preference (DoD only)
3. Labor Surplus Area -- Tie Bid Preference
5. Not a Labor Surplus Area Preference Award
6. Combined Small Business/Partial Labor Surplus Area Set-Aside Preference (DoD only)
7. Total Labor Surplus Area/Small Business Set-Aside Preference (P.L. 96-302)
8. Total Labor Surplus Area Set-Aside Preference (P.L. 96-302)
17. CONSULTANT TYPE AWARD (82) 1 = Yes; 2 = No
18. PRINCIPAL PRODUCT OR SERVICE *(FPDS Product/Service Code Manual)* Code (83 84 85 86)
18a. DESCRIPTION
19. METHOD OF CONTRACTING (87)
1. Two-step Formal Advertising
2. Other Formal Advertising
3. Negotiated Competitive
4. Negotiated Non-competitive
5. Directed Contracts for Foreign Governments
6. Tariff or Regulated Acquisition
20. EXTENT OF COMPETITION IN NEGOTIATION (88 89)
COMPETITIVE
A1. Small Business Total Set-Aside
A2. Small Business Partial Set-Aside
A3. Labor Surplus Area Set-Aside
A4. Labor Surplus Area/Small Business Set-Aside
A9. Other Negotiated Competitive
NON-COMPETITIVE
B1. Buy Indian
B2. 8(a) Program
B3. Follow-on After Competition
B9. Other Negotiated Non-Competitive
21. NEGOTIATION EXCEPTION AUTHORITY (90) A = 10 USC 2304 (a) *(applies to DoD, USCG & NASA only)* C = 41 USC 252 (c) *(applies to Civilian Agencies)* (91 92) Ø1 Ø2 Ø4 Ø5 Ø6 Ø7 Ø8 Ø9 1Ø 11 12 13 14 15 16 17 *Applies only to authority A.*
22. TYPE OF CONTRACT OR MODIFICATION (93)
A. Fixed Price Redetermination
J. Firm Fixed Price
K. Fixed Price Economic Price Adjustment
L. Fixed Price Incentive
R. Cost-Plus-Award Fee
S. Cost-No Fee
T. Cost Sharing
U. Cost-Plus-Fixed Fee
V. Cost-Plus-Incentive Fee
Y. Time and Materials
Z. Labor Hour
23. TYPE OF BUSINESS (94 95)
A1. Small Business-Disadvantaged 8(a)
A2. Small Business-Owned by Minority Group
A3. Other Small Business or Individuals
B1. Large Minority Business
B2. Other Large Business
C1. Non-Profit-Private Educational Organization
C2. Non-Profit-Hospital
C3. Non-Profit-Research Institution, Foundation, Laboratory
C4. Other Non-Profit Institutions
D1. State/Local Government-Educational
D2. State/Local Government-Hospital
D3. State/Local Government-Research Organization
D4. Other State/Local
E1. Acquired and Used Outside U.S./Outlying Areas
E2. Acquired Outside U.S./Outlying Areas and Used Inside U.S./Outlying Areas
24. WOMAN-OWNED BUSINESS (96) Ø = Exempt; 1 = Yes; 2 = No; 3 = Not Certified
25. *For Agency Use* (97)
26. *For Agency Use* (98 99 100 101)
27. FOREIGN TRADE DATA
A. Number of Bidders Offering Foreign Item (102)
B. Buy American Act Percent Difference (103 104)
C. Country of Manufacturer (105 106)

CONTRACTING OFFICER OR REPRESENTATIVE *(Typed name and Signature)* | TELEPHONE NO. | DATE SUBMITTED

NSN 7540-01-074-7031 PREVIOUS EDITION NOT USABLE 279-103

STANDARD FORM 279 (REV. 10-82)
Prescribed by GSA (41 CFR 1-1.341)
FAR (48 CFR 53.204-2(d))

OMB No. 3090–0094

FPDS–SUMMARY OF CONTRACT ACTIONS OF $10,000 OR LESS

INTERAGENCY REPORT CONTROL NUMBER: 0208-GSA-QU

REPORT PERIOD: FY ____ Qtr. ____

REPORTING AGENCY *(FPDS Organization Designation Code Manual)*: Code ____ Name: ____

PURCHASING OR CONTRACTING OFFICE *(Do not use for reporting to FPDC)*: Code ____ Name: ____

PART I – TOTAL PRIME CONTRACT ACTIONS OF $10,000 OR LESS

METHODS OF CONTRACTING (a)	NUMBER OF ACTIONS (b)	NET DOLLAR AMOUNT *(Round to nearest thousand)* TOTAL (c)	SMALL BUSINESS CONCERNS (d)	LARGE BUSINESS CONCERNS (e)	EDUCATIONAL AND NON-PROFIT INSTITUTIONS (f)	OUTSIDE U.S./ OUTLYING AREAS (g)
1. **TOTAL** *(2 + 7 + 8)*						
2. Subtotal *(3 + 4 + 5 + 6)*						
3. Formally Advertised *(Including 2 Step)*						
4. Negotiated Competitive						
5. Negotiated Non-Competitive						
6. Procurement Under Another Agency's Contracts						
6a. GSA Schedules						
6b. Another Agency's Contracts						
7. Directed Contracts for Foreign Governments						
8. Tariff or Regulated Acquisitions						

PART II – STATISTICS ON SELECTED TYPES OF ACQUISITION *(Breakdown of contract actions reported in Part I)*

TYPE OF ACQUISITION (a)	NUMBER OF ACTIONS (b)	NET DOLLAR AMOUNT *(Round to nearest thousand)* (c)
9. Small Business Total Set-Asides		
10. Small Business Partial Set-Asides		
11. Total Labor Surplus Area Set-Asides		
12. Total Labor Surplus Area/Small Business Set-Asides		
13. Acquisitions from Minority and Disadvantaged Business Enterprises *(13(a) + 13(b))*		
13a. Direct to Large or Small Minority Business Enterprises		
13b. Small Business–Disadvantaged 8(a)		
14. Woman-Owned Business		

REMARKS

DATE SUBMITTED	CONTRACTING OFFICER OR REPRESENTATIVE *(Typed name and signature)*	TELEPHONE NUMBER

NSN 7540-01-091-9674 PREVIOUS EDITION NOT USABLE 281-103

STANDARD FORM 281 (REV. 10-82)
Prescribed by GSA (41 CFR 1-1.341)
FAR (48 CFR 53.204-2(b))

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS

(Report to be submitted semi-annually. See back of form for instructions)

FORM APPROVED OMB NO. 3090-0052

1. REPORTING PERIOD FROM (Date)	1. REPORTING PERIOD TO (Date)	2. REPORT NO.	3. TYPE OF CONTRACT	4. DATE SUBMITTED
			☐ PRIME CONTRACT ☐ SUBCONTRACT	

GENERAL INFORMATION

5. AGENCY/CONTRACTOR AWARDING CONTRACT (Name & Address)	7. REPORTING CONTRACTOR (Name and Address)

6. PRIME CONTRACT NO. (And Subcontract No., if applicable)	8. BUSINESS CLASS. CODE	9. DUNS NO. (If applicable)

10. ADMINISTERING AGENCY	11. DATE OF LAST GOVERNMENT REVIEW	12. REVIEWING AGENCY

13. DOLLAR VALUE OF PRIME OR SUBCONTRACT.	14. ESTIMATED DOLLAR VALUE OF COMMITMENTS AS IN PLAN.	15. GOALS	DOLLARS	PERCENT
		a. SMALL BUSINESS CONCERNS		
		b. SMALL DISAD. BUSINESS CONCERNS		

SUBCONTRACT AND PURCHASE COMMITMENTS

COMMITMENTS	THIS REPORTING PERIOD DOLLARS	THIS REPORTING PERIOD PERCENT	CUMULATIVE DOLLARS	CUMULATIVE PERCENT
16. TOTAL DIRECT SUBCONTRACT COMMITMENTS (Sum of a & b)		100		100
a. TOTAL SMALL BUSINESS CONCERNS				
(1) SMALL DISADVANTAGED BUSINESS CONCERNS (% of 16)				
(2) OTHER SMALL BUSINESS CONCERNS (% of 16)				
b. LARGE BUSINESS CONCERNS (% of 16)				
17. TOTAL INDIRECT COMMITMENTS (Sum of a & b)				
a. TOTAL SMALL BUSINESS CONCERNS				
(1) SMALL DISADVANTAGED BUSINESS CONCERNS (% of 17)				
(2) OTHER SMALL BUSINESS CONCERNS (% of 17)				
b. LARGE BUSINESS CONCERNS (% of 17)				

18. REMARKS:

19. TYPE THE NAME AND TITLE OF THE INDIVIDUAL ADMINISTERING CONTRACT	SIGNATURE	TELEPHONE NO. (and Area Code)
20. TYPE THE NAME AND TITLE OF THE APPROVING OFFICER	SIGNATURE	

NSN 7540-01-152-8078
PREVIOUS EDITION USABLE

294-102

STANDARD FORM 294 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.219(a)

INSTRUCTIONS

GENERAL INSTRUCTIONS

1. This reporting form is prescribed for use in the collection of subcontract data from all Federal contractors and subcontractors which, pursuant to the Small Business Act of 1958, as amended by Public Law 95-507, are required to establish plans for subcontracting with small and small disadvantaged business concerns. Reports shall be submitted to the contracting officer semiannually as of March 31 and September 30, as well as at contract completion. This report is due by the 25th day of the month following the close of the reporting periods, in accordance with instructions contained in the contract or subcontract, or as directed by the contracting officer.

2. This report is not required to be submitted by small business concerns.

3. This report is not required for commercial products for which a company-wide annual plan has been approved. The Summary Subcontract Report is required for commercial products in accordance with the instructions on that form.

4. Only subcontract and purchase commitments involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands will be included in this report.

SPECIFIC INSTRUCTIONS

ITEM 1 – Specify the period covered by this report (e.g., April 1, 1981 - September 30, 1981).

ITEM 2 – Specify the sequential report covering this contract. The initial report shall be identified as Report Number 1. Add "Final Report" for the last report being made.

ITEM 3 – Specify whether this report covers either a Prime Contract awarded by a Federal Department or Agency or a Subcontract awarded by a Federal prime contractor or subcontractor.

ITEM 5 – Enter the name and address of the Federal Department or Agency or Prime Contractor awarding the Prime or Subcontract.

ITEM 6 – Enter the prime contract number. If this report covers a subcontract, enter both the prime contract and subcontract numbers.

ITEM 7 – Enter the name and address of the Prime Contractor or Subcontractor submitting the report.

ITEM 8 – Enter the Business Classification Code as follows:

Code	Definition
LB	Large Business
NP	Non-Profit Organization (including Educational Institutions).

ITEM 9 – Enter Dun and Bradstreet Universal Numbering System (DUNS) number (if available).

ITEM 10 – Identify Federal agency administering the contract. For Department of Defense, identify appropriate military department; i.e., Army, Navy, Air Force, or Defense Logistics Agency. Civilian agencies should be identified as noted in the contract award document; i.e., NASA, DOE, GSA, HHS, SBA, etc.

ITEM 11 & 12 – Enter the date of the last formal surveillance review conducted by the cognizant Department or Agency Small and Disadvantaged Business Specialist or other review personnel. For DOD, also identify the military department or Defense Contract Administration Service, as appropriate, that conducted the review. In those cases where the Small Business Administration conducts its own review, show the date and "SBA".

ITEM 13 – Specify the face value of the Prime or Subcontract covered by this report. If the value changes, the face value shall be adjusted accordingly.

ITEM 14 – Enter the estimated dollar value of subcontract and purchase commitments as set forth in the Subcontract Plan.

ITEM 15 – Specify in the appropriate blocks the dollar amount and percent of the reporting contractor's total subcontract awards contractually agreed upon as goals for subcontracting with Small Business and Small Disadvantaged Business concerns. NOTE: Should the original goals agreed upon at contract awards be either increased or decreased as a result of a contract modification, the amount of the revised goals shall be indicated.

ITEM 16 – Specify in the appropriate block the total amount of all direct subcontract commitments and the dollar amount and percentage of the total placed with the subcontractor classification indicated in a and b, both for this period and cumulative. Do not include in this report purchase commitments made in support of commercial business being performed by reporting contractor.

ITEM 17 – Complete Item 17 only if indirect contract commitments were included in establishing the small and small disadvantaged business goals for the contract being reported. Specify in the appropriate block the total allocable dollar amount of indirect commitments and the dollar amount and percentage of the total placed with the subcontractor classifications indicated in a(1), a(2), and b, both for this period and cumulative.

ITEM 18 – Enter any remarks. If the goals were not met, explain why on the final report.

ITEM 19 – Enter name and title of company individual responsible for administering contract.

ITEM 20 – The approving officer shall be the senior official of the company, division, or subdivision (plant or profit center) responsible for contract performance.

DEFINITIONS

1. A Small Business Concern is a concern that meets the pertinent criteria established by the Small Business Administration.

2. (a) A Small Disadvantaged Business means any small business concern:

(1) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly-owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(2) whose management and daily business operations are controlled by one or more of such individuals.

(b) The contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. "Native Americans" include American Indians, Eskimos, Aleuts, and native Hawaiians. "Asian-Pacific Americans" include U.S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the Trust Territory of the Pacific Islands, Northern Marianas, Laos, Cambodia, and Taiwan.

(c) Contractors acting in good faith may rely on written representations by their subcontractors certifying their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

(d) The Office of Minority Small Business and Capital Ownership Development in the Small Business Administration will answer inquiries from prime contractors and others relative to the class of eligibles and has final authority to determine the eligibility of a concern to be designated as a small disadvantaged business.

3. Commercial Products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.

4. Commitments as used herein is defined as a contract, purchase order, amendment, or other legal obligation executed by the reporting corporation, company, or subdivision for goods and services to be received by the reporting corporation, company, or subdivision.

5. Direct Commitments are those which are identified with the performance of a specific government contract, including allocable parts of awards for material which is to be incorporated into products under more than one Government contract.

6. Indirect Commitments are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

SUMMARY SUBCONTRACT REPORT

(Report to be submitted quarterly. See Instructions on reverse) (Type or Print)

FORM APPROVED OMB NO. 3090-0053

1. CONTRACTING AGENCY	2. ADMINISTERING AGENCY
3. DATE OF LAST GOVERNMENT REVIEW / 4. REVIEWING AGENCY	5. DUNS NO. / 6. REPORT SUBMITTED AS: ☐ PRIME CONTRACTOR ☐ SUBCONTRACTOR ☐ BOTH
7. CORPORATION, COMPANY, OR SUBDIVISION COVERED *(Name, Address, ZIP Code)*	8. MAJOR PRODUCTS OR SERVICE LINES: a. b. c.

CUMULATIVE COMMITMENTS

Subcontract and Purchase Commitments for the Period October 1, 19____ through _____, 19____

COMMITMENTS	CURRENT FISCAL YEAR *(To date)*		SAME PERIOD LAST YEAR	
	DOLLARS	PERCENT	DOLLARS	PERCENT
9. TOTAL *(Sum of a and b)*		100		100
a. SMALL BUSINESS CONCERNS				
b. LARGE BUSINESS CONCERNS				
10. SMALL DISADVANTAGED BUSINESS CONCERNS *($ & % of 9)*				
11. LABOR SURPLUS AREA CONCERNS *($ & % of 9)*				

SUBCONTRACT GOAL ACHIEVEMENT

GOALS	NO. OF CONTRACTS	$ VALUE OF SUBCONTRACTS (000)	$ VALUE OF SUBCONTRACT GOALS	ACTUAL GOAL ACHIEVEMENT	
				DOLLARS	%
12. CONTRACTS WITH SMALL BUSINESS SUBCONTRACT GOALS					
a. ACTIVE CONTRACTS					
b. CONTRACTS COMPLETED THIS QUARTER WHICH MET GOALS					
c. CONTRACTS COMPLETED THIS QUARTER NOT MEETING GOALS					
13. CONTRACTS WITH SMALL DISADVANT. BUS. SUBCONTRACT GOALS					
a. ACTIVE CONTRACTS					
b. CONTRACTS COMPLETED THIS QUARTER WHICH MET GOALS					
c. CONTRACTS COMPLETED THIS QUARTER NOT MEETING GOALS					

14. REMARKS *(Enter a short narrative explanation if: (a) Zero is entered in Blocks 9a or 10 for current fiscal year, (b) the percent entry in Block 9a for current fiscal year is more than 5 percentage points below the percent reported for same period last year, or (c) the percent entry in Block 10 for current fiscal year is lower than the percent reported for same period last year.)*

15. NAME AND TITLE OF LIAISON OFFICER	SIGNATURE	DATE	TELEPHONE NO. *(and Area Code)*
16. NAME AND TITLE OF APPROVING OFFICIAL	SIGNATURE	DATE	

NSN 7540-01-152-8079
PREVIOUS EDITION USABLE

295-102

STANDARD FORM 295 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.219(b)

INSTRUCTIONS

GENERAL INSTRUCTIONS

1. This reporting form is prescribed for use in the collection of subcontract data from Federal contractors and subcontractors which hold one or more contracts over $500,000 ($1 million for construction) and are required to subcontract with small and small disadvantaged business concerns under a subcontract plan as required by the Small Business Act of 1958, as amended by Public Law 95-507. (See Items 9 and 10 of Specific Instructions).

2. The report may be submitted on a corporate, company, or subdivision (e.g., plan or division operating as a separate profit center) basis unless otherwise directed. After submission of the first report on this form, succeeding reports shall be submitted on the same basis.

3. Reports shall be submitted by the 25th day of the month following the close of the reporting period, as follows: (a) quarterly, in accordance with instructions below, or as directed by the contracting activity, or (b) annually for subcontracts covered by an approved company-wide annual subcontracting plan for commercial products. The annual report should summarize all Federal contracts for commercial products performed during the year and should be submitted in addition to required quarterly reports, for other than commercial products, if any. Show in Item 14 or in an attachment to the report, the share of this total attributable to each agency from which contracts for such commercial products were received. Send a copy of this report to each listed agency.

4. If a contractor is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering its contracts. However, for DOD contracts, see paragraph 5, below.

5. (a) For reports covering contracts awarded by the military departments or agencies of the Department of Defense (DOD) or subcontracts awarded by DOD prime contracts, each reporting corporation, company, or subdivision (except contractors involved in maintenance, repair, and construction) shall report its total DOD business on one report (i.e., it shall not segregate subcontracts arising from work for the Army, Navy, Air Force, or Defense Agencies). All contractors shall submit:

(i) The original of each report directly to the Office of the Deputy Secretary of Defense, Attention: Director of Small and Disadvantaged Business Utilization, The Pentagon, Washington, DC 20301.

(ii) A copy of the report to the office listed below whose military activity is responsible for contract administration of the contractor:

ARMY — Director of Small and Disadvantaged Business Utilization, Office of the Secretary of the Army, Washington, DC 20360

NAVY — Director of Small and Disadvantaged Business Utilization, Office of the Secretary of the Navy, Washington, DC 20360

AIR FORCE — Director of Small and Disadvantaged Business Utilization, Office of the Secretary of the Air Force, Washington, DC 20330

DLA — Staff Director of Small and Disadvantaged Business Utilization, HQ Defense Logistics Agency (Attention U) Cameron Station, Alexandria, VA 22314

(iii) A copy of the report, in accordance with instructions contained in the contract or subcontract, to the Federal agency or military department or defense agency, which is administering the prime or subcontractor.

(b) Contractors involved in maintenance, repair and construction shall also submit this report, similarly on a quarterly basis, to the appropriate construction contract administration activity. If a construction contractor is involved with more than one contract administration activity, this report should be submitted to each activity reflecting the contract awards under the supervision of the particular contract administration activity.

6. For NASA contracts forward reports to NASA - Office of Procurement (HM-1) Washington, DC 20546. For Department of Energy, forward reports to DOE - Small Business Division, Washington, DC 20585. For reports covering contracts awarded by other Federal Departments or Agencies and subcontracts placed by prime contractors of such departments or agencies, the original copy shall be sent to the Department or Agency Director of Small and Disadvantaged Business Utilization or as otherwise provided for in instructions issued by the Department or Agency.

7. Only subcontract or purchase commitments involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands will be included in this report.

8. This report is not required to be submitted by small business concerns.

SPECIFIC INSTRUCTIONS

ITEM 1. Enter the agency which awarded the prime contract (e.g., DOD, HUD, GSA, etc.)

ITEM 2. Enter the department or agency administering the contracts (if different from Item 1). For DOD contracts enter the military department or agency which has responsibility for the subcontracting program of the corporation or plant (i.e., Army, Navy, Air Force, or Defense Logistics Agency), not the "Office of the Deputy Secretary of Defense."

ITEMS 3 & 4. Enter the date of the last formal surveillance review conducted by the cognizant department or agency Small and Disadvantaged Business Specialist or other review personnel. For DOD, also identify the military department or Defense Contract Administration Service, as appropriate, that conducted the review. In those cases where the Small Business Administration conducts its own review, show "SBA" and the date.

ITEM 5. Enter Dun and Bradstreet Universal Numbering System (DUNS) number (if available).

ITEM 6. Check whether reporting business is performing as a prime or subcontractor or both.

ITEM 7. Enter the name and address of the reporting corporation, company, or subdivision thereof (e.g., division or plant) which is covered by the data submitted.

ITEM 8. Identify the major product or service lines of the reporting corporation, company, or subdivision.

ITEMS 9 & 10. Report all commitments and purchase orders, regardless of dollar value, made by the reporting organization under all Federal prime contracts and subcontracts (whether or not prime contracts are over $500,000 ($1 million for construction) and small and small disadvantaged business subcontracting plans and goals are required). Report on a quarterly cumulative basis until the end of the fiscal year on September 30 after which a new quarterly reporting cycle is to be initiated commencing with the first quarter from October 1 through December 31. Dollar amounts reported should include direct awards and the appropriate prorated portion of the prime contractor's indirect awards (see definition below) contracted with small and small disadvantaged business concerns and other than small business concerns. The indirect award portion should be based on the percentages of the Federal department or agency work being performed by the reporting contractor in relation to other work performed for other departments or agencies. Particular care should be taken not to include in quarterly reports purchase commitments made in support of commercial business being performed by the contractor.

ITEM 11. Show dollar amount of commitments valued over $10,000 placed with labor surplus area (LSA) concerns (i.e., those that will perform substantially in labor surplus areas). Prime contractors are also encouraged to include awards valued less than $10,000 if such additional reporting does not impose a burden upon the contractor. LSA's are identified in the Department of Labor (DOL) publication "Labor Surplus Area Listings" which can be obtained from the Federal Agency contracting officer or by writing to Employment and Training Administration, (Attention: TPPL), Department of Labor, 601 "D" Street, NW, Washington, DC 20213.

ITEMS 12 & 13. Enter the information as indicated regarding contracts with small and small disadvantaged business goals. For each item (as applicable), enter the number of contracts, the dollar value of subcontracts, the dollar value of subcontract goals (as expressed in the subcontract plans) and actual goal achievement expressed in dollars and percent of goal. This item does not apply to reports covering commercial products.

ITEM 16. The approving official shall be the chief executive officer or, in the case of a separate division or plant, the senior individual responsible for overall division or plant operations.

DEFINITIONS

1. A Small Business Concern is a concern that meets the pertinent criteria established by the Small Business Administration.

2. (a) A Small Disadvantaged Business means any small business concern—
(i) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly-owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
(ii) whose management and daily business operations are controlled by one or more of such individuals.

