

# **FEDERAL ACQUISITION CIRCULAR**

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Loose-leaf pages

Federal Acquisition Circular (FAC) 2005-89 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-89 is effective July 14, 2016 except for Item I, which is effective November 1, 2016, and Items II, III, and IV, which are effective August 15, 2016.



## FAC 2005-89 FILING INSTRUCTIONS

**NOTE:** The FAR is segmented by subparts. The FAR page numbers reflect FAR Subparts. For example, "2.1-11" is page 11 of subpart 2.1.

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(2) Non-Economy Act acquisitions completed under other statutory authorities, (e.g., General Services Administration Federal Supply Schedules in subpart 8.4 and Governmentwide acquisition contracts (GWACs)).

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

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

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

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

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

“Major system” means that combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software, or any combination thereof, but exclude construction or other improvements to real property. A system is a major system if—

(1) The Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than \$185 million based on Fiscal Year 2014 constant dollars or the eventual total expenditure for the acquisition exceeds \$835 million based on Fiscal Year 2014 constant dollars (or any update of these thresholds based on a more recent fiscal year, as specified in the DoD Instruction 5000.02, “Operation of the Defense Acquisition System”);

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

(3) The system is designated a “major system” by the head of the agency responsible for the system ([10 U.S.C. 2302](#) and [41 U.S.C. 109](#)).

“Make-or-buy program” means that part of a contractor’s written plan for a contract identifying those major items to be

produced or work efforts to be performed in the prime contractor’s facilities and those to be subcontracted.

Manufactured end product means any end product in product and service codes (PSC) 1000-9999, except—

(1) PSC 5510, Lumber and Related Basic Wood Materials;

(2) Product or service group (PSG) 87, Agricultural Supplies;

(3) PSG 88, Live Animals;

(4) PSG 89, Subsistence;

(5) PSC 9410, Crude Grades of Plant Materials;

(6) PSC 9430, Miscellaneous Crude Animal Products, Inedible;

(7) PSC 9440, Miscellaneous Crude Agricultural and Forestry Products;

(8) PSC 9610, Ores;

(9) PSC 9620, Minerals, Natural and Synthetic; and

(10) PSC 9630, Additive Metal Materials.

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

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

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

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

“Micro-purchase threshold” means \$3,500, except it means—

(1) For acquisitions of construction subject to [40 U.S.C. chapter 31](#), subchapter IV, Wage Rate Requirements (Construction), \$2,000;

(2) For acquisitions of services subject to [41 U.S.C. chapter 67](#), Service Contract Labor Standards, \$2,500; and

(3) For acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical or radiological attack as described in [13.201\(g\)\(1\)](#), except for construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction) ([41 U.S.C. 1903](#))—

(i) \$20,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) \$30,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.

“Minority Institution” means an institution of higher education meeting the requirements of Section 365(3) of the

Higher Education Act of 1965 ([20 U.S.C. 1067k](#)), including a Hispanic-serving institution of higher education, as defined in Section 502(a) of the Act ([20 U.S.C. 1101a](#)).

“Multi-agency contract (MAC)” means a task-order or delivery-order contract established by one agency for use by Government agencies to obtain supplies and services, consistent with the Economy Act (see [17.502-2](#)). Multi-agency contracts include contracts for information technology established pursuant to [40 U.S.C. 11314\(a\)\(2\)](#).

“Multiple-award contract” means a contract that is—

(1) A Multiple Award Schedule contract issued by GSA (*e.g.*, GSA Schedule Contract) or agencies granted Multiple Award Schedule contract authority by GSA (*e.g.*, Department of Veterans Affairs) as described in FAR [part 38](#);

(2) A multiple-award task-order or delivery-order contract issued in accordance with FAR [subpart 16.5](#), including Governmentwide acquisition contracts; or

(3) Any other indefinite-delivery, indefinite-quantity contract entered into with two or more sources pursuant to the same solicitation.

“Must” (see “shall”).

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

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

“Nondevelopmental item” means—

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

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

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

“Novation agreement” means a legal instrument—

(1) Executed by the—

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

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

“Offer” means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called “bids” or “sealed bids”; responses to requests for proposals (negotiation) are offers called “proposals”; however, responses to requests for quotations (simplified acquisition) are “quotations,” not offers. For unsolicited proposals, see [subpart 15.6](#).

“Offeror” means offeror or bidder.

“Office of Small and Disadvantaged Business Utilization” means the Office of Small Business Programs when referring to the Department of Defense.

“OMB Uniform Guidance at 2 CFR part 200” is the abbreviated title for Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200), which supersedes OMB Circulars A-21, A-87, A-89, A-102, A-110, A-122, and A-133, and the guidance in Circular A-50 on Audit Followup.

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

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

“Outlying areas” means—

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

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

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

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

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

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

“Partial termination” means the termination of a part, but not all, of the work that has not been completed and accepted under a contract.

“Past performance” means an offeror’s or contractor’s performance on active and physically completed contracts (see [4.804-4](#)).

“Performance-based acquisition (PBA)” means an acquisition structured around the results to be achieved as opposed to the manner by which the work is to be performed.

“Performance Work Statement (PWS)” means a statement of work for performance-based acquisitions that describes the required results in clear, specific and objective terms with measurable outcomes.

“Personal property” means property of any kind or interest in it except real property, records of the Federal Government, and naval vessels of the following categories:

- (1) Battleships;
- (2) Cruisers;
- (3) Aircraft carriers;
- (4) Destroyers; and
- (5) Submarines.

“Personal services contract” means a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, Government employees (see [37.104](#)).

“Plant clearance officer” means an authorized representative of the contracting officer, appointed in accordance with agency procedures, responsible for screening, redistributing, and disposing of contractor inventory from a contractor’s plant or work site. The term “Contractor’s plant” includes, but is not limited to, Government-owned contractor-operated plants, Federal installations, and Federal and non-Federal industrial operations, as may be required under the scope of the contract.

“Pollution prevention” means any practice that—

(1)(i) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, and contaminants;

(2) Reduces or eliminates the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources; or

(3) Protects natural resources by conservation.

“Power of attorney” means the authority given one person or corporation to act for and obligate another, as specified in the instrument creating the power; in corporate suretyship, an instrument under seal that appoints an attorney-in-fact to act in behalf of a surety company in signing bonds (see also “attorney-in-fact” at [28.001](#)).

“Preaward survey” means an evaluation of a prospective contractor’s capability to perform a proposed contract.

“Preponderance of the evidence” means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

“Pricing” means the process of establishing a reasonable amount or amounts to be paid for supplies or services.

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a division or business segment; and similar positions).

“Procurement” (see “acquisition”).

“Procuring activity” means a component of an executive agency having a significant acquisition function and designated as such by the head of the agency. Unless agency regulations specify otherwise, the term “procuring activity” is synonymous with “contracting activity.”

“Products” has the same meaning as “supplies.”

“Projected average loss” means the estimated long-term average loss per period for periods of comparable exposure to risk of loss.

“Proper invoice” means an invoice that meets the minimum standards specified in [32.905\(b\)](#).

“Purchase order,” when issued by the Government, means an offer by the Government to buy supplies or services, including construction and research and development, upon specified terms and conditions, using simplified acquisition procedures.

“Qualification requirement” means a Government requirement for testing or other quality assurance demonstration that must be completed before award of a contract.

“Qualified products list (QPL)” means a list of products that have been examined, tested, and have satisfied all applicable qualification requirements.

“Receiving report” means written evidence that indicates Government acceptance of supplies delivered or services performed (see [subpart 46.6](#)). Receiving reports must meet the requirements of [32.905\(c\)](#).

“Recovered material” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. For use in [subpart 11.3](#) for paper and paper products, see the definition at [11.301](#).

“Registered in the System for Award Management (SAM) database” means that—

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number,

the Contractor and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14), into the SAM database;

(2) The Contractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in the SAM database;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The contractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record *Active*.

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

“Renewable energy technology” means—

(1) Technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities; or

(2) The use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

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

“Residual value” means the proceeds, less removal and disposal costs, if any, realized upon disposition of a tangible capital asset. It usually is measured by the net proceeds from the sale or other disposition of the asset, or its fair value if the asset is traded in on another asset. The estimated residual value is a current forecast of the residual value.

“Responsible audit agency” means the agency that is responsible for performing all required contract audit services at a business unit.

“Responsible prospective contractor” means a contractor that meets the standards in [9.104](#).

“Scrap” means personal property that has no value except its basic metallic, mineral, or organic content.

“Segment” means one of two or more divisions, 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—

(1) Government-owned contractor-operated (GOCO) facilities; and

(2) Joint ventures and subsidiaries (domestic and foreign) in which the organization has—

(i) A majority ownership; or

(ii) Less than a majority 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.

“Senior procurement executive” means the individual appointed pursuant to [41 U.S.C. 1702\(c\)](#) who is responsible for management direction of the acquisition system of the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency.

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

(1) Means a small business concern—

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

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

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

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

“Shall” means the imperative.

“Shipment” means freight transported or to be transported.

“Shop drawings” means drawings submitted by the construction contractor or a subcontractor at any tier or required under a construction contract, showing in detail either or both of the following:

(1) The proposed fabrication and assembly of structural elements.

(2) The installation (*i.e.*, form, fit, and attachment details) of materials or equipment.

“Should” means an expected course of action or policy that is to be followed unless inappropriate for a particular circumstance.

“Signature” or “signed” means the discrete, verifiable symbol of an individual that, when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing. This includes electronic symbols.

“Simplified acquisition procedures” means the methods prescribed in [part 13](#) for making purchases of supplies or services.

“Simplified acquisition threshold” means \$150,000 ([41 U.S.C. 134](#)), except for—

(1) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack ([41 U.S.C. 1903](#)), the term means—



(i) \$300,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) \$1 million for any contract to be awarded and performed, or purchase to be made, outside the United States; and

(2) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a humanitarian or peacekeeping operation ([10 U.S.C. 2302](#)), the term means \$300,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

“Single, Governmentwide point of entry,” means the one point of entry to be designated by the Administrator of OFPP that will allow the private sector to electronically access procurement opportunities Governmentwide.

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR part 121 (see [19.102](#)). Such a concern is “not dominant in its field of operation” when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration must be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity. (See [15 U.S.C. 632](#).)

“Small business subcontractor” means a concern, including affiliates, that for subcontracts valued at—

(1) \$15,000 or less, does not have more than 500 employees; and

(2) More than \$15,000, does not have employees or average annual receipts exceeding the size standard in 13 CFR Part 121 (see [19.102](#)) for the product or service it is providing on the subcontract.

“Small disadvantaged business concern” consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that:

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by—

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13 CFR 124.106) by individuals who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

“Sole source acquisition” means a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

“Solicitation” means any request to submit offers or quotations to the Government. Solicitations under sealed bid procedures are called “invitations for bids.” Solicitations under negotiated procedures are called “requests for proposals.” Solicitations under simplified acquisition procedures may require submission of either a quotation or an offer.

“Solicitation provision or provision” means a term or condition used only in solicitations and applying only before contract award.

“Source selection information” means any of the following information that is prepared for use by an agency for the purpose of evaluating a bid or proposal to enter into an agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

- (1) Bid prices submitted in response to an agency invitation for bids, or lists of those bid prices before bid opening.
- (2) Proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices.
- (3) Source selection plans.
- (4) Technical evaluation plans.
- (5) Technical evaluations of proposals.
- (6) Cost or price evaluations of proposals.
- (7) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(8) Rankings of bids, proposals, or competitors.

(9) Reports and evaluations of source selection panels, boards, or advisory councils.

(10) Other information marked as “Source Selection Information—See FAR [2.101](#) and [3.104](#)” based on a case-by-case determination by the head of the agency or the contracting officer, that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

“Special competency” means a special or unique capability, including qualitative aspects, developed incidental to the primary functions of the Federally Funded Research and Development Centers to meet some special need.

“Special test equipment” means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment including foundations and similar improvements necessary for installing special test equipment, and standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. Special test equipment does not include material, special tooling, real property, and equipment items used for general testing purposes or property that with relatively minor expense can be made suitable for general purpose use.

“Special tooling” means jigs, dies, fixtures, molds, patterns, taps, gauges, and all components of these items including foundations and similar improvements necessary for installing special tooling, and which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. Special tooling does not include material, special test equipment, real property, equipment, machine tools, or similar capital items.

“State and local taxes” means taxes levied by the States, the District of Columbia, outlying areas of the United States, or their political subdivisions.

“Statement of Objectives (SOO)” means a Government-prepared document incorporated into the solicitation that states the overall performance objectives. It is used in solicitations when the Government intends to provide the maximum flexibility to each offeror to propose an innovative approach.

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

“Substantially as follows” or “substantially the same as,” when used in the prescription and introductory text of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition; provided that the variation includes the salient features of the FAR provision or clause, and is not inconsistent with the intent, principle, and substance of the FAR provision or clause or related coverage of the subject matter.

“Supplemental agreement” means a contract modification that is accomplished by the mutual action of the parties.

“Supplies” means all property except land or interest in land. It includes (but is not limited to) public works, buildings, and facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts and accessories; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing.

“Supporting a diplomatic or consular mission” means performing outside the United States under a contract administered by Federal agency personnel who are subject to the direction of a Chief of Mission.

“Surety” means an individual or corporation legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation. The types of sureties referred to are as follows:

(1) An individual surety is one person, as distinguished from a business entity, who is liable for the entire penal amount of the bond.

(2) A corporate surety is licensed under various insurance laws and, under its charter, has legal power to act as surety for others.

(3) A cosurety is one of two or more sureties that are jointly liable for the penal sum of the bond. A limit of liability for each surety may be stated.

“Surplus property” means excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA). (See 41 CFR 102-36.40).

“Suspension” means action taken by a suspending official under [9.407](#) to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor that is disqualified is “suspended.”

“Sustainable acquisition” means acquiring goods and services in order to create and maintain conditions—

(1) Under which humans and nature can exist in productive harmony; and

(2) That permit fulfilling the social, economic, and other requirements of present and future generations.

“System for Award Management (SAM)” means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes—

(1) Data collected from prospective Federal awardees required for the conduct of business with the Government;

(2) Prospective contractor-submitted annual representations and certifications in accordance with FAR subpart 4.12; and

(3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

“Task order” means an order for services placed against an established contract or with Government sources.

“Taxpayer Identification Number (TIN)” means the number required by the IRS to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

“Technical data” means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See [41 U.S.C. 116](#)).

“Termination for convenience” means the exercise of the Government’s right to completely or partially terminate performance of work under a contract when it is in the Government’s interest.

“Termination for default” means the exercise of the Government’s right to completely or partially terminate a contract because of the contractor’s actual or anticipated failure to perform its contractual obligations.

“Termination inventory” means any property purchased, supplied, manufactured, furnished, or otherwise acquired for

the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes Government-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are subject to a separate contract or to a special contract requirement governing their use or disposition.

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

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

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

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

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

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

- (1) For use in [subpart 3.10](#), see the definition at [3.1001](#).
- (2) For use in [subpart 22.8](#), see the definition at [22.801](#).
- (3) For use in [subpart 22.10](#), see the definition at [22.1001](#).
- (4) For use in [subpart 22.12](#), see the definition at [22.1201](#).
- (5) For use in [subpart 22.13](#), see the definition at [22.1301](#).
- (6) For use in [subpart 22.16](#), see the definition at [22.1601](#).
- (7) For use in [subpart 22.17](#), see the definition at [22.1702](#).
- (8) For use in [subpart 22.18](#), see the definition at [22.1801](#).
- (9) For use in [part 23](#), see definition at [23.001](#).
- (10) For use in [part 25](#), see the definition at [25.003](#).
- (11) For use in [part 27](#), see the definition at [27.001](#).
- (12) For use in [subpart 47.4](#), see the definition at [47.401](#).

“Unsolicited proposal” means a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with

the Government, and that is not in response to a request for proposals, Broad Agency Announcement, Small Business Innovation Research topic, Small Business Technology Transfer Research topic, Program Research and Development Announcement, or any other Government-initiated solicitation or program.

