

FEDERAL ACQUISITION CIRCULAR

October 14, 2009

Number 2005-37

Federal Acquisition Circular (FAC) 2005-37 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 2005-37 is effective October 14, 2009, except for Item VII which is effective November 13, 2009.

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FAC 2005-37 LIST OF SUBJECTS

<u>Item</u>	<u>Title</u>	<u>Page</u>
I	Registry of Disaster Response Contractors (Interim)	i
II	Limiting Length of Noncompetitive Contracts in "Unusual and Compelling Urgency" Circumstances	i and ii
III	GAO Access to Contractor Employees	ii
IV	Use of Commercial Services Item Authority (Interim)	ii and iii
V	Limitations on Pass-Through Charges (Interim)	iii
VI	Award Fee Language Revision (Interim)	iii and iv
VII	National Response Framework	iv
VIII	Technical Amendments	iv
	Looseleaf changes only	v

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FAC 2005-37 SUMMARY OF ITEMS

Federal Acquisition Circular (FAC) 2005-37 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Registry of Disaster Response Contractors (FAR Case 2008-035) (Interim)

This interim rule amends the Federal Acquisition Regulation at parts 2, 4, 7, 10, 13, 18, 26, and 52 to implement the Registry of Disaster Response Contractors provision, section 697 of the Department of Homeland Security (DHS) Appropriations Act, 2007 (6 U.S.C. 796).

The Act requires that the Federal Emergency Management Agency (FEMA) establish and maintain this registry. It also requires that the registry include business information consistent with the data that is currently required in the Central Contractor Registration (CCR) with two additional categories added to reflect the area served by the business, and the bonding level of the business concern. The CCR has been updated to include these changes. In addition, the FEMA website has been updated with a link to the CCR search feature which provides access to the disaster response registry. Contracting officers will be required to consult this registry during market research and acquisition planning.

Replacement pages: 2.1-5 and 2.1-6; Part 4 TOC pp. 4-1 and 4-2; 4.11-1 and 4.11-2; 7.1-1 and 7.1-2; 10.0-1 and 10.0-2; 13.2-1 and 13.2-2; 18.1-1 and 18.1-2; Part 26 TOC pp. 26-1 and 26-2; 26.2-1 and 26.2-2; 52.2-9 and 52.2-10; 52.2-152.9 and 52.2-152.10; and Matrix pp. 52.3-3 and 52.3-4; and 52.3-17 and 52.3-18.

Item II—Limiting Length of Noncompetitive Contracts in “Unusual and Compelling Urgency” Circumstances (FAR Case 2007-008)

This final rule amends the Federal Acquisition Regulation to require that contracts awarded under the authority of FAR 6.302-2, Unusual and compelling urgency, may not exceed the time necessary to meet the unusual and compelling requirements, may not exceed the time for the agency to enter into a another contract for the required goods and services through the use of competitive procedures, and may not exceed one year unless the head of the agency entering into the contract determines that exceptional circumstances apply. The determination may be made after contract award when making the determination prior to award would unnecessarily delay the award. The rule applies to any contract

in an amount greater than the simplified acquisition threshold. The rule implements the requirements of section 862 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417). The rule is intended to strengthen Federal acquisition competition policies.

Replacement pages: 6.3-1 thru 6.3-4.

Item III—GAO Access to Contractor Employees (FAR Case 2008-026)

This final rule converts the interim rule published in the *Federal Register* at 74 FR 14649, March 31, 2009, to a final rule without change. The interim rule amended FAR 52.215-2, Audits and Records—Negotiation, and FAR 52.214-26, Audit and Records—Sealed Bidding, to allow the Government Accountability Office to interview current contractor employees when conducting audits. The rule does not apply to the acquisition of commercial items; therefore, FAR 12.503 was amended to add the exemption of this rule. This change implemented Section 871 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (NDAA)(Pub. L. 110-417).

Replacement pages: None.

Item IV—Use of Commercial Services Item Authority (FAR Case 2008-034) (Interim rule)

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing an interim final rule amending the Federal Acquisition Regulation to implement Section 868 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009. Section 868 provides that the FAR shall be amended with respect to the procurement of commercial services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace. Such services may be considered commercial items only if the contracting officer has determined in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for these services.

The rule details the information the contracting officer may consider in order to make this determination. The rule further details, when this determination cannot be made, the information

which may be requested to determine price reasonableness.

Replacement pages: 15.4-1 thru 15.4-4.

**Item V—Limitations on Pass-Through Charges (FAR Case 2008-031)
(Interim)**

This interim rule implements Section 866 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (Pub. L. 110-417) and Section 852 of the John Warner NDAA for Fiscal Year 2007 (Pub. L. 109-364). This legislation requires the Councils to amend the Federal Acquisition Regulation to minimize excessive pass-through charges by contractors from subcontractors, or of tiers of subcontractors, that add no or negligible value, and to ensure that neither a contractor nor a subcontractor receives indirect costs or profit/fee (*i.e.*, pass-through charges) on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no, or negligible, value.