(b) The contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and other minorities, or any other individual founds to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. "Native Americans" include American Indians, Eskimos, Aleuts, and native Hawaiians. "Asian-Pacific Americans" include U.S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, Trust Territory of the Pacific Islands, Northern Marianas, Laos, Cambodia, and Taiwan.

(c) Contractors acting in good faith may rely on written representations by their subcontractors certifying their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

(d) The Office of Minority Small Business and Capital Ownership Development in the Small Business Administration will answer inquiries from prime contractors and others relative to the class of eligibles and has final authority to determine the eligibility of a concern to be designated as a small disadvantaged business.

3. Commercial Products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.

4. Commitments as used herein is defined as a contract, purchase order, amendment, or other legal obligation executed by the Reporting corporation, company, or subdivision for goods and services to be received by the reporting corporation, company, or subdivision.

5. Direct Commitments are those which are identified with the performance of a specific government contract, including allocable parts of awards for material which is to be incorporated into products under more than one Government contract.

6. Indirect Commitments are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

7. A contract is considered to be completed when the supplies or services which are required to be delivered under the contract have been provided to the Government.

U. S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION

REQUEST FOR DETERMINATION AND RESPONSE TO REQUEST *(Davis Bacon Act as Amended and Related Statutes)*

FOR DEPARTMENT OF LABOR USE

Response To Request

a. ☐ Use area determination issued for this area

_____

_____

b. ☐ The attached decision noted below is applicable to this project

Decision Number

Date of Decision

Expires

Supersedes Decision Number

Approved

Requesting Officer (typed name and signature)

Department, Agency, or Bureau | Phone Number

Date of Request | Est. Advertising Date | Est. Bid Opening Date

Prior Decision Number (if any)

Est. $ Value of Contract
☐ Under ½ Mil. ☐ 1 to 5 Mil.
☐ ½ to 1 Mil. ☐ Over 5 Mil.

Type of Work
☐ Bldg. ☐ Highway
☐ Resid. ☐ Heavy

Location of Project (city or other description)

County | State

Address to which wage determination should be mailed. Must be complete and include ZIP Code. (Print or type)

Wage Survey by Agency Attached
☐ YES ☐ NO

Wage Survey by Agency in Progress
☐ YES ☐ NO

Description of Work (Be specific) (Print or type)

CHECK OR LIST CRAFTS NEEDED
(Attach continuation sheet if needed)

___ Asbestos workers
___ Boilermakers
___ Bricklayers
___ Carpenters
___ Cement masons
___ Electricians
___ Glaziers
___ Ironworkers
___ Laborers, *(specify classes)*
___ _____
___ _____
___ _____
___ _____
___ _____
___ Lathers
___ Marble & tile setters, terrazzo workers
___ Painters
___ Piledrivermen
___ Plasterers
___ Plumbers
___ Roofers
___ Sheet metal workers
___ Soft floor layers
___ Steamfitters
___ Welders--rate for craft
___ Truck drivers
___ Power equipment operators, *(specify types)*
___ _____
___ _____
___ _____
___ _____

Other crafts
___ _____
___ _____

308-103

(THIS REPLACES FORMS DB-11 & DB-11a)

STANDARD FORM- 308 JUNE 1972
U.S. DEPARTMENT OF LABOR
(29 CFR) Subtitle A, Part 5

Standard Form 1034
Revised January 1980
Department of the Treasury
I TFRM 4-2000
1034-118

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

VOUCHER NO.

U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION

DATE VOUCHER PREPARED

SCHEDULE NO.

CONTRACT NUMBER AND DATE

PAID BY

REQUISITION NUMBER AND DATE

PAYEE'S NAME AND ADDRESS

DATE INVOICE RECEIVED

DISCOUNT TERMS

PAYEE'S ACCOUNT NUMBER

SHIPPED FROM | TO | WEIGHT

GOVERNMENT B/L NUMBER

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES (Enter description, item number of contract of Federal supply schedule, and other information deemed necessary)	QUANTITY	UNIT PRICE COST	UNIT PRICE PER	AMOUNT

(Use continuation sheet(s) if necessary) **(Payee must NOT use the space below)** **TOTAL**

PAYMENT:
- ☐ PROVISIONAL
- ☐ COMPLETE
- ☐ PARTIAL
- ☐ FINAL
- ☐ PROGRESS
- ☐ ADVANCE

APPROVED FOR =$

EXCHANGE RATE =$1.00

DIFFERENCES

BY [2]

Amount verified; correct for

TITLE

(Signature or initials)

Pursuant to authority vested in me, I certify that this voucher is correct and proper for payment.

(Date) (Authorized Certifying Officer)[3] (Title)

ACCOUNTING CLASSIFICATION

PAID BY

CHECK NUMBER ON ACCOUNT OF U.S. TREASURY | CHECK NUMBER ON (Name of bank)

CASH $ DATE | PAYEE [3]

[1] When stated in foreign currency, insert name of currency.
[2] If the ability to certify and authority to approve are combined in one person, one signature only is necessary; otherwise the approving officer will sign in the space provided, over his official title.
[3] When a voucher is receipted in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. For example: "John Doe Company, per John Smith, Secretary", or "Treasurer", as the case may be.

PER

TITLE

Previous edition usable

NSN 7540-00-634-4206

PRIVACY ACT STATEMENT

The information requested on this form is required under the provisions of 31 U.S.C. 82b and 82c, for the purpose of disbursing Federal money. The information requested is to identify the particular creditor and the amounts to be paid. Failure to furnish this information will hinder discharge of the payment obligation.

Standard Form 1034 A
Revised January 1980
Department of the Treasury
I TFRM 4-2000

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

VOUCHER NO.

U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION

DATE VOUCHER PREPARED

SCHEDULE NO.

CONTRACT NUMBER AND DATE

PAID BY

REQUISITION NUMBER AND DATE

PAYEE'S NAME AND ADDRESS

DATE INVOICE RECEIVED

DISCOUNT TERMS

PAYEE'S ACCOUNT NUMBER

SHIPPED FROM TO WEIGHT

GOVERNMENT B/L NUMBER

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES (Enter description, item number of contract of Federal supply schedule, and other information deemed necessary)	QUANTITY	UNIT PRICE COST	UNIT PRICE PER	AMOUNT

(Use continuation sheet(s) if necessary) **(Payee must NOT use the space below)** **TOTAL**

PAYMENT:
- ☐ PROVISIONAL
- ☐ COMPLETE
- ☐ PARTIAL
- ☐ FINAL
- ☐ PROGRESS
- ☐ ADVANCE

DIFFERENCES

Amount verified; correct for

(Signature or initials)

MEMORANDUM

ACCOUNTING CLASSIFICATION

PAID BY

CHECK NUMBER ON ACCOUNT OF U.S. TREASURY CHECK NUMBER ON (Name of bank)

CASH $ DATE

1034-213

NSN: 7540-00-634-4207

PRIVACY ACT STATEMENT

The information requested on this form is required under the provisions of 31 U.S.C. 82b and 82c, for the purpose of disbursing Federal money. The information requested is to identify the particular creditor and the amounts to be paid. Failure to furnish this information will hinder discharge of the payment obligation.

Standard Form 1035
September 1973
4 Treasury FRM 2000
1035-110

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

CONTINUATION SHEET

VOUCHER NO.

SCHEDULE NO.

SHEET NO.

U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES (*Enter description, item number of contract or Federal supply schedule, and other information deemed necessary*)	QUANTITY	UNIT PRICE		AMOUNT
				COST	PER	

Standard Form No. 1035–A September 1973 4 Treasury FRM 2000 1035–209–01	**PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL** **MEMORANDUM** *CONTINUATION SHEET*	VOUCHER NO. SCHEDULE NO. SHEET NO.

U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES (*Enter description, item number of contract or Federal supply schedule, and other information deemed necessary*)	QUANTITY	UNIT PRICE		AMOUNT
				COST	PER	

SCHEDULE OF WITHHOLDINGS UNDER THE DAVIS-BACON ACT (40 U.S.C. 276a)

AND/OR

THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 327-333)

To THE CLAIMS DIVISION
U.S. GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

Contractor or subcontractor charged with violations .....

Prime contractor .....

Contract No. ....., ... (Date)

Report concerning irregularities transmitted to—

....., ... (Date)

Deducted from amounts otherwise due the contractor, for deposit to the account "05X6022," covering wages due the employees whose names, social security numbers, and current addresses are listed on the attached schedule, are withholdings pursuant to the following laws:

Davis-Bacon Act ..... $.....

Contract Work Hours and Safety Standards Act ..... $.....

Total ..... $.....

Forwarded herewith is check No....., dated .....

for $.....

..... (Disbursing officer or other administrative official)

Standard Form 1093
October 1971
4 GAO 46
1093-105

Book No.

UNITED STATES TAX EXEMPTION CERTIFICATES

7540-00-634-4238 (1094-107) PREVIOUS EDITION USEABLE

These Are Accountable Forms

TAX EXEMPTION CERTIFICATES ACCOUNTABILITY RECORD	To be used for convenience of the issuing agency for maintaining a control record of tax exemption certificates issued.		
TAX EXEMPTION CERTIFICATES IN THIS BOOK NUMBERED ▶	THROUGH	TAX EXEMPTION CERTIFICATES RETURNED UNUSED FOR REISSUE ▶	THROUGH
ISSUED TO		REISSUED TO	
NAME		NAME	
TITLE		TITLE	
OFFICE DESIGNATION		OFFICE DESIGNATION	
ISSUING OFFICER	SIGNATURE / DATE ISSUED	ISSUING OFFICER	SIGNATURE / DATE ISSUED
	TITLE AND OFFICE DESIGNATION		TITLE AND OFFICE DESIGNATION

SPECIMEN

STANDARD FORM 1094-A (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.229

CERTIFICATE NO. / DATE	Mark "X" in appropriate column to indicate type of tax ▶ VENDOR AND PURCHASE		TAX EXCLUDED (Amount)	S T	L O C	TRANSACTION REFERENCE
	VENDOR NAME AND ADDRESS	ITEM PURCHASED	$			Voucher No. ____ Voucher Date ____ PO/Cont. No. ____
	VENDOR NAME AND ADDRESS	ITEM PURCHASED	$			Voucher No. ____ Voucher Date ____ PO/Cont. No. ____
	VENDOR NAME AND ADDRESS	ITEM PURCHASED	$			Voucher No. ____ Voucher Date ____ PO/Cont. No. ____
	VENDOR NAME AND ADDRESS	ITEM PURCHASED	$			Voucher No. ____ Voucher Date ____ PO/Cont. No. ____
	VENDOR NAME AND ADDRESS	ITEM PURCHASED	$			Voucher No. ____ Voucher Date ____ PO/Cont. No. ____

SPECIMEN

STANDARD FORM 1094-A BACK (REV. 10-83)

U.S. TAX EXEMPTION CERTIFICATE	Read the instructions on the reverse side.	DEPARTMENT, AGENCY, OR OFFICE	SERIAL NO.

ITEM PURCHASED FOR EXCLUSIVE USE OF THE U.S. GOVERNMENT *(Describe)*

QUANTITY | UNIT PRICE $

VENDOR FROM WHICH PURCHASED

NAME

ADDRESS *(No., Street, City, State, and ZIP Code)*

A tax exemption certificate has not previously been issued and the described item(s) has (have) been delivered and invoiced pursuant to

P.O. OR CONTRACT NO.

Amount of Tax Excluded

State $

Local $

I certify that the information on this form is true and correct to the best of my knowledge and belief.

PURCHASER'S SIGNATURE, OFFICE TITLE, AND ADDRESS ▶

DATE

DATES

For Administrative Office

D.O. SYMBOL NO.

Certified correct and just:

SIGNATURE AND TITLE OF VENDOR'S REPRESENTATIVE ▶

DATE

VOUCHER NO.

DATE

SPECIMEN

STANDARD FORM 1094 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.229

INSTRUCTIONS

1. This form will be used to establish the Government's exemption or immunity from State or Local taxes whenever no other evidence is available.

2. This form shall NOT be used for:
(a) Purchases of quarters or subsistence made by employees in travel status.
(b) Expenses incident to use of a privately owned motor vehicle for which a mileage allowance has been authorized, or
(c) Merchandise purchased which is subject only to Federal Tax.

3. If the spaces provided on the face of this form are inadequate, attach a separate statement containing the required information.

4. If both State and Local taxes are involved, use a separate form for each tax. The certificate will be provided to the vendor when the prices exclude State or Local tax.

5. The serial number of each certificate prepared will be shown on the payment voucher.

THE FRAUDULENT USE OF THIS CERTIFICATE FOR THE PURPOSE OF OBTAINING EXEMPTION FROM OR ADJUSTMENT OF TAXES IS PROHIBITED.

STANDARD FORM 1094 BACK (REV. 10-83)

In case this book of United States Tax Exemption Certificates is lost, finder will please put band or string around cover and mail to:

GENERAL SERVICES ADMINISTRATION
OFFICE OF PERSONAL PROPERTY
STANDARD FORMS MANAGEMENT (WYSI-B)
WASHINGTON, D. C. 20407

INTERIM RECEIPT FOR CASH

DATE .....

Received of Imprest Fund Cashier $..... for which I hold myself accountable to the United States.

.....
(Signature)

NOTE TO SIGNER

Be sure this receipt is marked "VOID" and returned to you when the transaction is completed or the funds returned to the Cashier.

Standard Form 1165
7 GAO 5100
1165-105

RECEIPT FOR CASH—SUBVOUCHER

(To be used when invoice is not available)

SUBVOUCHER No. .....

DATE .....

Received in cash from .....

..... and ..... ($.....) for the following:
100

QUANTITY	ARTICLES OR SERVICES	AMOUNT

Vendor .....

Address .....

.....

By .....
(Signature of Vendor/Agent)

Title .....
(DO NOT SIGN IN DUPLICATE)

PURPOSE (*Project, etc.*)

APPROPRIATION AND ACCOUNTING CLASSIFICATION

Certificate of Appointment

Under authority vested in the undersigned and in conformance with
Subpart 1.6 of the Federal Acquisition Regulation

is appointed

Contracting Officer

for the

United States of America

Subject to the limitations contained in the Federal Acquisition Regulation and to the following:

Unless sooner terminated, this appointment is effective as long as the appointee is assigned to:

_____
(Organization)

_____
(Agency/Department)

_____
(Signature and Title)

_____ _____
(Date) *(No.)*

NSN7540-01-152-5812
1402-101

STANDARD FORM 1402 (10-83)
Prescribed by GSA
FAR (48 CFR). 53.201-1

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR (GENERAL)

1. SERIAL NO. *(For surveying activity use)*

FORM APPROVED OMB NO. 3090-0110

SECTION I – REQUEST *(For Completion by Contracting Office)*

2. NAME AND ADDRESS OF SURVEYING ACTIVITY

3. SOLICITATION NO.

4. TOTAL OFFERED PRICE
$

5. TYPE OF CONTRACT

6A. NAME AND ADDRESS OF SECONDARY SURVEY ACTIVITY *(For surveying activity use)*

7. NAME AND ADDRESS PROSPECTIVE CONTRACTOR

6B. TELEPHONE NO. *(Include autovon, Wats/FTS, if available)*

8. WILL CONTRACTING OFFICE PARTICIPATE IN SURVEY?
☐ YES ☐ NO

9. DATE OF THIS REQUEST

10. DATE REPORT REQUIRED

11. Prospective contractor represents that it ☐ is, ☐ is not a small business concern.

12. WALSH-HEALEY CONTRACTS ACT *(Check applicable box(es))*
A. IS NOT APPLICABLE
B. IS APPLICABLE AND PROSPECTIVE CONTRACTOR REPRESENTS HIS CLASSIFICATION AS:
☐ MANUFACTURER ☐ REGULAR DEALER
☐ OTHER *(Specify)*

13. NAME AND ADDRESS OF PARENT COMPANY *(If applicable)*

14. PLANT AND LOCATION *(If different from Item 7, above)*

15A. NAME OF REQUESTING ACTIVITY CONTRACTING OFFICER

15B. SIGNATURE

15C. TELEPHONE NO. *(Include autovon, Wats/FTS, if available)*

16A. NAME AND ADDRESS OF SECONDARY REQUESTING ACTIVITY *(For surveying authority use)*

16B. TELEPHONE NO. *(Include autovon, Wats/FTS, if available)*

17. FIRM'S CONTACT FOR SURVEY

A. NAME AND TITLE

B. TELEPHONE NO. *(Include Area Code)*

SECTION II – DATA *(For Completion by Contracting Office)*

18A. ITEM NO.	18B. NATIONAL STOCK NUMBER (NEW) AND NOMENCLATURE		18C. TOTAL QUANTITY	18D. UNIT PRICE	18E. DELIVERY SCHEDULE (a)	(b)	(c)	(d)	(e)
		SOLICITED							
		OFFERED		$					
		SOLICITED							
		OFFERED		$					
		SOLICITED							
		OFFERED		$					
		SOLICITED							
		OFFERED		$					
		SOLICITED							
		OFFERED		$					
		SOLICITED							
		OFFERED		$					
		SOLICITED							
		OFFERED		$					
		SOLICITED							
		OFFERED		$					
		SOLICITED							
		OFFERED		$					

NSN 7540-01-140-5525 1403-101

STANDARD FORM 1403 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.209-1(a)

SECTION III – FACTORS TO BE INVESTIGATED

Column (a) is for request. Columns (b) and (c) are for survey results. Provide a narrative explanation substantiating each factor for which Column (b) or (c) is checked.

19. MAJOR FACTORS	CHK. (a)	SAT. (b)	UN-SAT. (c)	20. OTHER FACTORS *(Provide specific requirements in Remarks)*	CHK. (a)	SAT. (b)	UN-SAT. (c)
A. TECHNICAL CAPABILITY				A. GOVERNMENT PROPERTY CONTROL			
B. PRODUCTION CAPABILITY				B. TRANSPORTATION			
C. QUALITY ASSURANCE CAPABILITY				C. PACKAGING			
D. FINANCIAL CAPABILITY				D. SECURITY			
E. ACCOUNTING SYSTEM				E. PLANT SAFETY			
				F. ENVIRONMENTAL/ENERGY CONSIDERATIONS			
				G. OTHER *(Specify)*			

21. IS THIS A SHORT FORM PREAWARD REPORT?

☐ YES ☐ NO

22. IS A FINANCIAL ASSISTANCE PAYMENT PROVISION IN THE SOLICITATION?

☐ YES ☐ NO

23. REMARKS

SECTION IV – SURVEYING ACTIVITY RECOMMENDATIONS

24. RECOMMEND	25A. NAME AND TITLE OF SURVEY APPROVING OFFICIAL	25B. TELEPHONE NO.
☐ A. COMPLETE AWARD ☐ B. PARTIAL AWARD *(Quantity _____)* ☐ C. NO AWARD	25C. SIGNATURE	25D. DATE

STANDARD FORM 1403 BACK (10-83)

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR TECHNICAL	SERIAL NO. *(For surveying activity use)*	FORM APPROVED OMB NO. 3090-0110
	PROSPECTIVE CONTRACTOR	

Provide the following information in narrative, or attach continuation on sheets of paper if necessary, concerning key personnel.	4. FIRM HAS AND/OR UNDERSTANDS	YES	NO
1. Names, qualifications/experience and length of affiliation with prospective contractor.	a. Specifications		
2. Evaluate technical capabilities with respect to the requirements of the proposed contract or item classification.	b. Exhibits		
	c. Drawings		
3. Description of any technical capabilities which the prospective contractor lacks. *(Comment on the prospective contractor's efforts to obtain the needed technical capabilities.)*	d. Technical data requirements		
	Give explanation for any items marked "NO" in 5. Narrative.		

5. NARRATIVE

6. SURVEY MADE BY	a. SIGNATURE *(Include typed or printed name)*	b. OFFICE	c. TELEPHONE NO. *(Include area code)*
			d. DATE

NSN 7540-01-142-0133 1404-101 **STANDARD FORM 1404** (10-83)
Prescribed by GSA,
FAR (48 CFR) 53.209-1(b)

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR PRODUCTION	SERIAL NO. *(For surveying activity use)*	FORM APPROVED OMB NO. 3090-0110
	PROSPECTIVE CONTRACTOR	

SECTION I – ORGANIZATION AND MANAGEMENT DATA

Provide the following information in narrative or attach continuation on sheets of paper if necessary.

1. Describe the relationship between management, production, and inspection. Attach an organizational chart, if available.

2. Describe the prospective contractor's production control system. State whether or not it is operational.

3. Evaluate the prospective contractor's production control system in terms of (a) historical effectiveness, (b) the proposed contract, and (c) total production during performance of the proposed contract.

4. Comment on or evaluate other areas unique to this survey (include all special requests by the contracting office and any other information pertinent to the proposed contract or item classification).

5. NARRATIVE

SECTION II – PLANT FACILITIES

1. SIZE OF TRACT		4. DESCRIPTION AND TYPE OF BUILDING(S)
		☐ OWNED
2. SQUARE FEET UNDER ROOF	3. NO. OF BUILDINGS	☐ LEASED (Give expiration date)

5. SPACE					6. MISCELLANEOUS PLANT OBSERVATIONS		
	TYPE	SQUARE FEET	ADEQUATE	INADEQUATE	(Explain any items marked "NO" on an attached sheet.)	YES	NO
MANUFACTURING	a. Total manufacturing space				a. Good housekeeping maintained		
	b. Space available for offered item				b. Power and fuel supply adequate to meet production requirements		
STORAGE	c. Total storage space				c. Alternate power and fuel source available		
	d. For inspection lots				d. Adequate material handling equipment available		
	e. For shipping quantities				e. Transportation facilities available for shipping product		
	f. Space available for offered item				OTHER (Specify) f.		
	g. Amount of storage that can be converted for manufacturing, if required				g.		
					h.		

SECTION III – PRODUCTION EQUIPMENT

	LIST MAJOR EQUIPMENT REQUIRED (Include GFP and annotate it as such) (a)	QUANTITY REQUIRED FOR PROPOSED CONTRACT (b)	TOTAL QTY. REQD. DURING LIFE OF PROPOSED CONTRACT (c)	QUANTITY ON HAND (d)	CONDITION (e) G	F	P	QUANTITY SHORT * (Col. (c) minus (d)) (f)	SOURCE, IF NOT ON HAND (g)	VERIFIED DELIVERY DATE (h)
1. MANUFACTURING										
2. SPECIAL TOOLING										
3. SPECIAL TEST										

* Coordinate shortage information for financial implications.

SECTION IV – MATERIALS AND PURCHASED PARTS

1. PARTS/MATERIALS WITH LONGEST LEAD TIME

DESCRIPTION (a)	SOURCE (b)	VERIFIED DELIVERY DATE TO MEET PROD. (c)

2. DESCRIBE THE MATERIAL CONTROL SYSTEM, INDICATING WHETHER IT IS CURRENTLY OPERATIONAL, AND EVALUATE ITS ABILITY TO MEET THE NEEDS OF THE PROPOSED ACQUISITION.