“Value engineering” means an analysis of the functions of a program, project, system, product, item of equipment, building, facility, service, or supply of an executive agency, performed by qualified agency or contractor personnel, directed at improving performance, reliability, quality, safety, and life-cycle costs ([41 U.S.C. 1711](#)). For use in the clause at [52.248-2](#), see the definition at [52.248-2\(b\)](#).

“Value engineering change proposal (VECP)”—

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

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

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

“Virgin material” means—

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

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

“Warranty” means a promise or affirmation given by a contractor to the Government regarding the nature, usefulness, or

condition of the supplies or performance of services furnished under the contract.

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

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

“Women-owned small business concern” means—

(1) A small business concern—

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

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

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

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

(1) “Women-Owned Small Business (WOSB) Program” means a program that authorizes contracting officers to limit competition, including award on a sole source basis, to—

(i) Economically disadvantaged women-owned small business (EDWOSB) concerns eligible under the

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

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

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

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

“Writing or written” (see “in writing”).

## 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 supplies and services to Government agencies ([18 U.S.C. 4121-4128](#)).

(c) FPI diversifies its supplies and services to minimize adverse impact on private industry.

(d) Supplies manufactured and services performed by FPI are listed in the FPI Schedule, which can be accessed at <http://www.unicor.gov> or by submitting a written request to Federal Prison Industries, Inc., Department of Justice, Washington, DC 20534.

(e) Agencies are encouraged to purchase FPI supplies and services to the maximum extent practicable.

### 8.602 Policy.

(a) In accordance with [10 U.S.C. 2410n](#) and Section 637 of Division H of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447) ([18 U.S.C. 4124 note](#)), and except as provided in paragraph (b) of this section, agencies shall—

(1) Before purchasing an item of supply listed in the FPI Schedule, conduct market research to determine whether the FPI item is comparable to supplies available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery. This is a unilateral determination made at the discretion of the contracting officer. The arbitration provisions of [18 U.S.C. 4124\(b\)](#) do not apply.

(2) Prepare a written determination that includes supporting rationale explaining the assessment of price, quality, and time of delivery, based on the results of market research comparing the FPI item to supplies available from the private sector.

(3) If the FPI item is comparable, purchase the item from FPI following the ordering procedures at <http://www.unicor.gov>, unless a waiver is obtained in accordance with [8.604](#).

(4) If the FPI item is not comparable in one or more of the areas of price, quality, and time of delivery—

(i) Acquire the item using—

(A) Competitive procedures (*e.g.*, the procedures in [6.102](#), the set-aside procedures in [Subpart 19.5](#), or competition conducted in accordance with [Part 13](#)); or

(B) The fair opportunity procedures in [16.505](#), if placing an order under a multiple award delivery-order contract;

(ii) Include FPI in the solicitation process and consider a timely offer from FPI for award in accordance with the

item description or specifications, and evaluation factors in the solicitation—

(A) If the solicitation is available through the Governmentwide point of entry (FedBizOpps), it is not necessary to provide a separate copy of the solicitation to FPI;

(B) If the solicitation is not available through FedBizOpps, provide a copy of the solicitation to FPI;

(iii) When using a multiple award schedule issued under the procedures in [Subpart 8.4](#) or when using the fair opportunity procedures in [16.505](#)—

(A) Establish and communicate to FPI the item description or specifications, and evaluation factors that will be used as the basis for selecting a source, so that an offer from FPI can be evaluated on the same basis as the contract or schedule holder; and

(B) Consider a timely offer from FPI;

(iv) Award to the source offering the item determined by the agency to provide the best value to the Government; and

(v) When the FPI item is determined to provide the best value to the Government as a result of FPI's response to a competitive solicitation, follow the ordering procedures at <http://www.unicor.gov>.

(b) The procedures in paragraph (a) of this section do not apply if an exception in [8.605\(b\)](#) through (g) applies.

(c) In some cases where FPI and an AbilityOne participating nonprofit agency produce identical items (see [8.603](#)), FPI grants a waiver to permit the Government to purchase a portion of its requirement from the AbilityOne participating nonprofit agency. When this occurs, the portion of the requirement for which FPI has granted a waiver—

(1) Shall be purchased from the AbilityOne participating nonprofit agency using the procedures in [Subpart 8.7](#); and

(2) Shall not be subject to the procedures in paragraph (a) of this section.

(d) Disputes regarding price, quality, character, or suitability of supplies produced by FPI, except for determinations under paragraph (a)(1) of this section, 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 President, or their representatives. The decisions of the board are final and binding on all parties.

### 8.603 Purchase priorities.

FPI and nonprofit agencies participating in the AbilityOne Program under [41 U.S.C. chapter 85](#), Committee for Purchase from People Who Are Blind or Severely Disabled (see [Subpart 8.7](#)) may produce identical supplies or services. When this occurs, ordering offices shall purchase supplies and services in the following priorities:

(a) *Supplies.* (1) Federal Prison Industries, Inc. ([41 U.S.C. 8504](#)).

(2) AbilityOne participating nonprofit agencies.

(3) Commercial sources.

(b) *Services.* (1) AbilityOne participating nonprofit agencies.

(2) Federal Prison Industries, Inc., or commercial sources.

#### 8.604 Waivers.

FPI may grant a waiver for purchase of supplies in the FPI Schedule from another source. FPI waivers ordinarily are of the following types:

(a) General or blanket waivers issued when classes of supplies are not available from FPI.

(b) Formal waivers issued in response to requests from offices desiring to acquire, from other sources, supplies listed in the FPI Schedule and not covered by a general waiver. Agencies shall process waiver requests in accordance with the procedures at <http://www.unicor.gov>.

#### 8.605 Exceptions.

Purchase from FPI is not mandatory and a waiver is not required if—

(a)(1) The contracting officer makes a determination that the FPI item of supply is not comparable to supplies available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery; and

(2) The item is acquired in accordance with [8.602\(a\)\(4\)](#);

(b) Public exigency requires immediate delivery or performance;

(c) Suitable used or excess supplies are available;

(d) The supplies are acquired and used outside the United States;

(e) Acquiring listed items totaling \$3,500 or less;

(f) Acquiring items that FPI offers exclusively on a competitive (non-mandatory) basis, as identified in the FPI Schedule; or

(g) Acquiring services.

#### 8.606 Evaluating FPI performance.

Agencies shall evaluate FPI contract performance in accordance with [Subpart 42.15](#). Performance evaluations do not negate the requirements of [8.602](#) and [8.604](#), but they may be used to support a waiver request in accordance with [8.604](#).

#### 8.607 Performance as a subcontractor.

Agencies shall not require a contractor, or subcontractor at any tier, to use FPI as a subcontractor for performance of a contract by any means, including means such as—

(a) A solicitation provision requiring a potential contractor to offer to make use of FPI supplies or services;

(b) A contract specification requiring the contractor to use specific supplies or services (or classes of supplies or services) offered by FPI; or

(c) Any contract modification directing the use of FPI supplies or services.

#### 8.608 Protection of classified and sensitive information.

Agencies shall not enter into any contract with FPI that allows an inmate worker access to any—

(a) Classified data;

(b) Geographic data regarding the location of—

(1) Surface and subsurface infrastructure providing communications or water or electrical power distribution;

(2) Pipelines for the distribution of natural gas, bulk petroleum products, or other commodities; or

(3) Other utilities; or

(c) Personal or financial information about any individual private citizen, including information relating to such person's real property however described, without the prior consent of the individual.

commerce, or facsimile). If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposals are due.

(b)(1) Any proposal, modification, or revision, that is received at the designated Government office after the exact time specified for receipt of proposals is “late” and will not be considered unless it is received before award is made, the contracting officer determines that accepting the late proposal would not unduly delay the acquisition; and—

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

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

(iii) It was the only proposal received.

(2) However, 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.

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

(d) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the Government office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(e) Proposals may be withdrawn by written notice at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. The contracting officer must document the contract file when oral withdrawals are made. One copy of withdrawn proposals should be retained in the contract file (see [4.803\(a\)\(10\)](#)). Extra copies of the withdrawn proposals may be destroyed or returned to the offeror at the offeror’s request. Where practicable, electronically transmitted proposals that are withdrawn must be purged from primary and backup data storage systems after a copy is made for the file. Extremely bulky proposals must only be returned at the offeror’s request and expense.

(f) The contracting officer must promptly notify any offeror if its proposal, modification, or revision was received late, and must inform the offeror whether its proposal will be

considered, unless contract award is imminent and the notice prescribed in [15.503\(b\)](#) would suffice.

(g) Late proposals and modifications that are not considered must be held unopened, unless opened for identification, until after award and then retained with other unsuccessful proposals.

(h) If available, the following must be included in the contracting office files for each late proposal, modification, revision, or withdrawal:

(1) The date and hour of receipt.

(2) A statement regarding whether the proposal was considered for award, with supporting rationale.

(3) The envelope, wrapper, or other evidence of date of receipt.

**15.209 Solicitation provisions and contract clauses.**

When contracting by negotiation—

(a) The contracting officer shall insert the provision at [52.215-1](#), Instructions to Offerors—Competitive Acquisition, in all competitive solicitations where the Government intends to award a contract without discussions.

(1) If the Government intends to make award after discussions with offerors within the competitive range, the contracting officer shall use the basic provision with its Alternate I.

(2) If the Government would be willing to accept alternate proposals, the contracting officer shall alter the basic clause to add a new paragraph (c)(9) substantially the same as Alternate II.

(b)(1) Except as provided in paragraph (b)(2) of this section, the contracting officer shall insert the clause at [52.215-2](#), Audit and Records—Negotiation ([10 U.S.C. 2313](#), [41 U.S.C. 4706](#), and Audit Requirements in the OMB Uniform Guidance at 2 CFR part 200, subpart F), in solicitations and contracts except those for—

(i) Acquisitions not exceeding the simplified acquisition threshold;

(ii) The acquisition of utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge; or

(iii) The acquisition of commercial items exempted under [15.403-1](#).

(2)(i) When using funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5)—

(A) The exceptions in paragraphs (b)(1)(i) through (b)(1)(iii) are not applicable; and

(B) Use the clause with its Alternate I.

(ii)(A) In the case of a bilateral contract modification that will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the contracting officer shall specify applicability of Alternate I to that modification.

(B) In the case of a task- or delivery-order contract in which not all orders will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the contracting officer shall specify the task or delivery orders to which Alternate I applies.

(3) For cost-reimbursement contracts with State and local Governments, educational institutions, and other non-profit organizations, the contracting officer shall use the clause with its Alternate II.

(4) When the head of the agency has waived the examination of records by the Comptroller General in accordance with [25.1001](#), use the clause with its Alternate III.

(c) When issuing a solicitation for information or planning purposes, the contracting officer shall insert the provision at [52.215-3](#), Request for Information or Solicitation for Planning Purposes, and clearly mark on the face of the solicitation that it is for information or planning purposes.

(d) [Reserved]

(e) The contracting officer shall insert the provision at [52.215-5](#), Facsimile Proposals, in solicitations if facsimile proposals are authorized (see [15.203](#)(d)).

(f) The contracting officer shall insert the provision at [52.215-6](#), Place of Performance, in solicitations unless the place of performance is specified by the Government.

(g) [Reserved]

(h) The contracting officer shall insert the clause at [52.215-8](#), Order of Precedence—Uniform Contract Format, in solicitations and contracts using the format at [15.204](#).

#### 15.210 Forms.

Prescribed forms are not required to prepare solicitations described in this part. The following forms may be used at the discretion of the contracting officer:

(a) [Standard Form 33](#), Solicitation, Offer and Award, and [Optional Form 308](#), Solicitation and Offer—Negotiated Acquisition, may be used to issue RFPs and RFIs.

(b) [Standard Form 30](#), Amendment of Solicitation/ Modification of Contract, and [Optional Form 309](#), Amendment of Solicitation, may be used to amend solicitations of negotiated contracts.

(c) [Optional Form 17](#), Offer Label, may be furnished with each request for proposal.



## 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.

(a) The contracting officer shall use cost-reimbursement contracts only when—

(1) Circumstances do not allow the agency to define its requirements sufficiently to allow for a fixed-price type contract (see [7.105](#)); or

(2) Uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

(b) The contracting officer shall document the rationale for selecting the contract type in the written acquisition plan and ensure that the plan is approved and signed at least one level above the contracting officer (see [7.103\(j\)](#) and [7.105](#)).

#### 16.301-3 Limitations.

(a) A cost-reimbursement contract may be used only when—

(1) The factors in [16.104](#) have been considered;

(2) A written acquisition plan has been approved and signed at least one level above the contracting officer;

(3) The contractor's accounting system is adequate for determining costs applicable to the contract or order; and

(4) Prior to award of the contract or order, adequate Government resources are available to award and manage a contract other than firm-fixed-priced (see [7.104\(e\)](#)). This includes appropriate Government surveillance during performance in accordance with [1.602-2](#), to provide reasonable assurance that efficient methods and effective cost controls are used.

(i) Designation of at least one contracting officer's representative (COR) qualified in accordance with [1.602-2](#) has been made prior to award of the contract or order; and

(ii) Appropriate Government surveillance during performance to provide reasonable assurance that efficient methods and effective cost controls are used.

(b) The use of cost-reimbursement contracts is prohibited for the acquisition of commercial items (see [Parts 2](#) and [12](#)).

#### 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.

(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 [16.405-1](#) 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 [16.401\(e\)](#) for a more complete description and discussion of the application of these contracts. See [16.301-3](#) and [16.401\(e\)\(5\)](#) 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 the contracting officer complies with all limitations in [15.404-4\(c\)\(4\)\(i\)](#) and [16.301-3](#).

(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 statement 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)(1) The contracting officer shall insert the clause at [52.216-7](#), Allowable Cost and Payment, in solicitations and contracts when a cost-reimbursement contract or a time-and-materials contract (other than a contract for a commercial item) is contemplated. If the contract is a time-and-materials contract, the clause at [52.216-7](#) applies in conjunction with the clause at [52.232-7](#), but only to the portion of the contract that provides for reimbursement of materials (as defined in the

clause at [52.232-7](#)) at actual cost. Further, the clause at [52.216-7](#) does not apply to labor-hour contracts.

(2) If the contract is a construction contract and contains the clause at [52.232-27](#), Prompt Payment for Construction Contracts, the contracting officer shall use the clause at [52.216-7](#) with its Alternate I.

(3) If the contract is with an educational institution, the contracting officer shall use the clause at [52.216-7](#) with its Alternate II.

(4) If the contract is with a State or local government, the contracting officer shall use the clause at [52.216-7](#) with its Alternate III.

(5) If the contract is with a nonprofit organization other than an educational institution, a State or local government, or a nonprofit organization exempted under the OMB Uniform Guidance at 2 CFR part 200, appendix VIII, the contracting officer shall use the clause at [52.216-7](#) with its Alternate IV.

(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 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 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.

(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 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) 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.

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

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

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

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

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

“Projected benefit cost method” means either—

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

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

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

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

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

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

“Spread-gain actuarial cost method” means any of the several projected benefit actuarial cost methods under which

actuarial gains and losses are included as part of the current and future normal costs of the pension plan.

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

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

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

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

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

“Welfare benefit fund” means a trust or organization which receives and accumulates assets to be used either for the payment of postretirement benefits, or for the purchase of such benefits, provided such accumulated assets form a part of a postretirement benefit plan.

### **31.002 Availability of accounting guide.**

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

## **Subpart 31.1—Applicability**

### **31.100 Scope of subpart.**

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

### **31.101 Objectives.**

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

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

### 31.102 Fixed-price contracts.

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

### 31.103 Contracts with commercial organizations.

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

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

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

(1) Determining reimbursable costs under—

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

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

(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 (defined as institutions of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A, and [20 U.S.C. 1001](#)).