To enable agencies to ensure that pass-through charges are not excessive, this interim rule includes a solicitation provision and a contract clause requiring offerors and contractors to identify the percentage of work that will be subcontracted, and when subcontract costs will exceed 70 percent of the total cost of work to be performed, to provide information on indirect costs and profit/fee and value added with regard to the subcontract work.

Replacement pages: 15.4-17 and 15.4-18; 31.2-3 and 31.2-4; Part 52 TOC pp. 52-1 and 52-2; 52.2-63 and 52.2-64; and Matrix pp. 52.3-9 and 52.3-10.

Item VI—Award Fee Language Revision (FAR Case 2008-008) (Interim)

This final rule amends the Federal Acquisition Regulation (FAR) part 18 to remove all references to the National Response Plan (NRP) and Incidents of National Significance. In January 2008, the Federal Emergency Management Agency (FEMA), a component within the Department of Homeland Security, reissued the National Response Plan (NRP) as the National Response Framework (NRF). With the reissuance, the term "Incidents of National Significance" was eliminated. The changes became effective on March 22, 2008. Both the NRP and the term "Incidents of National Significance" are now obsolete.

This rule is informational and represents minor updates for consistency with FEMA references. FEMA provides a link at their website for Frequently Asked Questions that explains the rationale for and the changes to the NRF.

This rule does not have a significant impact on Government or any automated systems.

Replacement pages: Part 16 TOC pp. 16-1 and 16-2; 16.1-1 and 16.1-2; 16.3-1 and 16.3-2; and 16.4-1 thru 16.4-6 (16.4-5 and 16.4-6 added).

Item VII—National Response Framework (FAR Case 2009-003)

This final rule amends the Federal Acquisition Regulation (FAR) part 18 to remove all references to the National Response Plan (NRP) and Incidents of National Significance. In January 2008, the Federal Emergency Management Agency (FEMA), a component within the Department of Homeland Security, reissued the National Response Plan (NRP) as the National Response Framework (NRF).

With the reissuance, the term "Incidents of National Significance" was eliminated. The changes became effective on March 22, 2009. Both the NRP and the term "Incidents of National Significance" are now obsolete.

This rule is informational and represents minor updates for consistency with FEMA references.

FEMA provides a link at their website for Frequently Asked Questions that explains the rationale for and the changes to the NRF.

This rule does not have a significant impact on Government or any automated systems.

Replacement pages: Part 18 TOC pp. 18-1 and 18-2; 18.1-1 and 18.1-2; and 18.2-1 and 18.2-2.

Item VIII—Technical Amendments

This document makes amendments to the Federal Acquisition Regulation in order to make editorial changes at FAR 5.102, 52.213-4, and 52.244-6.

Replacement pages: 5.1-1 and 5.1-2; and 52.2-42.1 and 52.2-42.2.

Looseleaf Only Corrections

1. Section 3.103-1 is corrected in the introductory paragraph by removing "52.203-1" and adding "52.203-2" in its place.

Replacement pages: 3.1-1 and 3.1-2.

2. Section 52.227-14 is corrected in Alternate II by removing from the heading after paragraph (g)(3) "Limited Righths Notice" and adding "Limited Rights Notice" in its place.

Replacement pages: 52.2-165 and 52.2-166.

3. The Matrix is corrected in the table, entries "52.216-29" and "52.216-30" by amending the entries under the heading "UCF" by removing "I" and adding "L" in its place (twice).

Replacement pages: Matrix pp. 52.3-11 and 52.3-12.

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FAC 2005-37 FILING INSTRUCTIONS

NOTE: The FAR is segmented by subparts. The FAR page numbers reflect FAR subparts. For example, "4.11-1" is page one of subpart 4.11.