SECTION V – SUBCONTRACTING

HOW MUCH OF THE TOTAL PROPOSED CONTRACT WILL BE SUBCONTRACTED? ▶ %

DESCRIPTION OF SUBCONTRACT ITEMS (a)	SOURCE (b)	VERIFIED DELIVERY DATE TO MEET PROD. (c)

SECTION VI – PERSONNEL

1. NUMBER AND SOURCE OF EMPLOYEES

TYPE OF EMPLOYEES	NO. ON BOARD	ADD. NO. REQUIRED	AVAIL. YES	AVAIL. NO	SOURCE
a. Skilled Production					
b. Unskilled Production					
c. Engineering					
d. Administrative					
e. **TOT.** *(Lines a, b + c)*					

2. SHIFTS ON WHICH WORK IS TO BE PERFORMED

☐ FIRST ☐ SECOND ☐ THIRD

3. UNION AFFILIATION

AGREEMENT EXPIRATION DATE ▶

4. RELATIONSHIP WITH LABOR INDICATES PROBLEMS AFFECTING TIMELY PERFORMANCE OF PROPOSED CONTRACT *(If "Yes," explain on attached sheet)*

☐ YES ☐ NO

SECTION VII – DELIVERY PERFORMANCE RECORD

SECTION VIII – RELATED PREVIOUS PRODUCTION (Government)

PAST YEAR PRODUCTION		GOVERNMENT CONTRACT NUMBER 1/	PERFORMANCE		QUANTITY	DOLLAR VALUE ($000)
ITEM NOMENCLATURE (a)	NATIONAL STOCK NO. (NSN) (b)	(c)	ON SCHED. (d)	DELIN-QUENT (e)	(f)	(g)

1/ Identify identical items by an asterisk (*) after the Government contract number.

SECTION IX – CURRENT PRODUCTION

(Government and civilian concurrent production schedule using same equipment and/or personnel as offered item.)

	ITEM(S) (Include Government Contract No., if applicable. Identify unsatisfactory performance with asterisk (*).)	MONTHLY SCHEDULE OF CONCURRENT DELIVERIES (Quantity)										
		1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	BAL.
BEING PRODUCED	1.											
PENDING AWARD	2.											

SECTION X – RECOMMENDATION

1. RECOMMENDED

☐ a. COMPLETE AWARD ☐ b. PARTIAL AWARD *(Quantity: _____)* ☐ c. NO AWARD

2. REMARKS *(Cite those sections of this report which substantiate the recommendations. List any other backup information in this space or on attached sheet if necessary. Identify any formal systems reviews and state results.)*

If continuation sheets attached – mark here ☐

3. SURVEY MADE BY	a. SIGNATURE AND OFFICE *(Include typed or printed name)*	b. TELEPHONE NO. *(Include area code)*	c. DATE SIGNED
4. SURVEY REVIEWING OFFICIAL	a. SIGNATURE AND OFFICE *(Include typed or printed name)*	b. TELEPHONE NO. *(Include area code)*	c. DATE REVIEWED

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR QUALITY ASSURANCE	*If more space is required, continue on the back in Section IV or attach continuation sheets.*	FORM APPROVED OMB NO. **3090-0110** SERIAL NO. *(For surveying activity use)*

SECTION I – GENERAL

1. PROSPECTIVE CONTRACTOR	2. LOCATION

SECTION II – COMPANY AND SOLICITATION DATA

1. QUALITY ASSURANCE ORGANIZATION *(Describe briefly and attach organization chart.)*

2. QUALITY ASSURANCE OFFICIALS CONTACTED *(Names, titles, and years of quality assurance experience)*

3. QUALITY RELIABILITY, MAINTAINABILITY REQUIREMENTS WHICH APPLY					
	☐	MIL-I-45208	☐ MIL-C-45662	☐	OTHER *(Specify)*
	☐	MIL-I-45007	MIL-STD-785		
	☐	MIL-Q-9555	☐ MIL-STD-470		

4. IDENTICAL OR SIMILAR ITEMS HAVE BEEN ☐ PRODUCED ☐ SERVICED BY PROSPECTIVE CONTRACTOR.

SECTION III – EVALUATION CHECKLIST

STATEMENTS		YES	NO
1. AS PERTAINS TO THE CONTRACT, THESE ITEMS ARE UNDERSTOOD BY THE CONTRACTOR	a. Exhibits, technical data, drawings, specifications, and approval requirements.		
	b. Preservation, packaging, packing, and marking requirements.		
	c. OTHER *(Specify)*		
2. Records available indicate that the prospective contractor has a satisfactory quality performance record during the past twelve (12) months for similar items.			
3. Used or reconditioned material and former Government surplus material will be furnished by the prospective contractor. *(If Yes, explain in Section IV, on the back of this form.)*			
4. Prospective contractor will require unusual assistance from the Government.			
5. Did prospective contractor fulfill commitments to correct deficiencies, as proposed on previous surveys, when awarded that contract?			
6. Quality control, inspection, and test personnel.	NUMBER SKILLED	NUMBER SEMI-SKILLED	
7. Inspection to production personnel ratio.	RATIO :		
The following are available and adequate. (If not applicable, show "N/A" in "Yes" column.)			
8. Inspection and test equipment, guages, and instruments for first article and production (including solicitation specified equipment).			
9. Calibration/metrology program.			
10. Written procedures and instructions for inspections, tests, process controls, and other requirements; conformance thereto; in conjunction with other planning control functions.			
11. Control of specifications, drawings, changes and modifications, work/process instructions.			
12. Quality assurance/control organizational structure.			
13. System for determining inspection, test, and measurement requirements.			
14. Controls for selecting qualified supplies and assuring the quality of purchased materials.			
15. Material control: identification, segregation, maintenance, preservation, and correction of defects.			
16. Government furnished property controls.			

SECTION III – EVALUATION CHECKLIST – STATEMENTS, Continued	YES	NO
17. In-process inspection controls.		
18. System for timely identification and correction of deficiencies to prevent recurrence.		
19. Preservation, packaging, packing, marking controls.		
20. Quality control records (such as, inspection, test, corrective actions, calibration, etc.		
21. Controls for investigation of customer complaints and correction of deficiencies.		
22. Reliability and/or maintainability program.		

SECTION IV – QUALITY ASSURANCE RECOMMENDATIONS

1. RECOMMEND ☐ AWARD ☐ NO AWARD *(Provide full substantiation for recommendation)*

If more space is needed, use plain paper, identify continued item(s), and attach to this form.

NO. OF PAGES ATTACHED, IF ANY ☐

2. SURVEY MADE BY *(Include signature, typed/printed name, and office)*	3. TELEPHONE NO. *(Include area code)*	4. DATE SUBMITTED

5. REVIEWING/APPROVING OFFICIAL *(Include signature, typed/printed name, and office)*	6. DATE APPROVED	7. NEXT HIGHER AUTHORITY *(Code/title)*

STANDARD FORM 1406 BACK (10-83)

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR FINANCIAL CAPABILITY	*If more space is needed, continue on page 3, back. Identify continued items.*	SERIAL NO. *(For surveying activity use)*	FORM APPROVED OMB NO. 3090-0110
PROSPECTIVE CONTRACTOR	LOCATION		

SECTION I – BALANCE SHEET/PROFIT AND LOSS STATEMENT

PART A – LATEST BALANCE SHEET

1. DATE	2. FILED WITH

3. FINANCIAL POSITION	
a. Cash	$
b. Other current assets	
c. Working capital	
d. Current liabilities	
e. Net worth	
f. Total liabilities	

4. RATIOS		
a. CURRENT ASSETS TO CURRENT LIABILITIES	b. ACID TEST *(Cash, temporary investments held in lieu of cash and current receivables to current liabilities)*	c. TOTAL LIABILITIES TO NET WORTH
:	:	:

6. FISCAL YEAR ENDS *(Date)*	7. BALANCE SHEETS AND PROFIT AND LOSS STATEMENTS HAVE BEEN CERTIFIED	a. THROUGH *(Date)*	b. BY *(Signature)*

PART B – LATEST PROFIT AND LOSS STATEMENT

1. CURRENT PERIOD a. FROM	1. CURRENT PERIOD b. TO	2. FILED WITH

3. NET SALES	a. CURRENT PERIOD	$
	b. First prior fiscal year	
	c. Second prior fiscal year	
4. NET PROFITS BEFORE TAXES	a. CURRENT PERIOD	$
	b. First prior fiscal year	
	c. Second prior fiscal year	

5. OTHER PERTINENT DATA

SECTION II – PROSPECTIVE CONTRACTOR'S FINANCIAL ARRANGEMENTS

Mark "X" in appropriate column.	YES	NO
1. USE OF OWN RESOURCES		
2. USE OF BANK CREDITS		
3. OTHER *(Specify)*		

4. INDEPENDENT ANALYSIS OF FINANCIAL POSITION SUPPORTS THE STATEMENTS SHOWN IN ITEMS 1, 2, AND 3 ☐ YES ☐ NO *(If "NO," explain)*

SECTION III – GOVERNMENT FINANCIAL AID

1. TO BE REQUESTED IN CONNECTION WITH PERFORMANCE OF PROPOSED CONTRACT

Mark "X" in appropriate column.	YES	NO
a. PROGRESS PAYMENT		
b. GUARANTEED LOAN		
c. ADVANCE PAYMENTS		

2. EXPLAIN ANY "YES" ANSWERS TO ITEMS 1a, b, AND c

3. FINANCIAL AID CURRENTLY OBTAINED FROM THE GOVERNMENT

a. PROSPECTIVE CONTRACTOR RECEIVES GOVERNMENT FINANCING AT PRESENT	b. IS LIQUIDATION CURRENT?	c. AMOUNT OF UNLIQUIDATED PROGRESS PAYMENTS OUTSTANDING
☐ YES ☐ NO	☐ YES ☐ NO	$

Complete items below only if item a., is marked "YES."

DOLLAR AMOUNTS	(a) AUTHORIZED	(b) IN USE
a. Guaranteed loans	$	$
b. Advance payments	$	$

4. LIST THE GOVERNMENT AGENCIES INVOLVED	5. SHOW THE APPLICABLE CONTRACT NOS.

SECTION IV – BUSINESS AND FINANCIAL REPUTATION

1. COMMENTS OF PROSPECTIVE CONTRACTOR'S BANK

2. COMMENTS OF TRADE CREDITORS

3. COMMENTS AND REPORTS OF COMMERCIAL FINANCIAL SERVICES AND CREDIT ORGANIZATIONS *(Such as, Dun & Bradstreet, Standard and Poor, etc.)*

4. MOST RECENT CREDIT RATING — a. DATE — b. BY

5. OTHER SOURCES *(Business and financial reputation and integrity of the prospective contractor, or, if not established, of the principal executions, as determined by other sources.)*

6. DOES PRICE APPEAR UNREALISTICALLY LOW? ☐ YES ☐ NO

7. DESCRIBE ANY OUTSTANDING LIENS OR JUDGMENTS

SECTION V – SALES

CATEGORY	CURRENT DOLLAR BACKLOG OF SALES (a)	ANTICIPATED ADDITIONAL DOLLAR SALES FORECAST FOR NEXT 18 MONTHS (b)
1. Government *(Prime and subcontractor)*	$	$
2. Commercial	$	$
3. **TOTAL**	$	$

SECTION VI – RECOMMENDATION

1. RECOMMEND

☐ a. COMPLETE AWARD ☐ b. PARTIAL AWARD *(Quantity:* _____ *)* ☐ c. NO AWARD

2. REMARKS *(Cite those sections of the report which substantiate the recommendation. Give any other backup information in this space, on the back, or on additional sheet, if necessary.)*

If continuation sheets attached – mark here ☐

3. SURVEY MADE BY *(Signature and office)*	4. TELEPHONE NO. *(Include area code)*	5. DATE SUBMITTED

STANDARD FORM 1407 (10-83)
PAGE 3

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR ACCOUNTING SYSTEM	SERIAL NO. *(For surveying activity use)*	FORM APPROVED OMB NO. 3090-0110
	PROSPECTIVE CONTRACTOR	

Mark "X" in the appropriate column	YES	NO	NOT APPLI-CABLE
1. Except as stated below, is the accounting system in accord with generally accepted accounting principles applicable in the circumstances?			
2. ACCOUNTING SYSTEM PROVIDES FOR:			
a. Proper segregation of costs applicable to proposed contract and to other work of the prospective contractor.			
b. Determination of costs at interim points to provide data required for contract repricing purposes or for negotiating revised targets.			
c. Exclusion from costs charged to proposed contract of amounts which are not allowable under terms of FAR 31, Contract Cost Principles and Procedures, or other contract provisions.			
d. Identification of costs by contract line item and by units if required by proposed contract.			
e. Segregation of preproduction costs from production costs.			
3. ACCOUNTING SYSTEM PROVIDES FINANCIAL INFORMATION:			
a. Required by contract clauses concerning limitation of cost (FAR 52.232-40 and 41) or limitation on payments (FAR 52.216-16).			
b. Required to support requests for progress payments.			
4. Is the accounting system designed, and are the records maintained in such a manner that adequate, reliable data are developed for use in pricing follow-on acquisitions?			

5. REMARKS *(Clarification of above deficiencies, and other pertinent comments. If additional space is required, continue on the back or on plain sheets of paper.)*

If continuation sheets attached – mark here ☐

6. SURVEY MADE BY *(Signature and office)*	7. TELEPHONE NO. *(Include area code)*	8. DATE SUBMITTED

NSN 7540-01-140-5529 1408-101 **STANDARD FORM 1408** (10-83)
Prescribed by GSA,
FAR (48 CFR) 53.209-1(f)

ABSTRACT OF OFFERS

SOLICITATION NO.

OPENING DATE

PAGE OF PAGES

ISSUING OFFICE

SUPPLIES OR SERVICES *(General Description)*

NO.	NAME OF OFFEROR	DISCOUNT TERMS *(Days)* 10	20	30		ACCEPTANCE TIME* *(Days)*	BUSINESS SIZE L	S	ITEM NO. ▶ QUANTITY ▶ UNIT ▶						DELIVERY TIME**	F.O.B. POINT	REMARKS
										$	$	$	$	$			

* *Indicate by an X a 60-day acceptance.*
** *Indicate by an X if offer conforms to delivery time specified in solicitation.*

I CERTIFY THAT I HAVE OPENED, READ AND RECORDED ON THIS ABSTRACT (AND CONTINUATION SHEETS, IF ANY) ALL OFFERS RECEIVED IN RESPONSE TO THE SOLICITATION.

TYPED NAME AND TITLE

SIGNATURE

DATE

NSN 7540-01-142-9844

1409-101

STANDARD FORM 1409 (10-83)
Prescribed by GSA, FAR (48 CFR) 53.214(f)

ABSTRACT OF OFFERS – CONTINUATION

PAGE OF PAGES

NO.*	ITEM NO. ▶																
	QUANTITY ▶																
	UNIT ▶																
		$	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$

*Transfer number from face of form.

STANDARD FORM 1409 BACK (10-83)

CONTRACT PRICING PROPOSAL COVER SHEET

1. SOLICITATION/CONTRACT/MODIFICATION NO.

FORM APPROVED OMB NO. 3090-0116

NOTE: This form is used in contract actions if submission of cost or pricing data is required. *(See FAR 15.804-6(b))*

2. NAME AND ADDRESS OF OFFEROR *(Include ZIP Code)*

3A. NAME AND TITLE OF OFFEROR'S POINT OF CONTACT

3B. TELEPHONE NO.

4. TYPE OF CONTRACT ACTION *(Check)*

- ☐ A. NEW CONTRACT
- ☐ B. CHANGE ORDER
- ☐ C. PRICE REVISION/ REDETERMINATION
- ☐ D. LETTER CONTRACT
- ☐ E. UNPRICED ORDER
- ☐ F. OTHER *(Specify)*

5. TYPE OF CONTRACT *(Check)*

☐ FFP ☐ CPFF ☐ CPIF ☐ CPAF
☐ FPI ☐ OTHER *(Specify)*

6. PROPOSED COST *(A+B=C)*

A. COST	B. PROFIT/FEE	C. TOTAL
$	$	$

7. PLACE(S) AND PERIOD(S) OF PERFORMANCE

8. List and reference the identification, quantity and total price proposed for each contract line item. A line item cost breakdown supporting this recap is required unless otherwise specified by the Contracting Officer. *(Continue on reverse, and then on plain paper, if necessary. Use same headings.)*

A. LINE ITEM NO.	B. IDENTIFICATION	C. QUANTITY	D. TOTAL PRICE	E. REF.

9. PROVIDE NAME, ADDRESS, AND TELEPHONE NUMBER FOR THE FOLLOWING *(If available)*

A. CONTRACT ADMINISTRATION OFFICE

B. AUDIT OFFICE

10. WILL YOU REQUIRE THE USE OF ANY GOVERNMENT PROPERTY IN THE PERFORMANCE OF THIS WORK? *(If "Yes," identify)*

☐ YES ☐ NO

11A. DO YOU REQUIRE GOVERNMENT CONTRACT FINANCING TO PERFORM THIS PROPOSED CONTRACT? *(If "Yes," complete Item 11B)*

☐ YES ☐ NO

11B. TYPE OF FINANCING *(√ one)*

☐ ADVANCE PAYMENTS ☐ PROGRESS PAYMENTS
☐ GUARANTEED LOANS

12. HAVE YOU BEEN AWARDED ANY CONTRACTS OR SUBCONTRACTS FOR THE SAME OR SIMILAR ITEMS WITHIN THE PAST 3 YEARS? *(If "Yes," identify item(s), customer(s) and contract number(s))*

☐ YES ☐ NO

13. IS THIS PROPOSAL CONSISTENT WITH YOUR ESTABLISHED ESTIMATING AND ACCOUNTING PRACTICES AND PROCEDURES AND FAR PART 31 COST PRINCIPLES? *(If "No," explain)*

☐ YES ☐ NO

14. COST ACCOUNTING STANDARDS BOARD (CASB) DATA *(Public Law 91-379 as amended and FAR PART 30)*

A. WILL THIS CONTRACT ACTION BE SUBJECT TO CASB REGULATIONS? *(If "No," explain in proposal)*

☐ YES ☐ NO

B. HAVE YOU SUBMITTED A CASB DISCLOSURE STATEMENT *(CASB DS-1 or 2)*? *(If "Yes," specify in proposal the office to which submitted and if determined to be adequate)*

☐ YES ☐ NO

C. HAVE YOU BEEN NOTIFIED THAT YOU ARE OR MAY BE IN NONCOMPLIANCE WITH YOUR DISCLOSURE STATEMENT OR COST ACCOUNTING STANDARDS? *(If "Yes," explain in proposal)*

☐ YES ☐ NO

D. IS ANY ASPECT OF THIS PROPOSAL INCONSISTENT WITH YOUR DISCLOSED PRACTICES OR APPLICABLE COST ACCOUNTING STANDARDS? *(If "Yes," explain in proposal)*

☐ YES ☐ NO

This proposal is submitted in response to the RFP contract, modification, etc. in Item 1 and reflects our best estimates and/or actual costs as of this date.

15. NAME AND TITLE *(Type)*

16. NAME OF FIRM

17. SIGNATURE

18. DATE OF SUBMISSION

CLAIM FOR EXEMPTION FROM SUBMISSION OF CERTIFIED COST OR PRICING DATA

FORM APPROVED OMB NO. 3090-0116

1. OFFEROR *(Name, address, ZIP Code)*

3. SOLICITATION NO.

4. ITEM OF SUPPLIES AND/OR SERVICES TO BE FURNISHED

2. DIVISION(S) AND LOCATION(S) WHERE WORK IS TO BE PERFORMED

5. QUANTITY

6. TOTAL AMOUNT PROPOSED FOR ITEM
$

By submission of this form the offeror claims exemption from requirements for submitting certified cost or pricing data on the basis that the price offered is based on an established catalog or market price of a commercial item sold in substantial quantities to the general public or is a price set by law or regulation (see FAR 15.804-3). Complete Section I, II, or III below as applicable.

SECTION I – CATALOG PRICE *(See Instructions for Items 7 thru 11 on reverse.)*

7. CATALOG IDENTIFICATION AND DATE

8. SALES PERIOD COVERED
FROM TO

9. CATEGORIES OF SALES	TOTAL UNITS SOLD*
a. U.S. Government sales	
b. Sales at catalog price to general public	
c. Other sales to general public	

10. REMARKS

**If your accounting system does not provide precise information, insert your best estimate and explain the basis for it in Item 10, REMARKS. Continue on a separate sheet, if necessary.*

11. LIST THREE SALES OF THE ITEM OFFERED

SALES CATEGORY	DATE	NO. OF UNITS SOLD	PRICE/UNIT
a. ☐ B ☐ C			$
b. ☐ B ☐ C			$
c. ☐ B ☐ C			$

SECTION II – MARKET PRICE *(See Instructions for item 12 on reverse.)*

12. SET FORTH THE SOURCE AND DATE OR PERIOD OF THE MARKET QUOTATION OR OTHER BASE FOR MARKET PRICE, THE BASE AMOUNT, AND APPLICABLE DISCOUNTS.

SECTION III – LAW OR REGULATION *(See Instructions for item 13 on reverse.)*

13. IDENTIFY THE LAW OR REGULATION ESTABLISHING THE PRICE OFFERED

REPRESENTATION *(See Instructions for item 14 on reverse.)*

The offeror represents that all statements made above and on attachments submitted are accurate and are submitted for the purpose of claiming exemption from requirements for submitting certified cost or pricing data. The offeror also represents that, except as stated in an attachment, a like claim for exemption involving the same or a substantially similar item has not been denied by a Government Contracting Officer within the last 2 years. Pending consideration of the proposal supported by this submission and, if this proposal or a modification of it is accepted by the Government, until the expiration of 3 years from the date of final payment under a contract resulting from this proposal, the Contracting Officer or any other authorized employee of the United States Government is granted access to books, records, documents, and other supporting data that will permit verification of the claim.

14. TYPED NAME, TITLE, AND FIRM	15. SIGNATURE	16. DATE OF SUBMISSION

NSN 7540-01-142-9846
1412-101

STANDARD FORM 1412 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.215-2(b)

INSTRUCTIONS TO OFFERORS SUBMITTING CLAIM FOR EXEMPTION FROM SUBMISSION OF CERTIFIED COST OR PRICING DATA

Item 7. Attach a copy of the catalog, or the appropriate pages covering price and published discounts, or a statement that the catalog is on file in the buying office to which this proposal is being made. Catalog price, is a price that is included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public. To justify a catalog price exemption for the Government item, the catalog item must be identical or must be so similar in material and design that any price difference or its absence can be evaluated solely by price analysis (see FAR 15.805-2). In the latter case, a statement must be attached identifying the specific differences and explaining, by price analysis of the differences, how the proposed price is derived from the catalog price.

Item 8. This period should include the most recent regular monthly, quarterly, or other period for which sales data are reasonably available and should extend back only far enough to provide a total period representative of average sales. You may also attach sales data for a prior representative period if for any reason recent sales are abnormal and the prior period is sufficiently recent (not more than 2 years preceding) to support the proposed price for the Government item. In the latter case, you must explain, by price analysis only, how the proposed price is derived from the catalog sales for the prior period.

Item 9. (a) Include in Category A all sales of the catalog item (a) directly to the U.S. Government and its instrumentalities and (b) for U.S. Government use (sales directly to U.S. Government prime contractors, or their subcontractors or suppliers at any tier, for use as an end item, or as part of an end item, by the U.S. Government).

(b) Include in Category B all sales of the catalog item made strictly at the catalog price, less only published discounts, to the general public (i.e., catalog price sales other than those (i) to affiliates of the offeror or (ii) included in Category A (Instruction 9(a)).

(c) Include in Category C all sales to the general public that were not made strictly at the catalog price or that were made at special discounts or discount rates not published in the catalog.

Item 11. On line a. insert information on the lowest price at which Category B or C sales of the offered item was made during the period, regardless of quantity.

On lines b. and c. insert sales information in the following manner.

a. Give the lowest price Category C sales of comparable quantities. If there were no sales of comparable quantities, then give

b. The lowest price Category C sales of quantities most nearly the quantity being offered. If there were no sales of Category C, then give

c. The lowest price Category B sales of comparable quantities. If there were no sales of comparable quantities, then give

d. The lowest price Category B sales of quantities most nearly the quantity being offered.