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

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

(2) Negotiating indirect cost rates; and

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

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

### 31.105 Construction and architect-engineer contracts.

(a) This category includes all contracts and contract modifications negotiated on the basis of cost with organizations other than educational institutions (see [31.104](#)), State and local governments (see [31.107](#)), and nonprofit organizations except those exempted under OMB Uniform Guidance at 2 CFR part 200, appendix VIII (see [31.108](#)) for construction management or construction, alteration or repair of buildings, bridges, roads, or other kinds of real property. It also includes architect-engineer contracts related to construction projects. It does not include contracts for vessels, aircraft, or other kinds of personal property.

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

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

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

(2) Negotiating indirect cost rates;

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

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

(5) Pricing changes and other contract modifications.

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

(1) Because of widely varying factors such as the nature, size, duration, and location of the construction project, advance agreements as set forth in [31.109](#), for such items as 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 operations 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 particular schedule of predetermined rates or any part thereof to determine ownership and operating costs of construction equipment (see subdivisions (d)(2)(i)(B) and (C) of this section). However, costs otherwise unallowable under this part shall not become allowable through the use of any schedule (see [31.109\(c\)](#)). For example, schedules need to be adjusted for Government contract costing purposes if they are based on replacement cost, include unallowable interest costs, or use improper cost of money rates or computations. Contracting officers should review the computations and factors included within the specified schedule and ensure that unallowable or unacceptably computed factors are not allowed in cost submissions.

(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, industry sponsored construction equipment cost guides, or commercially published schedules of construction equipment use cost) provide average ownership and operating rates for construction equipment. 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) of this subsection).

(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 [Reserved]

### 31.107 Contracts with State, local, and federally recognized Indian tribal governments.

(a) [Subpart 31.6](#) provides principles and standards for determining costs applicable to contracts with State, local, and federally recognized Indian tribal governments. They provide the basis for a uniform approach to the problem of determining costs and to promote efficiency and better relationships between State, local, and federally recognized Indian tribal governments, and Federal Government entities. They apply to all programs that involve contracts with State, local, and federally recognized Indian tribal 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 (see [subpart 31.3](#)), State and local governments (see [subpart 31.6](#)), and those nonprofit organizations exempted under the OMB Uniform Guidance at 2 CFR part 200, appendix VIII (see [subpart 31.2](#) for the cost principles applicable to nonprofit organizations exempt from the cost principles in the OMB Uniform Guidance at 2 CFR part 200).

### 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, the allocability and the allowability under the specific cost principles at [Subparts 31.2, 31.3, 31.6, and 31.7](#) of certain costs may be difficult to determine. To avoid possible subsequent disallowance or dispute based on unreasonableness, unallocability or unallowability under the specific cost principles at [Subparts 31.2, 31.3, 31.6, and 31.7](#), contracting officers and contractors should seek advance agreement on the treatment of special or unusual costs and on statistical sampling methodologies at [31.201-6\(c\)](#). 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, allocability or the allowability under the specific cost principles at [Subparts 31.2, 31.3, 31.6, and 31.7](#) 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 responsible 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 [15.406-3](#), as applicable.

(h) Examples 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, cost of living differential, and termination of defined benefit pension plans;

(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, as related to travel via contractor-owned, -leased, or -chartered aircraft; or as related to maximum per diem rates;

(9) Costs of idle facilities and idle capacity;

(10) Severance pay to employees on support service contracts;

(11) Plant reconversion;

(12) Professional services (*e.g.*, legal, accounting, and engineering);

(13) 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\(h\)](#));

(14) Costs of construction plant and equipment (see [31.105\(d\)](#));

(15) Costs of public relations and advertising; and

(16) Statistical sampling methods (see [31.201-6\(c\)\(4\)](#)).

**31.110 Indirect cost rate certification and penalties on unallowable costs.**

(a) Certain contracts require certification of the indirect cost rates proposed for final payment purposes. See [42.703-2](#) for administrative procedures regarding the certification provisions and the related contract clause prescription.

(b) If unallowable costs are included in final indirect cost settlement proposals, penalties may be assessed. See [42.709](#) for administrative procedures regarding the penalty assessment provisions and the related contract clause prescription.

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**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.**

The OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III, provides principles for determining the costs applicable to research and development, training, and other work performed by educational institutions (defined as institutions of higher education in the OMB Uniform Guid-

ance at 2 CFR part 200, subpart A, and [20 U.S.C. 1001](#)) 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 (defined as institutions of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A, and [20 U.S.C. 1001](#)) shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III, in effect on the date of the contract.

(b) Agencies are not expected to place additional restrictions on individual items of cost.

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## 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.

The OMB Uniform Guidance at 2 CFR part 200, subpart E and appendices V and VII, 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 OMB Uniform Guidance at 2 CFR part 200, subpart E and appendices V and VII, in effect on the date of the contract.

(b) Agencies are not expected to place additional restrictions on individual items of cost. However, under [10 U.S.C. 2324\(e\)](#) and [41 U.S.C. 4304\(a\)](#), the following costs are unallowable:

(1) Costs of entertainment, including amusement, diversion, and social activities, and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, state, local, or

foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations in the FAR or an executive agency supplement to the FAR.

(5) Costs of any membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

(11) Costs incurred in making any payment (commonly known as a “golden parachute payment”) which is—

(i) In an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and

(ii) Is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor’s assets.

(12) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor’s own defects in materials or workmanship.

(13) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of the severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined by regulations in the FAR or in an executive agency supplement to the FAR.

(14) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or curtailment of activities at, a United States facility in that country at the request of the government of that country.

(15) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceedings commenced by the United States or a State, to the extent provided in [10 U.S.C. 2324\(k\)](#) or [41 U.S.C. 4310](#).

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**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.**

The OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix IV, sets forth principles for determining the costs applicable to work performed by nonprofit organizations (as defined in the OMB Uniform Guidance at 2 CFR part 200) under contracts (as well as grants and other agreements) with the Government. See [31.108](#) for exceptions to the cost principles for nonprofit organizations.

**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 OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix IV in effect on the date of the contract.

(b) Agencies are not expected to place additional restrictions on individual items of cost. However, under [10 U.S.C. 2324\(e\)](#) and [41 U.S.C. 4304](#), the costs cited in [31.603\(b\)](#) are unallowable.

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**42.000 Scope of part.**

This part prescribes policies and procedures for assigning and performing contract administration and contract audit services.

**42.001 [Reserved]**

**42.002 Interagency agreements.**

(a) Agencies shall avoid duplicate audits, reviews, inspections, and examinations of contractors or subcontractors, by more than one agency, through the use of interagency agreements.

(b) Subject to the fiscal regulations of the agencies and applicable interagency agreements, the requesting agency shall reimburse the servicing agency for rendered services in accordance with the Economy Act ([31 U.S.C. 1535](#)).

(c) When an interagency agreement is established, the agencies are encouraged to consider establishing procedures for the resolution of issues that may arise under the agreement.

**42.003 Cognizant Federal agency.**

(a) For contractors other than educational institutions and nonprofit organizations, the cognizant Federal agency normally will be the agency with the largest dollar amount of negotiated contracts, including options. For educational institutions (defined as institutions of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A, and [20 U.S.C. 1001](#)) and nonprofit organizations (as defined in the OMB Uniform Guidance at 2 CFR part 200), the cognizant Federal agency for indirect costs is established according to the OMB Uniform Guidance at 2 CFR part 200, appendices III and IV, respectively.

(b) Once a Federal agency assumes cognizance for a contractor, it should remain cognizant for at least 5 years to ensure continuity and ease of administration. If, at the end of the 5-year period, another agency has the largest dollar amount of negotiated contracts, including options, the two agencies shall coordinate and determine which will assume cognizance. However, if circumstances warrant it and the affected agencies agree, cognizance may transfer prior to the expiration of the 5-year period.

**Subpart 42.1—Contract Audit Services**

**42.101 Contract audit responsibilities.**

(a) The auditor is responsible for—

(1) Submitting information and advice to the requesting activity, based on the auditor’s analysis of the contractor’s

financial and accounting records or other related data as to the acceptability of the contractor’s incurred and estimated costs;

(2) Reviewing the financial and accounting aspects of the contractor’s cost control systems; and

(3) Performing other analyses and reviews that require access to the contractor’s financial and accounting records supporting proposed and incurred costs.

(b) Normally, for contractors other than educational institutions and nonprofit organizations, the Defense Contract Audit Agency (DCAA) is the responsible Government audit agency. However, there may be instances where an agency other than DCAA desires cognizance of a particular contractor. In those instances, the two agencies shall agree on the most efficient and economical approach to meet contract audit requirements. For educational institutions (defined as institutions of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A, and [20 U.S.C. 1001](#)) and nonprofit organizations (as defined in the OMB Uniform Guidance at 2 CFR part 200), audit cognizance will be determined according to the provisions of the OMB Uniform Guidance at 2 CFR part 200, subpart F.

**42.102 Assignment of contract audit services.**

(a) As provided in agency procedures or interagency agreements, contracting officers may request audit services directly from the responsible audit agency cited in the Directory of Federal Contract Audit Offices. The audit request should include a suspense date and should identify any information needed by the contracting officer.

(b) The responsible audit agency may decline requests for services on a case-by-case basis, if resources of the audit agency are inadequate to accomplish the tasks. Declinations shall be in writing.

**42.103 Contract audit services directory.**

(a) DCAA maintains and distributes the Directory of Federal Contract Audit Offices. The directory identifies cognizant audit offices and the contractors over which they have cognizance. Changes to audit cognizance shall be provided to DCAA so that the directory can be updated.

(b) Agencies may obtain a copy of the directory or information concerning cognizant audit offices by contacting the—

Defense Contract Audit Agency  
 ATTN: CMO  
 Publications Officer  
 8725 John J. Kingman Road  
 Suite 2135  
 Fort Belvoir, VA 22060-6219.

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## 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 Definition.

“Billing rate,” as used in this subpart, means an indirect cost rate—

- (1) Established temporarily for interim reimbursement of incurred indirect costs; and
- (2) Adjusted as necessary pending establishment of final indirect cost rates.

### 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 General.

#### 42.703-1 Policy.

(a) A single agency (see [42.705-1](#)) shall be responsible for establishing final 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. An agency shall not perform an audit of indirect cost rates when the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by any other department or agency of the Federal Government ([10 U.S.C. 2313\(d\)](#) and [41 U.S.C. 4706\(e\)](#)).

(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) To ensure compliance with [10 U.S.C. 2324\(a\)](#) and [41 U.S.C. 4303\(a\)](#)—

- (1) Final indirect cost rates shall be used for contract closeout for a business unit, unless the quick-closeout procedure in [42.708](#) is used. These final rates shall be binding for all cost-reimbursement contracts at the business unit, subject

to any specific limitation in a contract or advance agreement; and

(2) Established final indirect cost rates shall be used 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, unless the quick-closeout procedure in [42.708](#) is used.

#### 42.703-2 Certificate of indirect costs.

(a) *General.* In accordance with [10 U.S.C. 2324\(h\)](#) and [41 U.S.C. 4307](#), a proposal shall not be accepted and no agreement shall be made to establish final indirect cost rates unless the costs have been certified by the contractor.

(b) *Waiver of certification.* (1) The agency head, or designee, may waive the certification requirement when—

- (i) It is determined to be in the interest of the United States; and
- (ii) The reasons for the determination are put in writing and made available to the public.

(2) A waiver may be appropriate for a contract with—

(i) A foreign government or international organization, such as a subsidiary body of the North Atlantic Treaty Organization;

(ii) A State or local government subject to the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendices V and VII;

(iii) An educational institution (defined as an institution of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A, and [20 U.S.C. 1001](#)) subject to the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III; and

(iv) A nonprofit organization (as defined in the OMB Uniform Guidance at 2 CFR part 200) subject to the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix IV.

(c) *Failure to certify.* (1) If the contractor has not certified its proposal for final indirect cost rates and a waiver is not appropriate, the contracting officer may unilaterally establish the rates.

(2) Rates established unilaterally should be—

(i) Based on audited historical data or other available data as long as unallowable costs are excluded; and

(ii) Set low enough to ensure that unallowable costs will not be reimbursed.

(d) *False certification.* The contracting officer should consult with legal counsel to determine appropriate action when a contractor’s certificate of final indirect costs is thought to be false.

(e) *Penalties for unallowable costs.* [10 U.S.C. 2324\(a\)](#) through (d) and [41 U.S.C. 4303](#) prescribe penalties for submission of unallowable costs in final indirect cost rate propos-

als (see [42.709](#) for penalties and contracting officer responsibilities).

(f) *Contract clause.* (1) Except as provided in paragraph (f)(2) of this subsection, the clause at [52.242-4](#), Certification of Final Indirect Costs, shall be incorporated into all solicitations and contracts which provide for establishment of final indirect cost rates.

(2) The Department of Energy may provide an alternate clause in its agency supplement for its Management and Operating contracts.

#### **42.704 Billing rates.**

(a) The contracting officer (or cognizant Federal agency official) or auditor responsible under [42.705](#) for establishing the final indirect cost rates also shall be responsible for determining the billing rates.

(b) The contracting officer (or cognizant Federal agency official) or auditor shall establish billing rates on the basis of information resulting from recent review, previous rate audits or experience, or similar reliable data or experience of other contracting activities. In establishing billing rates, the contracting officer (or cognizant Federal agency official) or auditor should ensure that the billing rates are as close as possible to the final indirect cost rates anticipated for the contractor's fiscal period, as adjusted for any unallowable costs. When the contracting officer (or cognizant Federal agency official) or auditor determines that the dollar value of contracts requiring use of billing rates does not warrant submission of a detailed billing rate proposal, the billing rates 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 cognizant Federal agency official) or auditor and the contractor at either party's request, to prevent substantial overpayment or underpayment. When agreement cannot be reached, the billing rates may be unilaterally determined by the contracting officer (or cognizant Federal agency official).

(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.

(e) When the contractor provides to the cognizant contracting officer the certified final indirect cost rate proposal in accordance with [42.705-1\(b\)](#) or [42.705-2\(b\)](#), the contractor and the Government may mutually agree to revise billing rates to reflect the proposed indirect cost rates, as approved by the Government to reflect historically disallowed amounts from prior years' audits, until the proposal has been audited and settled. The historical decrement will be determined by either the cognizant contracting officer ([42.705-1\(b\)](#)) or the cognizant auditor ([42.705-2\(b\)](#)).

#### **42.705 Final indirect cost rates.**

(a) Final indirect cost rates shall be established on the basis of—

(1) Contracting officer determination procedure (see [42.705-1](#)), or

(2) Auditor determination procedure (see [42.705-2](#)).

(b) Within 120 days (or longer period, if approved in writing by the contracting officer,) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor must submit a completion invoice or voucher reflecting the settled amounts and rates. To determine whether a period longer than 120 days is appropriate, the contracting officer should consider whether there are extenuating circumstances, such as the following:

(1) Pending closeout of subcontracts awaiting Government audit.

(2) Pending contractor, subcontractor, or Government claims.

(3) Delays in the disposition of Government property.

(4) Delays in contract reconciliation.

(5) Any other pertinent factors.

(c)(1) If the contractor fails to submit a completion invoice or voucher within the time specified in paragraph (b) of this section, the contracting officer may—

(i) Determine the amounts due to the contractor under the contract; and

(ii) Record this determination in a unilateral modification to the contract.

(2) This contracting officer determination must be issued as a final decision in accordance with [33.211](#).

#### **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 (or cognizant Federal agency official) 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 non-resident 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) For business units not included in paragraph (a)(1) or (a)(2) of this subsection, the contracting officer (or cognizant Federal agency official) will determine whether the rates will be contracting officer or auditor determined.

(4) Educational institutions (see [42.705-3](#)).

(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](#), the contractor is required to submit an adequate final indirect cost rate proposal to the contracting officer (or cognizant Federal agency official) and to the cognizant auditor.

(i) The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, contracting officer, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible.

(ii) Each contractor is required to submit the final indirect cost rate proposal within the six-month period following the expiration of each of its fiscal years. The contracting officer may grant, in writing, reasonable extensions, for exceptional circumstances only, when requested in writing by the contractor.