Remove Pages

2.1-5 and 2.1-6

3.1-1 and 3.1-2

Part 4 TOC

pp. 4-1 and 4-2
4.11-1 and 4.11-2

5.1-1 and 5.1-2

6.3-1 thru 6.3-4

7.1-1 and 7.1-2

10.0-1 and 10.0-2

13.2-1 and 13.2-2

15.4-1 thru 15.4-4
15.4-17 and 15.4-18

Part 16 TOC

pp. 16-1 and 16-2
16.1-1 and 16.1-2
16.3-1 and 16.3-2
16.4-1 thru 16.4-4

18.1-1 and 18.1-2

Part 26 TOC

26-1 and 26-2
26.2-1 and 26.2-2

31.2-3 and 31.2-4

Part 52 TOC

pp. 52-1 and 52-2
52.2-9 and 52.2-10
52.2-42.1 and 52.2-42.2
52.2-63 and 52.2-64

Insert Pages

2.1-5 and 2.1-6

3.1-1 and 3.1-2

Part 4 TOC

pp. 4-1 and 4-2
4.11-1 and 4.11-2

5.1-1 and 5.1-2

6.3-1 thru 6.3-4

7.1-1 and 7.1-2

10.0-1 and 10.0-2

13.2-1 and 13.2-2

15.4-1 thru 15.4-4
15.4-17 and 15.4-18

Part 16 TOC

pp. 16-1 and 16-2
16.1-1 and 16.1-2
16.3-1 and 16.3-2
16.4-1 thru 16.4-6

18.1-1 and 18.1-2

Part 26 TOC

26-1 and 26-2
26.2-1 and 26.2-2

31.2-3 and 31.2-4

Part 52 TOC

pp. 52-1 and 52-2
52.2-9 and 52.2-10
52.2-42.1 and 52.2-42.2
52.2-63 and 52.2-64

52.2-152.9 and 52.2-152.10
52.2-165 and 52.2-166

Matrix pp.
52.3-3 and 52.3-4
52.3-9 thru 52.3-12
52.3-17 and 52.3-18

52.2-152.9 and 52.2-152.10
52.2-165 and 52.2-166

Matrix pp.
52.3-3 and 52.3-4
52.3-9 thru 52.3-12
52.3-17 and 52.3-18

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

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

“Contract administration office” means an office that performs—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Data Universal Numbering System +4 (DUNS+4) number” means the DUNS number assigned by D&B plus a

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

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

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

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

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

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

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

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

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

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

website at <http://www.fema.gov/business/index.shtm>. (See [26.205](#)).

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

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

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

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

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

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

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

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

3.000 Scope of part.

This part prescribes policies and procedures for avoiding improper business practices and personal conflicts of interest and for dealing with their apparent or actual occurrence.

Subpart 3.1—Safeguards**3.101 Standards of conduct.****3.101-1 General.**

Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of Government personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions.

3.101-2 Solicitation and acceptance of gratuities by Government personnel.

As a rule, no Government employee may solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who (a) has or is seeking to obtain Government business with the employee's agency, (b) conducts activities that are regulated by the employee's agency, or (c) has interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Certain limited exceptions are authorized in agency regulations.

3.101-3 Agency regulations.

(a) Agencies are required by Executive Order 11222 of May 8, 1965, and 5 CFR 735 to prescribe "Standards of Conduct." These agency standards contain—

(1) Agency-authorized exceptions to [3.101-2](#); and

(2) Disciplinary measures for persons violating the standards of conduct.

(b) Requirements for employee financial disclosure and restrictions on private employment for former Government employees are in Office of Personnel Management and agency regulations implementing Public Law 95-521, which amended [18 U.S.C. 207](#).

3.102 [Reserved]**3.103 Independent pricing.****3.103-1 Solicitation provision.**

The contracting officer shall insert the provision at [52.203-2](#), Certificate of Independent Price Determination, in solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(a) The acquisition is to be made under the simplified acquisition procedures in [Part 13](#);

(b) [Reserved]

(c) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(d) The solicitation is for utility services for which rates are set by law or regulation.

3.103-2 Evaluating the certification.

(a) *Evaluation guidelines.* (1) None of the following, in and of itself, constitutes "disclosure" as it is used in paragraph (a)(2) of the Certificate of Independent Price Determination (hereafter, the certificate):

(i) The fact that a firm has published price lists, rates, or tariffs covering items being acquired by the Government.

(ii) The fact that a firm has informed prospective customers of proposed or pending publication of new or revised price lists for items being acquired by the Government.

(iii) The fact that a firm has sold the same items to commercial customers at the same prices being offered to the Government.

(2) For the purpose of paragraph (b)(2) of the certificate, an individual may use a blanket authorization to act as an agent for the person(s) responsible for determining the offered prices if—

(i) The proposed contract to which the certificate applies is clearly within the scope of the authorization; and

(ii) The person giving the authorization is the person within the offeror's organization who is responsible for determining the prices being offered at the time the certification is made in the particular offer.

(3) If an offer is submitted jointly by two or more concerns, the certification provided by the representative of each concern applies only to the activities of that concern.

(b) *Rejection of offers suspected of being collusive.* (1) If the offeror deleted or modified paragraph (a)(1) or (a)(3) or paragraph (b) of the certificate, the contracting officer shall reject the offeror's bid or proposal.

(2) If the offeror deleted or modified paragraph (a)(2) of the certificate, the offeror must have furnished with its offer a signed statement of the circumstances of the disclosure of prices contained in the bid or proposal. The chief of the contracting office shall review the altered certificate and the statement and shall determine, in writing, whether the disclosure was made for the purpose or had the effect of restricting com-

petition. If the determination is positive, the bid or proposal shall be rejected; if it is negative, the bid or proposal shall be considered for award.

(3) Whenever an offer is rejected under paragraph (b)(1) or (b)(2) of this section, or the certificate is suspected of being false, the contracting officer shall report the situation to the Attorney General in accordance with [3.303](#).

(4) The determination made under paragraph (b)(2) of this section shall not prevent or inhibit the prosecution of any criminal or civil actions involving the occurrences or transactions to which the certificate relates.

3.103-3 The need for further certifications.