Attach a complete explanation (i) if you, during the period covered, offered special discounts not included in the catalog, or (ii) if the price proposed is not the lowest price at which a sale was made to any customer during that period for like items and comparable quantities.

Item 12. Market price is a current price, established in the usual and ordinary course of trade between buyers and sellers free to bargain, that can be substantiated from sources independent of the manufacturer or vendor. There must be a sufficient number of commercial buyers so that their purchases establish an ascertainable current market price for the item or service. The nature of this market should be described. To justify a market-price exemption, the item or service being purchased must be identical to the commercial item or service or must be so similar in material and design (for supplies) or in work and facilities (for services) that any price difference or its absence can be evaluated solely by price analysis (see FAR 15.805-2). In the latter case, a statement must be attached identifying the specific differences and explaining, by price analysis of the differences, how the proposed price is derived from the market price.

Item 13. Identify the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

Item 14. Insert the name, title, and firm of the person authorized by the offeror to sign this form.

STATEMENT AND ACKNOWLEDGMENT

FORM APPROVED OMB NO. 3090-0119

PART I – STATEMENT OF PRIME CONTRACTOR

1. PRIME CONTRACT NO.	2. DATE SUBCONTRACT AWARDED	3. SUBCONTRACT NUMBER

4. PRIME CONTRACTOR *(Name, address and ZIP code)*	5. SUBCONTRACTOR *(Name, address and ZIP code)*

6. The prime contractor states that under the contract shown in Item 1, a subcontract was awarded on date shown in Item 2 by (Name of Awarding Firm) _____

to the subcontractor identified in Item 5, for the following work:

7. PROJECT	8. LOCATION

9. NAME AND TITLE OF PERSON SIGNING	10. BY *(Signature)*	11. DATE SIGNED

PART II – ACKNOWLEDGMENT OF SUBCONTRACTOR

12. The subcontractor acknowledges that the following clauses of the contract shown in Item 1 are included in this subcontract:

Contract Work Hours and Safety Standards Act – Overtime Compensation – Construction	Davis-Bacon Act
	Apprentices and Trainees
Payrolls and Basic Records	Compliance with Copeland Regulations
Withholding of Funds	Subcontracts
	Contract Termination-Debarment

13. NAME(S) OF ANY INTERMEDIATE SUBCONTRACTORS, IF ANY

14. NAME AND TITLE OF PERSON SIGNING	15. BY *(Signature)*	16. DATE SIGNED

NSN 7540-01-151-4297
1413-101

STANDARD FORM 1413 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.222(e)

CONSENT OF SURETY	1. CONTRACT NUMBER	2. MODIFICATION NUMBER	3. DATED
			4. DATE OF EXECUTION

The Surety (Co-Sureties) consents (consent) to the foregoing contract modification and agrees (agree) that its (their) bond or bonds shall apply and extend to the contract as modified or amended.

	a. BUSINESS ADDRESS	b. SIGNATURE c. TYPED NAME OF ABOVE PERSON	(Affix Seal)
5. INDIVIDUAL PRINCIPAL			

	a. CORPORATE NAME AND BUSINESS ADDRESS	b. PERSON EXECUTING CONSENT (Signature) BY c. TYPED NAME AND TITLE OF ABOVE PERSON	DATE: (Affix Corporate Seal)
6. CORPORATE PRINCIPAL			

7. CORPORATE SURETY (CO-SURETIES)

	a. CORPORATE SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT (Signature) BY c. TYPED NAME AND TITLE OF ABOVE PERSON	(Affix Corporate Seal)
A			
B	a. CORPORATE SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT (Signature) BY c. TYPED NAME AND TITLE OF ABOVE PERSON	(Affix Corporate Seal)
C	a. CORPORATE SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT (Signature) BY c. TYPED NAME AND TITLE OF ABOVE PERSON	(Affix Corporate Seal)
D	a. CORPORATE SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT (Signature) BY c. TYPED NAME AND TITLE OF ABOVE PERSON	(Affix Corporate Seal)
E	a. CORPORATE SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT (Signature) BY c. TYPED NAME AND TITLE OF ABOVE PERSON	(Affix Corporate Seal)

(Add similar signature blocks on the back of this form if necessary for additional co-Sureties.)

NSN 7540-01-140-5530 1414-101 **STANDARD FORM 1414** (10-83)
Prescribed by GSA
FAR (48 CFR) 53.228(k)

CONSENT OF SURETY AND INCREASE OF PENALTY	1. CONTRACT NO.	2. MODIFICATION NO.	3. DATED

4. The surety (co-sureties) consents (consent) to the foregoing contract modification and agrees (agree) that its (their) bond or bonds shall apply and extend to the contract as modified or amended. The principal and surety (co-sureties) further agree that on and after the execution of this consent, the penalty of the performance bond or bonds is increased by _____ dollars ($ _____). However, the increase of the liability of each co-surety resulting from this consent shall not exceed the sums shown below.

	5. NAME OF SURETY(IES)	6. INCREASE IN LIABILITY LIMIT UNDER PERFORMANCE BOND	7. INCREASE IN LIABILITY LIMIT UNDER PAYMENT BOND
a.		$	$
b.			
c.			

	a. BUSINESS ADDRESS	b. DATE THIS CONSENT EXECUTED c. SIGNATURE* d. TYPED NAME	
8. INDIVIDUAL PRINCIPAL			*(Seal)*

	a. CORPORATE NAME AND BUSINESS ADDRESS	b. DATE THIS CONSENT EXECUTED c. PERSON EXECUTING CONSENT *(Signature)** BY d. TYPED NAME AND TITLE OF ABOVE PERSON	
9. CORPORATE PRINCIPAL			*(Affix Corporate Seal)*

*The Principal or authorized representative shall execute this Consent of Surety and Increase of Penalty with the modification to which it pertains. If the representative (e.g., attorney-in-fact) that signs the consent is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, a Power-of-Attorney or a Certificate of Corporate Principal must accompany the consent.

10. CORPORATE SURETY(IES)

	a. CORPORATE SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE OF ABOVE PERSON	
A			*(Affix Corporate Seal)*
B	a. CORPORATE SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE OF ABOVE PERSON	*(Affix Corporate Seal)*
C	a. CORPORATE SURETY'S NAME AND ADDRESS	b. PERSON EXECUTING CONSENT *(Signature)* BY c. TYPED NAME AND TITLE OF ABOVE PERSON	*(Affix Corporate Seal)*

Add similar signature blocks on the back of this form if necessary for additional co-sureties.

NSN 7540-01-140-5531 1415-101 **STANDARD FORM 1415** (10-83)
Prescribed by GSA
FAR (48 CFR) 53.228(l)

PAYMENT BOND FOR OTHER THAN CONSTRUCTION CONTRACTS *(See Instructions on reverse)*	DATE BOND EXECUTED *(Must be same or later than date of contract)*
PRINCIPAL *(Legal name and business address) (Include ZIP Code)*	TYPE OF ORGANIZATION *(Check one)* ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION
SURETY(IES) *(Name(s) and business address(es)) (Include ZIP Code)*	PENAL SUM OF BOND MILLION(S) | THOUSAND(S) | HUNDRED(S) | CENTS CONTRACT DATE | CONTRACT NO.

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE:

(a) The above obligation is void if the Principal promptly makes payment to all persons (claimants) having a contract relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above and any duly authorized modifications thereof. Notice of those modifications to the Surety(ies) are waived.

(b) The above obligation shall remain in full force if the Principal does not promptly make payments to all persons (claimants) having a contract relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the contract identified above. In these cases, persons not paid in full before the expirations of ninety (90) days after the date of which the last labor was performed or material furnishing, have a direct right of action against the Principal and Surety(ies) on this bond for the sum or sums justly due. The claimant, however, may not bring a suit or any action –

(1) Unless claimant, other than one having a direct contract with the Principal, had given written notice to the Principal within ninety (90) days after the claimant did or performed the last of the work or labor, or furnished or supplied the last of the materials for which the claim is made. The notice is to state with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished or supplied, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process is served in the state in which the contract is being performed, save that such service need not be made by a public officer.

(2) After the expiration of one (1) year following the date on which claimant did or performed the last of the work or labor, or furnished or supplied the last of the materials for which suit is brought.

(3) Other than in the United States District Court for the district in which the contract, or any part thereof, was performed and executed, and not elsewhere.

WITNESS:

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

PRINCIPAL			
Signature(s)	1. (Seal)	2. (Seal)	*Corporate Seal*
Name(s) & Title(s) *(Typed)*	1.	2.	
INDIVIDUAL SURETY(IES)			
Signature(s)	1. (Seal)	2. (Seal)	
Name(s) & Title(s) *(Typed)*	1.	2.	
CORPORATE SURETY(IES)			
SURETY A — Name & Address		STATE OF INC.	LIABILITY LIMIT $
SURETY A — Signature(s)	1.	2.	*Corporate Seal*
SURETY A — Name(s) & Title(s) *(Typed)*	1.	2.	
SURETY B — Name & Address		STATE OF INC.	LIABILITY LIMIT $
SURETY B — Signature(s)	1.	2.	*Corporate Seal*
SURETY B — Name(s) & Title(s) *(Typed)*	1.	2.	

INSTRUCTIONS

1. This form is authorized for use when payment bonds are required under FAR (48 CFR) 28.103-3, i.e., payment bonds for other than construction contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)". In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, two or more responsible persons shall execute the bond. A completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require these sureties to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

PRE-SOLICITATION NOTICE (CONSTRUCTION CONTRACT)	1. PROJECT NO.	2. DATE OF NOTICE	3. DATE SOLICITATION DOCUMENTS AVAILABLE (Approx.)

NOTE: The project number in Items 1 and 16 may be the same as the Invitation or Proposal Number.

4. OFFERS TO BE OPENED (AT PLACE OF BID (PROPOSAL) OPENING) ▶	A. TIME A.M. P.M.	B. DATE (Month, day, year)	5. TIME FOR COMPLETION (Calendar days)

6A. ISSUING OFFICE (Name, address and ZIP code)	7. PROJECT TITLE AND LOCATION
6B. ROOM NO. / 6C. TELEPHONE NO. (Include area code)	

INSTRUCTIONS: a. Solicitation Documents will be issued upon receipt of your affirmative response to this Pre-Solicitation Notice by the DUE DATE set forth in Item 15. b. If a charge is required under Item 8A, your affirmative response must include a certified check, cashier's check or money order, in the applicable amount, made payable to Agency (shown in Item 9). Refund (when specified in Item 8B) will be made upon your return of the bid documents in good condition, without marks, notes, or mutilations, within 20 calendar days after bid opening date. c. The Issuing Office, at its discretion, may make bid documents available to plan rooms of the Associated General Contractors, Chambers of Commerce, Dodge Reports, and other similar contractors' commercial service facilities. d. Bid guarantee is required with any bid in excess of $25,000. Bid guarantee shall be in the amount of 20 percent of the amount of the bid, or $3,000,000, whichever is less. For bid guarantee purposes, the amount of the bid is the aggregate of the Lump Sum Base Bid, all Alternates (if any), and the product(s) of each unit price (if any) multiplied by the applicable number of units shown on the Bid Form. e. NOTICE TO SMALL BUSINESS FIRMS: A program for the purpose of assisting qualified small business concerns in obtaining certain bid, payment, or performance bonds that are otherwise not obtainable is available through the Small Business Administration (SBA). For information concerning SBA's surety bond guarantee assistance, contact your SBA District office.

8A. CHARGE FOR SOLICITATION DOCUMENTS	8B. IS THIS CHARGE REFUNDABLE?	9. MAKE CHECK PAYABLE TO:
$	☐ YES ☐ NO	

10. ESTIMATED COST RANGE OF PROJECT		11. OFFERS COVERING THE PROJECT RESTRICTED TO SMALL BUSINESS?	12. SUBCONTRACTING PROGRAM REQUIRED?
A. FROM	B. TO		
$	$	☐ YES ☐ NO	☐ YES ☐ NO

13. DESCRIPTION OF WORK (Physical characteristics)

IMPORTANT: FAILURE TO COMPLETE AND RETURN THIS PART OF THE NOTICE TO THE ISSUING OFFICE, ON OR BEFORE THE DUE DATE SHOWN IN ITEM 15, MAY RESULT IN YOUR NAME BEING REMOVED FROM OUR MAILING LIST.

14. ACTION REQUESTED (Check applicable box)			15. DUE DATE
A. I AM INTERESTED IN BIDDING ON THIS PROJECT AS A: ☐ PRIME CONTRACTOR ☐ PRINCIPAL SUBCONTRACTOR		B. I AM NOT INTERESTED IN BIDDING ON THIS PROJECT. RETAIN MY NAME ON YOUR MAILING LIST.	
NO. OF SET(S) YOU REQUIRE OF SOLICITATION DOCUMENTS		C. REMOVE MY NAME FROM YOUR MAILING LIST.	16. PROJECT NO.

17. NAME AND ADDRESS OF FIRM (City, State and ZIP code)

18. NAME AND TITLE OF FIRM REPRESENTATIVE	19. SIGNATURE OF REPRESENTATIVE	20. DATE SIGNED

ABSTRACT OF OFFERS – CONSTRUCTION

1. SOLICITATION NUMBER	2. DATE ISSUED	3. DATE OPENED	PAGE OF PAGES

4. ISSUING OFFICE

I CERTIFY that I have opened, read, and recorded on this abstract all offers received in response to this solicitation.

SIGNATURE	DATE SIGNED

5. PROJECT TITLE

6. NUMBER OF ADDENDA ISSUED

8. GOVERNMENT ESTIMATE *(Check A, B or C and complete D, E and F.)*

- A. HIRED LABOR
- B. REASONABLE CONTRACT *(Without Profit)*
- C. REASONABLE CONTRACT *(Including Profit)*

9. OFFERS

NO. 1	NO. 2
A. OFFEROR	A. OFFEROR
B. BID SECURITY *(Type and amount)*	B. BID SECURITY *(Type and Amount)*
C. ADDENDA ACKNOWLEDGED	C. ADDENDA ACKNOWLEDGED

7A. ITEM NO.	7B. DESCRIPTION OF OFFERED ITEM	7C. EST. QUANTITY	D. UNIT	E. UNIT PRICE	F. ESTIMATED AMOUNT	D. UNIT PRICE	E. ESTIMATED AMOUNT	D. UNIT PRICE	E. ESTIMATED AMOUNT

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1419-101

STANDARD FORM 1419 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.236-1(c)

9. OFFERS *(Continued)*

NO. 3		NO. 4		NO. 5		NO. 6		NO. 7	
A. OFFEROR		A. OFFEROR		A. OFFEROR		A. OFFEROR		A. OFFEROR	
B. BID SECURITY *(Type and Amount)*		B. BID SECURITY *(Type and Amount)*		B. BID SECURITY *(Type and Amount)*		B. BID SECURITY *(Type and Amount)*		B. BID SECURITY *(Type and Amount)*	
C. ADDENDA ACKNOWLEDGED		C. ADDENDA ACKNOWLEDGED		C. ADDENDA ACKNOWLEDGED		C. ADDENDA ACKNOWLEDGED		C. ADDENDA ACKNOWLEDGED	
D. UNIT PRICE	E. ESTIMATED AMOUNT	D. UNIT PRICE	E. ESTIMATED AMOUNT	D. UNIT PRICE	E. ESTIMATED AMOUNT	D. UNIT PRICE	E. ESTIMATED AMOUNT	D. UNIT PRICE	E. ESTIMATED AMOUNT

STANDARD FORM 1419 BACK (10-83)

FOR OFFICIAL USE ONLY
(WHEN COMPLETED)

PERFORMANCE EVALUATION – CONSTRUCTION CONTRACTS

1. CONTRACT NUMBER

PART I – GENERAL CONTRACT DATA

2. CONTRACTOR *(Name, address and ZIP code)*

3. TYPE OF CONTRACT *(Check)* ▶
- ☐ A. ADVERTISED
- ☐ B. NEGOTIATED
  - ☐ CPFF
  - ☐ FIRM FIXED PRICE
  - ☐ OTHER *(Specify)*

4. COMPLEXITY OF WORK
- ☐ DIFFICULT
- ☐ ROUTINE

5. DESCRIPTION AND LOCATION OF WORK

	A. AMOUNT OF BASIC CONTRACT	B. TOTAL AMOUNT OF MODIFICATION	C. LIQUIDATED DAMAGES ASSESSED	D. NET AMOUNT PAID CONTRACTOR
6. FISCAL DATA ▶	$	$	$	$
7. SIGNIFICANT DATES ▶	A. DATE OF AWARD	B. ORIGINAL CONTRACT COMPLETION DATE	C. REVISED CONTRACT COMPLETION DATE	D. DATE WORK ACCEPTED

8. TYPE AND EXTENT OF SUBCONTRACTING

PART II – PERFORMANCE EVALUATION OF CONTRACT *(Check appropriate box)*

9. PERFORMANCE ELEMENTS	OUTSTANDING	SATISFACTORY	UNSATISFACTORY
A. QUALITY OF WORK			
B. TIMELY PERFORMANCE			
C. EFFECTIVENESS OF MANAGEMENT			
D. COMPLIANCE WITH LABOR STANDARDS			
E. COMPLIANCE WITH SAFETY STANDARDS			

10. OVERALL EVALUATION

☐ OUTSTANDING *(Explain in Item 13, on reverse)* ☐ SATISFACTORY ☐ UNSATISFACTORY *(Explain in Item 14, on reverse)*

11. EVALUATED BY

A. ORGANIZATION *(Type or print)*

B. NAME AND TITLE *(Type or print)*	C. SIGNATURE	D. DATE

12. EVALUATION REVIEWED BY

A. ORGANIZATION *(Type or print)*

B. NAME AND TITLE *(Type or print)*	C. SIGNATURE	D. DATE

NSN 7540-01-150-0326

FOR OFFICIAL USE ONLY
(WHEN COMPLETED)

STANDARD FORM 1420 (10-83)
Prescribed by GSA
FAR (45 CFR) 53.236-1(b)

FOR OFFICIAL USE ONLY
(WHEN COMPLETED)

13. REMARKS ON OUTSTANDING PERFORMANCE - AS INDICATED BY THE CONTRACTOR'S PERFORMANCE ON THIS CONTRACT, IF YOU CONSIDER THE CONTRACTOR TO BE OUTSTANDING, SET FORTH FACTUAL DATA SUPPORTING THIS OBSERVATION. THESE DATA MUST BE IN SUFFICIENT DETAIL TO ASSIST CONTRACTING OFFICERS IN SELECTING CONTRACTORS THAT HAVE DEMONSTRATED OUTSTANDING QUALITY OF WORK AND RELIABILITY. *(Continue on separate sheet, if needed.)*

14. EXPLANATION OF UNSATISFACTORY EVALUATION - FOR EACH UNSATISFACTORY ELEMENT, PROVIDE FACTS CONCERNING SPECIFIC EVENTS OR ACTIONS TO JUSTIFY THE EVALUATION *(e.g., extent of Government inspection required, rework required, subcontracting, cooperation of contractor, quality of workmen and adequacy of equipment).* THESE DATA MUST BE IN SUFFICIENT DETAIL TO ASSIST CONTRACTING OFFICERS IN DETERMINING THE CONTRACTOR'S RESPONSIBILITY. *(Continue on separate sheet, if needed.)*

PERFORMANCE EVALUATION (ARCHITECT-ENGINEER)

1. PROJECT NUMBER

2. CONTRACT NUMBER

IMPORTANT: Be sure to complete Performance section on reverse. If additional space is necessary for any item, use Remarks section on reverse.

3. TYPE OF REPORT *(Check one)*

☐ INTERIM ☐ COMPLETION OF DESIGN OR STUDY ☐ COMPLETION OF CONSTRUCTION ☐ TERMINATION

4. REPORT NUMBER

5. DATE OF REPORT

6. NAME AND ADDRESS OF CONTRACTOR

7. PROJECT DESCRIPTION AND LOCATION

8. OFFICE RESPONSIBLE FOR:

A. SELECTION OF CONTRACTOR	B. NEGOTIATION/AWARD OF CONTRACT	C. ADMINISTRATION OF CONTRACT

9. CONTRACT DATA

A. TYPE OF WORK

B. TYPE OF CONTRACT

☐ FIXED-PRICE ☐ OTHER *(Specify)*

☐ COST-REIMBURSEMENT

C. PROJECT COMPLEXITY

☐ DIFFICULT ☐ ROUTINE ☐ SIMPLE

D. PROFESSIONAL SERVICES CONTRACT

INITIAL FEE	AMENDMENTS		CLAIMS BY CONTRACTOR		TOTAL FEE
	NO.	AMOUNT	NO.	AMOUNT	
$		$		$	$

E. DATE CONTRACT AWARDED	F. CONTRACT COMPLETION DATE *(Including extensions)*	G. ACTUAL COMPLETION DATE OF CONTRACT

10. KEY CONSULTANT DATA

A. NAMES	B. ADDRESS	C. SPECIALTY

11. CONSTRUCTION COSTS	A. INITIAL ESTIMATE	B. AWARD	C. ACTUAL
	$	$	$

12. CONSTRUCTION CHANGES AND DEFICIENCIES	NUMBER	TOTAL
A. CONSTRUCTION CHANGES		$
B. CONSTRUCTION CHANGES RESULTING FROM DEFICIENCIES IN A-E PERFORMANCE		$
C. DEFICIENCIES PAID FOR BY A-E		$
D. DEFICIENCIES PAID FOR BY GOVERNMENT		$

13. OVERALL RATING

☐ EXCELLENT ☐ AVERAGE ☐ POOR

14. RECOMMENDED FOR FUTURE CONTRACTS?

☐ YES ☐ NO *(If "NO," explain in REMARKS on reverse)*

15A. NAME AND TITLE OF RATING OFFICIAL

16A. NAME AND TITLE OF REVIEWING OFFICIAL

15B. SIGNATURE	15C. DATE	16B. SIGNATURE	16C. DATE

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STANDARD FORM 1421 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.236-2(d)

PERFORMANCE																	
STAGES OF SERVICES *(As applicable)*					NOT APPLICABLE	RATING FACTORS/RATINGS									RATED BY		
						ACCURACY	COMPLETENESS	COOPERATION	COORDINATION	MANAGEMENT	MEETING SCHEDULE	PERSONNEL ABILITY	WORK QUALITY	CODE LEGEND: + EXCELLENT; A AVERAGE; P POOR; N/A NOT APPLICABLE; NI NO INFORMATION	SIGNATURE AND DATE		
CONCEPTS	SCHEDULE *(Mo., day, yr.)*	FROM	TO	ARCH.													
				STRU.													
	ACTUAL *(Mo., day, yr.)*	FROM	TO	MECH.													
				ELEC.													
TENTATIVES	SCHEDULE *(Mo., day, yr.)*	FROM	TO	ARCH.													
				STRUC.													
	ACTUAL *(Mo., day, yr.)*	FROM	TO	MECH.													
				ELEC.													
WORKING DRAWINGS	SCHEDULE *(Mo., day, yr.)*	FROM	TO	ARCH.													
				STRUC.													
	ACTUAL *(Mo., day, yr.)*	FROM	TO	MECH.													
				ELEC.													
ESTIMATES				A/S													
				M/E													
CRITICAL PATH METHOD				PRE-AWARD													
				POST-AWARD													
POST CONSTRUCTION CONTRACT SERVICES				SHOP DWGS.													
				MAN-UALS													
INSPECTION				FIELD													
				OFFICE													
SOLICITATION DOCUMENTS																	

REMARKS

STANDARD FORM 1421 BACK (10-83)

INVENTORY VERIFICATION SURVEY (See FAR 45.606-3)	DATE	FORM APPROVED OMB NO. 3090-0120

SECTION I – GENERAL

1. FROM: *(Include ZIP Code)*

2. CONTRACT NUMBER

3. TO: *(Include ZIP Code)*

4. CONTRACTOR/SUBCONTRACTOR

5. SCHEDULES OF INVENTORY TO BE INSPECTED AND VERIFIED

SF 1426 pages _____ through _____ $_____
SF 1428 pages _____ through _____ $_____
SF 1430 pages _____ through _____ $_____
SF 1432 pages _____ through _____ $_____
SF 1434 pages _____ through _____ $_____

SECTION II – TECHNICAL VERIFICATION

	YES	NO
6. Is property listed on the inventory schedules on hand and in the quantities indicated?		*
7. Is the property correctly described on the inventory schedules?		*
8. Is the property segregated or adequately protected?		*
9. Is the property properly protected?		*
10. Are the condition codes accurate?		*
11. Are the items listed on SF 1432 correctly categorized as special tooling or special test equipment?		*
12. Are the weights of the items recommended as scrap approximately correct? If weights are not shown, give estimate of weight by basic material content:		*
13. Do the items appear to have commercial value other than scrap?		*
14. Are the items Agency-peculiar?	*	
15. Do any items require special processing *(Fire arms, drugs, etc.)*?	*	
16. Are common items included on the Inventory Schedule?	*	

SECTION III – TERMINATION INVENTORY

COMPLETION OF THIS SECTION ☐ IS ☐ IS NOT REQUIRED *(Requestor, check one)*

	YES	NO
17. Did work stop promptly upon receipt of the termination notice? Date of Notice:		*
18. Do the quantities of material exceed the amounts that would have been required to complete the terminated portion of the contract?	*	
Can any items of termination inventory be used on the continuing portion of the contract?	*	
19. Are all items and quantities allocable to the termination portion of this contract or order?		*
20. Does the inventory include rejects? If yes, explain specific line item entries. Obtain from contractor estimated cost of reworking rejects on specific line item basis.	*	
21a. Have completed articles been inspected as to quality and conformance to specifications?		*
b. Do the completed items inspected conform to contract specifications?		*
c. Do other than completed items conform with technical requirements of the contract or order?		*

22. REQUESTING OFFICE REMARKS *(Where the answer to any question is placed in a block containing an asterisk (*) detailed comments of the Quality Assurance Representative shall be included on the reverse of this form and identified by section and item number.)*

23. SIGNATURE OF REQUESTOR

INVENTORY VERIFICATION CERTIFICATION

The above information is based on a physical Verification of Inventory listed under Item 5.