(iii) Upon receipt of the proposal—

(A) The cognizant auditor will review the adequacy of the contractor's proposal for audit in support of negotiating final indirect cost rates and will provide a written description of any inadequacies to the contractor and contracting officer.

(B) If the auditor and contractor are unable to resolve the proposal's inadequacies identified by the auditor, the auditor will elevate the issue to the contracting office to resolve the inadequacies.

(iv) The proposal must be supported with adequate supporting data, some of which may be required subsequent to finding that the proposal is adequate for audit in support of negotiating final indirect cost rates (*e.g.*, during the course of the performance of the advisory audit). See the clause at [52.216-7\(d\)\(2\)](#) for the description of an adequate final indirect cost rate proposal and supporting data.

(2) Once a proposal has been determined to be adequate for audit in support of negotiating final indirect cost rates, the auditor will audit the proposal and prepare an advisory audit report to the contracting officer (or cognizant Federal agency official), including a listing of any relevant advance agreements or restrictive terms of specific contracts.

(3) The contracting officer (or cognizant Federal agency official) 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. Pursuant to [10 U.S.C. 2324\(f\)](#) and [41 U.S.C. 4305](#), the contracting officer shall—

(i) Not resolve any questioned costs until obtaining—

(A) Adequate documentation on the costs; and

(B) The contract auditor's opinion on the allowability of the costs.

(ii) Whenever possible, invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor's final indirect cost rates.

(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 certified 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](#).

(v) Notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance.

#### **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 (or cognizant Federal agency official) 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 (or cognizant Federal agency official) and auditor agree that special circumstances require auditor determination.

(b) *Procedures.* (1) The contractor shall submit to the cognizant contracting officer (or cognizant Federal agency official) and auditor a final indirect cost rate proposal in accordance with [42.705-1\(b\)\(1\)](#).

(2) Once a proposal has been determined to be adequate for audit in support of negotiating final indirect cost rates, the auditor shall—

(i) Audit the proposal and prepare an advisory audit report, including a listing of any relevant advance agreements or restrictive terms of specific contracts;

(ii) Seek agreement on indirect costs with the contractor;

(iii) Prepare an indirect cost rate agreement conforming to the requirements of the contracts. The agreement shall be signed by the contractor and the auditor;

(iv) If agreement with the contractor is not reached, forward the audit report to the contracting officer (or cognizant Federal agency official) identified in the Directory of Contract Administration Services Components (see [42.203](#)), who will then resolve the disagreement; and

(v) 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) of this subsection).

(2) The OMB Uniform Guidance at 2 CFR part 200, appendix III assigns each educational institution (defined as an institution of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A, and [20 U.S.C. 1001](#)) to a single Government agency for the negotiation of indirect cost rates and 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 [42.103](#)).

(3) The cognizant agency for indirect costs shall establish the billing rates and final indirect cost rates at the educational institution (defined as an institution of higher education in 2 CFR 200, subpart A, and [20 U.S.C. 1001](#)) consistent with the requirements of this subpart, subpart [31.3](#), and the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III. The agency shall follow the procedures outlined in [42.705-1\(b\)](#).

(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. 4708](#)), 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 paragraph (a)(2) of this subsection) 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 rates have been previously established for the institution's current fiscal year, the agency shall obtain from the institution a proposal for predetermined rates.

(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 (*i.e.*, contracts that do not exceed the simplified acquisition threshold), 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\(g\)](#), 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 four years. The agency shall obtain the contractor's proposal for new predetermined rates sufficiently in advance so that the new rates, based on current data, may be promptly negotiated near the beginning of the

new fiscal year or other period agreed to by the parties (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.

(8) The OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III, provides additional guidance on how long predetermined rates may be used.

#### **42.705-4 State and local governments.**

The OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix V, concerning cost principles for state and local governments (see Subpart [31.6](#)) establishes the cognizant agency concept and the 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 and approved by the cognizant agency for indirect costs 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 the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix IV; but see appendix VIII for nonprofit organizations exempt from subpart E.)

#### **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 shall negotiate the settlement of direct and indirect costs for a specific contract, task order, or delivery order to be closed, in advance of the determination of final direct costs and indirect rates set forth in [42.705](#), if—

(1) The contract, task order, or delivery order is physically complete;

(2) The amount of unsettled direct costs and indirect costs to be allocated to the contract, task order, or delivery order is relatively insignificant. Cost amounts will be considered relatively insignificant when the total unsettled direct costs and indirect costs to be allocated to any one contract, task order, or delivery order does not exceed the lesser of—

(i) \$1,000,000; or

(ii) 10 percent of the total contract, task order, or delivery order amount;

(3) The contracting officer performs a risk assessment and determines that the use of the quick-closeout procedure is appropriate. The risk assessment shall include—

(i) Consideration of the contractor's accounting, estimating, and purchasing systems;

(ii) Other concerns of the cognizant contract auditors; and

(iii) Any other pertinent information, such as, documented history of Federal Government approved indirect cost rate agreements, changes to contractor's rate structure, volatility of rate fluctuations during affected periods, mergers or acquisitions, special contract provisions limiting contractor's recovery of otherwise allowable indirect costs under cost reimbursement or time-and-materials contracts; and

(4) 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](#) 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.

#### 42.709 Scope.

(a) This section implements [10 U.S.C. 2324\(a\)](#) through (d) and [41 U.S.C. 4303](#). It covers the assessment of penalties against contractors which include unallowable indirect costs in—

- (1) Final indirect cost rate proposals; or
- (2) The final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract.

(b) This section applies to all contracts in excess of \$750,000, except fixed-price contracts without cost incentives or any firm-fixed-price contracts for the purchase of commercial items.

#### 42.709-1 General.

(a) The following penalties apply to contracts covered by this section:

(1) If the indirect cost is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the penalty is equal to—

- (i) The amount of the disallowed costs allocated to contracts that are subject to this section for which an indirect cost proposal has been submitted; plus
- (ii) Interest on the paid portion, if any, of the disallowance.

(2) If the indirect cost was determined to be unallowable for that contractor before proposal submission, the penalty is two times the amount in paragraph (a)(1)(i) of this section.

(b) These penalties are in addition to other administrative, civil, and criminal penalties provided by law.

(c) It is not necessary for unallowable costs to have been paid to the contractor in order to assess a penalty.

#### 42.709-2 Responsibilities.

(a) The cognizant contracting officer is responsible for—

- (1) Determining whether the penalties in [42.709-1\(a\)](#) should be assessed;
- (2) Determining whether such penalties should be waived pursuant to [42.709-5](#); and
- (3) Referring the matter to the appropriate criminal investigative organization for review and for appropriate

coordination of remedies, if there is evidence that the contractor knowingly submitted unallowable costs.

(b) The contract auditor, in the review and/or the determination of final indirect cost proposals for contracts subject to this section, is responsible for—

- (1) Recommending to the contracting officer which costs may be unallowable and subject to the penalties in [42.709-1\(a\)](#);
- (2) Providing rationale and supporting documentation for any recommendation; and
- (3) Referring the matter to the appropriate criminal investigative organization for review and for appropriate coordination of remedies, if there is evidence that the contractor knowingly submitted unallowable costs.

#### 42.709-3 Assessing the penalty.

Unless a waiver is granted pursuant to [42.709-5](#), the cognizant contracting officer shall—

(a) Assess the penalty in [42.709-1\(a\)\(1\)](#), when the submitted cost is expressly unallowable under a cost principle in the FAR or an executive agency supplement that defines the allowability of specific selected costs; or

(b) Assess the penalty in [42.709-1\(a\)\(2\)](#), when the submitted cost was determined to be unallowable for that contractor prior to submission of the proposal. Prior determinations of unallowability may be evidenced by—

(1) A DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved (see 48 CFR 242.705-2), or any similar notice which the contractor elected not to appeal and was not withdrawn by the cognizant Government agency;

(2) A contracting officer final decision which was not appealed;

(3) A prior executive agency Board of Contract Appeals or court decision involving the contractor, which upheld the cost disallowance; or

(4) A determination or agreement of unallowability under [31.201-6](#).

(c) Issue a final decision (see [33.211](#)) which includes a demand for payment of any penalty assessed under paragraph (a) or (b) of this section. The letter shall state that the determination is a final decision under the Disputes clause of the contract. (Demanding payment of the penalty is separate from demanding repayment of any paid portion of the disallowed cost.)

#### 42.709-4 Computing interest.

For [42.709-1\(a\)\(1\)\(ii\)](#), compute interest on any paid portion of the disallowed cost as follows:

(a) Consider the overpayment to have occurred, and interest to have begun accumulating, from the midpoint of the contractor's fiscal year. Use an alternate equitable method if the cost was not paid evenly over the fiscal year.

(b) Use the interest rate specified by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

(c) Compute interest from the date of overpayment to the date of the demand letter for payment of the penalty.

(d) Determine the paid portion of the disallowed costs in consultation with the contract auditor.

#### **42.709-5 Waiver of the penalty.**

The cognizant contracting officer shall waive the penalties at [42.709-1](#)(a) when—

(a) The contractor withdraws the proposal before the Government formally initiates an audit of the proposal and the contractor submits a revised proposal (an audit will be deemed to be formally initiated when the Government provides the contractor with written notice, or holds an entrance conference, indicating that audit work on a specific final indirect cost proposal has begun);

(b) The amount of the unallowable costs under the proposal which are subject to the penalty is \$10,000 or less (*i.e.*, if the amount of expressly or previously determined unallowable costs which would be allocated to the contracts specified in [42.709](#)(b) is \$10,000 or less); or

(c) The contractor demonstrates, to the cognizant contracting officer's satisfaction, that—

(1) It has established policies and personnel training and an internal control and review system that provide assurance that unallowable costs subject to penalties are precluded from being included in the contractor's final indirect cost rate proposals (*e.g.*, the types of controls required for satisfactory participation in the Department of Defense sponsored self-governance programs, specific accounting controls over indirect costs, compliance tests which demonstrate that the controls are effective, and Government audits which have not disclosed recurring instances of expressly unallowable costs); and

(2) The unallowable costs subject to the penalty were inadvertently incorporated into the proposal; *i.e.*, their inclusion resulted from an unintentional error, notwithstanding the exercise of due care.

#### **42.709-6 Contract clause.**

Use the clause at [52.242-3](#), Penalties for Unallowable Costs, in all solicitations and contracts over \$750,000 except fixed-price contracts without cost incentives or any firm-fixed-price contract for the purchase of commercial items. Generally, covered contracts are those which contain one of the clauses at [52.216-7](#), [52.216-16](#), or [52.216-17](#), or a similar clause from an executive agency's supplement to the FAR.

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procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

*Alternate I (Oct 1997).* As prescribed in [15.209\(a\)\(1\)](#), substitute the following paragraph (f)(4) for paragraph (f)(4) of the basic provision:

(f)(4) The Government intends to evaluate proposals and award a contract after conducting discussions with offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, the offeror's initial proposal should contain the offeror's best terms from a price and technical standpoint.

*Alternate II (Oct 1997).* As prescribed in [15.209\(a\)\(2\)](#), add a paragraph (c)(9) substantially the same as the following to the basic clause:

(c)(9) Offerors may submit proposals that depart from stated requirements. Such proposals shall clearly identify why the acceptance of the proposal would be advantageous to the Government. Any deviations from the terms and conditions of the solicitation, as well as the comparative advantage to the Government, shall be clearly identified and explicitly defined. The Government reserves the right to amend the solicitation to allow all offerors an opportunity to submit revised proposals based on the revised requirements.

#### 52.215-2 Audit and Records—Negotiation.

As prescribed in [15.209\(b\)](#), insert the following clause:

##### AUDIT AND RECORDS—NEGOTIATION (OCT 2010)

(a) As used in this clause, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *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 an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of 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.

(c) *Certified cost or pricing data.* If the Contractor has been required to submit certified cost or pricing data in connection with any pricing action relating to this contract, the Contract-

ing Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the certified cost or pricing data, shall have the right to examine and audit all of the Contractor’s records, including computations and projections, related to—

(1) The proposal for the contract, subcontract, or modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the contract, subcontract, or modification;

or

(4) Performance of the contract, subcontract or modification.

(d) *Comptroller General.*—(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor’s directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and 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.

(f) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, 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 (FAR), 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 Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and—

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which certified cost or pricing data are required;  
or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)

*Alternate I (Mar 2009).* As prescribed in [15.209\(b\)\(2\)](#), substitute the following paragraphs (d)(1) and (g) for paragraphs (d)(1) and (g) of the basic clause:

(d) *Comptroller General or Inspector General.* (1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 ([5 U.S.C. App.](#)), or an authorized representative of either of the foregoing officials, shall have access to and the right to—

(i) Examine any of the Contractor’s or any subcontractor’s records that pertain to and involve transactions relating to this contract or a subcontract hereunder; and

(ii) Interview any officer or employee regarding such transactions.

(g)(1) Except as provided in paragraph (g)(2) of this clause, the Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract. The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(2) The authority of the Inspector General under paragraph (d)(1)(ii) of this clause does not flow down to subcontracts.

*Alternate II (Aug 2016).* As prescribed in [15.209\(b\)\(3\)](#), add the following paragraph (h) to the basic clause:

(h) The provisions of the OMB Uniform Guidance at 2 CFR part 200, subpart F apply to this contract.

*Alternate III (June 1999).* As prescribed in [15.209\(b\)\(4\)](#), delete paragraph (d) of the basic clause and redesignate the remaining paragraphs accordingly, and substitute the following paragraph (e) for the redesignated paragraph (e) of the basic clause:

(e) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), and (d) of this clause, 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 (FAR), 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 Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

### 52.215-3 Request for Information or Solicitation for Planning Purposes.

As prescribed in [15.209\(c\)](#), insert the following provision:

#### REQUEST FOR INFORMATION OR SOLICITATION FOR PLANNING PURPOSES (OCT 1997)

(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 an allowable cost under other contracts as provided in subsection [31.205-18](#), Bid and proposal costs, of the Federal Acquisition Regulation.

(b) Although “proposal” and “offeror” are used in this Request for Information, your response will be treated as information only. It shall not be used as a proposal.

(c) This solicitation is issued for the purpose of: [*state purpose*].

(End of provision)

### 52.215-4 [Reserved]

### 52.215-5 Facsimile Proposals.

As prescribed in [15.209\(e\)](#), insert the following provision:

#### FACSIMILE PROPOSALS (OCT 1997)

(a) *Definition.* “Facsimile proposal,” as used in this provision, means a proposal, revision or modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Government via facsimile machine.

(b) Offerors may submit facsimile proposals as responses to this solicitation. Facsimile proposals are subject to the same rules as paper proposals.

(c) The telephone number of receiving facsimile equipment is: [*insert telephone number*].

(d) If any portion of a facsimile proposal received by the Contracting Officer is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document—

(1) The Contracting Officer immediately shall notify the offeror and permit the offeror to resubmit the proposal;

(2) The method and time for resubmission shall be prescribed by the Contracting Officer after consultation with the offeror; and

(3) The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the Contracting Officer.

(e) The Government reserves the right to make award solely on the facsimile proposal. However, if requested to do so by the Contracting Officer, the apparently successful

offeror promptly shall submit the complete original signed proposal.

(End of provision)

#### 52.215-6 Place of Performance.

As prescribed in [15.209](#)(f), insert the following provision:

##### PLACE OF PERFORMANCE (OCT 1997)

(a) The offeror or respondent, 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 respondent as indicated in this proposal or response to request for information.

(b) If the offeror or respondent checks “intends” in paragraph (a) of this provision, it shall insert in the following spaces the required information:

PLACE OF PERFORMANCE (STREET ADDRESS, CITY, STATE, COUNTY, ZIP CODE)	NAME AND ADDRESS OF OWNER AND OPERATOR OF THE PLANT OR FACILITY IF OTHER THAN OFFEROR OR RESPONDENT
_____	_____
_____	_____

(End of provision)

#### 52.215-7 [Reserved]

#### 52.215-8 Order of Precedence—Uniform Contract Format.

As prescribed in [15.209](#)(h), insert the following clause:

##### ORDER OF PRECEDENCE—UNIFORM CONTRACT FORMAT (OCT 1997)

Any inconsistency in this solicitation or contract 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.
- (e) The specifications.