A contractor that properly executed the certificate before award does not have to submit a separate certificate with each proposal to perform a work order or similar ordering instrument issued pursuant to the terms of the contract, where the Government's requirements cannot be met from another source.

3.104 Procurement integrity.

3.104-1 Definitions.

As used in this section—

“Agency ethics official” means the designated agency ethics official described in 5 CFR 2638.201 or other designated person, including—

(1) Deputy ethics officials described in 5 CFR 2638.204, to whom authority under [3.104-6](#) has been delegated by the designated agency ethics official; and

(2) Alternate designated agency ethics officials described in 5 CFR 2638.202(b).

“Compensation” means wages, salaries, honoraria, commissions, professional fees, and any other form of compensation, provided directly or indirectly for services rendered. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

“Contractor bid or proposal information” means any of the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Cost or pricing data (as defined by [10 U.S.C. 2306a\(h\)](#)) with respect to procurements subject to that section, and section 304A(h) of the Federal Property and Administrative Services Act of 1949 ([41 U.S.C. 254b\(h\)](#)), with respect to procurements subject to that section.

(2) Indirect costs and direct labor rates.

(3) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(4) Information marked by the contractor as “contractor bid or proposal information” in accordance with applicable law or regulation.

(5) Information marked in accordance with [52.215-1\(e\)](#).

“Decision to award a subcontract or modification of subcontract” means a decision to designate award to a particular source.

“Federal agency procurement” means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds. For broad agency announcements and small business innovative research programs, each proposal received by an agency constitutes a separate procurement for purposes of the Act.

“In excess of \$10,000,000” means—

(1) The value, or estimated value, at the time of award, of the contract, including all options;

(2) The total estimated value at the time of award of all orders under an indefinite-delivery, indefinite-quantity, or requirements contract;

(3) Any multiple award schedule contract, unless the contracting officer documents a lower estimate;

(4) The value of a delivery order, task order, or an order under a Basic Ordering Agreement;

(5) The amount paid or to be paid in settlement of a claim; or

(6) The estimated monetary value of negotiated overhead or other rates when applied to the Government portion of the applicable allocation base.

“Official” means—

(1) An officer, as defined in [5 U.S.C. 2104](#);

(2) An employee, as defined in [5 U.S.C. 2105](#);

(3) A member of the uniformed services, as defined in [5 U.S.C. 2101\(3\)](#); or

(4) A special Government employee, as defined in [18 U.S.C. 202](#).

“Participating personally and substantially in a Federal agency procurement” means—

(1) Active and significant involvement of an official in any of the following activities directly related to that procurement:

(i) Drafting, reviewing, or approving the specification or statement of work for the procurement.

(ii) Preparing or developing the solicitation.

(iii) Evaluating bids or proposals, or selecting a source.

(iv) Negotiating price or terms and conditions of the contract.

(v) Reviewing and approving the award of the contract.

PART 4—ADMINISTRATIVE MATTERS

<p><i>Sec.</i> 4.000</p> <p style="padding-left: 40px;">Subpart 4.1—Contract Execution</p> <p>4.101 Contracting officer’s signature. 4.102 Contractor’s signature. 4.103 Contract clause.</p> <p style="padding-left: 40px;">Subpart 4.2—Contract Distribution</p> <p>4.201 Procedures. 4.202 Agency distribution requirements. 4.203 Taxpayer identification information.</p> <p style="padding-left: 40px;">Subpart 4.3—Paper Documents</p> <p>4.300 Scope of subpart. 4.301 Definition. 4.302 Policy. 4.303 Contract clause.</p> <p style="padding-left: 40px;">Subpart 4.4—Safeguarding Classified Information Within Industry</p> <p>4.401 [Reserved] 4.402 General. 4.403 Responsibilities of contracting officers. 4.404 Contract clause.</p> <p style="padding-left: 40px;">Subpart 4.5—Electronic Commerce in Contracting</p> <p>4.500 Scope of subpart. 4.501 [Reserved] 4.502 Policy.</p> <p style="padding-left: 40px;">Subpart 4.6—Contract Reporting</p> <p>4.600 Scope of subpart. 4.601 Definitions. 4.602 General. 4.603 Policy. 4.604 Responsibilities. 4.605 Procedures. 4.606 Reporting Data. 4.607 Solicitation Provisions.</p> <p style="padding-left: 40px;">Subpart 4.7—Contractor Records Retention</p> <p>4.700 Scope of subpart. 4.701 Purpose. 4.702 Applicability. 4.703 Policy. 4.704 Calculation of retention periods. 4.705 Specific retention periods. 4.705-1 Financial and cost accounting records. 4.705-2 Pay administration records. 4.705-3 Acquisition and supply records.</p>	<p style="padding-left: 40px;">Subpart 4.8—Government Contract Files</p> <p>4.800 Scope of subpart. 4.801 General. 4.802 Contract files. 4.803 Contents of contract files. 4.804 Closeout of contract files. 4.804-1 Closeout by the office administering the contract. 4.804-2 Closeout of the contracting office files if another office administers the contract. 4.804-3 Closeout of paying office contract files. 4.804-4 Physically completed contracts. 4.804-5 Procedures for closing out contract files. 4.805 Storage, handling, and disposal of contract files.</p> <p style="padding-left: 40px;">Subpart 4.9—Taxpayer Identification Number Information</p> <p>4.900 Scope of subpart. 4.901 Definition. 4.902 General. 4.903 Reporting contract information to the IRS. 4.904 Reporting payment information to the IRS. 4.905 Solicitation provision.</p> <p style="padding-left: 40px;">Subpart 4.10—Contract Line Items</p> <p>4.1001 Policy.</p> <p style="padding-left: 40px;">Subpart 4.11—Central Contractor Registration</p> <p>4.1100 Scope. 4.1101 Definition. 4.1102 Policy. 4.1103 Procedures. 4.1104 Disaster Response Registry. 4.1105 Solicitation provision and contract clauses.</p> <p style="padding-left: 40px;">Subpart 4.12—Representations and Certifications</p> <p>4.1200 Scope. 4.1201 Policy. 4.1202 Solicitation provision and contract clause.</p> <p style="padding-left: 40px;">Subpart 4.13—Personal Identity Verification</p> <p>4.1300 Scope of subpart. 4.1301 Policy. 4.1302 Acquisition of approved products and services for personal identity verification. 4.1303 Contract clause.</p> <p style="padding-left: 40px;">Subpart 4.14—Reporting Subcontract Awards</p> <p>4.1400 Scope of subpart. 4.1401 Contract clause.</p>
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	Subpart 4.15—American Recovery and Reinvestment Act—Reporting Requirements	4.1501	Procedures.
		4.1502	Contract clause.
4.1500	Scope of subpart.		