24. NAME AND TITLE	25. SIGNATURE OF VERIFIER	26. DATE

NSN 7540-01-142-9847
1423-101

STANDARD FORM 1423 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.245(c)

INVENTORY DISPOSAL REPORT (See FAR 45.615)	FORM APPROVED OMB NO. 3090-0120	PLANT CLEARANCE CASE NUMBER
TO: *(Include ZIP Code)*	FROM: *(Include ZIP Code)*	
1. DATE PLANT CLEARANCE CASE OPENED	2. DATE PLANT CLEARANCE CASE CLOSED	3. NUMBER OF DAYS BETWEEN OPENING AND CLOSING
4. NAME AND ADDRESS OF CONTRACTOR/SUBCONTRACTOR *(Include ZIP Code)*	5. IF SUBCONTRACTOR STATE NAME AND ADDRESS OF PRIME CONTRACTOR *(Include ZIP Code)*	
6. LOCATION OF PROPERTY *(City and State)*	7. CONTRACT NUMBER	8. DOCKET NUMBER *(Termination only)*
	9. SUBCONTRACT NUMBER	10. CONTRACTOR REFERENCE NUMBER

DISPOSITION OF PROPERTY

ITEM DESCRIPTION	LINE ITEMS	ACQUISITION COST	PROCEEDS
11. **TOTAL INVENTORY AS SUBMITTED**			
12. ADJUSTMENTS *(Pricing errors, shortages, etc.)*			
13. ADJUSTED INVENTORY *(Line 11 ± Line 12)*			
14. PURCHASE OR RETENTION AT COST			
15. RETURN TO SUPPLIERS *(Net Proceeds)*			
16. REDISTRIBUTIONS			
A. WITHIN OWNING AGENCY			
B. OTHER AGENCIES			
TOTAL			
17. DONATIONS			
18. SALES			
19. SALES – PROCEEDS TO OVERHEAD			
20.			
21.			
22. **TOTAL PROCEEDS CREDITS** *(Total Lines 14, 15, and 18)*			
23. DESTROYED OR ABANDONED			
24. OTHER *(Explain in Item 26, Remarks)*			
25. **TOTAL DISPOSITIONS**			

26. REMARKS *(Identify contract number in which proceeds were applied, or disbursing office where proceeds were deposited)*

To the best of my knowledge, disposition of all property on this case has been effected in accordance with existing regulations, all property has been accounted for and all disposal credits properly applied.

CONTRACT ADMINISTRATION OFFICE *(Authorized signature and title)*	DATE

NSN 7540-01-150-0325
1424-101

STANDARD FORM 1424 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.245(d)

INVENTORY SCHEDULE A
(METALS IN MILL PRODUCT FORM)

(See SF 1425 for Instructions)

☐ PARTIAL ☐ FINAL

TYPE: ☐ TERMINATION ☐ NONTERMINATION

TYPE OF CONTRACT | DATE | FORM APPROVED OMB NO. 3090-0120

PROPERTY CLASSIFICATION | PAGE NO. | NO. OF PAGES

THIS SCHEDULE APPLIES TO *(Check one)*

☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT(S) OR PURCHASE ORDER(S)

GOVERNMENT PRIME CONTRACT NO. | SUBCONTRACT OR P.O. NO. | REFERENCE NO.

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

CITY AND STATE *(Include ZIP Code)*

ADDRESS *(Include ZIP Code)*

LOCATION OF MATERIAL

PRODUCT COVERED BY CONTRACT OR ORDER

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION: FORM SHAPE, ROLLING TREATMENT *(When applicable, type of edge, Example: HR coiled strip, CR flat sheets box rod, tubing in straight length, etc.)* (b)	HEAT TREATMENT, TEMPER, HARDNESS FINISH, ETC. *(Example: Annealed and pickled, ½ hard, polished, etc.)* (b1)	SPECIFICATIONS, AND ALLOY OR OTHER VARIABLE DESIGNATION IN THE SPECIFICATION *(Example: QQ-T-951-D B16-42 Alloy 7 Grade B)* (b2)	DIMENSIONS: THICKNESS *(Wall for tubing, class for pipe, type for copper watertube)* (b3)	WIDTH *(O.D. for tube diameter of rod, size for pipe, manufacturer's die no. for extruded shapes)* (b4)	LENGTH (b5): FEET	LENGTH (b5): INCHES	CONDITION *(Use code)* (c)	QUANTITY (d)	UNIT OF MEASURE (d1)	COST: UNIT (e)	COST: TOTAL (f)	CONTRACTOR'S OFFER (g)	FOR USE OF CONTRACTING AGENCY ONLY

INVENTORY SCHEDULE CERTIFICATE

The undersigned, personally and as representative of the Contractor, certifies that this inventory Schedule consisting of page numbers ____ to ____ inclusive, dated _____ has been examined, and that in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; that the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, that the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; that this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and that the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR | BY *(Signature of Authorized Official)* | TITLE | DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL | TITLE

NSN 7540-01-140-5515
1426-101

STANDARD FORM 1426 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.245(f)

INVENTORY SCHEDULE A – CONTINUATION SHEET
(METALS IN MILL PRODUCT FORM)

TYPE: ☐ TERMINATION ☐ NONTERMINATION

DATE

FORM APPROVED OMB NO. 3090-0120

GOVERNMENT PRIME CONTRACT NO.	SUBCONTRACT OR P.O. NO.	REFERENCE NO.	PROPERTY CLASSIFICATION	PAGE NO.	NO. OF PAGES

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO.	DESCRIPTION							CONDITION (Use code)	QUANTITY	UNIT OF MEASURE	COST		CONTRACTOR'S OFFER	FOR USE OF CONTRACTING AGENCY ONLY
		FORM, SHAPE, ROLLING TREATMENT	HEAT TREATMENT, TEMPER, HARDNESS, FINISH, ETC.	SPECIFICATIONS, AND ALLOY OR OTHER VARIABLE DESIGNATION IN THE SPECIFICATION	DIMENSIONS							UNIT	TOTAL		
					THICKNESS	WIDTH	LENGTH (b5)								
							FEET	INCHES							
	(a)	(b)	(b1)	(b2)	(b3)	(b4)			(c)	(d)	(d1)	(e)	(f)	(g)	

NSN 7540-01-140-5516
1427-101

STANDARD FORM 1427 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.245(f)

INVENTORY SCHEDULE B
(See SF 1425 for instructions)

☐ PARTIAL ☐ FINAL

TYPE: ☐ TERMINATION ☐ NONTERMINATION

TYPE OF CONTRACT | DATE | FORM APPROVED OMB NO. 3090-0120

TYPE OF INVENTORY
☐ RAW MATERIALS *(Other than metals)* ☐ PURCHASED PARTS ☐ FINISHED COMPONENTS
☐ FINISHED PRODUCT ☐ PLANT EQUIPMENT ☐ MISCELLANEOUS

PROPERTY CLASSIFICATION | PAGE NO. | NO. OF PAGES

THIS SCHEDULE APPLIES TO *(Check one)*
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER

COMPANY PREPARING AND SUBMITTING SCHEDULE

GOVERNMENT PRIME CONTRACT NO. | SUBCONTRACT OR P.O. NO. | REFERENCE NO.

STREET ADDRESS

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

CITY AND STATE *(Include ZIP Code)*

ADDRESS *(Include ZIP Code)*

LOCATION OF MATERIAL

PRODUCT COVERED BY CONTRACT OR ORDER

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION: ITEM DESCRIPTION (b)	GOVERNMENT PART OR DRAWING NUMBER AND REVISION NUMBER (b1)	TYPE OF PACKING *(Bulk, bbls., crates, etc.)* (b2)	CONDITION *(Use code)* (c)	QUANTITY (d)	UNIT OF MEASURE (d1)	COST *(For finished product, show contract price instead of cost)*: UNIT (e)	COST: TOTAL (f)	CONTRACTOR'S OFFER (g)	*FOR USE OF CONTRACTING AGENCY ONLY*

INVENTORY SCHEDULE CERTIFICATE

The undersigned, personally and as representative of the Contractor, certifies that this inventory Schedule consisting of page numbers ____ to ____ inclusive, dated _____ has been examined, and that in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; that the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, that the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; that this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and that the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR | BY *(Signature of Authorized Official)* | TITLE | DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL | TITLE

NSN 7540-01-142-0135
1428-101

STANDARD FORM 1428 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.245(g)

INVENTORY SCHEDULE B -- CONTINUATION SHEET

TYPE: ☐ TERMINATION ☐ NONTERMINATION

FORM APPROVED OMB NO. 3090-0120

TYPE OF INVENTORY: ☐ RAW MATERIALS (Other than metals) ☐ PURCHASED PARTS ☐ FINISHED COMPONENTS ☐ FINISHED PRODUCTS ☐ PLANT EQUIPMENT ☐ MISCELLANEOUS

GOVERNMENT PRIME CONTRACT NO.	SUBCONTRACT OR P.O. NO.	REFERENCE NO.	PROPERTY CLASSIFICATION	DATE	PAGE NO.	NO. OF PAGES

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO.	DESCRIPTION: ITEM DESCRIPTION	DESCRIPTION: GOVERNMENT PART OR DRAWING NUMBER AND REV. NUMBER	DESCRIPTION: TYPE OF PACKING (Bulk, bbls., crates, etc.)	CONDITION (Use code)	QUANTITY	UNIT OF MEASURE	COST (For finished product, show contract price instead of cost): UNIT	COST (For finished product, show contract price instead of cost): TOTAL	CONTRACTOR'S OFFER	FOR USE OF CONTRACTING AGENCY ONLY
	(a)	(b)	(b1)	(b2)	(c)	(d)	(d1)	(e)	(f)	(g)	

NSN 7540-01-140-5517
1429-101

STANDARD FORM 1429 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.245(g)

INVENTORY SCHEDULE C
(WORK-IN-PROCESS)
(See SF 1425 for Instructions)

☐ PARTIAL ☐ FINAL

TYPE
☐ TERMINATION
☐ NONTERMINATION

TYPE OF CONTRACT

FORM APPROVED OMB NO. 3090-0120

DATE

PAGE NO. | NO. OF PAGES

THIS SCHEDULE APPLIES TO *(Check one)*
☐ A PRIME CONTRACT WITH THE GOVERNMENT
☐ SUBCONTRACT(S) OR PURCHASE ORDER(S)

COMPANY PREPARING AND SUBMITTING SCHEDULE

GOVERNMENT PRIME CONTRACT NO. | SUBCONTRACT OR P.O. NO. | REFERENCE NO.

STREET ADDRESS

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

CITY AND STATE *(Include ZIP Code)*

ADDRESS *(Include ZIP Code)*

LOCATION OF MATERIAL

PRODUCT COVERED BY CONTRACT OR ORDER

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION: ITEM DESCRIPTION (b)	DESCRIPTION: ESTIMATED WEIGHT (b1)	CONDITION *(See code)* (c)	QUANTITY (d)	UNIT OF MEASURE (d1)	COST: UNIT (e)	COST: TOTAL (f)	CONTRACTORS OFFER (g)	FOR USE OF CONTRACTING AGENCY ONLY

INVENTORY SCHEDULE CERTIFICATE

The undersigned, personally and as representative of the Contractor, certifies that this inventory Schedule consisting of page numbers ____ to ____ inclusive, dated _____ has been examined, and that in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; that the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, that the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; that this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and that the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR | BY *(Signature of Authorized Official)* | TITLE | DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL | TITLE

NSN 7540-01-140-5518
1430-101

STANDARD FORM 1430 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.245(h)

INVENTORY SCHEDULE C – CONTINUATION SHEET
(WORK-IN-PROCESS)

TYPE: ☐ TERMINATION ☐ NONTERMINATION

FORM APPROVED OMB NO. 3090-0120

GOVERNMENT PRIME CONTRACT NO.	SUBCONTRACT OR P.O. NO.	REFERENCE NO.	DATE	PAGE NO.	NO. OF PAGES

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION: ITEM DESCRIPTION (b)	ESTIMATED WEIGHT (b1)	CONDITION (See code) (c)	QUANTITY (d)	UNIT OF MEASURE (d1)	COST: UNIT (e)	COST: TOTAL (f)	CONTRACTOR'S OFFER (g)	FOR USE OF CONTRACTING AGENCY ONLY

NSN 7540-01-140-9848
1431-101

STANDARD FORM 1431 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.245(h)

INVENTORY SCHEDULE D
(SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT)

(See SF 1425 for Instructions)

☐ PARTIAL ☐ FINAL

TYPE
☐ TERMINATION
☐ NONTERMINATION

TYPE OF CONTRACT | DATE | FORM APPROVED OMB NO. 3090-0120

PROPERTY CLASSIFICATION | PAGE NO. | NO. OF PAGES

THIS SCHEDULE APPLIES TO *(Check one)*
☐ A PRIME CONTRACT WITH THE GOVERNMENT
☐ SUBCONTRACT OR PURCHASE ORDER

GOVERNMENT PRIME CONTRACT NO. | SUBCONTRACT OR P.O. NO. | REFERENCE NO.

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS *(Include ZIP Code)*

PRODUCT COVERED BY CONTRACT OR ORDER

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CITY AND STATE *(Include ZIP Code)*

LOCATION OF MATERIAL

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	ITEM DESCRIPTION (b)	CONDITION *(Use code)* (c)	QUANTITY (d)	COST UNIT (e)	COST TOTAL (f)	APPLICABLE TO THIS CONTRACT: TO ENTIRE CONTRACT (f1)	APPLICABLE TO THIS CONTRACT: TO PORTION NOT TO BE COMPLETED (f2)	CONTRACTOR'S OFFER (g)	FOR USE OF CONTRACTING AGENCY ONLY

INVENTORY SCHEDULE CERTIFICATE

The undersigned, personally and as representative of the Contractor, certifies that this inventory Schedule consisting of page numbers ____ to ____ inclusive, dated _____ has been examined, and that in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; that the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, that the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; that this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and that the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR | BY *(Signature of Authorized Official)* | TITLE | DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL | TITLE

NSN 7540-01-140-5519
1432-101

STANDARD FORM 1432 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.245(i)

INVENTORY SCHEDULE D – CONTINUATION SHEET
(SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT)

TYPE ☐ TERMINATION ☐ NONTERMINATION | DATE | FORM APPROVED OMB NO. 3090-0120

GOVERNMENT PRIME CONTRACT NO. | SUBCONTRACT OR P.O. NO. | REFERENCE NO. | PROPERTY CLASSIFICATION | PAGE NO. | NO. OF PAGES

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	ITEM DESCRIPTION (b)	CONDITION (Use code) (c)	QUANTITY (d)	COST				CONTRACTOR'S OFFER (g)	FOR USE OF CONTRACTING AGENCY ONLY
					UNIT (e)	TOTAL (f)	APPLICABLE TO THIS CONTRACT			
							TO ENTIRE CONTRACT (f1)	TO PORTION NOT TO BE COMPLETED (f2)		

NSN 7540-01-141-3918
1433-101

STANDARD FORM 1433 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.245(i)

TERMINATION INVENTORY SCHEDULE E
(SHORT FORM FOR USE WITH SF 1438 ONLY)
(See SF 1425 for Instructions)

☐ PARTIAL ☐ FINAL

DATE	PAGE NO.	NO. OF PAGES	FORM APPROVED OMB NO.
			3090-0120

THIS SCHEDULE APPLIES TO *(Check one)*
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT(S) OR PURCHASE ORDER(S)

GOVERNMENT PRIME CONTRACT NO.	SUBCONTRACT OR P.O. NO.	REFERENCE NO.

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS *(Include ZIP Code)*

PRODUCT COVERED BY CONTRACT OR ORDER

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CITY AND STATE *(Include ZIP Code)*

LOCATION OF MATERIAL

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION: ITEM DESCRIPTION (b)	GOVERNMENT PART OR DRAWING NUMBER AND REVISION NUMBER (b1)	TYPE OF PACKING *(Bulk, bdls., crates, etc.)* (b2)	CONDITION *(Use code)* (c)	QUANTITY (d)	UNIT OF MEASURE (d1)	COST *(For finished product, show contract price instead of cost)*: UNIT (e)	COST: TOTAL (f)	CONTRACTOR'S OFFER (g)	FOR USE OF CONTRACTING AGENCY ONLY

TERMINATION INVENTORY SCHEDULE CERTIFICATE

The undersigned, personally and as representative of the Contractor, certifies that this Inventory Schedule consisting of page numbers ____ to ____ inclusive, dated _____ has been examined, and that in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; that the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, that the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; that this schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and that the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR	BY *(Signature of Authorized Official)*	TITLE	DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE

NSN 7540-01-140-5520
1434-101

STANDARD FORM 1434 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.245(j)

SETTLEMENT PROPOSAL
(INVENTORY BASIS)

FORM APPROVED OMB NO. 3090-0115

FOR USE BY A FIXED-PRICE PRIME CONTRACTOR OR FIXED-PRICE SUBCONTRACTOR

THIS PROPOSAL APPLIES TO *(Check one)*
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER

SUBCONTRACT OR PURCHASE ORDER NO(S).

CONTRACTOR WHO SENT NOTICE OF TERMINATION
NAME

ADDRESS

If moneys payable under the contract have been assigned, give the following:
NAME OF ASSIGNEE

ADDRESS

COMPANY

STREET ADDRESS

CITY AND STATE

NAME OF GOVERNMENT AGENCY

GOVERNMENT PRIME CONTRACT NO.

CONTRACTOR'S REFERENCE NO.

EFFECTIVE DATE OF TERMINATION

PROPOSAL NO.

CHECK ONE ☐ INTERIM ☐ FINAL

SF 1439, SCHEDULE OF ACCOUNTING INFORMATION ☐ IS ☐ IS NOT ATTACHED *(If not, explain)*

SECTION I – STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)		FINISHED: PREVIOUSLY SHIPPED AND INVOICED (b)	FINISHED: ON HAND: PAYMENT TO BE RECEIVED THROUGH INVOICING (c)	FINISHED: ON HAND: INCLUDED IN THIS PROPOSAL (d)	UNFINISHED OR NOT COMMENCED: TO BE COMPLETED *(Partial termination only)* (e)	UNFINISHED OR NOT COMMENCED: NOT TO BE COMPLETED (f)	TOTAL COVERED BY CONTRACT OR ORDER (g)
	QUANTITY						
	$						
	QUANTITY						
	$						
	QUANTITY						
	$						

SECTION II – PROPOSED SETTLEMENT

NO.	ITEM (a)	*(Use Column (b) and (c) only where previous proposal has been filed)* TOTAL PREVIOUSLY PROPOSED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (c)	TOTAL PROPOSED TO DATE (d)	*FOR USE OF CONTRACTING AGENCY ONLY* (e)
1	METALS				
2	RAW MATERIALS *(other than metals)*				
3	PURCHASED PARTS				
4	FINISHED COMPONENTS				
5	MISCELLANEOUS INVENTORY				
6	WORK-IN-PROCESS				
7	SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT				
8	OTHER COSTS *(from Schedule B)*				
9	GENERAL AND ADMINISTRATIVE EXPENSES *(from Schedule C)*				
10	**TOTAL** *(Items 1 to 9 inclusive)*				
11	PROFIT *(explain in Schedule D)*				
12	SETTLEMENT EXPENSES *(from Schedule E)*				
13	**TOTAL** *(Items 10 to 13 inclusive)*				
14	SETTLEMENTS WITH SUBCONTRACTORS *(from Schedule F)*				
15	ACCEPTABLE FINISHED PRODUCT				
16	GROSS PROPOSED SETTLEMENT *(Items 13 thru 15)*				
17	DISPOSAL AND OTHER CREDITS *(from Schedule G)*				
18	NET PROPOSED SETTLEMENT *(Item 16 less 17)*				
19	ADVANCE, PROGRESS & PARTIAL PAYMENTS *(from Schedule H)*				
20	**NET PAYMENT REQUESTED** *(Item 18 less 19)*				

When the space provided for any information is insufficient, continue on a separate sheet.

SCHEDULE A – ANALYSIS OF INVENTORY COST *(Items 4 and 6)*

Furnish the following information *(unless not reasonably available)* for inventories of finished components and work-in-process included in this proposal:

	TOTAL DIRECT LABOR	TOTAL DIRECT MATERIALS	TOTAL INDIRECT EXPENSES	TOTAL
FINISHED COMPONENTS				
WORK-IN-PROCESS				

NOTE.—Individual items of small amounts may be grouped into a single entry in Schedules B, C, D, E, and G.

SCHEDULE B – OTHER COSTS *(Item 8)*

ITEM	EXPLANATION	AMOUNT	*FOR USE OF CONTRACTING AGENCY ONLY*

SCHEDULE C – GENERAL AND ADMINISTRATIVE EXPENSES *(Item 9)*

DETAIL OF EXPENSES	AMOUNT	*FOR USE OF CONTRACTING AGENCY ONLY*

SCHEDULE D – PROFIT *(Item 11)*

EXPLANATION	AMOUNT	*FOR USE OF CONTRACTING AGENCY ONLY*

Where the space provided for any information is insufficient, continue on a separate sheet.