(End of clause)

#### 52.215-9 Changes or Additions to Make-or-Buy Program.

As prescribed in [15.408](#)(a), insert the following clause:

##### CHANGES OR ADDITIONS TO MAKE-OR-BUY PROGRAM (OCT 1997)

(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)

*Alternate I (Oct 2010).* As prescribed in [15.408](#)(a)(1) 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 certified cost or pricing data in accordance with FAR [15.408](#), [Table 15-2](#) when required by FAR 15.403, and data other than certified 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.

*Alternate II (Oct 2010).* As prescribed in [15.408](#)(a)(2), 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 certified cost or pricing data in accordance with FAR [15.408](#), [Table 15-2](#), when required by FAR 15.403, and data other than certified 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 of this contract.

#### 52.215-10 Price Reduction for Defective Certified Cost or Pricing Data.

As prescribed in [15.408](#)(b), insert the following clause:

##### PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA (AUG 2011)

(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 certified 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 certified 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) of this clause 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 certified cost or pricing data.

(c)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the certified cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Interest compounded daily, as required by [26 U.S.C. 6622](#), on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under [26 U.S.C. 6621\(a\)\(2\)](#); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted certified cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

#### **52.215-11 Price Reduction for Defective Certified Cost or Pricing Data—Modifications.**

As prescribed in [15.408\(c\)](#), insert the following clause:

##### **PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA—MODIFICATIONS (AUG 2011)**

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR [15.403-4](#), except that this clause does not apply to any modification if an exception under FAR [15.403-1](#) applies.

(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 certified 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 certified 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) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause 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 certified cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by paragraph (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the certified cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Interest compounded daily, as required by [26 U.S.C. 6622](#), on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter pre-

scribed by the Secretary of the Treasury under [26 U.S.C. 6621\(a\)\(2\)](#); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted certified cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

#### **52.215-12 Subcontractor Certified Cost or Pricing Data.**

As prescribed in [15.408](#)(d), insert the following clause:

##### **SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (OCT 2010)**

(a) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR [15.403-4](#), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR [15.403-4](#), the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR [15.408](#), [Table 15-2](#) (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR [15.403-1](#) applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR [15.406-2](#) that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause 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 the threshold for submission of certified cost or pricing data at FAR [15.403-4](#), when entered into, the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of certified cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR [52.215-13](#), Subcontractor Certified Cost or Pricing Data—Modifications.

(End of clause)

#### **52.215-13 Subcontractor Certified Cost or Pricing Data—Modifications.**

As prescribed in [15.408](#)(e), insert the following clause:

##### **SUBCONTRACTOR CERTIFIED COST OR PRICING DATA— MODIFICATIONS (OCT 2010)**

(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

the threshold for submission of certified cost or pricing data at FAR [15.403-4](#); and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR [15.403-4](#), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR [15.403-4](#), the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR [15.408](#), [Table 15-2](#) (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR [15.403-1](#) applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR [15.406-2](#) that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause 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 the threshold for submission of certified cost or pricing data at FAR [15.403-4](#) on the date of agreement on price or the date of award, whichever is later.

(End of clause)

#### 52.215-14 Integrity of Unit Prices.

As prescribed in [15.408](#)(f)(1), insert the following clause:

##### INTEGRITY OF UNIT PRICES (OCT 2010)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of certified cost or pricing data not otherwise required by law or regulation.

(b) When requested by the Contracting Officer, the Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

(c) The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold in FAR [Part 2](#); construction or architect-engineer services under FAR [Part 36](#); utility services under FAR [Part 41](#); services

where supplies are not required; commercial items; and petroleum products.

(End of clause)

*Alternate I (Oct 1997).* As prescribed in [15.408](#)(f)(2), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

#### 52.215-15 Pension Adjustments and Asset Reversions.

As prescribed in [15.408](#)(g), insert the following clause:

##### PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2010)

(a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.

(b) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be—

(1) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12); and

(2) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) [Subpart 31.2](#) or for which certified cost or pricing data were submitted.

(c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which certified cost or pricing data were submitted or that are subject to FAR [Subpart 31.2](#).

(d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR [15.408](#)(g).

(End of clause)

#### 52.215-16 Facilities Capital Cost of Money.

As prescribed in [15.408](#)(h), insert the following provision:

##### FACILITIES CAPITAL COST OF MONEY (JUNE 2003)

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, if the criteria for allowability in FAR [31.205-10](#)(b) are met. One of the allowability criteria requires the prospective Contractor to propose facilities capital cost of money in its offer.

(b) If the prospective Contractor does not propose this cost, the resulting contract will include the clause Waiver of Facilities Capital Cost of Money.

(End of provision)

#### 52.215-17 Waiver of Facilities Capital Cost of Money.

As prescribed in [15.408](#)(i), insert the following clause:

WAIVER OF FACILITIES CAPITAL COST OF MONEY  
(OCT 1997)

The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.

(End of clause)

#### 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.

As prescribed in [15.408](#)(j), insert the following clause:

REVERSION OR ADJUSTMENT OF PLANS FOR  
POSTRETIREMENT BENEFITS (PRB) OTHER THAN  
PENSIONS (JULY 2005)

(a) The Contractor shall promptly notify the Contracting Officer in writing when the Contractor determines that it will terminate or reduce the benefits of a PRB plan.

(b) If PRB fund assets revert or inure to the Contractor, or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by [31.205-6](#)(o)(5) of the Federal Acquisition Regulation (FAR). When determining or agreeing on the method for recovery of the Government's equitable share, the contracting parties should consider the following methods: cost reduction, amortizing the credit over a number of years (with appropriate interest), cash refund, or some other agreed upon method. Should the parties be unable to agree on the method for recovery of the Government's equitable share, through good faith negotiations, the Contracting Officer shall designate the method of recovery.

(c) The Contractor shall insert the substance of this clause in all subcontracts that meet the applicability requirements of FAR [15.408](#)(j).

(End of clause)

#### 52.215-19 Notification of Ownership Changes.

As prescribed in [15.408](#)(k), insert the following clause:

NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall—

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR [15.408](#)(k).

(End of clause)

#### 52.215-20 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.

As prescribed in [15.408](#)(l), insert the following provision:

REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA  
AND DATA OTHER THAN CERTIFIED COST OR PRICING  
DATA (OCT 2010)

(a) *Exceptions from certified cost or pricing data.*(1) In lieu of submitting certified cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following paragraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) *Identification of 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.

(ii) *Commercial item exception.* For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include—

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for certified cost or pricing data.* If the offeror is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The offeror shall prepare and submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in accordance with the instructions contained in [Table 15-2](#) of FAR [15.408](#), which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in [Table 15-2](#) are incorporated as a mandatory format to be used in this contract, unless the Contracting Officer and the Contractor agree to a different format and change this clause to use Alternate I.

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR [15.406-2](#).

(End of provision)

*Alternate I (Oct 2010).* As prescribed in [15.408](#)(l) (and see [15.403-5](#)(b)(1)), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision:

(b)(1) The offeror shall submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in the following format: [Insert description of the data and format that are required, and include access to records necessary to permit an adequate evaluation of the proposed price in accordance with [15.408](#), [Table 15-2](#), Note 2. The description may be inserted at the time of issuing the solicitation, or the Contracting Officer may specify that the offeror's

format will be acceptable, or the description may be inserted as the result of negotiations.]:

*Alternate II (Oct 1997).* As prescribed in [15.408](#)(l), add the following paragraph (c) to the basic provision:

(c) When the proposal is submitted, also submit one copy each to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

*Alternate III (Oct 1997).* As prescribed in [15.408](#)(l), add the following paragraph (c) to the basic provision (if Alternate II is also used, redesignate the following paragraph as paragraph (d)).

(c) Submit the cost portion of the proposal via the following electronic media: [Insert media format, *e.g.*, electronic spreadsheet format, electronic mail, etc.]

*Alternate IV (Oct 2010).* As prescribed in [15.408](#)(l), replace the text of the basic provision with the following:

(a) Submission of certified cost or pricing data is not required.

(b) Provide data described below: [Insert description of the data and the format that are required, including the access to records necessary to permit an adequate evaluation of the proposed price in accordance with [15.403-3](#).]

#### **52.215-21 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.**

As prescribed in [15.408](#)(m), insert the following clause:

##### **REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA—MODIFICATIONS (OCT 2010)**

(a) *Exceptions from certified cost or pricing data.*(1) In lieu of submitting certified cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR [15.403-4](#) on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following paragraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

(i) *Identification of 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.

(ii) *Information on modifications of contracts or subcontracts for commercial items.* (A) If—

(1) The original contract or subcontract was granted an exception from certified cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or



was a contract or subcontract for the acquisition of a commercial item; and

(2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include—

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for certified cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The Contractor shall submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in accordance with the instructions contained in [Table 15-2](#) of FAR [15.408](#), which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in [Table 15-2](#) are incorporated as a mandatory format to be used in this contract, unless the Contracting Officer and the Contractor agree to a different format and change this clause to use Alternate I.

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR [15.406-2](#).

(End of clause)

*Alternate I (Oct 2010).* As prescribed in [15.408\(m\)](#) and [15.403-5\(b\)\(1\)](#), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic clause.

(b)(1) The Contractor shall submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments prepared in the following format: [*Insert description of the data and format that are required and include access to records necessary to permit an adequate evaluation of the proposed price in accordance with [15.408](#), [Table 15-2](#), Note 2. The description may be inserted at the time of issuing the solicitation, or the Contracting Officer may specify that the offeror's format will be acceptable, or the description may be inserted as the result of negotiations.*]:

*Alternate II (Oct 1997).* As prescribed in [15.408\(m\)](#), add the following paragraph (c) to the basic clause:

(c) When the proposal is submitted, also submit one copy each to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

*Alternate III (Oct 1997).* As prescribed in [15.408\(m\)](#), add the following paragraph (c) to the basic clause (if Alternate II is also used, redesignate the following paragraph as paragraph (d)):

(c) Submit the cost portion of the proposal via the following electronic media: [*Insert media format*]

*Alternate IV (Oct 2010).* As prescribed in [15.408\(m\)](#), replace the text of the basic clause with the following:

(a) Submission of certified cost or pricing data is not required.

(b) Provide data described below: [*Insert description of the data and the format that are required, including the access to records necessary to permit an adequate evaluation of the proposed price in accordance with [15.403-3](#).*]

#### **52.215-22 Limitations on Pass-Through Charges— Identification of Subcontract Effort.**

As prescribed in [15.408\(n\)\(1\)](#), use the following provision:

##### **LIMITATIONS ON PASS-THROUGH CHARGES— IDENTIFICATION OF SUBCONTRACT EFFORT (OCT 2009)**

(a) *Definitions.* Added value, excessive pass-through charge, subcontract, and subcontractor, as used in this provision, are defined in the clause of this solicitation entitled "Limitations on Pass-Through Charges" (FAR [52.215-23](#)).

(b) *General.* The offeror's proposal shall exclude excessive pass-through charges.

(c) *Performance of work by the Contractor or a subcontractor.* (1) The offeror shall identify in its proposal the total cost of the work to be performed by the offeror, and the total cost of the work to be performed by each subcontractor, under the contract, task order, or delivery order.

(2) If the offeror intends to subcontract more than 70 percent of the total cost of work to be performed under the contract, task order, or delivery order, the offeror shall identify in its proposal—

(i) The amount of the offeror's indirect costs and profit/fee applicable to the work to be performed by the subcontractor(s); and

(ii) A description of the added value provided by the offeror as related to the work to be performed by the subcontractor(s).

(3) If any subcontractor proposed under the contract, task order, or delivery order intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed under its subcontract, the offeror shall identify in its proposal—

(i) The amount of the subcontractor's indirect costs and profit/fee applicable to the work to be performed by the lower-tier subcontractor(s); and

(ii) A description of the added value provided by the subcontractor as related to the work to be performed by the lower-tier subcontractor(s).

(End of provision)

### 52.215-23 Limitations on Pass-Through Charges.

As prescribed in [15.408\(n\)\(2\)](#), use the following clause:

#### LIMITATIONS ON PASS-THROUGH CHARGES (OCT 2009)

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

“Added value” means that the Contractor performs subcontract management functions that the Contracting Officer determines are a benefit to the Government (*e.g.*, processing orders of parts or services, maintaining inventory, reducing delivery lead times, managing multiple sources for contract requirements, coordinating deliveries, performing quality assurance functions).

“Excessive pass-through charge”, with respect to a Contractor or subcontractor that adds no or negligible value to a contract or subcontract, means a charge to the Government by the Contractor or subcontractor that is for indirect costs or profit/fee on work performed by a subcontractor (other than charges for the costs of managing subcontracts and any applicable indirect costs and associated profit/fee based on such costs).

“No or negligible value” means the Contractor or subcontractor cannot demonstrate to the Contracting Officer that its effort added value to the contract or subcontract in accomplishing the work performed under the contract (including task or delivery orders).

“Subcontract” means any contract, as defined in FAR [2.101](#), entered into by a subcontractor to furnish supplies or services for performance of the contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor”, as defined in FAR [44.101](#), means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

(b) *General.* The Government will not pay excessive pass-through charges. The Contracting Officer shall determine if excessive pass-through charges exist.

(c) *Reporting.* Required reporting of performance of work by the Contractor or a subcontractor. The Contractor shall notify the Contracting Officer in writing if—

(1) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

(2) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(d) *Recovery of excessive pass-through charges.* If the Contracting Officer determines that excessive pass-through charges exist;

(1) For other than fixed-price contracts, the excessive pass-through charges are unallowable in accordance with the provisions in FAR subpart [31.2](#); and

(2) For applicable DoD fixed-price contracts, as identified in [15.408\(n\)\(2\)\(i\)\(B\)](#), the Government shall be entitled to a price reduction for the amount of excessive pass-through charges included in the contract price.

(e) *Access to records.* (1) The Contracting Officer, or authorized representative, shall have the right to examine and audit all the Contractor's records (as defined at FAR [52.215-2\(a\)](#)) necessary to determine whether the Contractor proposed, billed, or claimed excessive pass-through charges.

(2) For those subcontracts to which paragraph (f) of this clause applies, the Contracting Officer, or authorized representative, shall have the right to examine and audit all the subcontractor's records (as defined at FAR [52.215-2\(a\)](#)) necessary to determine whether the subcontractor proposed, billed, or claimed excessive pass-through charges.

(f) *Flowdown.* The Contractor shall insert the substance of this clause, including this paragraph (f), in all cost-reimbursement subcontracts under this contract that exceed the simplified acquisition threshold, except if the contract is with DoD, then insert in all cost-reimbursement subcontracts and fixed-price subcontracts, except those identified in [15.408\(n\)\(2\)\(i\)\(B\)\(2\)](#), that exceed the threshold for obtaining cost or pricing data in accordance with FAR [15.403-4](#).

(End of clause)

*Alternate I (Oct 2009).* As prescribed in [15.408\(n\)\(2\)\(iii\)](#), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) *General.* The Government will not pay excessive pass-through charges. The Contracting Officer has determined that there will be no excessive pass-through charges, provided the Contractor performs the disclosed value-added functions.

date or if the subcontractor has submitted certified 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. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection [30.201-4](#) of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$750,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

### 52.230-3 Disclosure and Consistency of Cost Accounting Practices.

As prescribed in [30.201-4\(b\)\(1\)](#), insert the following clause:

#### DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (OCT 2015)

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standard—Cost Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR Part 9904.

(2) (*CAS-covered 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 48 CFR 9903.202-1 through 9903.202-5. 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.

(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 48 CFR 9903.201-6(c), that the change is desirable and not detrimental to the interests

of the Government, 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 annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 ([26 U.S.C. 6621\(a\)\(2\)](#)), 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 as specified in 48 CFR 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under [41 U.S.C. chapter 71](#), Contract Disputes.