Subpart 4.11—Central Contractor Registration

4.1100 Scope.

This subpart prescribes policies and procedures for requiring contractor registration in the Central Contractor Registration (CCR) database, a part of the Business Partner Network (BPN) to—

- (a) Increase visibility of vendor sources (including their geographical locations) for specific supplies and services; and
- (b) Establish a common source of vendor data for the Government.

4.1101 Definition.

As used in this subpart—

“Agreement” means basic agreement, basic ordering agreement, or blanket purchase agreement.

4.1102 Policy.

(a) Prospective contractors shall be registered in the CCR database prior to award of a contract or agreement, except for—

(1) Purchases that use a Governmentwide commercial purchase card as both the purchasing and payment mechanism, as opposed to using the purchase card only as a payment method;

(2) Classified contracts (see [2.101](#)) when registration in the CCR database, or use of CCR data, could compromise the safeguarding of classified information or national security;

(3) Contracts awarded by—

(i) Deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in [10 U.S.C. 101\(a\)\(13\)](#) or humanitarian or peacekeeping operations as defined in [10 U.S.C. 2302\(7\)](#); or

(ii) Contracting officers in the conduct of emergency operations, such as responses to natural or environmental disasters or national or civil emergencies, *e.g.*, Robert T. Stafford Disaster Relief and Emergency Assistance Act ([42 U.S.C. 5121](#));

(4) Contracts to support unusual or compelling needs (see [6.302-2](#));

(5) Awards made to foreign vendors for work performed outside the United States, if it is impractical to obtain CCR registration; and

(6) Micro-purchases that do not use the electronic funds transfer (EFT) method for payment and are not required to be reported (see [Subpart 4.6](#)).

(b) If practical, the contracting officer shall modify the contract or agreement awarded under paragraph (a)(3) or (a)(4) of this section to require CCR registration.

(c) (1) (i) If a contractor has legally changed its business name, “doing business as” name, or division name (whichever

is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in [Subpart 42.12](#), the contractor shall provide the responsible contracting officer a minimum of one business day’s written notification of its intention to change the name in the CCR database; comply with the requirements of [Subpart 42.12](#); and agree in writing to the timeline and procedures specified by the responsible contracting officer. The contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the contractor fails to comply with the requirements of paragraph (g)(1)(i) of the clause at [52.204-7](#), Central Contractor Registration, or fails to perform the agreement at [52.204-7\(g\)\(1\)\(i\)\(C\)](#), and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the contractor to be other than the contractor indicated in the contract will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the EFT clause of the contract.

(2) The contractor shall not change the name or address for electronic funds transfer payments (EFT) or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see [Subpart 32.8](#), Assignment of Claims).

(3) Assignees shall be separately registered in the CCR database. Information provided to the contractor’s CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that contractor will be considered to be incorrect information within the meaning of the “Suspension of payment” paragraph of the EFT clause of the contract.