SCHEDULE E – SETTLEMENT EXPENSES *(Item 12)*

ITEM	EXPLANATION	AMOUNT	*FOR USE OF CONTRACTING AGENCY ONLY*

SCHEDULE F – SETTLEMENTS WITH IMMEDIATE SUBCONTRACTORS AND SUPPLIERS *(Item 14)*

NAME AND ADDRESS OF SUBCONTRACTOR	BRIEF DESCRIPTION OF PRODUCT CANCELED	AMOUNT OF SETTLEMENT	*FOR USE OF CONTRACTING AGENCY ONLY*

SCHEDULE G – DISPOSAL AND OTHER CREDITS *(Item 17)*

DESCRIPTION	AMOUNT	*FOR USE OF CONTRACTING AGENCY ONLY*

(If practicable, show separately amount of disposal credits applicable to acceptable finished product included in Item 15.)

Where the space provided for any information is insufficient, continue on a separate sheet.

SCHEDULE H – ADVANCE, PROGRESS AND PARTIAL PAYMENTS *(Item 19)*

DATE	TYPE OF PAYMENT	AMOUNT	*FOR USE OF CONTRACTING AGENCY ONLY*

Where the space provided for any information is insufficient, continue on a separate sheet.

CERTIFICATE

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

(a) AS TO THE CONTRACTOR'S OWN CHARGES. The proposed settlement (exclusive of charges set forth in Item 14) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.

(b) AS TO THE SUBCONTRACTORS' CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors' own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) the Contractor has no information leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term "subcontractors," as used above, includes suppliers.

NOTE: The Contractor shall, under conditions stated in FAR 15.804-2, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.804-2(a) and 15.804-6).

NAME OF CONTRACTOR	BY *(Signature of authorized official)*	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

SETTLEMENT PROPOSAL
(TOTAL COST BASIS)

FORM APPROVED OMB NO. 3090-0115

FOR USE BY A FIXED-PRICE PRIME CONTRACTOR OR FIXED-PRICE SUBCONTRACTOR

THIS PROPOSAL APPLIES TO *(Check one)*
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ A SUBCONTRACT OR PURCHASE ORDER

SUBCONTRACT OR PURCHASE ORDER NO.(S)

CONTRACTOR WHO SENT NOTICE OF TERMINATION
NAME

ADDRESS

If moneys payable under the contract have been assigned, give the following:
NAME OF ASSIGNEE

ADDRESS

COMPANY

STREET ADDRESS

CITY AND STATE

NAME OF GOVERNMENT AGENCY

GOVERNMENT PRIME CONTRACT NO.

CONTRACTOR'S REFERENCE NO.

EFFECTIVE DATE OF TERMINATION

PROPOSAL NO.

CHECK ONE ☐ INTERIM ☐ FINAL

SF 1439, SCHEDULE OF ACCOUNTING INFORMATION ☐ IS ☐ IS NOT ATTACHED *(If not, explain)*

SECTION I – STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)		FINISHED			UNFINISHED OR NOT COMMENCED		TOTAL COVERED BY CONTRACT OR ORDER
		PREVIOUSLY SHIPPED AND INVOICED	ON HAND				
			PAYMENT TO BE RECEIVED THROUGH INVOICING	PAYMENT NOT TO BE RECEIVED THROUGH INVOICING	SUBSEQUENTLY COMPLETED AND INVOICED *	NOT TO BE COMPLETED	
		(b)	(c)	(d)	(e)	(f)	(g)
	QUANTITY						
	$						
	QUANTITY						
	$						
	QUANTITY						
	$						

SECTION II – PROPOSED SETTLEMENT

NO.	ITEM (a)	*(Use Columns (b) and (c) only where previous proposal has been filed)* TOTAL PREVIOUSLY PROPOSED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (c)	TOTAL PROPOSED TO DATE (d)	*FOR USE OF CONTRACTING AGENCY ONLY* (e)
1	DIRECT MATERIAL				
2	DIRECT LABOR				
3	INDIRECT FACTORY EXPENSE *(from Schedule A)*				
4	SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT *(SF 1432)*				
5	OTHER COSTS *(from Schedule B)*				
6	GENERAL AND ADMINISTRATIVE EXPENSES *(from Schedule C)*				
7	**TOTAL COSTS** *(Items 1 thru 4)*				
8	PROFIT *(Explain in Schedule D)*				
9	**TOTAL** *(Items 7 and 8)*				
10	DEDUCT FINISHED PRODUCT INVOICED OR TO BE INVOICED *				
11	**TOTAL** *(Item 9 less Item 10)*				
12	SETTLEMENT EXPENSES *(from Schedule E)*				
13	**TOTAL** *(Items 11 and 12)*				
14	SETTLEMENTS WITH SUBCONTRACTORS *(from Schedule F)*				
15	GROSS PROPOSED SETTLEMENT *(Items 13 thru 14)*				
16	DISPOSAL AND OTHER CREDITS *(from Schedule G)*				
17	NET PROPOSED SETTLEMENT *(Item 15 less 16)*				
18	ADVANCE, PROGRESS & PARTIAL PAYMENTS *(from Schedule H)*				
19	**NET PAYMENT REQUESTED** *(Item 18 less 19)*				

**Column (e), Section I, should only be used in the event of a partial termination, in which the total cost reported in Section II should be accumulated to date of completion of the continued portion of the contract and the deduction for finished product (Item 10, Section II) should be the contract price of finished product in Column (b), (c) and (e), Section I.*

NOTE.—File inventory schedules (SF 1426, 1428, 1430, and 1432) for allocable inventories on hand at date of termination *(See 49.2 06 and SF 1425).*

Where the space provided for any information is insufficient, continue on a separate sheet.

NSN 7540-01-140-5521 1436-101 **STANDARD FORM 1436** (10-83)
Prescribed by GSA
FAR (48 CFR) 53.249(a)(3)

SCHEDULE A – INDIRECT FACTORY EXPENSE *(Item 3)*

DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	*FOR USE OF CONTRACTING AGENCY ONLY*

NOTE.—Individual items of small amounts may be grouped into a single entry in Schedules B, C, D, E, and G.

SCHEDULE B – OTHER COSTS *(Item 5)*

ITEM	EXPLANATION	AMOUNT	*FOR USE OF CONTRACTING AGENCY ONLY*

SCHEDULE C – GENERAL AND ADMINISTRATIVE EXPENSES *(Item 6)*

DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	*FOR USE OF CONTRACTING AGENCY ONLY*

SCHEDULE D – PROFIT *(Item 8)*

EXPLANATION	AMOUNT	*FOR USE OF CONTRACTING AGENCY ONLY*

Where the space provided for any information is insufficient, continue on a separate sheet.

STANDARD FORM 1436 (10-83)
PAGE 2

SCHEDULE E – SETTLEMENT EXPENSES *(Item 12)*

ITEM	EXPLANATION	AMOUNT	*FOR USE OF CONTRACTING AGENCY ONLY*

SCHEDULE F – SETTLEMENTS WITH IMMEDIATE SUBCONTRACTORS AND SUPPLIERS *(Item 14)*

NAME AND ADDRESS OF SUBCONTRACTOR	BRIEF DESCRIPTION OF PRODUCT CANCELED	AMOUNT OF SETTLEMENT	*FOR USE OF CONTRACTING AGENCY ONLY*

SCHEDULE G – DISPOSAL AND OTHER CREDITS *(Item 16)*

DESCRIPTION	AMOUNT	*FOR USE OF CONTRACTING AGENCY ONLY*

(If practicable, show separately amount of disposal credits applicable to acceptable finished product included on SF 1428.)

Where the space provided for any information is insufficient, continue on a separate sheet.

SECTION H – ADVANCE, PROGRESS AND PARTIAL PAYMENTS

DATE	TYPE OF PAYMENT	AMOUNT	*FOR USE OF CONTRACTING AGENCY ONLY*

Where the space provided for any information is insufficient, continue on a separate sheet.

CERTIFICATE

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

(a) AS TO THE CONTRACTOR'S OWN CHARGES. The proposed settlement (exclusive of charges set forth in Item 14) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States, and the charges as stated are fair and reasonable.

(b) AS TO THE SUBCONTRACTORS' CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors' own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) the Contractor has no information leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received; to the extent that it has not previously done so. The term "subcontractors," as used above, includes suppliers.

NOTE: The Contractor shall, under conditions stated in FAR 15.804-2, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.804-2(a) and 15.804-6).

NAME OF CONTRACTOR	BY *(Signature of authorized official)*	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

SETTLEMENT PROPOSAL FOR COST-REIMBURSEMENT TYPE CONTRACTS

FORM APPROVED OMB NO. 3090-0115

To be used by prime contractors submitting settlement proposals on cost-reimbursement type contracts under Part 49 of the Federal Acquisition Regulation. Also suitable for use in connection with terminated cost-reimbursement type subcontracts.

COMPANY	PROPOSAL NUMBER	CHECK ONE ☐ PARTIAL ☐ FINAL
STREET ADDRESS	GOVERNMENT PRIME CONTRACT NO.	REFERENCE NO.
CITY AND STATE *(Include ZIP Code)*	EFFECTIVE DATE OF TERMINATION	

ITEM (a)	TOTAL PREVIOUSLY SUBMITTED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (c)	TOTAL SUBMITTED TO DATE (d)
1. DIRECT MATERIAL	$	$	$
2. DIRECT LABOR			
3. INDIRECT FACTORY EXPENSE			
4. SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT			
5. OTHER COSTS			
6. GENERAL AND ADMINISTRATIVE EXPENSE			
7. TOTAL COSTS *(Items 1 thru 6)*	$	$	$
8. FEE			
9. SETTLEMENT EXPENSES			
10. SETTLEMENTS WITH SUBCONTRACTORS			
11. GROSS PROPOSED SETTLEMENT *(Items 7 thru 10)*			
12. DISPOSAL AND OTHER CREDITS			
13. NET PROPOSED SETTLEMENT *(Items 11 less 12)*	$	$	$
14. PRIOR PAYMENTS TO CONTRACTOR	$	$	$
15. NET PAYMENT REQUESTED *(Items 13 less 14)*	$	$	$

CERTIFICATE

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

(a) AS TO THE CONTRACTOR'S OWN CHARGES. The proposed settlement (exclusive of charges set forth in Item 10) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.

(b) AS TO THE SUBCONTRACTORS' CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors' own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) The Contractor has no information leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term "subcontractors," as used above, includes suppliers.

NOTE: The Contractor shall, under conditions stated in FAR 15.804-2, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.804-2(a) and 15.804-6).

NAME OF CONTRACTOR	BY *(Signature of authorized official)*	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

SETTLEMENT PROPOSAL
(SHORT FORM)

FORM APPROVED OMB NO.
3090-0115

For Use by a Prime Contractor or Subcontractor In Settlement of a Fixed Price Terminated Contract When Total Charges Claimed Are Less Than $10,000.

THIS PROPOSAL APPLIES TO *(Check one)*
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER

SUBCONTRACT OR PURCHASE ORDER NO.(S)

CONTRACTOR WHO SENT NOTICE OF TERMINATION
NAME

ADDRESS

If moneys payable under the contract have been assigned, give the following:
NAME OF ASSIGNEE

ADDRESS

COMPANY *(Prime or Subcontractor)*

STREET ADDRESS

CITY AND STATE

NAME OF GOVERNMENT AGENCY | GOVERNMENT PRIME CONTRACT NO.

CONTRACTOR'S REFERENCE NO. | EFFECTIVE DATE OF TERMINATION

SECTION I – STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)		FINISHED: PREVIOUSLY SHIPPED AND INVOICED (b)	FINISHED ON HAND: PAYMENT TO BE RECEIVED THROUGH INVOICING (c)	FINISHED ON HAND: INCLUDED IN THIS PROPOSAL (d)	UNFINISHED OR NOT COMMENCED: TO BE COMPLETED *(Partial termination only)* (e)	UNFINISHED OR NOT COMMENCED: NOT TO BE COMPLETED (f)	TOTAL COVERED BY CONTRACT OR ORDER (g)
	QUANTITY						
	$						
	QUANTITY						
	$						
	QUANTITY						
	$						

SECTION II – PROPOSED SETTLEMENT

NO.	ITEM *(Include only items allocable to the terminated portion of contract)*	AMOUNT OF CHARGE
1	CHARGE FOR ACCEPTABLE FINISHED PRODUCT NOT COVERED BY INVOICING *(from SF 1434)*	$
2	CHARGE FOR WORK-IN-PROCESS, RAW MATERIAL, ETC., ON HAND *(from SF 1434)*	$
3	OTHER CHARGES INCLUDING PROFIT AND SETTLEMENT EXPENSES	$
4	CHARGES FOR SETTLEMENT(S) WITH SUBCONTRACTORS	$
5	GROSS PROPOSED SETTLEMENT *(Sum of Items 1 thru 4)*	$
6	DISPOSAL AND OTHER CREDITS *(from SF 1434, Col. 2)*	$
7	NET PROPOSED SETTLEMENT *(Item 5 less 6)*	$
8	ADVANCE, PROGRESS, AND PARTIAL PAYMENTS	$
9	NET PAYMENT REQUESTED *(Item 7 less 8)*	$

List your inventory on SF 1434 and attach a copy thereto. Retain for the applicable period specified in the prime contract all papers and records relating to this proposal for future examination.

GIVE A BRIEF EXPLANATION OF HOW YOU ARRIVED AT THE AMOUNTS SHOWN IN ITEMS 3, 4, 6, AND 7

I CERTIFY that the above proposed settlement includes only charges allocable to the terminated portion of the contract or purchase order. That the total charges (Item 5) and the disposal credits (Item 6) are fair and reasonable, and that this proposal has been prepared with knowledge that it will, or may, be used directly or indirectly as a basis for reimbursement under a settlement proposal(s) against agencies of the United States.

NAME OF YOUR COMPANY

BY *(Signature of authorized official)*

TITLE | DATE

Where the space provided for any information is insufficient, continue on a separate sheet.

INSTRUCTIONS

1. This settlement proposal should be submitted to the contracting officer, if you are a prime contractor, or to your customer, if you are a subcontractor. The term contract as used hereinafter includes a subcontract or a purchase order.

2. Proposals that would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract should be consolidated wherever possible, and must not be divided in such a way as to bring them below $10,000.

3. You should review any aspects of your contract relating to termination and consult your customer or contracting officer for further information. Government regulations pertaining to the basis for determining a fair and reasonable termination settlement are contained in Part 49 of the Federal Acquisition Regulation. Your proposal for fair compensation should be prepared on the basis of the costs shown by your accounting records. Where your costs are not so shown, you may use any reasonable basis for estimating your costs which will provide for fair compensation for the preparations made and work done for the terminated portion of the contract, including a reasonable profit on such preparation and work.

4. Generally your settlement proposal may include under items 2, 3, and 4, the following:

a. COSTS—Costs incurred which are reasonably necessary and are properly allocable to the terminated portion of your contract under recognized commercial accounting practices, including direct and indirect manufacturing, selling and distribution, administrative, and other costs and expenses incurred.

b. SETTLEMENT WITH SUBCONTRACTORS—Reasonable settlements of proposals of subcontractors allocable to the terminated portion of the subcontract. Copies of such settlements will be attached hereto.

c. SETTLEMENT EXPENSES—Reasonable costs of protecting and preserving termination inventory in your possession and preparing your proposal.

d. PROFIT—A reasonable profit with respect to the preparations you have made and work you have actually done for the terminated portion of your contract. No profit should be included for work which has not been done, nor shall profit be included for settlement expenses, or for settlement with subcontractors.

5. If you use this form, your total charges being proposed (line 5), must be less than $10,000. The Government has the right to examine your books and records relative to this proposal, and if you are a subcontractor your customer must be satisfied with your proposal.

SCHEDULE OF ACCOUNTING INFORMATION

FORM APPROVED OMB NO. 3090-0115

To be used by prime contractors submitting termination proposals under Part 49 of the Federal Acquisition Regulation. Also suitable for use by subcontractor in effecting subcontract settlements with prime contractor or intermediate subcontractor.

THIS PROPOSAL APPLIES TO *(Check one)*
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER

SUBCONTRACT OR PURCHASE ORDER NO.(S)

CONTRACTOR WHO SENT NOTICE OF TERMINATION
NAME AND ADDRESS *(Include ZIP Code)*

COMPANY *(Prime or Subcontractor)*

STREET ADDRESS

CITY AND STATE *(Include ZIP Code)*

NAME OF GOVERNMENT AGENCY

GOVERNMENT PRIME CONTRACT NO.	CONTRACTOR'S REFERENCE NO.	EFFECTIVE DATE OF TERMINATION

1. INDIVIDUAL IN YOUR ORGANIZATION FROM WHOM ADDITIONAL INFORMATION MAY BE REQUESTED ON QUESTIONS RELATING TO:

ACCOUNTING MATTERS		PROPERTY DISPOSAL	
NAME		NAME	
TITLE	TELEPHONE NO.	TITLE	TELEPHONE NO.
ADDRESS *(Include ZIP Code)*		ADDRESS *(Include ZIP Code)*	

2. ARE THE ACCOUNTS OF THE CONTRACTOR SUBJECT TO REGULAR PERIODIC EXAMINATION BY INDEPENDENT PUBLIC ACCOUNTANTS?
☐ YES ☐ NO *(Name and address of accountants)*

3. INDEPENDENT ACCOUNTANTS, IF ANY, WHO HAVE REVIEWED OR ASSISTED IN THE PREPARATION OF THE ATTACHED PROPOSAL

NAME	ADDRESS *(Include ZIP Code)*

4. GOVERNMENTAL AGENCY(IES) WHICH HAVE REVIEWED YOUR ACCOUNTS IN CONNECTION WITH PRIOR SETTLEMENT PROPOSALS DURING THE CURRENT AND PRECEDING FISCAL YEAR

NAME	ADDRESS *(Include ZIP Code)*

5. HAVE THERE BEEN ANY SIGNIFICANT DEVIATIONS FROM YOUR REGULAR ACCOUNTING PROCEDURES AND POLICIES IN ARRIVING AT THE COSTS SET FORTH IN THE ATTACHED PROPOSAL? *(If "Yes," explain briefly)*
☐ YES ☐ NO

6. WERE THE DETAILED COST RECORDS USED IN PREPARING THE PROPOSAL CONTROLLED BY AND IN AGREEMENT WITH YOUR GENERAL BOOKS OF ACCOUNT? ☐ YES ☐ NO

7. STATE METHOD OF ACCOUNTING FOR TRADE AND CASH DISCOUNTS EARNED, REBATES, ALLOWANCES, AND VOLUME PRICE ADJUSTMENTS. ARE SUCH ITEMS EXCLUDED FROM COSTS PROPOSED? ☐ YES ☐ NO

Where the space provided for any information is insufficient, continue on a separate sheet.

NSN 7540-01-142-9852 1439-101 **STANDARD FORM 1439** (10-83)
Prescribed by GSA
FAR (48 CFR) 53.249(a)(6)

8. STATE METHOD OF RECORDING AND ABSORBING (1) GENERAL ENGINEERING AND GENERAL DEVELOPMENT EXPENSE AND (2) ENGINEERING AND DEVELOPMENT EXPENSE DIRECTLY APPLICABLE TO THE TERMINATED CONTRACT.

9. STATE TYPES AND SOURCE OF MISCELLANEOUS INCOME AND CREDITS AND MANNER OF RECORDING IN THE INCOME OR THE COST ACCOUNTS SUCH AS RENTAL OF YOUR FACILITIES TO OUTSIDE PARTIES, ETC.

10. METHOD OF ALLOCATING GENERAL AND ADMINISTRATIVE EXPENSE.

11. ARE COSTS AND INCOME FROM CHANGE ORDERS SEGREGATED FROM OTHER CONTRACT COSTS AND INCOME? *(If "Yes," by what method)*

☐ YES ☐ NO

12. METHOD OF COMPUTING PROFIT SHOWN IN THE ATTACHED PROPOSAL AND REASON FOR SELECTING THE METHOD USED. FURNISH ESTIMATE OF AMOUNT OR RATE OF PROFIT IN DOLLARS OR PERCENT ANTICIPATED HAD THE CONTRACT BEEN COMPLETED.

13. ARE SETTLEMENT EXPENSES APPLICABLE TO PREVIOUSLY TERMINATED CONTRACTS EXCLUDED FROM THE ATTACHED PROPOSALS? *(If "No," explain)*

☐ YES ☐ NO

14. DOES THIS PROPOSAL INCLUDE CHARGES FOR MAJOR INVENTORY ITEMS AND PROPOSALS OF SUBCONTRACTORS COMMON TO THIS TERMINATED CONTRACT AND OTHER WORK OF THE CONTRACTOR? *(If "Yes," explain the method used in allocating amounts to the terminated portion of this contract.)*

☐ YES ☐ NO

15. EXPLAIN BRIEFLY YOUR METHOD OF PRICING INVENTORIES, INDICATING WHETHER MATERIAL HANDLING COST HAS BEEN INCLUDED IN CHARGES FOR MATERIALS.

16. ARE ANY PARTS, MATERIALS, OR FINISHED PRODUCT, KNOWN TO BE DEFECTIVE, INCLUDED IN THE INVENTORIES? *(If "Yes," explain.)*

☐ YES ☐ NO

Where the space provided for any information is insufficient, continue on a separate sheet.

17. WERE INVENTORY QUANTITIES BASED ON A PHYSICAL COUNT AS OF THE DATE OF TERMINATION? *(If "No," explain exceptions)*

☐ YES ☐ NO

18. DESCRIBE BRIEFLY THE NATURE OF INDIRECT EXPENSE ITEMS INCLUDED IN INVENTORY COSTS *(See Schedule A, SF 1435)* AND EXPLAIN YOUR METHOD OF ALLOCATION USED IN PREPARING THIS PROPOSAL, INCLUDING IF PRACTICABLE, THE RATES USED AND THE PERIOD OF TIME UPON WHICH THEY ARE BASED.

19. STATE GENERAL POLICIES RELATING TO DEPRECIATION AND AMORTIZATION OF FIXED ASSETS, BASES, UNDERLYING POLICIES.

20. DO THE COSTS SET FORTH IN THE ATTACHED PROPOSAL INCLUDE PROVISIONS FOR ANY RESERVES OTHER THAN DEPRECIATION RESERVES? *(If "Yes," list such reserves)*

☐ YES ☐ NO

21. STATE POLICY OR PROCEDURE FOR RECORDING AND WRITING OFF STARTING LOAD.

22. STATE POLICIES FOR DISTINGUISHING BETWEEN CHARGES TO CAPITAL (FIXED) ASSET ACCOUNTS AND TO REPAIR AND MAINTENANCE ACCOUNTS.

23. ARE PERISHABLE TOOLS AND MANUFACTURING SUPPLIES CHARGED DIRECTLY TO CONTRACT COSTS OR INCLUDED IN INDIRECT EXPENSES?

Where the space provided for any information is insufficient, continue on a separate sheet.