(c) The Contractor shall permit any authorized representatives of the Government 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 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection [30.201-4](#) of the Federal Acquisition Regulation shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of \$750,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

### 52.230-4 Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.

As prescribed in [30.201-4\(c\)](#), insert the following clause:

#### DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES—FOREIGN CONCERNS (OCT 2015)

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; and 48 CFR 9904.402, Consistency in Allocating Costs

Incurred for the Same Purpose, in effect on the date of award of this contract, as indicated in 48 CFR 9904.

(2) (*Cost Accounting Standard (CAS)-covered 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 48 CFR 9903.202-1 through 48 CFR 9903.202-5. 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 U.S. Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the U.S. 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 48 CFR 9903.201-6(c) that the change is desirable and not detrimental to the interests of the U.S. Government, 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 U.S. Government.

(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 U.S. Government. Such adjustment shall provide for recovery of the increased costs to the U.S. Government, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 ([26 U.S.C. 6621\(a\)\(2\)](#)) for such period, from the time the payment by the U.S. Government 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 as specified in 48 CFR 9903 and 48 CFR 9904 and as to any cost adjustment demanded by the U.S. Government, such failure to agree will constitute a dispute under [41 U.S.C. chapter 71](#), Contract Disputes.

(c) The Contractor shall permit any authorized representatives of the U.S. Government 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 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause prescribed in FAR [30.201-4](#) shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of \$750,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

### 52.230-5 Cost Accounting Standards—Educational Institution.

As prescribed in [30.201-4](#)(e), insert the following clause:

#### COST ACCOUNTING STANDARDS—EDUCATIONAL INSTITUTION (AUG 2016)

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) (*CAS-covered Contracts Only*). If a business unit of an educational institution (defined as an institution of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A and [20 U.S.C. 1001](#)) is required to submit a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for accumulating and allocating indirect costs. 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 CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III, requires that a change in the Contractor's cost accounting

practices be made after the date of this contract award, the change must be applied prospectively to this contract and the Disclosure Statement, if required, 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 paragraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR 9905 in effect on the date of award of this contract or, if the Contractor has submitted certified 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 (or modifications to CAS) which hereafter become 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 paragraph (a)(3) of this clause, 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 paragraph (a)(4) of this clause; 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 subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(iv) Agree to an equitable adjustment as provided in the Changes clause of this contract, if the contract cost is materially affected by an accounting principle amendment required under the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III, which, on becoming effective after the date of contract award, requires the Contractor to make a change to the Contractor's established cost accounting practices.

(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 annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 ([26 U.S.C. 6621\(a\)\(2\)](#)) for such period, from the time the payment by the United States was made to the time the adjustment

is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under [41 U.S.C. chapter 71](#), Contract Disputes.

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or, if the subcontractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 48 CFR 9903.201-4 shall be inserted;

(2) This requirement shall apply only to negotiated subcontracts in excess of \$750,000; and

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

#### **52.230-6 Administration of Cost Accounting Standards.**

As prescribed in [30.201-4](#)(d)(1), insert the following clause:

##### ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUNE 2010)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (b) through (i) and (k) through (n) of this clause:

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

“Affected CAS-covered contract or subcontract” means a contract or subcontract subject to CAS rules and regulations for which a Contractor or subcontractor—

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

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

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

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

“Fixed-price contracts and subcontracts” means—

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

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

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

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

“Flexibly-priced contracts and subcontracts” means—

(1) Fixed-price contracts and subcontracts described at FAR [16.203-1\(a\)\(2\)](#), [16.204](#), [16.205](#), and [16.206](#);

(2) Cost-reimbursement contracts and subcontracts (FAR [Subpart 16.3](#));

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

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

(5) The materials portion of time-and-materials contracts and subcontracts (FAR [Subpart 16.6](#)).

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

(1) Comply with applicable CAS; or

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

“Required change” means—

(1) A change in cost accounting practice that a Contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently become applicable to existing CAS-covered con-

tracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or

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

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

(b) Submit to the CFAO a description of any cost accounting practice change as outlined in paragraphs (b)(1) through (3) of this clause (including revisions to the Disclosure Statement, if applicable), and any written statement that the cost impact of the change is immaterial. If a change in cost accounting practice is implemented without submitting the notice required by this paragraph, the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR [52.230-2](#), Cost Accounting Standards; paragraph (a)(4) of the clause at FAR [52.230-3](#), Disclosure and Consistency of Cost Accounting Practices; paragraph (a)(4) of the clause at FAR [52.230-4](#), Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns; or paragraph (a)(2) of the clause at FAR [52.230-5](#), Cost Accounting Standards—Educational Institution.

(1) When a description has been submitted for a change in cost accounting practice that is dependent on a contact award and that contract is subsequently awarded, notify the CFAO within 15 days after such award.

(2) For any change in cost accounting practice not covered by (b)(1) of this clause that is required in accordance with paragraphs (a)(3) and (a)(4)(i) of the clause at FAR [52.230-2](#); or paragraphs (a)(3), (a)(4)(i), or (a)(4)(iv) of the clause at FAR [52.230-5](#); submit a description of the change to the CFAO not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change.

(3) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (iii) of the clauses at FAR [52.230-2](#) and FAR [52.230-5](#); or with paragraph (a)(3) of the clauses at FAR [52.230-3](#) and FAR [52.230-4](#), submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. If the change includes a proposed retroactive date submit supporting rationale.

(4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) of the clause at FAR [52.230-2](#) and FAR [52.230-5](#); or by paragraph (a)(4) of the clauses at FAR [52.230-3](#) and FAR [52.230-4](#))—

(i) Within 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) after the

date of agreement with the CFAO that there is a noncompliance; or

(ii) In the event of Contractor disagreement, within 60 days after the CFAO notifies the Contractor of the determination of noncompliance.

(c) When requested by the CFAO, submit on or before a date specified by the CFAO—

(1) A general dollar magnitude (GDM) proposal in accordance with paragraph (d) or (g) of this clause. The Contractor may submit a detailed cost-impact (DCI) proposal in lieu of the requested GDM proposal provided the DCI proposal is in accordance with paragraph (e) or (h) of this clause;

(2) A detailed cost-impact (DCI) proposal in accordance with paragraph (e) or (h) of this clause;

(3) For any request for a desirable change that is based on the criteria in FAR [30.603-2\(b\)\(3\)\(ii\)](#), the data necessary to demonstrate the required cost savings; and

(4) For any request for a desirable change that is based on criteria other than that in FAR [30.603-2\(b\)\(3\)\(ii\)](#), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change.

(d) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the GDM proposal shall—

(1) Calculate the cost impact in accordance with paragraph (f) of this clause;

(2) Use one or more of the following methods to determine the increase or decrease in cost accumulations:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly-priced contracts and subcontracts;

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The estimated increase or decrease in cost accumulations by Executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) For unilateral changes, the increased or decreased costs to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts;

and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(e) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the DCI proposal shall—

(1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;

(2) Show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to include—

(i) Only those affected CAS-covered contracts and subcontracts having an estimate to complete exceeding a specified amount; and

(ii) An estimate of the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (e)(2)(i) of this clause;

(3) Use a format acceptable to the CFAO but, as a minimum, include the information in paragraph (d)(3) of this clause; and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(f) For GDM and DCI proposals that are subject to the requirements of paragraph (d) or (e) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs were incurred (*i.e.*, whether or not the final indirect rates have been established).

(2) For unilateral changes—

(i) Determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

(A) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is increased cost to the Government.

(B) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

(ii) Determine the increased or decreased cost to the Government for fixed-priced contracts and subcontracts as follows:

(A) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is increased cost to the Government.

(B) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

(iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased costs to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the cost impact been known at the time the contracts and subcontracts were negotiated; and

(iv) Calculate the increased cost to the Government in the aggregate.

(3) For equitable adjustments for required or desirable changes—

(i) Estimated increased cost accumulations are the basis for increasing contract prices, target prices and cost ceilings; and

(ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, target prices and cost ceilings.

(g) For any noncompliant cost accounting practice subject to paragraph (b)(4) of this clause, prepare the GDM proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Use one or more of the following methods to determine the increase or decrease in contract and subcontract prices or cost accumulations, as applicable:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) When the noncompliance involves cost accumulation the change in indirect rates multiplied by the applicable base for only flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease.

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The total increase or decrease in contract and subcontract price and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) The increased or decreased cost to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) The total overpayments and underpayments made by the Government during the period of noncompliance.

(4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

(h) For any noncompliant practice subject to paragraph (b)(4) of this clause, prepare the DCI proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Show the increase or decrease in price and cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to—

(i) Include only those affected CAS-covered contracts and subcontracts having—

(A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and

(B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and

(ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (h)(2)(i) of this clause.

(3) Use a format acceptable to the CFAO that, as a minimum, include the information in paragraph (g)(3) of this clause.

(4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

(i) For GDM and DCI proposals that are subject to the requirements of paragraph (g) or (h) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs are incurred (*i.e.*, whether or not the final indirect rates have been established).

(2) For noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(i) When the negotiated contract or subcontract price exceeds what the negotiated price would have been had the Contractor used a compliant practice, the difference is increased cost to the Government.

(ii) When the negotiated contract or subcontract price is less than what the negotiated price would have been had the Contractor used a compliant practice, the difference is decreased cost to the Government.

(3) For noncompliances that involve accumulating costs, determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

(i) When the costs that were accumulated under the noncompliant practice exceed the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is increased cost to the Government.

(ii) When the costs that were accumulated under the noncompliant practice are less than the costs that would have been accumulated using a compliant practice (from the time



the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is decreased cost to the Government.

(4) Calculate the total increase or decrease in contract and subcontracts incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the Contractor used a compliant practice.

(5) Calculate the increased cost to the Government in the aggregate.

(j) If the Contractor does not submit the information required by paragraph (b) or (c) of this clause within the specified time, or any extension granted by the CFAO, the CFAO may take one or both of the following actions:

(1) Withhold an amount not to exceed 10 percent of each subsequent amount payment to the Contractor's affected CAS-covered contracts, (up to the estimated general dollar magnitude of the cost impact), until such time as the Contractor provides the required information to the CFAO.

(2) Issue a final decision in accordance with FAR [33.211](#) and unilaterally adjust the contract(s) by the estimated amount of the cost impact.

(k) Agree to—

(1) Contract modifications to reflect adjustments required in accordance with paragraph (a)(4)(ii) or (a)(5) of the clauses at FAR [52.230-2](#) and [52.230-5](#); or with paragraph (a)(3)(i) or (a)(4) of the clauses at FAR [52.230-3](#) and FAR [52.230-4](#); and

(2) Repay the Government for any aggregate increased cost paid to the Contractor.

(l) For all subcontracts subject to the clauses at FAR [52.230-2](#), [52.230-3](#), [52.230-4](#), or [52.230-5](#)—

(1) So state in the body of the subcontract, in the letter of award, or in both (do not use self-deleting clauses);

(2) Include the substance of this clause in all negotiated subcontracts; and

(3) Within 30 days after award of the subcontract, submit the following information to the Contractor's CFAO:

- (i) Subcontractor's name and subcontract number.
- (ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(m) Notify the CFAO in writing of any adjustments required to subcontracts under this contract and agree to an adjustment to this contract price or estimated cost and fee. The Contractor shall—

(1) Provide this notice within 30 days after the Contractor receives the proposed subcontract adjustments; and

(2) Include a proposal for adjusting the higher-tier subcontract or the contract appropriately.

(n) For subcontracts containing the clause or substance of the clause at FAR [52.230-2](#), FAR [52.230-3](#), FAR [52.230-4](#), or FAR [52.230-5](#), require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(End of clause)

#### **52.230-7 Proposal Disclosure—Cost Accounting Practice Changes.**

As prescribed in [30.201-3\(c\)](#), insert the following provision:

##### PROPOSAL DISCLOSURE—COST ACCOUNTING PRACTICE CHANGES (APR 2005)

The offeror shall check "yes" below if the contract award will result in a required or unilateral change in cost accounting practice, including unilateral changes requested to be desirable changes.

? Yes                      ? No

If the offeror checked "Yes" above, the offeror shall—

(1) Prepare the price proposal in response to the solicitation using the changed practice for the period of performance for which the practice will be used; and

(2) Submit a description of the changed cost accounting practice to the Contracting Officer and the Cognizant Federal Agency Official as pricing support for the proposal.

(End of provision)

#### **52.231 [Reserved]**

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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 paragraph (b)(6) of this clause; 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) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart [49.001](#) 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.

(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) of this clause, 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 (f) or paragraph (g) of this clause, 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 (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) 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 (f) of this clause:

(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 (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, 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 paragraph (b)(8) of this clause.

(h) 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 (g) of this clause, the fair value, as determined by the Contracting Officer, for the loss of the Government property.

(i) 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.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (e) or (l) 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 (l) of this clause, 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.

(k) 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.

(l) 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.

(m)(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.

(n) 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)

*Alternate I (Sept 1996).* 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 paragraph (m)(2) from the basic clause.

**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)

**52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).**

As prescribed in [49.502\(d\)](#), insert the following clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT  
(EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS)  
(AUG 2016)

(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 paragraph (b)(6) of this clause; *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) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(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. 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.

(e) Subject to paragraph (d) of this clause, 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.

(f) The cost principles and procedures in subpart [31.3](#) of the Federal Acquisition Regulation (FAR), Contracts with Educational Institutions (defined as institutions of higher education in the OMB Uniform Guidance in 2 CFR part 200, subpart A, and [20 U.S.C. 1001](#)), as 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 (as defined in the OMB Uniform Guidance at 2 CFR part 200), the cost principles and procedures in subpart [31.7](#) of the FAR, Contracts with Nonprofit Organizations, shall apply; unless the Contractor is a nonprofit institution listed in the OMB Uniform Guidance at 2 CFR part 200, appendix VIII, as exempted from the cost principles in subpart E, in which case the cost principles at FAR [31.2](#) for commercial organizations shall apply to such contractor.

(g) 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.

(h) 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 (d) of this clause and failed to request a time extension, there is no right of appeal.

(End of clause)

### 52.249-6 Termination (Cost-Reimbursement).

As prescribed in [49.503](#)(a)(1), insert the following clause:

#### TERMINATION (COST-REIMBURSEMENT) (MAY 2004)

(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 paragraph (c)(6) of this clause; *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) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(e) After expiration of the plant clearance period as defined in Subpart [49.001](#) 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.

(f) 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.

(g) Subject to paragraph (f) of this clause, 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.

(h) 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 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 paragraph (h)(1) of this clause.

(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 arti-

cles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under paragraph (h)(4) of this clause.

(i) 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.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) 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 (f), (h) or (l) of this clause, 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.

(k) 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.

(l) 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.

(m)(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.

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

(End of clause)

*Alternate I (Sept 1996).* If the contract is for construction, substitute the following paragraph (h)(4) for paragraph (h)(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.

*Alternate II (Sept 1996).* 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 paragraph (m)(2) from the basic clause.

*Alternate III (Sept 1996).* 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 paragraph (h)(4) shall be substituted for paragraph (h)(4) of the basic clause. Paragraph (m)(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.

*Alternate IV (Sept 1996).* If the contract is a time-and-material or labor-hour contract, substitute the following paragraphs (h) and (l) for paragraphs (h) and (l) of the basic clause:

(h) 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 deter-

mine, 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 subdivision (h)(1)(i), (ii), or (iii) of this clause, 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 paragraph (h)(1) of this clause 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.

\* \* \* \* \*

(l) If the termination is partial, the Contractor may file with the Contracting Officer a proposal for an equitable adjustment of 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.

*Alternate V (Sept 1996).* If the contract is a time-and-material or labor-hour contract with an agency of the U.S. Govern-



ment or with State, local or foreign governments or their agencies, substitute the following paragraphs (h) and (l) for paragraphs (h) and (l) of the basic clause. Paragraph (m)(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.

(h) 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 subdivision (h)(1)(i), (ii), or (iii) of this clause, 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 paragraph (h)(1) of this clause 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.

\* \* \* \* \*

(1) 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.