4.1103 Procedures.

(a) Unless the acquisition is exempt under [4.1102](#), the contracting officer—

(1) Shall verify that the prospective contractor is registered in the CCR database (see paragraph (b) of this section) before awarding a contract or agreement. Contracting officers are encouraged to check the CCR early in the acquisition process, after the competitive range has been established, and then communicate to the unregistered offerors that they must register;

(2) Should use the DUNS number or, if applicable, the DUNS+4 number, to verify registration—

(i) Via the Internet at <http://www.ccr.gov>;

(ii) By calling toll-free: 1-888-227-2423, commercial: (269) 961-5757, or Defense Switched Network (DSN) (used at certain Department of Defense locations): 932-5757; or

(iii) As otherwise provided by agency procedures; and

(3) Need not verify registration before placing an order or call if the contract or agreement includes the clause at [52.204-7](#), or [52.212-4](#)(t), or a similar agency clause.

(b) If the contracting officer, when awarding a contract or agreement, determines that a prospective contractor is not registered in the CCR database and an exception to the registration requirements for the award does not apply (see [4.1102](#)), the contracting officer shall—

(1) If the needs of the requiring activity allow for a delay, make award after the apparently successful offeror has registered in the CCR database. The contracting officer shall advise the offeror of the number of days it will be allowed to become registered. If the offeror does not become registered by the required date, the contracting officer shall award to the next otherwise successful registered offeror following the same procedures (*i.e.*, if the next apparently successful offeror is not registered, the contracting officer shall advise the offeror of the number of days it will be allowed to become registered, etc.); or

(2) If the needs of the requiring activity do not allow for a delay, proceed to award to the next otherwise successful reg-

istered offeror, provided that written approval is obtained at one level above the contracting officer.

(c) Agencies shall protect against improper disclosure of contractor CCR information.

(d) The contracting officer shall, on contractual documents transmitted to the payment office, provide the DUNS number, or, if applicable, the DUNS+4, in accordance with agency procedures.

4.1104 Disaster Response Registry.

Contracting officers shall consult the Disaster Response Registry at www.ccr.gov when contracting for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (See [26.205](#)).

4.1105 Solicitation provision and contract clauses.

Except as provided in [4.1102](#)(a), use the clause at [52.204-7](#), Central Contractor Registration, in solicitations and contracts.

5.000 Scope of part.

This part prescribes policies and procedures for publicizing contract opportunities and award information.

5.001 Definition.

“Contract action,” as used in this part, means an action resulting in a contract, as defined in [Subpart 2.1](#), including actions for additional supplies or services outside the existing contract scope, but not including actions that are within the scope and under the terms of the existing contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

5.002 Policy.

Contracting officers must publicize contract actions in order to—

- (a) Increase competition;
- (b) Broaden industry participation in meeting Government requirements; and
- (c) Assist small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns in obtaining contracts and subcontracts.

5.003 Governmentwide point of entry.

For any requirement in the FAR to publish a notice, the contracting officer must transmit the notices to the GPE.

Subpart 5.1—Dissemination of Information**5.101 Methods of disseminating information.**

(a) As required by the Small Business Act ([15 U.S.C. 637\(e\)](#)) and the Office of Federal Procurement Policy Act ([41 U.S.C. 416](#)), contracting officers must disseminate information on proposed contract actions as follows:

- (1) For proposed contract actions expected to exceed \$25,000, by synopsisizing in the GPE (see [5.201](#)).
- (2) For proposed contract actions expected to exceed \$10,000, but not expected to exceed \$25,000, by displaying in a public place, or by any appropriate electronic means, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements of [5.207\(c\)](#). The notice must include a statement that all responsible sources may submit a response which, if timely received, must be considered by the agency. The information must be posted not later than the date the solicitation is issued, and must remain posted for at least 10 days or until after quotations have been opened, whichever is later.

(i) If solicitations are posted instead of a notice, the contracting officer may employ various methods of satisfying the requirements of [5.207\(c\)](#). For example, the contracting

officer may meet the requirements of [5.207\(c\)](#) by stamping the solicitation, by a cover sheet to the solicitation, or by placing a general statement in the display room.

(ii) The contracting officer need not comply with the display requirements of this section when the exemptions at [5.207\(a\)\(1\)](#), (a)(4) through (a)(9), or (a)(11) apply, when oral solicitations are used, or when providing access to a notice of proposed contract action and solicitation through the GPE and the notice permits the public to respond to the solicitation electronically.

(iii) Contracting officers may use electronic posting of requirements in a place accessible by the general public at the Government installation to satisfy the public display requirement. Contracting offices using electronic systems for public posting that are not accessible outside the installation must periodically publicize the methods for accessing the information.

(b) In addition, one or more of the following methods may be used:

- (1) Preparing periodic handouts listing proposed contracts, and displaying them as in [5.101\(a\)\(2\)](#).
- (2) Assisting local trade associations in disseminating information to their members.
- (3) Making brief announcements of proposed contracts to newspapers, trade journals, magazines, or other mass communication media for publication without cost to the Government.

(4) Placing paid advertisements in newspapers or other communications media, subject to the following limitations:

(i) Contracting officers shall place paid advertisements of proposed contracts only when it is anticipated that effective competition cannot be obtained otherwise (see [5.205\(d\)](#)).