24. HAVE ANY CHARGES FOR SEVERANCE, DISMISSAL, OR SEPARATION PAY BEEN INCLUDED IN THIS PROPOSAL? *(If "Yes," furnish brief explanation and estimates of amounts included.)*

☐ YES ☐ NO

25. STATE POLICIES RELATING TO RECORDING OF OVERTIME SHIFT PREMIUMS AND PRODUCTION BONUSES.

26. DOES CONTRACTOR HAVE A PENSION PLAN? *(If "Yes," state method of funding and absorption of past and current pension service costs.)*

☐ YES ☐ NO

27. IS THIS SETTLEMENT PROPOSAL BASED ON STANDARD COSTS?

☐ YES *(If "Yes," has adjustment to actual cost or adjustment for any significant variations been made?* ☐ YES ☐ NO *(If "No," explain.)*

☐ NO

28. DOES THIS PROPOSAL INCLUDE ANY ELEMENT OF PROFIT TO THE CONTRACTOR OR A RELATED ORGANIZATION, OTHER THAN (a) PROFIT SET FORTH SEPARATELY IN THE PROPOSAL OR (b) PROFIT INCLUDED IN THE CONTRACT PRICE AT WHICH ACCEPTABLE FINISHED PRODUCT, IF ANY, IS INCLUDED IN THE PROPOSAL? *(If "Yes," explain briefly.)*

☐ YES ☐ NO

29. WHAT IS LENGTH OF TIME (PRODUCTION CYCLE) REQUIRED TO PRODUCE ONE OF THE END ITEMS FROM THE TIME THE MATERIAL ENTERS THE PRODUCTION LINE TO THE COMPLETION AS THE FINISHED PRODUCT?

30. STATE POLICY AND PROCEDURE FOR VERIFICATION AND NEGOTIATION OF SETTLEMENTS WITH SUBCONTRACTORS AND VENDORS.

CERTIFICATE

THIS CERTIFIES THAT, TO THE BEST KNOWLEDGE AND BELIEF OF THE UNDERSIGNED, THE ABOVE STATEMENTS ARE TRUE AND CORRECT.

NAME OF CONTRACTOR	BY *(Signature of supervisor accounting official)*	
	TITLE	DATE

Where the space provided for any information is insufficient, continue on a separate sheet.

APPLICATION FOR PARTIAL PAYMENT

FORM APPROVED OMB NO. 3090-0115

For use by Prime Contractor or Subcontractor under contracts terminated for the convenience of the Government.

THIS APPLICATION APPLIES TO *(Check one)*
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER

SUBCONTRACT OR PURCHASE ORDER NUMBER(S)

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS *(Include ZIP Code)*

IF CONTRACTOR HAS GUARANTEED LOANS OR HAS ASSIGNED MONEYS DUE UNDER THE CONTRACT, GIVE THE FOLLOWING:

NAME AND ADDRESS OF FINANCING INSTITUTION *(Include ZIP Code)*

NAME AND ADDRESS OF GUARANTOR *(Include ZIP Code)*

NAME AND ADDRESS OF ASSIGNEE *(Include ZIP Code)*

APPLICANT

STREET ADDRESS

CITY AND STATE *(Include ZIP Code)*

NAME OF GOVERNMENT AGENCY

GOVERNMENT PRIME CONTRACT NUMBER

CONTRACTOR'S REFERENCE NUMBER

EFFECTIVE DATE OF TERMINATION

DATE OF THIS APPLICATION

AMOUNT REQUESTED
$

APPLICATION NUMBER UNDER THIS TERMINATION

SECTION I – STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)		FINISHED: PREVIOUSLY SHIPPED AND INVOICED (b)	FINISHED: ON HAND, PAYMENT TO BE RECEIVED THROUGH INVOICING (c)	FINISHED: ON HAND, INCLUDED IN THIS APPLICATION (d)	UNFINISHED OR NOT COMMENCED: TO BE COMPLETED (e)	UNFINISHED OR NOT COMMENCED: NOT TO BE COMPLETED (f)	TOTAL COVERED BY CONTRACT OR ORDER (g)
	QUANTITY						
	$						
	QUANTITY						
	$						
	QUANTITY						
	$						

SECTION II – APPLICANT'S OWN TERMINATION CHARGES
(Exclusive of its Subcontractors' Charges)

SETTLEMENT PROPOSAL
☐ ATTACHED
☐ PREVIOUSLY SUBMITTED

NO.	ITEM	CHARGES AS LISTED IN SETTLEMENT PROPOSAL
1	ACCEPTABLE FURNISHED PRODUCT *(at contract price)*	$
2	WORK-IN-PROCESS	
3	RAW MATERIALS, PURCHASED PARTS, AND SUPPLIES	
4	GENERAL AND ADMINISTRATIVE EXPENSE	
5	**TOTAL** *(Sum of lines 1, 2, 3, and 4)*	$
6	SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT	
7	OTHER COSTS	
8	SETTLEMENT EXPENSES	
9	**TOTAL** *(Sum of lines 5, 6, 7, and 8)*	$
10	SUBCONTRACTOR SETTLEMENTS APPROVED BY CONTRACTING OFFICER OR SETTLED UNDER A DELEGATION OF AUTHORITY AND PAID BY APPLICANT	$
	11. AMOUNTS RECEIVED	
a	UNLIQUIDATED PARTIAL, PROGRESS, AND ADVANCE PAYMENTS RECEIVED	$
b	DISPOSAL AND OTHER CREDITS	
c	**TOTAL** *(Sum of lines a and b)*	
d	AMOUNT OF PARTIAL PAYMENT REQUESTED	
e	**TOTAL** *(Sum of lines c and d)*	$

NSN 7540-01-142-0131 1440-101

STANDARD FORM 1440 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.249(a)(7)

SECTION III – AGREEMENT OF APPLICANT

IN CONSIDERATION OF PARTIAL PAYMENT THAT MAY BE MADE, THE APPLICANT AGREES AS FOLLOWS:

(a) Repayment of Excess. If any partial payment made to the Contractor is in excess of the amount finally determined to be due on its termination settlement proposal or claim, the Contractor shall repay the excess to the Government upon demand together with interest at the rate established by the Secretary of the Treasury under 50 U.S.C. (App.) 1215(b)(2). Interest shall be computed for the period from the date of the excess payment to the date the excess is repaid. Interest shall not be charged however, for any (1) excess payment due to a reduction in the Contractor's proposal or claim because of retention or other disposition of termination inventory, until 10 days after the date of the retention or disposition, or any later date determined by the Contracting Officer because of the circumstances, or for (2) overpayment under cost-reimbursement research and development contracts (without profit or fee to the Contractor) if the overpayments are repaid to the Government within 30 days after demand.

(b) Prompt Settlement of Proposal. The applicant will make every effort to expedite final settlement of the termination settlement proposal and any proposals of its subcontractors.

(c) Disposal and Retention of Inventory. The applicant shall, within 10 days, notify the Contracting Officer whenever the proceeds received from the disposal of termination inventory, when added to the cost or agreed value of inventory retained by the applicant, exceeds the amount of its charges (Section II, Line 9) and the amount of such credits has not been included on Section II, Line b (Disposal and Other Credits).

SECTION IV – CERTIFICATE OF APPLICANT

I certify that the amount of charges *(exclusive of subcontractors' charges)* due as of the date of this application and allocable to the terminated portion of contract number _____ dated _____ with _____, is not less than $ _____ *(From Section II, Line 9)*; that, to the best of my knowledge, the amounts received are as set forth above; and that I have not assigned any moneys payable under this contract, except as set forth above.

NAME OF APPLICANT	BY *(Signature of authorized official)*	
	TITLE	DATE

SECTION V – RECOMMENDATION OF FIRST REVIEWING CONTRACTOR

The undersigned states that it has examined this application and has considered the applicant's general reputation. It has no reason to doubt the accuracy of the information contained in this application or that the amount certified by the applicant as due will constitute a proper charge to be included in the undersigned's termination settlement proposal against _____. It recommends that the requested partial payment be made.

The undersigned agrees that it will promptly pay over to the applicant or credit against amounts owing from the applicant any amount received for the benefit of the applicant under this application, and that it will repay to the Government on demand any amount not so paid or credited.

NAME OF CONTRACTOR	BY *(Signature of authorized official)*	
	TITLE	DATE

SECTION VI – RECOMMENDATIONS OF OTHER REVIEWING CONTRACTORS

Each of the undersigned states that it has no reason to doubt that the amount of the partial payment requested, and recommended above is due the applicant and will constitute a proper charge in the termination settlement proposal of the undersigned.

Each of the undersigned agrees that it will promptly pay over to its immediate subcontractor or credit against amounts owing from such subcontractor any amount received for the benefit of the applicant under this application, and that it will repay to the Government on demand any amount not so paid or credited.

	CONTRACTOR	DATE	IDENTIFICATION OF YOUR CONTRACT	SIGNATURE OF OFFICER, PARTNER, OR OWNER
1				
2				
3				

Where the space provided for any information is insufficient, continue on a separate sheet.

STANDARD FORM 1440 BACK (10-83)

SOLICITATION, OFFER, AND AWARD *(Construction, Alteration, or Repair)*	1. SOLICITATION NO.	2. TYPE OF SOLICITATION ☐ ADVERTISED *(IFB)* ☐ NEGOTIATED *(RFP)*	3. DATE ISSUED	PAGE OF PAGES

IMPORTANT – The "offer" section on the reverse must be fully completed by offeror.

4. CONTRACT NO.	5. REQUISITION/PURCHASE REQUEST NO.	6. PROJECT NO.

7. ISSUED BY CODE	8. ADDRESS OFFER TO

9. FOR INFORMATION CALL:	A. NAME	B. TELEPHONE NO. *(Include area code) (NO COLLECT CALLS)*

SOLICITATION

NOTE: In advertised solicitations "offer" and "offeror" mean "bid" and "bidder".

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS *(Title, identifying no., date):*

11. The Contractor shall begin performance within _____ calendar days and complete it within _____ calendar days after receiving ☐ award, ☐ notice to proceed. This performance period is ☐ mandatory, ☐ negotiable. *(See _____.)*

12A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? *(If "YES," indicate within how many calendar days after award in Item 12B.)* ☐ YES ☐ NO	12B. CALENDAR DAYS

13. ADDITIONAL SOLICITATION REQUIREMENTS:

A. Sealed offers in original and _____ copies to perform the work required are due at the place specified in Item 8 by _____ *(hour)* local time _____ *(date)*. If this is an advertised solicitation, offers will be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.

B. An offer guarantee ☐ is, ☐ is not required.

C. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.

D. Offers providing less than _____ calendar days for Government acceptance after the date offers are due will be considered nonresponsive and will be rejected.

OFFER *(Must be fully completed by offeror)*

14. NAME AND ADDRESS OF OFFEROR *(Include ZIP Code)*

15. TELEPHONE NO. *(Include area code)*

16. REMITTANCE ADDRESS *(Include only if different than Item 14)*

CODE FACILITY CODE

17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government within _____ calendar days after the date offers are due. *(Insert any number equal to or greater than the minimum requirement stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in Item 13D.)*

AMOUNTS ▶

18. The offeror agrees (a) to carry out this offer if the Government accepts it by signing Item 31B within the time specified in Item 13D, and (b) to furnish any required performance and payment bonds.

19. ACKNOWLEDGMENT OF AMENDMENTS
(The offeror acknowledges receipt of amendments to the solicitation — give number and date of each)

AMENDMENT NO.										
DATE										

20A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER *(Type or print)*

20B. SIGNATURE

20C. OFFER DATE

AWARD *(To be completed by Government)*

21. ITEMS ACCEPTED:

22. AMOUNT

23. ACCOUNTING AND APPROPRIATION DATA

24. SUBMIT INVOICES TO ADDRESS SHOWN IN *(4 copies unless otherwise specified)* ▶ ITEM

25. NEGOTIATED PURSUANT TO
☐ 10 USC 2304(a)( ) ☐ 41 USC 252(c)( )

26. ADMINISTERED BY CODE

27. PAYMENT WILL BE MADE BY

CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE

☐ 28. NEGOTIATED AGREEMENT *(Contractor is required to sign this document and return _____ copies to issuing office.)* Contractor agrees to furnish and deliver all items or perform all work, requisitions identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications or incorporated by reference in or attached to this contract.

☐ 29. AWARD *(Contractor is not required to sign this document.)* Your offer on this solicitation, is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.

30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN *(Type or print)*

31A. NAME OF CONTRACTING OFFICER *(Type or print)*

30B. SIGNATURE

30C. DATE

31B. UNITED STATES OF AMERICA
BY

31C. AWARD DATE

STANDARD FORM 1442 BACK (10-83)

CONTRACTOR'S REQUEST FOR PROGRESS PAYMENT

Form Approved OMB No. 3090-0105

IMPORTANT: This form is to be completed in accordance with Instructions on reverse.

SECTION I – IDENTIFICATION INFORMATION

1. TO: NAME AND ADDRESS OF CONTRACTING OFFICE (Include ZIP Code)	2. FROM: NAME AND ADDRESS OF CONTRACTOR (Include ZIP Code)
PAYING OFFICE	

3. SMALL BUSINESS	4. CONTRACT NO.	5. CONTRACT PRICE
☐ YES ☐ NO		$

6. RATES		7. DATE OF INITIAL AWARD		8A. PROGRESS PAYMENT REQUEST NO.	8B. DATE OF THIS REQUEST
A. PROG. PYMTS.	B. LIQUIDATION	A. YEAR	B. MONTH		
%	%				

SECTION II – STATEMENT OF COSTS UNDER THIS CONTRACT THROUGH _____ (Date)

9. PAID COSTS ELIGIBLE UNDER PROGRESS PAYMENT CLAUSE		$
10. INCURRED COSTS ELIGIBLE UNDER PROGRESS PAYMENT CLAUSE		
11. TOTAL COSTS ELIGIBLE FOR PROGRESS PAYMENTS *(Item 9 plus 10)*		
12. a. TOTAL COSTS INCURRED TO DATE	$	
b. ESTIMATED ADDITIONAL COST TO COMPLETE		
13. ITEM 11 MULTIPLIED BY ITEM 6a		
14. a. PROGRESS PAYMENTS PAID TO SUBCONTRACTORS		
b. LIQUIDATED PROGRESS PAYMENTS TO SUBCONTRACTORS		
c. UNLIQUIDATED PROGRESS PAYMENTS TO SUBCONTRACTORS *(Item 14a less 14b)*		
d. SUBCONTRACT PROGRESS BILLINGS APPROVED FOR CURRENT PAYMENT		
e. ELIGIBLE SUBCONTRACTOR PROGRESS PAYMENTS *(Item 14c plus 14d)*		
15. TOTAL DOLLAR AMOUNT *(Item 13 plus 14e)*		
16. ITEM 5 MULTIPLIED BY ITEM 6b		
17. LESSER OF ITEM 15 OR ITEM 16		
18. TOTAL AMOUNT OF PREVIOUS PROGRESS PAYMENTS REQUESTED		
19. MAXIMUM BALANCE ELIGIBLE FOR PROGRESS PAYMENTS *(Item 17 less 18)*		

SECTION III – COMPUTATION OF LIMITS FOR OUTSTANDING PROGRESS PAYMENTS

**SEE SPECIAL INSTRUCTIONS ON BACK FOR USE UNDER THE FEDERAL ACQUISITION REGULATION.*

20. COMPUTATION OF PROGRESS PAYMENT CLAUSE *(a(3)(i) or a(4)(i))* LIMITATION*	$	
a. COSTS INCLUDED IN ITEM 11, APPLICABLE TO ITEMS DELIVERED, INVOICED, AND ACCEPTED TO THE DATE IN HEADING OF SECTION II.		
b. COSTS ELIGIBLE FOR PROGRESS PAYMENTS, APPLICABLE TO UNDELIVERED ITEMS AND TO DELIVERED ITEMS NOT INVOICED AND ACCEPTED *(Item 11 less 20a)*		
c. ITEM 20b MULTIPLIED BY ITEM 6a		$
d. ELIGIBLE SUBCONTRACTOR PROGRESS PAYMENTS *(Item 14e)*		
e. LIMITATION a(3)(i) or a(4)(i) *(Item 20c plus 20d)* *		
21. COMPUTATION OF PROGRESS PAYMENT CLAUSE *(a(3)(ii) or a(4)(ii))* LIMITATION *		
a. CONTRACT PRICE OF ITEMS DELIVERED, ACCEPTED AND INVOICED TO DATE IN HEADING OF SECTION II		
b. CONTRACT PRICE OF ITEMS NOT DELIVERED, ACCEPTED AND INVOICED *(Item 5 less 21a)*		
c. ITEM 21b MULTIPLIED BY ITEM 6b		
d. UNLIQUIDATED ADVANCE PAYMENTS PLUS ACCRUED INTEREST		
e. LIMITATION *(a(3)(ii) or a(4)(ii))* *(Item 21c less 21d)* *		
22. MAXIMUM UNLIQUIDATED PROGRESS PAYMENTS *(Lesser of Item 20e or 21e)*		
23. TOTAL AMOUNT APPLIED AND TO BE APPLIED TO REDUCE PROGRESS PAYMENT		
24. UNLIQUIDATED PROGRESS PAYMENTS *(Item 18 less 23)*		
25. MAXIMUM PERMISSIBLE PROGRESS PAYMENTS *(Item 22 less 24)*		
26. AMOUNT OF CURRENT INVOICE FOR PROGRESS PAYMENT *(Lesser of Item 25 or 19)*		
27. AMOUNT APPROVED BY CONTRACTING OFFICER		

CERTIFICATION

I certify that the above statement (with attachments) has been prepared from the books and records of the above-named contractor in accordance with the contract and the instructions hereon, and to the best of my knowledge and belief, that it is correct, that all the costs of contract performance (except as herewith reported in writing) have been paid to the extent shown herein, or where not shown as paid have been paid or will be paid currently, by the contractor, when due, in the ordinary course of business, that the work reflected above has been performed, that the quantities and amounts involved are consistent with the requirements of the contract. That there are no encumbrances (except as reported in writing herewith, or on previous progress payment request No. _____) against the property acquired or produced for, and allocated or properly chargeable to the contract which would affect or impair the Government's title, that there has been no materially adverse change in the financial condition of the contractor since the submission of the most recent written information dated _____ by the contractor to the Government in connection with the contract, that to the extent of any contract provision limiting progress payments pending first article approval, such provision has been complied with, and that after the making of the requested progress payment the unliquidated progress payments will not exceed the maximum unliquidated progress payments permitted by the contract.

NAME AND TITLE OF CONTRACTOR REPRESENTATIVE SIGNING THIS FORM	SIGNATURE
NAME AND TITLE OF CONTRACTING OFFICER	SIGNATURE

INSTRUCTIONS

GENERAL - All entries on this form must be typewritten - all dollar amounts must be shown in whole dollars, rounded up to the next whole dollar. All line item numbers not included in the instructions below are self-explanatory.

SECTION I – IDENTIFICATION INFORMATION. Complete Items 1 through 8c in accordance with the following instructions:

Item 1. TO – Enter the name and address of the cognizant Contract Administration Office. PAYING OFFICE – Enter the designation of the paying office, as indicated in the contract.

Item 2. FROM - CONTRACTOR'S NAME AND ADDRESS/ ZIP CODE – Enter the name and mailing address of the contractor. If applicable, the division of the company performing the contract should be entered immediately following the contractor's name.

Item 3. Enter an "X" in the appropriate block to indicate whether or not the contractor is a small business concern.

Item 5. Enter the total contract price, as amended. If the contract provides for escalation or price redetermination, enter the initial price until changed and not the ceiling price; if the contract is of the incentive type, enter the target or billing price, as amended until final pricing. For letter contracts, enter the maximum expenditure authorized by the contract, as amended.

Item 6A. PROGRESS PAYMENT RATES – Enter the 2-digit progress payment percentage rate shown in paragraph (a)(1) of the progress payment clause.

Item 6B. LIQUIDATION RATE – Enter the progress payment liquidation rate shown in paragraph (b) of the progress payment clause, using three digits - Example: show 80% as 800 - show 72.3% as 723.

Item 7. DATE OF INITIAL AWARD – Enter the last two digits of the calendar year. Use two digits to indicate the month. Example: show January 1982 as 82/01.

Item 8A. PROGRESS PAYMENT REQUEST NO. – Enter the number assigned to this request. All requests under a single contract must be numbered consecutively, beginning with 1. Each subsequent request under the same contract must continue in sequence, using the same series of numbers without omission.

Item 8B. Enter the date of the request.

SECTION II – GENERAL INSTRUCTIONS. DATE. In the space provided in the heading enter the date through which costs have been accumulated from inception for inclusion in this request. This date is applicable to item entries in Sections II and III.

Cost Basis. For all contracts with Small Business concerns, the base for progress payments is total costs incurred. For contracts with concerns other than Small Business, the progress payment base will be the total recorded paid costs, together with the incurred costs per the Computation of Amounts paragraph of the progress payment clause in FPR 1-30.510-1(a) or FAR 52.232-16, as appropriate. Total costs include all expenses paid and incurred, including applicable manufacturing and production expense, general and administrative expense for performance of contract, which are reasonable, allocable to the contract, consistent with sound and generally accepted accounting principles and practices, and which are not otherwise excluded by the contract.

Manufacturing and Production Expense, General and Administrative Expense. In connection with the first progress payment request on a contract, attach an explanation of the method, bases and period used in determining the amount of each of these two types of expenses. If the method, basis or periods used for computing these expenses differ in subsequent requests for progress payments under this contract, attach an explanation of such changes to the progress payment request involved.

Incurred Costs Involving Subcontractors for Contracts with Small Business Concerns. If the incurred costs eligible for progress payments under the contract include costs shown in invoices of subcontractors, suppliers and others, that portion of the costs computed on such invoices can only include costs for: (1) completed work to which the prime contractor has acquired title; (2) materials delivered to which the prime contractor has acquired title; (3) services rendered; and (4) costs billed under cost reimbursement or time and material subcontracts for work to which the prime contractor has acquired title.

SECTION II – SPECIFIC INSTRUCTIONS

Item 9. PAID COSTS ELIGIBLE UNDER PROGRESS PAYMENT CLAUSE – Line 9 will not be used for Small Business Contracts.

For large business contracts, costs to be shown in Item 9 shall include only those recorded costs which have resulted at time of request in payment made by cash, check, or other form of actual payment for items or services purchased directly for the contract. This includes items delivered, accepted and paid for, resulting in liquidation of subcontractor progress payments.

Costs to be shown in Item 9 are not to include advance payments, downpayments, or deposits, all of which are not eligible for reimbursement; or progress payments made to subcontractors, suppliers or others, which are to be included in Item 14. See "Cost Basis" above.

Item 10. INCURRED COSTS ELIGIBLE UNDER PROGRESS PAYMENT CLAUSE – For all Small Business Contracts, Item 10 will show total costs incurred for the contract.

Costs to be shown in Item 10 are not to include advance payments, downpayments, deposits, or progress payments made to subcontractors, suppliers or others.

For large business contracts, costs to be shown in Item 10 shall include all costs incurred (see "Cost Basis" above) for: materials which have been issued from the stores inventory and placed into production process for use on the contract; for direct labor; for other direct in-house costs; and for properly allocated and allowable indirect costs as set forth under "Cost Basis" above.

Item 12a. Enter the total contract costs incurred to date; if the actual amount is not known, enter the best possible estimate. If an estimate is used, enter (E) after the amount.

Item 12b. Enter the estimated cost to complete the contract. The estimate may be the last estimate made, adjusted for costs incurred since the last estimate; however, estimates shall be made not less frequently than every six months.

Items 14a through 14e. Include only progress payments on subcontracts which conform to progress payment provisions of the prime contract.

Item 14a. Enter only progress payments actually paid.

Item 14b. Enter total progress payments recouped from subcontractors.

Item 14d. For Small Business prime contracts, include the amount of unpaid subcontract progress payment billings which have been approved by the contractor for the current payment in the ordinary course of business. For other contracts, enter "0" amount.