#### 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)

#### 52.249-8 Default (Fixed-Price Supply and Service).

As prescribed in [49.504](#)(a)(1), insert the following clause:

##### DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984)

(a)(1) The Government may, subject to paragraphs (c) and (d) of this clause, 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 paragraph (a)(2) of this clause); or

(iii) Perform any of the other provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The Government's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, 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)

*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) of this clause, 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 paragraph (a)(2) of this clause); or

(iii) Perform any of the other provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The Government's right to terminate this contract under subdivisions (a)(1)(ii) and (iii) of this clause, 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.

#### **52.249-9 Default (Fixed-Price Research and Development).**

As prescribed in [49.504\(b\)](#), insert the following clause:

DEFAULT (FIXED-PRICE RESEARCH AND DEVELOPMENT)  
(APR 1984)

(a)(1) The Government may, subject to paragraphs (c) and (d) of this clause, 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 paragraph (a)(2) of this clause); or

(iii) Perform any of the other provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The Government's right to terminate this contract under subdivisions (a)(1)(ii) and (iii) of this clause 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)

**52.249-10 Default (Fixed-Price Construction).**

As prescribed in [49.504\(c\)\(1\)](#), insert the following clause:

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)

*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 revert 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.

*Alternate II (Apr 1984).* If the contract is to be awarded during a period of national emergency, paragraph (b)(1) below may be substituted for paragraph (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

*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 paragraph (b)(1) may be substituted for paragraph (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 revert 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 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

#### 52.249-11 [Reserved]

#### 52.249-12 Termination (Personal Services).

As prescribed in [49.505\(a\)](#), 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)

#### 52.249-13 [Reserved]

#### 52.249-14 Excusable Delays.

As prescribed in [49.505\(b\)](#), 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, and labor-hour contracts. When used in construction contracts, substitute the words "completion time" for "delivery schedule" 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 per-

form 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)

#### 52.250-1 Indemnification Under Public Law 85-804.

As prescribed in [50.104-4](#) insert the following clause:

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 be 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)

*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.

#### **52.250-2 SAFETY Act Coverage Not Applicable.**

As prescribed in [50.206\(a\)](#), insert the following provision:

SAFETY ACT COVERAGE NOT APPLICABLE (FEB 2009)

The Government has determined that for purposes of this solicitation the product(s) or service(s) being acquired by this action are neither presumptively nor actually entitled to a pre-determination that the products or services are qualified anti-terrorism technologies as that term is defined by the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act), [6 U.S.C. 441-444](#). This determination does not prevent sellers of technologies from applying for SAFETY Act protections in other contexts. Proposals in which either acceptance or pricing is made contingent upon SAFETY Act designation as a qualified anti-terrorism technology or SAFETY Act certification as an approved product for homeland security of the proposed product or service will not be considered for award. See Federal Acquisition Regulation [Subpart 50.2](#).

(End of provision)

#### **52.250-3 SAFETY Act Block Designation/Certification.**

As prescribed in [50.206\(b\)\(1\)](#), insert the following provision:

SAFETY ACT BLOCK DESIGNATION/CERTIFICATION  
(FEB 2009)

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

“Act of terrorism” means any act determined to have met the following requirements or such other requirements as defined and specified by the Secretary of Homeland Security:

(1) Is unlawful.

(2) Causes harm, including financial harm, to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States.

(3) Uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

“Block certification” means SAFETY Act certification of a technology class that the Department of Homeland Security (DHS) has determined to be an approved class of approved products for homeland security.

“Block designation” means SAFETY Act designation of a technology class that the DHS has determined to be a Qualified Anti-Terrorism Technology (QATT).

“Qualified Anti-Terrorism Technology (QATT)” means any technology designed, developed, modified, procured, or sold for the purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, for which a SAFETY Act designation has been issued. For purposes of defining a QATT, technology means any product, equipment, service (including support services), device, or technology (including information technology) or any combination of the foregoing. Design services, consulting services, engineering services, software development services, software integration services, threat assessments, vulnerability studies, and other analyses relevant to homeland security may be deemed a technology.

“SAFETY Act certification” means a determination by DHS pursuant to [6 U.S.C. 442\(d\)](#), as further delineated in 6 CFR 25.9, that a QATT for which a SAFETY Act designation has been issued is an approved product for homeland security, *i.e.*, it will perform as intended, conforms to the seller’s specifications, and is safe for use as intended.

“SAFETY Act designation” means a determination by DHS pursuant to [6 U.S.C. 441\(b\)](#) and [6 U.S.C. 443\(a\)](#), as further delineated in 6 CFR 25.4, that a particular Anti-Terrorism Technology constitutes a QATT under the SAFETY Act.

(b) The Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act), [6 U.S.C. 441-444](#), creates certain liability limitations for claims arising out of, relating to, or resulting from an act of terrorism where QATTs have been deployed. It also confers other important benefits. SAFETY Act designation and SAFETY Act certification are designed to support effective technologies aimed at preventing, detecting, identifying, or deterring acts of terrorism, or limiting the harm that such acts might otherwise cause, and which also meet other prescribed criteria. For some classes of technologies, DHS may issue a block designation/certification in order to lessen the burdens for filing for SAFETY Act

designation or SAFETY Act certifications by not requiring applicants to provide certain information otherwise required and in order to offer expedited review of any application submitted pursuant to a block designation/certification. Block designations/certifications will be issued only for technologies that rely on established performance standards or defined technical characteristics.

(c)(1) DHS has issued a block designation or block certification for the technology to be acquired under this solicitation.

(2) This block designation or block certification is attached to this solicitation and contains essential information, including—

(i) A detailed description of and specification for the technology covered by the block designation or block certification;

(ii) A listing of those portions of the SAFETY Act application kit that must be completed and submitted by applicants;

(iii) The date of its expiration; and

(iv) Any other terms and conditions.

(3) Offerors should read this block designation or block certification carefully to make sure they comply with its terms if they plan to take advantage of SAFETY Act coverage for their technology(ies).

(d) All determinations by DHS are based on factors set forth in the SAFETY Act and its implementing regulations. A determination by DHS to issue a SAFETY Act designation, or not to issue a SAFETY Act designation for a particular technology as a QATT is not a determination that the technology meets, or fails to meet, the requirements of any solicitation issued by any Federal, State, local or tribal governments. Determinations by DHS with respect to whether to issue a SAFETY Act designation for technologies submitted for DHS review are based on the factors identified in 6 CFR 25.4(b).

(e) Neither SAFETY Act designation nor certification is in any way a requirement of this action. Whether to seek the benefits of the SAFETY Act for a proposed product or service is entirely up to the offeror. Additional information about the SAFETY Act and this block designation/certification may be found at the SAFETY Act website at <http://www.SAFETYAct.gov> or requests may be mailed to:

Directorate of Science and Technology  
SAFETY Act/Room 4320  
Department of Homeland Security  
Washington, DC 20528

(f) Proposals in which pricing or any other terms or conditions are offered contingent upon SAFETY Act designation or SAFETY Act certification of the proposed product(s) or service(s) will not be considered for award.

(End of provision)

*Alternate I (Feb 2009).* As prescribed in [50.206\(b\)\(2\)](#), substitute the following paragraph (f):

(f)(1) Offerors are authorized to submit proposals made contingent upon SAFETY Act designation (or SAFETY Act certification, if a block certification exists) before award. When an offer is made contingent upon SAFETY Act designation or certification, the offeror also may submit an alternate offer without the contingency.

(2) If an offer is submitted contingent upon receipt of SAFETY Act designation (or SAFETY Act certification, if a block certification exists) prior to contract award, then the Government may not award a contract based on such offer unless the offeror demonstrates prior to award that DHS has issued a SAFETY Act designation (or SAFETY Act certification, if a block certification exists) for the offeror's technology.

(3) The Government reserves the right to award the contract based on a noncontingent offer, prior to DHS resolution of the offeror's application for SAFETY Act designation (or SAFETY Act certification, if a block certification exists).

*Alternate II (Feb 2009).* As prescribed in [50.206\(b\)\(3\)](#), substitute the following paragraph (f):

(f)(1) Offerors are authorized to submit offers presuming that SAFETY Act designation (or SAFETY Act certification, if a block certification exists) will be obtained before or after award.

(2) An offeror is eligible for award only if the offeror—

(i) Files a SAFETY Act designation (or SAFETY Act certification) application, limited to the scope of the applicable block designation (or block certification), within 15 days after submission of the proposal;

(ii) Pursues its SAFETY Act designation (or SAFETY Act certification) application in good faith; and

(iii) Agrees to obtain the amount of insurance DHS requires for issuing the offeror's SAFETY Act designation (or SAFETY Act certification).

(3) If DHS has not issued a SAFETY Act designation (or SAFETY Act certification) to the successful offeror before contract award, the contracting officer will include the clause at [52.250-5](#) in the resulting contract.

#### **52.250-4 SAFETY Act Pre-qualification Designation Notice.**

As prescribed in [50.206\(c\)\(1\)](#), insert the following provision:

##### **SAFETY ACT PRE-QUALIFICATION DESIGNATION NOTICE (FEB 2009)**

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

“Act of terrorism” means any act determined to have met the following requirements or such other requirements as defined and specified by the Secretary of Homeland Security:

(1) Is unlawful.

(2) Causes harm, including financial harm, to a person, property, or entity, in the United States, or in the case of a

domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States.

(3) Uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

“Block certification” means SAFETY Act certification of a technology class that the Department of Homeland Security (DHS) has determined to be an approved class of approved products for homeland security.

“Block designation” means SAFETY Act designation of a technology class that the DHS has determined to be a Qualified Anti-Terrorism Technology (QATT).

“Pre-qualification designation notice” means a notice in a procurement solicitation or other publication by the Government stating that the technology to be procured either affirmatively or presumptively satisfies the technical criteria necessary to be deemed a qualified anti-terrorism technology. A pre-qualification designation notice authorizes offeror(s) to submit streamlined SAFETY Act applications for SAFETY Act designation and receive expedited processing of those applications.

“Qualified Anti-Terrorism Technology (QATT)” means any technology designed, developed, modified, procured, or sold for the purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, for which a SAFETY Act designation has been issued. For purposes of defining a QATT, technology means any product, equipment, service (including support services), device, or technology (including information technology) or any combination of the foregoing. Design services, consulting services, engineering services, software development services, software integration services, threat assessments, vulnerability studies, and other analyses relevant to homeland security may be deemed a technology.

“SAFETY Act certification” means a determination by DHS pursuant to [6 U.S.C. 442\(d\)](#), as further delineated in 6 CFR 25.9, that a QATT for which a SAFETY Act designation has been issued is an approved product for homeland security, *i.e.*, it will perform as intended, conforms to the seller's specifications, and is safe for use as intended.

“SAFETY Act designation” means a determination by DHS pursuant to [6 U.S.C. 441\(b\)](#) and [6 U.S.C. 443\(a\)](#), as further delineated in 6 CFR 25.4, that a particular Anti-Terrorism Technology constitutes a QATT under the SAFETY Act.

(b) The Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act), [6 U.S.C. 441-444](#), creates certain liability limitations for claims arising out of, relating to, or resulting from an act of terrorism where QATTs have been deployed. It also confers other important benefits.



SAFETY Act designation and SAFETY Act certification are designed to support effective technologies aimed at preventing, detecting, identifying, or deterring acts of terrorism, or limiting the harm that such acts might otherwise cause, and which also meet other prescribed criteria.

(c)(1) DHS has issued a SAFETY Act pre-qualification designation notice for the technology to be acquired under this solicitation.

(2) This notice is attached to this solicitation and contains essential information, including—

(i) A detailed description of and specification for the technology covered by the notice;

(ii) A statement that the technology described and specified in the notice satisfies the technical criteria to be deemed a QATT and the offeror's proposed technology either may presumptively or will qualify for the issuance of a designation provided the offeror complies with terms and conditions in the notice and its application is approved;

(iii) The period of time within which DHS will take action upon submission of a SAFETY Act application submitted pursuant to the notice;

(iv) A listing of those portions of the application that must be completed and submitted by selected awardees and the time periods for such submissions;

(v) The date of expiration of the notice; and

(vi) Any other terms and conditions concerning the notice.

(3) Offerors should read this notice carefully to make sure they comply with the terms of the notice if they plan on taking advantage of SAFETY Act coverage for their technologies.

(d) All determinations by DHS are based on factors set forth in the SAFETY Act and its implementing regulations. A determination by DHS to issue a SAFETY Act designation, or not to issue a SAFETY Act designation for a particular Technology as a QATT is not a determination that the Technology meets, or fails to meet, the requirements of any solicitation issued by any Federal, State, local or tribal governments. Determinations by DHS with respect to whether to issue a SAFETY Act designation for Technologies submitted for DHS review are based on the factors identified in 6 CFR 25.4(b).

(e) Neither SAFETY Act designation nor certification is in any way a requirement of this action. Whether to seek the benefits of the SAFETY Act for a proposed product or service is entirely up to the offeror. Additional information about the SAFETY Act may be found at the SAFETY Act website at <http://www.SAFETYAct.gov>.

(f) Proposals in which pricing or any other terms or conditions are offered contingent upon SAFETY Act designation or

certification of the proposed product(s) or service(s) will not be considered for award.

(End of provision)

*Alternate I (Feb 2009).* As prescribed in [50.206\(c\)\(2\)](#), substitute the following paragraph (f):

(f)(1) Offerors are authorized to submit proposals made contingent upon SAFETY Act designation before award. When an offer is made contingent upon SAFETY Act designation, the offeror also may submit an alternate offer without the contingency.

(2) If an offer is submitted contingent upon receipt of SAFETY Act designation prior to contract award, then the Government may not award a contract based on such offer unless the offeror demonstrates prior to award that DHS has issued a SAFETY Act designation for the offeror's technology.

(3) The Government reserves the right to award the contract based on a noncontingent offer, prior to DHS resolution of the offeror's application for SAFETY Act designation.

*Alternate II (Feb 2009).* As prescribed in [50.206\(c\)\(3\)](#), substitute the following paragraph (f):

(f)(1) Offerors are authorized to submit proposals presuming SAFETY Act designation before or after award.

(2) An offeror is eligible for award only if the offeror—

(i) Files a SAFETY Act designation application, limited to the scope of the applicable prequalification designation notice, within 15 days after submission of the proposal;

(ii) Pursues its SAFETY Act designation application in good faith; and

(iii) Agrees to obtain the amount of insurance DHS requires for issuing the offeror's SAFETY Act designation.

(3) If DHS has not issued a SAFETY Act designation to the successful offeror before contract award, the contracting officer will include the clause at [52.250-5](#) in the resulting contract.

#### **52.250-5 SAFETY Act—Equitable Adjustment.**

As prescribed in [50.206\(d\)](#), insert the following clause:

SAFETY ACT—EQUITABLE ADJUSTMENT (FEB 2009)

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

“Act of terrorism” means any act determined to have met the following requirements or such other requirements as defined and specified by the Secretary of Homeland Security:

(1) Is unlawful.

(2) Causes harm, including financial harm, to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States.

(3) Uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

“Block certification” means SAFETY Act certification of a technology class that the Department of Homeland Security (DHS) has determined to be an approved class of approved products for homeland security.

“Block designation” means SAFETY Act designation of a technology class that the DHS has determined to be a Qualified Anti-Terrorism Technology (QATT).

“Qualified Anti-Terrorism Technology (QATT)” means any technology designed, developed, modified, procured, or sold for the purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, for which a SAFETY Act designation has been issued. For purposes of defining a QATT, technology means any product, equipment, service (including support services), device, or technology (including information technology) or any combination of the foregoing. Design services, consulting services, engineering services, software development services, software integration services, threat assessments, vulnerability studies, and other analyses relevant to homeland security may be deemed a technology.

“SAFETY Act certification” means a determination by DHS pursuant to [6 U.S.C. 442\(d\)](#), as further delineated in 6 CFR 25.9, that a QATT for which a SAFETY Act designation has been issued is an approved product for homeland security, *i.e.*, it will perform as intended, conforms to the seller's specifications, and is safe for use as intended.