(ii) Contracting officers shall not place advertisements of proposed contracts in a newspaper published and printed in the District of Columbia unless the supplies or services will be furnished, or the labor performed, in the District of Columbia or adjoining counties in Maryland or Virginia ([44 U.S.C. 3701](#)).

(iii) Advertisements published in newspapers must be under proper written authority in accordance with [44 U.S.C. 3702](#) (see [5.502\(a\)](#)).

5.102 Availability of solicitations.

(a)(1) Except as provided in paragraph (a)(5) of this section, the contracting officer must make available through the GPE solicitations synopsisized through the GPE, including specifications, technical data, and other pertinent information determined necessary by the contracting officer. Transmissions to the GPE must be in accordance with the interface description available via the Internet at <http://www.fedbizopps.gov>.

(2) The contracting officer is encouraged, when practicable and cost-effective, to make accessible through the GPE additional information related to a solicitation.

(3) The contracting officer must ensure that solicitations transmitted using electronic commerce are forwarded to the GPE to satisfy the requirements of paragraph (a)(1) of this section.

(4) When an agency determines that a solicitation contains information that requires additional controls to monitor access and distribution (*e.g.*, technical data, specifications, maps, building designs, schedules, etc.), the information shall be made available through the enhanced controls of the GPE, unless an exception in paragraph (a)(5) of this section applies. The GPE meets the synopsis and advertising requirements of this part.

(5) The contracting officer need not make a solicitation available through the GPE as required in paragraph (a)(4) of this section, when—

(i) Disclosure would compromise the national security (*e.g.*, would result in disclosure of classified information, or information subject to export controls) or create other security risks. The fact that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception;

(ii) The nature of the file (*e.g.*, size, format) does not make it cost-effective or practicable for contracting officers to provide access to the solicitation through the GPE; or

(iii) The agency's senior procurement executive makes a written determination that access through the GPE is not in the Government's interest.

(6) When an acquisition contains brand name specifications, the contracting officer shall include with the solicitation the justification or documentation required by [6.302-1\(c\)](#), [13.106-1\(b\)](#), or [13.501](#), redacted as necessary (see [6.305](#)).

(b) When the contracting officer does not make a solicitation available through the GPE pursuant to paragraph (a)(5) of this section, the contracting officer—

(1) Should employ other electronic means (*e.g.*, CD-ROM or electronic mail) whenever practicable and cost-effective. When solicitations are provided electronically on physical media (*e.g.*, disks) or in paper form, the contracting officer must—

(i) Maintain a reasonable number of copies of solicitations, including specifications and other pertinent information determined necessary by the contracting officer (upon request, potential sources not initially solicited should be mailed or provided copies of solicitations, if available);

(ii) Provide copies on a “first-come-first-served” basis, for pickup at the contracting office, to publishers, trade associations, information services, and other members of the public having a legitimate interest (for construction, see [36.211](#)); and

(iii) Retain a copy of the solicitation and other documents for review by and duplication for those requesting copies after the initial number of copies is exhausted; and

(2) May require payment of a fee, not exceeding the actual cost of duplication, for a copy of the solicitation document.

(c) In addition to the methods of disseminating proposed contract information in [5.101\(a\)](#) and (b), provide, upon request to small business concerns, as required by [15 U.S.C. 637\(b\)](#)—

(1) A copy of the solicitation and specifications. In the case of solicitations disseminated by electronic data interchange, solicitations may be furnished directly to the electronic address of the small business concern;

(2) The name and telephone number of an employee of the contracting office who will answer questions on the solicitation; and

(3) Adequate citations to each applicable major Federal law or agency rule with which small business concerns must comply in performing the contract.

(d) When electronic commerce (see [Subpart 4.5](#)) is used in the solicitation process, availability of the solicitation may be limited to the electronic medium.

(e) Provide copies of a solicitation issued under other than full and open competition to firms requesting copies that were not initially solicited, but only after advising the requester of the determination to limit the solicitation to a specified firm or firms as authorized under [Part 6](#).

(f) This section [5.102](#) applies to classified contracts to the extent consistent with agency security requirements (see [5.202\(a\)\(1\)](#)).

Subpart 6.3—Other Than Full and Open Competition

6.300 Scope of subpart.

This subpart prescribes policies and procedures, and identifies the statutory authorities, for contracting without providing for full and open competition.

6.301 Policy.

(a) [41 U.S.C. 253\(c\)](#) and [10 U.S.C. 2304\(c\)](#) each authorize, under certain conditions, contracting without providing for full and open competition. The Department of Defense, Coast Guard, and National Aeronautics and Space Administration are subject to [10 U.S.C. 2304\(c\)](#). Other executive agencies are subject to [41 U.S.C. 253\(c\)](#). Contracting without providing for full and open competition or full and open competition after exclusion of sources is a violation of statute, unless permitted by one of the exceptions in [6.302](#).