SECTION III – SPECIFIC INSTRUCTIONS. This Section must be completed only if the contractor has received advance payments against this contract, or if items have been delivered, invoiced and accepted as of the date indicated in the heading of Section II above. EXCEPTION: Item 27 must be filled in by the Contracting Officer.

Item 20a. Of the costs reported in Item 11, compute and enter only costs which are properly allocable to items delivered, invoiced and accepted to the applicable date. In order of preference, these costs are to be computed on the basis of one of the following: (a) The actual unit cost of items delivered, giving proper consideration to the deferment of the starting load costs or, (b) projected unit costs (based on experienced costs plus the estimated cost to complete the contract), where the contractor maintains cost data which will clearly establish the reliability of such estimates.

Item 20d. Enter amount from 14e.

Item 21a. Enter the total billing price, as adjusted, of items delivered, accepted and invoiced to the applicable date.

Item 23. Enter total progress payments liquidated and those to be liquidated from billings submitted but not yet paid.

Item 25. Self-explanatory. (NOTE: If the entry in this item is a negative amount, there has been an overpayment which requires adjustment.)

Item 26. Self-explanatory, but if a lesser amount is requested, enter the lesser amount.

SPECIAL INSTRUCTIONS FOR USE UNDER FEDERAL ACQUISITION REGULATION (FAR).

Items 20 and 20e. Delete the references to a(3)(i) of the progress payment clause.

Items 21 and 21e. Delete the references to a(3)(ii) of the progress payment clause.

STANDARD FORM 1443 BACK (10-82)

OF-17 (OCT. 83) FAR (48 CFR 53.214(9))

IMPORTANT— NOTICE TO BIDDER

On the envelope submitting your bid, it is imperative:

1. That your name and address appear in the UPPER left corner.
2. That the bottom portion of this label be filled in and pasted on the LOWER left corner.

5017-103

SEALED BID

INVITATION NO.

DATE OF OPENING

TIME OF OPENING

A. M. P. M.

BID FOR

ORDER FOR SUPPLIES OR SERVICES

PAGE 1 OF PAGES

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

1. DATE OF ORDER	2. CONTRACT NO. (If any)	3. ORDER NO.	4. REQUISITION/REFERENCE NO.

5. ISSUING OFFICE (Address correspondence to)

6. SHIP TO: (Consignee and address, ZIP Code)

SHIP VIA:

7. TO: CONTRACTOR (Name, address and ZIP Code)

8. TYPE OF ORDER

☐ A. PURCHASE — Reference your _____

Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheets, if any, including delivery as indicated. This purchase is negotiated under authority of:

☐ B. DELIVERY — Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.

9. ACCOUNTING AND APPROPRIATION DATA

10. REQUISITIONING OFFICE

11. BUSINESS CLASSIFICATION (Check appropriate box(es))

☐ SMALL ☐ OTHER THAN SMALL ☐ DIS-ADVAN-TAGED ☐ WOMEN-OWNED

12. F.O.B. POINT	14. GOVERNMENT B/L NO.	15. DELIVER TO F.O.B. POINT ON OR BEFORE (Date)	16. DISCOUNT TERMS
13. PLACE OF INSPECTION AND ACCEPTANCE			

17. SCHEDULE (See reverse for Rejections)

ITEM NO. (A)	SUPPLIES OR SERVICES (B)	QUANTITY ORDERED (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)	QUANTITY ACCEPTED (G)

SEE BILLING INSTRUCTIONS ON REVERSE	18. SHIPPING POINT	19. GROSS SHIPPING WEIGHT	20. INVOICE NO.		17(H). TOT. (Cont. pages) ◀
	21. MAIL INVOICE TO: (Include ZIP Code)				17(I). GRAND TOTAL ◀

22. UNITED STATES OF AMERICA BY (Signature) ▶

23. NAME (Typed)

TITLE: CONTRACTING/ORDERING OFFICER

NSN 7540-01-152-8083 50347-101

OPTIONAL FORM 347 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.213(e)

PURCHASE ORDER TERMS AND CONDITIONS

52.252-2. CLAUSES INCORPORATED BY REFERENCE (Apr 84).—This contract incorporates the following 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:

FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

52.203-1	Officials Not to Benefit (Apr 84)
52.203-3	Gratuities (Apr 84)
52.203-4	Covenant Against Contingent Fees (Apr 84)
52.212-9	Variation in Quantity (Apr 84) (In the preceding clause, the permissible variations are stated in the schedule)
52.222-3	Convict Labor (Apr 84)
52.222-4	Contract Work Hours and Safety Standards Act—Overtime Compensation—General (Apr 84)
52.222-26	Equal Opportunity (Apr 84)
52.222-36	Affirmative Action for Handicapped Workers (Apr 84)
52.222-40	Service Contract Act of 1965—Contracts of $2500 or Less (Apr 84)
52.222-41	Service Contract Act of 1965 (Apr 84)
52.225-3	Buy American Act—Supplies (Apr 84)
52.232-1	Payments (Apr 84)
52.232-8	Discounts for Prompt Payment (Apr 84) (With Alternate 1)
52.233-1	Disputes (Apr 84)
52.243-1	Changes — Fixed Price (Apr 84)
52.249-1	Termination for Convenience of the Government (Fixed Price) (Short Form) (Apr 84)

NOTE.—If desired, this order (or a copy thereof) may be used by the Contractor as the Contractor's invoice, instead of a separate invoice, provided the following statement, (signed and dated) is on (or attached to) the order: "Payment is requested in the amount of $_____. No other invoice will be submitted." However, if the Contractor wishes to submit an invoice, the following information must be provided: contract number (if any), order number, item number(s), description of supplies or services, sizes, quantities, unit prices, and extended totals. Prepaid shipping costs will be indicated as a separate item on the invoice. Where shipping costs exceed $10 (except for parcel post), the billing must be supported by a bill of lading or receipt. When several orders are invoiced to an ordering activity during the same billing period, consolidated periodic billings are encouraged.

RECEIVING REPORT

Quantity in the "Quantity Accepted" column on the face of this order has been: ☐ inspected, ☐ accepted, ☐ received by me and conforms to contract. Items listed below have been rejected for the reasons indicated.

SHIPMENT NUMBER	PARTIAL		DATE RECEIVED	SIGNATURE OF AUTHORIZED U.S. GOV'T. REP.	DATE
	FINAL				
TOTAL CONTAINERS		GROSS WEIGHT	RECEIVED AT	TITLE	

REPORT OF REJECTIONS

ITEM NO.	SUPPLIES OR SERVICES	UNIT	QUANTITY REJECTED	REASON FOR REJECTION

OPTIONAL FORM 347 BACK (10-83)

ORDER FOR SUPPLIES OR SERVICES
SCHEDULE – CONTINUATION

PAGE NO.

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

DATE OF ORDER	CONTRACT NO.	ORDER NO.

ITEM NO. (A)	SUPPLIES OR SERVICES (B)	QUANTITY ORDERED (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)	QUANTITY ACCEPTED (G)

TOTAL CARRIED FORWARD TO 1ST PAGE (ITEM 17(H)) ▶

NSN 7540-01-152-8082

50348-101

OPTIONAL FORM 348 (10-83)
Prescribed by GSA
FAR (48 CFR) 53.213(e)

DEPARTMENT OF DEFENSE
CONTRACT SECURITY CLASSIFICATION SPECIFICATION

1. THE REQUIREMENTS OF THE DOD INDUSTRIAL SECURITY MANUAL APPLY TO ALL SECURITY ASPECTS OF THIS EFFORT. THE FACILITY CLEARANCE REQUIRED IS: _____

2. THIS SPECIFICATION IS FOR:	3. CONTRACT NUMBER OR OTHER IDENTIFICATION NUMBER (Prime contracts must be shown for all subcontracts)	4. DATE TO BE COMPLETED (Estimated)	5. THIS SPECIFICATION IS: (See "NOTE" below. If item b or c is "X'd", also enter date for item a)
☐ a. PRIME CONTRACT	a. PRIME CONTRACT NUMBER	a.	☐ a. ORIGINAL (Complete date in all cases) — DATE
☐ b. SUBCONTRACT (Use item 15 for subcontracting beyond second tier)	b. FIRST TIER SUBCONTRACT NO.	b.	☐ b. REVISED (supersedes all previous specifications) — REVISION NO. — DATE
☐ c. REQUEST FOR BID, REQUEST FOR PROPOSAL OR REQ FOR QUOTATION	c. IDENTIFICATION NUMBER	c. DUE DATE	☐ c. FINAL — DATE

6. Is this a follow-on contract? ☐ Yes ☐ No. If YES, complete the following:

a. _____ (PRECEDING CONTRACT NUMBER) b. _____ (DATE COMPLETED) c. Accountability for classified material on preceding contract

☐ Is ☐ Is not, transferred to this follow-on contract.

7a. Name, Address & Zip Code of Prime Contractor *	b. FSC Number	c. Name, Address & Zip Code of Cognizant Security Office
8a. Name, Address & Zip Code of First Tier Subcontractor *	b. FSC Number	c. Name, Address & Zip Code of Cognizant Security Office
9a. Name, Address & Zip Code of Second Tier Subcontractor, or facility associated with IFB, RFP OR RFQ *	b. FSC Number	c. Name, Address & Zip Code of Cognizant Security Office

* When actual performance is at a location other than that specified, identify such other location in Item 15.

10a. General identification of the Procurement for which this specification applies	b. DoDAAD Number of Procuring Activity identified in Item 16d.

c. Are there additional security requirements established in accordance with paragraph 1-114 or 1-115, ISR? ☐ Yes ☐ No. If YES, identify the pertinent contractual documents in Item 15.

d. Are any elements of this contract outside the inspection responsibility of the cognizant security office? ☐ Yes ☐ No. If YES, explain in Item 15 and identify specific areas or elements.

11. ACCESS REQUIREMENTS	YES	NO	ACCESS REQUIREMENTS (Continued)	YES	NO
a. Access to Classified Information Only at other contractor/Government activities.			j. Access to SENSITIVE COMPARTMENTED INFORMATION.		
b. Receipt of classified documents or other material for reference only (no generation).			k. Access to other Special Access Program information (Specify in item 15).		
c. Receipt and generation of classified documents or other material.			l. Access to U. S. classified information outside the U. S. Panama Canal Zone, Puerto Rico, U. S. Possessions and Trust Territories.		
d. Fabrication/Modification/Storage of classified hardware.			m. Defense Documentation Center or Defense Information Analysis Center Services may be requested.		
e. Graphic arts services only.			n. Classified ADP processing will be involved.		
f. Access to IPO information.			o. REMARKS:		
g. Access to RESTRICTED DATA.					
h. Access to classified COMSEC information.					
i. Cryptographic Access Authorization required.					

12. Refer all questions pertaining to contract security classification specification to the official named below (NORMALLY, thru ACO (Item 16e); EMERGENCY, direct with written record of inquiry and response to ACO) (thru prime contractor for subcontracts).

a. The classification guidance contained in this specification and attachments referenced herein is complete and adequate.

b. Typed name, title and signature of program/project manager or other designated official	c. Activity name, address, Zip Code, telephone number and office symbol

NOTE: Original Specification (Item 5a) is authority for contractors to mark classified information. Revised and Final Specifications (Items 5b and c) are authority for contractors to remark the regraded classified information. Such actions by contractors shall be taken in accordance with the provisions of the Industrial Security Manual.

DD FORM 1 JAN 78 254 EDITION OF 1 APR 71 IS OBSOLETE. ALSO REPLACES DD FORM 254c WHICH IS OBSOLETE

13a. Information pertaining to classified contracts or projects, even though such information is considered unclassified, shall not be released for public dissemination except as provided by the Industrial Security Manual *(paragraph 5o and Appendix IX)*.

b. Proposed public releases shall be submitted for approval prior to release ☐ Direct ☐ Through *(Specify)*:

to the Directorate For Freedom of Information and Security Review, Office of the Assistant Secretary of Defense *(Public Affairs)* * for review in accordance with paragraph 5o of the Industrial Security Manual.

* *In the case of non-DoD User Agencies, see footnote, paragraph 5o, Industrial Security Manual.*

14. Security Classification Specifications for this solicitation/contract are identified below *("X" applicable box(es) and supply attachments as required)*. Any narrative or classification guide(s) furnished shall be annotated or have information appended to clearly and precisely identify each element of information which requires a classification. When a classification guide is utilized, that portion of the guide(s) pertaining to the specific contractual effort may be extracted and furnished the contractor. When a total guide(s) is utilized, each individual portion of the guide(s) which pertains to the contractual effort shall be clearly identified in Item 14b. The following information must be provided for each item of classified information identified in an extract or guide:
(I) Category of classification. (II) Date or event for declassification or review for declassification, and (III) The date or event for downgrading *(If applicable)*.

The official named in Item 12b, is responsible for furnishing the contractor copies of all guides and changes thereto that are made a part of this specification. Classified information may be attached or furnished under separate cover.

☐ a. A completed narrative is (1) ☐ attached, or (2) ☐ transmitted under separate cover and made a part of this specification.

☐ b. The following classification guide(s) is made a part of this specification and is (1) ☐ attached, or (2) ☐ transmitted under separate cover. *(List guides under Item 15 or in an attachment by title, reference number and date).*

☐ c. Service-type contract/subcontract. *(Specify instructions in accordance with ISR/ISM, as appropriate.)*.

☐ d. "X" only if this is a final specification and Item 6 is a "NO" answer. In response to the contractor's request dated _____ retention of the identified classified material is authorized for a period of _____.

☐ e. Annual review of this DD Form 254 is required. If "X'd", provide date such review is due: _____.

15. Remarks *(Whenever possible, illustrate proper classification, declassification, and if applicable, downgrading instructions)*.

16a. Contract Security Classification Specifications for Subcontracts issuing from this contract will be approved by the Office named in Item 16e below, or by the prime contractor, as authorized. This Contract Security Classification Specification and attachments referenced herein are approved by the *User Agency* Contracting Officer or his Representative named in Item 16b below.

REQUIRED DISTRIBUTION:

☐ Prime Contractor *(Item 7a)*
☐ Cognizant Security Office *(Item 7c)*
☐ Administrative Contracting Office *(Item 16e)*
☐ Quality Assurance Representative
☐ Subcontractor *(Item 8a)*
☐ Cognizant Security Office *(Item 8c)*
☐ Program/Project Manager *(Item 12b)*
☐ U. S. Activity Responsible for Overseas Security Administration

ADDITIONAL DISTRIBUTION:

☐
☐
☐

b. Typed name and title of approving official

c. Signature

d. Approving official's activity address and Zip Code

e. Name, address and Zip Code of Administrative Contracting Office

DEPARTMENT OF DEFENSE

SECURITY AGREEMENT

THIS AGREEMENT, entered into this day of 19

by and between THE UNITED STATES OF AMERICA through the Defense Contract Administration Services, Defense Supply Agency
acting for the Department of Defense (*hereinafter called the Government*) and (i)

a corporation organized and existing under the laws of the State of

(ii) a partnership consisting of

(iii) an individual trading as

with its principal office and place of business at in the city of

State of (*hereinafter called the Contractor*).

WITNESSETH THAT:

WHEREAS, the Government, through the Department of the Army, the Department of the Navy, and/or the Department of the Air Force, has in the past purchased or may in the future purchase from the Contractor supplies or services which are required and necessary to the national defense of the United States; or may invite bids or request quotations on proposed contracts for the purchase of supplies or services which are required and necessary to the national defense of the United States; and

WHEREAS, it is essential that certain security measures be taken by the Contractor prior to and after his being accorded access to classified information; and

WHEREAS, the parties desire to define and set forth the precautions and specific safeguards to be taken by the Contractor and the Government in order to preserve and maintain the security of the United States through the prevention of improper disclosure of classified information derived from matters affecting the national defense; sabotage; or any other act detrimental to the security of the United States:

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises herein contained, the parties hereto agree as follows:

Section I—SECURITY CONTROLS

(A) The Contractor agrees to provide and maintain a system of security controls within its or his own organization in accordance with the requirements of the Department of Defense Industrial Security Manual for Safeguarding Classified Information attached hereto and made a part of this agreement, subject, however, (i) to any revisions of the Manual required by the demands of national security as determined by the Government, notice of which has been furnished to the Contractor, and (ii) to mutual agreements entered into by the parties in order to adapt the Manual to the Contractor's business and necessary procedures thereunder. In order to place in effect such security controls, the Contractor further agrees to prepare *Standard Practice Procedures* for its or his own use, such procedures to be consistent with the Department of Defense Industrial Security Manual for Safeguarding Classified Information. In the event of any inconsistency between the Contractor's Standard Practice Procedures and the Department of Defense Industrial Security Manual for Safeguarding Classified Information as the same may be revised, the Manual shall control.

(B) The Government agrees that it shall indicate when necessary by security classification (*Top Secret, Secret,* or *Confidential*), the degree of importance to the national defense of information pertaining to supplies, services, and other matters to be furnished by the Contractor to the Government or the Government to the Contractor, and the Government shall give written notice of such security classification to the Contractor and of any subsequent changes thereof; provided, however, that matters requiring security classification will be assigned the least restrictive security classification consistent with proper safeguarding of the matter concerned, since overclassification causes unnecessary operational delays and depreciates the importance of correctly classified matter. Further, the Government agrees that when Atomic Energy information is involved it will when necessary indicate by a marking additional to the classification marking that the information is "Restricted Data—Atomic Energy Act, 1946." The Contractor is authorized to rely on any letter or other written instrument signed by the contracting officer changing the classification of matter. The Government also agrees upon written application of the Contractor to designate employees of the Contractor who may have access to information classified Top Secret or Secret or to information classified Confidential when "Restricted Data" is involved, or to matter involving research, development, or production of cryptographic equipment, regardless of its military classification; and alien employees to have access to any classified matter.

(C) The Contractor agrees that it or he shall determine that any subcontractor, subbidder, individual, or organization proposed by it or him for the furnishing of supplies or services which will involve access to classified information in its or his custody has executed a Department of Defense Security Agreement which is still in effect, with any Military Department, prior to being accorded access to such classified information.

Section II—INSPECTION

Designated representatives of the Government responsible for inspection pertaining to industrial plant security shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the requirements of the terms and conditions of the Department of Defense Industrial Security Manual for Safeguarding Classified Information. Should the Government, through its authorized representative, determine that the Contractor's security methods, procedures, or facilities do not comply with such requirements, it shall submit a written report to the Contractor advising him of the deficiencies.

DD FORM 1 OCT 64 441 EDITION OF 1 MAY 54 MAY BE USED

Section III—MODIFICATION

Modification of this security agreement (*as distinguished from the Industrial Security Manual for Safeguarding Classified Information, which may be modified in accordance with section I of this agreement*) may be made only by written agreement of the parties hereto.

Section IV—TERMINATION

This agreement shall remain in effect until terminated through the giving of 30 days' written notice to the other party of intention to terminate; provided, however, notwithstanding any such termination, the terms and conditions of this agreement shall continue in effect so long as the Contractor has classified information in his possession or under his control.

Section V—PRIOR SECURITY AGREEMENTS

As of the date hereof, this security agreement replaces and succeeds any and all prior security or secrecy agreements, understandings, and representations with respect to the subject matter included herein, entered into between the Contractor and the Department of the Army, the Department of the Navy, and/or the Department of the Air Force: *Provided*, That the term "security or secrecy agreements, understandings, and representations" shall not include agreements, understandings, and representations contained in contracts for the furnishing of supplies or services to the Government heretofore entered into between the Contractor and the Department of the Army, the Department of the Navy, and/or the Department of the Air Force.

Section VI—SECURITY COSTS

This agreement does not obligate Government funds, and the Government shall not be liable for any costs or claims of the Contractor arising out of this agreement or instructions issued hereunder. It is recognized, however, that the parties may provide in other written contracts for security costs which may be properly chargeable thereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written:

THE UNITED STATES OF AMERICA

By _____

_____
(Authorized representative of the Government)

_____
(Corporation)

WITNESS

By _____

_____

_____

_____
(Firm)

_____
(Title)

NOTE.—In case of corporation, witnesses not required but certificate below must be completed. Type or print names under all signatures.

_____
(Address)

NOTE.—*Contractor, if a corporation, should cause the following certificate to be executed under its corporate seal, provided that the same officer shall not execute both the agreement and the certificate.*

CERTIFICATE

I, _____, certify that I am the _____ of the corporation named as Contractor herein; that _____ who signed this agreement on behalf of the Contractor, was then _____ of said corporation; that said agreement was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

(*Corporate Seal*)

_____
(Signature)

GPO 886-110

PAGE _____ OF _____ PAGES

FILE NO. | AGENCY NO. | FORM DJ-1500 (8-12-81) 11000-100

U.S. DEPARTMENT OF JUSTICE
ANTITRUST DIVISION

IDENTICAL BID REPORT FOR PROCUREMENT

1. ISSUING AGENCY (Name and location)	5. BIDDER'S NAME CITY AND STATE	5.	5.	5.	5.
2. INVITATION NUMBER	6. PARENT COMPANY (If any)	6.	6.	6.	6.
3. BID OPENING DATE: DAY / MONTH / YEAR					
4. PROPERTY OR SERVICE (Describe)	7. E. I. NUMBER	7.	7.	7.	7.
	8. BIDDER'S STATUS	8. ☐ REGULAR DEALER ☐ MANUFACTURER	8. ☐ REGULAR DEALER ☐ MANUFACTURER	8. ☐ REGULAR DEALER ☐ MANUFACTURER	8. ☐ REGULAR DEALER ☐ MANUFACTURER
	9. PROMPT PAYMENT DISCOUNT	9.	9.	9.	9.

4a. ITEM NO.	4b. FEDERAL STOCK NO. OF ITEM OR BRIEF IDENTIFICATION	4c. QUANTITY (No. of units)	4d. UNIT	4e. NO. OF ORDERS	4f. ACTION CODE	10a. AWARD	10b. UNIT PRICE	10c. TOTAL AMOUNT	10d. PRICE BASIS	10a. AWARD	10b. UNIT PRICE	10c. TOTAL AMOUNT	10d. PRICE BASIS	10a. AWARD	10b. UNIT PRICE	10c. TOTAL AMOUNT	10d. PRICE BASIS	10a. AWARD	10b. UNIT PRICE	10c. TOTAL AMOUNT	10d. PRICE BASIS

11. NAME AND TITLE OF PERSON COMPLETING REPORT	NAME	TITLE	DATE

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

PAYROLL

(For Contractor's Optional Use; See Instruction, Form WH–347 Inst.)

Form Approved.
Budget Bureau No. 44–R1093

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☐ | ADDRESS

PAYROLL NO. | FOR WEEK ENDING | PROJECT AND LOCATION | PROJECT OR CONTRACT NO.

(1) NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT. OR ST.	(4) DAY AND DATE / HOURS WORKED EACH DAY	(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS: FICA	WITH-HOLDING TAX			OTHER	TOTAL DEDUCTIONS	(9) NET WAGES PAID FOR WEEK
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FORM WH–347 (1/68) – FORMERLY SOL 194—*PURCHASE THIS FORM DIRECTLY FROM THE SUPT. OF DOCUMENTS*

Date _____

I, _____ (Name of signatory party) _____ (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by _____

_____ (Contractor or subcontractor) on the _____ (Building or work)

_____; that during the payroll period commencing on the _____

day of _____, 19____, and ending the ____ day of _____, 19____, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ (Contractor or subcontractor) from the full

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:

_____

_____

_____

_____

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ —In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ —Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS

NAME AND TITLE	SIGNATURE

THE WILFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

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