“SAFETY Act designation” means a determination by DHS pursuant to [6 U.S.C. 441\(b\)](#) and [6 U.S.C. 443\(a\)](#), as further delineated in 6 CFR 25.4, that a particular Anti-Terrorism Technology constitutes a QATT under the SAFETY Act.

(b) Prices for the items covered by the pre-qualification designation notice, block designation, or block certification in the contract were established presuming DHS will issue a SAFETY Act designation (or SAFETY Act certification) for those items.

(c) In order to qualify for an equitable adjustment in accordance with paragraph (d) of this clause the Contractor shall in good faith pursue obtaining—

(1) SAFETY Act designation (or SAFETY Act certification); and

(2) The amount of insurance DHS requires for issuing any SAFETY Act designation (or SAFETY Act certification).

(d)(1) If DHS denies the Contractor's SAFETY Act designation (or certification) application, the Contractor may submit a request for an equitable adjustment within 30 days of DHS's notification of denial.

(2) The Contracting Officer shall either—

(i) Make an equitable adjustment to the contract price based on evidence of the resulting increase or decrease in the Contractor's costs and/or an equitable adjustment to other terms and conditions based on lack of SAFETY Act designation (or certification); or

(ii) At the sole option of the Government, terminate this contract for the convenience of the Government in place of an equitable adjustment.

(3) A failure of the parties to agree on the equitable adjustment will be considered to be a dispute in accordance with the “Disputes” clause of this contract.

(4) Unless first terminated, the Contractor shall continue contract performance during establishment of any equitable adjustment.

(End of clause)

#### **52.251-1 Government Supply Sources.**

As prescribed in [51.107](#), insert the following clause:

##### GOVERNMENT SUPPLY SOURCES (APR 2012)

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. The provisions of the clause at FAR [52.245-1](#), Government Property, apply to all property acquired under such authorization

(End of clause)

#### **52.251-2 Interagency Fleet Management System Vehicles and Related Services.**

As prescribed in [51.205](#), insert the following clause:

##### INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)

The Contracting Officer may issue the Contractor an authorization to obtain interagency fleet management system (IFMS) vehicles and related services for use in the performance of this contract. The use, service, and maintenance of interagency fleet management system vehicles and the use of related services by the Contractor shall be in accordance with 41 CFR 101-39 and 41 CFR 101-38.301-1.

(End of clause)

#### **52.252-1 Solicitation Provisions Incorporated by Reference.**

As prescribed in [52.107\(a\)](#), insert the following provision:

##### SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)

This solicitation incorporates one or more 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. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 [Insert one or more Internet addresses]

(End of provision)

#### 52.252-2 Clauses Incorporated by Reference.

As prescribed in [52.107\(b\)](#), insert the following clause:

CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 [Insert one or more Internet addresses]

(End of clause)

#### 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)

#### 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)

#### 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)

#### 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)

**52.253-1 Computer Generated Forms.**

As prescribed in FAR [53.111](#), insert the following clause:

COMPUTER GENERATED FORMS (JAN 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, *provided* there is no change to the name, content, or sequence of the data elements on the form, and provided the

form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

(End of clause)

(g) [OF 309](#) (Rev. 9/97), *Amendment of Solicitation*. [OF 309](#) may be used to amend solicitations of negotiated contracts, as specified in [15.210](#)(b).

**53.216 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](#)(f) (or an approved agency form), may be used to place orders under indefinite delivery contracts and basic ordering agreements, as specified in [16.703](#)(d)(2)(i).

**53.217 [Reserved]**

**53.218 [Reserved]**

**53.219 Small business programs.**

The following standard form is prescribed for use in reporting small business (including Alaska Native Corporations and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including Alaska Native Corporations and Indian tribes) and women-owned small business subcontracting data, as specified in [Part 19](#); [SF 294](#), (Rev. 10/2015) Subcontracting Report for Individual Contracts. [SF 294](#) is authorized for local reproduction.

**53.220 [Reserved]**

**53.221 [Reserved]**

**53.222 Application of labor laws to Government acquisitions (SF’s 308, 1413, 1444, 1445, 1446, WH-347).**

The following forms are prescribed as stated below, for use in connection with the application of labor laws:

(a) [Reserved]

(b) [Reserved]

(c) [SF 308](#) (DOL) (Rev. 2/2013), *Request for Wage Determination and Response to Request*. (See [22.404-3](#)(a) and (b).)

(d) [Reserved]

(e) [SF 1413](#) (Rev. 4/2013), *Statement and Acknowledgment*. [SF 1413](#) is prescribed for use in obtaining contractor acknowledgment of inclusion of required clauses in subcontracts, as specified in [22.406-5](#).

(f) *Form SF 1444* (Rev. 4/2013), *Request for Authorization of Additional Classification and Rate*. (See [22.406-3](#)(a) and [22.1019](#).)

(g) [SF 1445](#) (Rev. 12/96), *Labor Standards Interview*. (See [22.406-7](#)(b).)

(h) [SF 1446](#) (Rev. 4/2013.), *Labor Standards Investigation Summary Sheet*. (See [22.406-8](#)(d).)

(i) *Form WH-347* (DOL), *Payroll (For Contractor’s Optional Use)*. (See [22.406-6](#)(a).)

**53.223 [Reserved]**

**53.224 [Reserved]**

**53.225 [Reserved]**

**53.226 [Reserved]**

**53.227 [Reserved]**

**53.228 Bonds and insurance.**

The following standard forms are prescribed for use for bond and insurance requirements, as specified in [Part 28](#):

(a) [SF 24](#) (Rev. 8/2016) *Bid Bond*. (See [28.106-1](#).) [SF 24](#) is authorized for local reproduction and can be found in the GSA Forms Library at <http://www.gsa.gov/forms>.

(b) [SF 25](#) (Rev. 8/2016) *Performance Bond*. (See [28.106-1](#)(b).) [SF 25](#) is authorized for local reproduction and can be found in the GSA Forms Library at <http://www.gsa.gov/forms>.

(c) [SF 25A](#) (Rev. 8/2016) *Payment Bond*. (See [28.106-1](#)(c).) [SF 25A](#) is authorized for local reproduction and can be found in the GSA Forms Library at <http://www.gsa.gov/forms>.

(d) [SF 25B](#) (Rev. 10/83), *Continuation Sheet* (For Standard Forms [24](#), [25](#), and [25A](#)). (See [28.106-1](#)(c).) This form can be found in the GSA Forms Library at <http://www.gsa.gov/forms>.

(e) [SF 28](#) (Rev. 6/03) *Affidavit of Individual Surety*. (See [28.106-1](#)(e) and [28.203](#)(b).) [SF 28](#) is authorized for local reproduction and can be found in the GSA Forms Library at <http://www.gsa.gov/forms>.

(f) [SF 34](#) (Rev. 8/2016), *Annual Bid Bond*. (See [28.106-1](#)(f).) [SF 34](#) is authorized for local reproduction and can be found in the GSA Forms Library at <http://www.gsa.gov/forms>.

(g) [SF 35](#) (Rev. 8/2016), *Annual Performance Bond*. (See [28.106-1](#).) [SF 35](#) is authorized for local reproduction and can be found in the GSA Forms Library at <http://www.gsa.gov/forms>.

(h) [SF 273](#) (Rev. 4/2013) *Reinsurance Agreement for a Bond statute Performance Bond*. (See [28.106-1](#)(h) and [28.202-1](#)(a)(4).) [SF 273](#) is authorized for local reproduction.

(i) [SF 274](#) (Rev. 4/2013) *Reinsurance Agreement for a Bond statute Payment Bond*. (See [28.106-1](#)(i) and [28.202-1](#)(a)(4).) [SF 274](#) is authorized for local reproduction.

(j) [SF 275](#) (Rev. 10/98) *Reinsurance Agreement in Favor of the United States*. (See [28.106-1\(j\)](#) and 28.202-1(a)(4).) [SF 275](#) is authorized for local reproduction.

(k) [SF 1414](#) (Rev. 10/93), *Consent of Surety*. [SF 1414](#) is authorized for local reproduction.

(l) [SF 1415](#) (Rev. 7/93), *Consent of Surety and Increase of Penalty*. (See [28.106-1\(l\)](#).) [SF 1415](#) is authorized for local reproduction.

(m) [SF 1416](#) (Rev. 10/98) *Payment Bond for Other than Construction Contracts*. (See [28.106-1\(m\)](#).) [SF 1416](#) is authorized for local reproduction.

(n) [SF 1418](#) (Rev. 2/99) *Performance Bond For Other Than Construction Contracts*. (See [28.106-1\(n\)](#).) [SF 1418](#) is authorized for local reproduction.

(o) [OF 90](#) (Rev. 1/90), *Release of Lien on Real Property*. (See [28.106-1\(o\)](#) and [28.203-5\(a\)](#).) [OF 90](#) is authorized for local reproduction.

(p) [OF 91](#) (1/90 Ed.), *Release of Personal Property from Escrow*. (See [28.106-1\(p\)](#) and [28.203-5\(a\)](#).) [OF 91](#) is authorized for local reproduction.

### 53.229 Taxes (SF's 1094, 1094-A).

[SF 1094](#) (Rev. 12/96), *U.S. Tax Exemption Form, and SF 1094A* (Rev. 12/96), *Tax Exemption Forms Accountability Record*. SF's [1094](#) and [1094A](#) are prescribed for use in establishing exemption from State or local taxes, as specified in [29.302\(b\)](#).

### 53.230 [Reserved]

### 53.231 [Reserved]

### 53.232 Contract financing (SF 1443).

[SF 1443](#) (7/09), *Contractor's Request for Progress Payment*. [SF 1443](#) is prescribed for use in obtaining contractors' requests for progress payments.

### 53.233 [Reserved]

### 53.234 [Reserved]

### 53.235 Research and development contracting (SF 298).

[SF 298](#) (2/89), *Report Documentation Page*. [SF 298](#) is prescribed for use in submitting scientific and technical reports to contracting officers and to technical information libraries, as specified in [35.010](#).

## 53.236 Construction and architect-engineer contracts.

### 53.236-1 Construction.

The following forms are prescribed, as stated below, for use in contracting for construction, alteration, or repair, or dismantling, demolition, or removal of improvements.

(a) [Reserved]

(b) [Reserved]

(c) [Reserved]

(d) [SF 1442](#) (4/85 Ed.), *Solicitation, Offer and Award (Construction, Alteration, or Repair)*. [SF 1442](#) is prescribed for use in soliciting offers and awarding contracts expected to exceed the simplified acquisition threshold for—

(1) Construction, alteration, or repair; or

(2) Dismantling, demolition, or removal of improvements (and may be used for contracts within the simplified acquisition threshold), as specified in [36.701\(a\)](#).

(e) [OF 347](#) (Rev. 2/2012), *Order for Supplies or Services*. [OF 347](#), prescribed in [53.213\(f\)](#) (or an approved agency form), may be used for contracts under the simplified acquisition threshold for—

(1) Construction, alteration, or repair; or

(2) Dismantling, demolition, or removal of improvements, as specified in [36.701\(b\)](#).

(f) [OF 1419](#) (11/88 Ed.), *Abstract of Offers—Construction*, and [OF 1419A](#) (11/88 Ed.), *Abstract of Offers—Construction, Continuation Sheet*. OF's [1419](#) and [1419A](#) are prescribed for use in recording bids (and may be used for recording proposal information), as specified in [36.701\(c\)](#).

### 53.236-2 Architect-engineer services (SF's 252 and 330).

The following forms are prescribed for use in contracting for architect-engineer and related services:

(a) [SF 252](#) (Rev. 10/83), *Architect-Engineer Contract*. [SF 252](#) is prescribed for use in awarding fixed-price contracts for architect-engineer services, as specified in [36.702\(a\)](#). Pending issuance of a new edition of the form, Block 8, Negotiation Authority, is deleted.

(b) [SF 330](#) (Rev. 3/2013), *Architect-Engineer Qualifications*. [SF 330](#) is prescribed for use in obtaining information from architect-engineer firms regarding their professional qualifications, as specified in [36.702\(b\)\(1\)](#) and (b)(2).

### 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\(h\)](#).

**53.243 Contract modifications (SF 30).**

[SF 30](#) (Rev. 10/83), *Amendment of Solicitation/ Modification of Contract*. [SF 30](#) is prescribed for use in amending invitation for bids, as specified in [14.208](#); modifying purchase and delivery orders, as specified in [13.302-3](#); and modifying contracts, as specified in [42.1203\(h\)](#), [43.301](#), [49.602-5](#), and elsewhere in this regulation. The form may also be used to amend solicitations for negotiated contracts, as specified in [15.210\(b\)](#). 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.**

The following forms are prescribed, as specified in this section, for use in reporting, reutilization, and disposal of Government property and in accounting for this property:

(a) [SF 120](#) (GSA), *Report of Excess Personal Property*, and [SF 120A](#) (GSA), *Continuation Sheet (Report of Excess Personal Property)*. (See [45.602-3](#) and 41 CFR 102-36.215.)

(b) [SF 126](#) (GSA), *Report of Personal Property for Sale*, and [SF 126A](#) (GSA), *Report of Personal Property for Sale*

(*Continuation Sheet*). (See FPMR 101-45.303 (41 CFR 101-45.303.))

(c) [SF 1423](#) (Rev. 5/04), *Inventory Verification Survey*. (See [45.602-1\(b\)\(1\)](#).)

(d) [SF 1424](#) (Rev. 5/2004), *Inventory Disposal Report* (See [45.605](#)). [SF 1424](#) is authorized for local reproduction.

(e) [SF 1428](#) (Rev. 6/2007), *Inventory Disposal Schedule*, and [SF 1429](#) (Rev. 5/2004), *Inventory Disposal Schedule—Continuation Sheet*. (See [45.602-1](#), [49.303-2](#), [52.245-1](#), and [53.249\(b\)](#).) SF's [1428](#) and [1429](#) are authorized for local reproduction.

**53.246 [Reserved]****53.247 Transportation (U.S. Commercial Bill of Lading).**

The commercial bill of lading is the preferred document for the transportation of property, as specified in [47.101](#).

**53.248 [Reserved]****53.249 Termination of contracts.**

(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](#) (Rev. 9/97), *Settlement Proposal (Inventory Basis)*. (See [49.602-1\(a\)](#).) [Standard Form 1435](#) is authorized for local reproduction.

(3) [SF 1436](#) (Rev. 5/2004), *Settlement Proposal (Total Cost Basis)*. (See [49.602-1\(b\)](#).) [Standard Form 1436](#) is authorized for local reproduction.

(4) [SF 1437](#) (Rev. 9/97), *Settlement Proposal for Cost-Reimbursement Type Contracts*. (See [49.602-1\(c\)](#) and [49.302](#).) [Standard Form 1437](#) is authorized for local reproduction.

(5) [SF 1438](#) (Rev. 5/2004), *Settlement Proposal (Short Form)*. (See [49.602-1\(d\)](#).) [Standard Form 1438](#) is authorized for local reproduction.

(6) [SF 1439](#) (Rev. 7/89), *Schedule of Accounting Information*. (See [49.602-3](#).) [Standard Form 1439](#) is authorized for local reproduction.

(7) [SF 1440](#) (Rev. 7/89), *Application for Partial Payment*. (See [49.602-4](#).) [Standard Form 1440](#) is authorized for local reproduction.

(b) [SF 1428](#) (Rev. 6/2007), *Inventory Disposal Schedule*, and [Standard Form 1429](#) (Rev. 5/2004), *Inventory Disposal Schedule—Continuation Sheet*, shall be used to support termination settlement proposals listed in paragraph (a) of this section, 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](#)(f), may be used by contractors when requisitioning from the VA, as specified in [51.102](#)(e)(3)(ii).



# Standard Form 24

[Go to <http://www.gsa.gov/forms> to access this form.]



# Standard Form 25

[Go to <http://www.gsa.gov/forms> to access this form.]



# Standard Form 25A

[Go to <http://www.gsa.gov/forms> to access this form.]



# Standard Form 34

[Go to <http://www.gsa.gov/forms> to access this form.]





# Standard Form 35

[Go to <http://www.gsa.gov/forms> to access this form.]