(b) Each contract awarded without providing for full and open competition shall contain a reference to the specific authority under which it was so awarded. Contracting officers shall use the U.S. Code citation applicable to their agency (see [6.302](#)).

(c) Contracting without providing for full and open competition shall not be justified on the basis of—

- (1) A lack of advance planning by the requiring activity; or
- (2) Concerns related to the amount of funds available (*e.g.*, funds will expire) to the agency or activity for the acquisition of supplies or services.

(d) When not providing for full and open competition, the contracting officer shall solicit offers from as many potential sources as is practicable under the circumstances.

(e) For contracts under this subpart, the contracting officer shall use the contracting procedures prescribed in [6.102\(a\)](#) or (b), if appropriate, or any other procedures authorized by this regulation.

6.302 Circumstances permitting other than full and open competition.

The following statutory authorities (including applications and limitations) permit contracting without providing for full and open competition. Requirements for justifications to support the use of these authorities are in [6.303](#).

6.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) *Authority.*(1) Citations: [10 U.S.C. 2304\(c\)\(1\)](#) or [41 U.S.C. 253\(c\)\(1\)](#).

(2) When the supplies or services required by the agency are available from only one responsible source, or, for DoD, NASA, and the Coast Guard, from only one or a limited number of responsible sources, and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for.

(i) Supplies or services may be considered to be available from only one source if the source has submitted an unsolicited research proposal that—

(A) Demonstrates a unique and innovative concept (see definition at [2.101](#)), or, demonstrates a unique capability of the source to provide the particular research services proposed;

(B) Offers a concept or services not otherwise available to the Government; and

(C) Does not resemble the substance of a pending competitive acquisition. (See [10 U.S.C. 2304\(d\)\(1\)\(A\)](#) and [41 U.S.C. 253\(d\)\(1\)\(A\)](#).)

(ii) Supplies may be deemed to be available only from the original source in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, including major components thereof, when it is likely that award to any other source would result in—

(A) Substantial duplication of cost to the Government that is not expected to be recovered through competition; or

(B) Unacceptable delays in fulfilling the agency's requirements. (See [10 U.S.C. 2304\(d\)\(1\)\(B\)](#) or [41 U.S.C. 253\(d\)\(1\)\(B\)](#).)

(iii) For DoD, NASA, and the Coast Guard, services may be deemed to be available only from the original source in the case of follow-on contracts for the continued provision of highly specialized services when it is likely that award to any other source would result in—

(A) Substantial duplication of cost to the Government that is not expected to be recovered through competition; or

(B) Unacceptable delays in fulfilling the agency's requirements. (See [10 U.S.C. 2304\(d\)\(1\)\(B\)](#).)

(b) *Application.* This authority shall be used, if appropriate, in preference to the authority in [6.302-7](#); it shall not be used when any of the other circumstances is applicable. Use of this authority may be appropriate in situations such as the following (these examples are not intended to be all inclusive and do not constitute authority in and of themselves):

(1) When there is a reasonable basis to conclude that the agency's minimum needs can only be satisfied by—

(i) Unique supplies or services available from only one source or only one supplier with unique capabilities; or

(ii) For DoD, NASA, and the Coast Guard, unique supplies or services available from only one or a limited number of sources or from only one or a limited number of suppliers with unique capabilities.

(2) The existence of limited rights in data, patent rights, copyrights, or secret processes; the control of basic raw material; or similar circumstances, make the supplies and services available from only one source (however, the mere existence of such rights or circumstances does not in and of itself justify the use of these authorities) (see [Part 27](#)).

(3) When acquiring utility services (see [41.101](#)), circumstances may dictate that only one supplier can furnish the service (see [41.202](#)); or when the contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system.

(4) When the agency head has determined in accordance with the agency's standardization program that only specified makes and models of technical equipment and parts will satisfy the agency's needs for additional units or replacement items, and only one source is available.

(c) *Application for brand name descriptions.* An acquisition that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer does not provide for full and open competition regardless of the number of sources solicited. It shall be justified and approved in accordance with FAR [6.303](#) and [6.304](#). The justification should indicate that the use of such descriptions in the acquisition is essential to the Government's requirements, thereby precluding consideration of a product manufactured by another company. See [5.102\(a\)\(6\)](#) for the requirement to post the brand name justification. (Brand-name or equal descriptions, and other purchase descriptions that permit prospective contractors to offer products other than those specifically referenced by brand name, provide for full and open competition and do not require justifications and approvals to support their use.)

(d) *Limitations.*(1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in [6.303](#) and [6.304](#).

(2) For contracts awarded using this authority, the notices required by [5.201](#) shall have been published and any bids, proposals, quotations, or capability statements must have been considered.

6.302-2 Unusual and compelling urgency.

(a) *Authority.*(1) Citations: [10 U.S.C. 2304\(c\)\(2\)](#) or [41 U.S.C. 253\(c\)\(2\)](#).

(2) When the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for.

(b) *Application.* This authority applies in those situations where—

(1) An unusual and compelling urgency precludes full and open competition; and

(2) Delay in award of a contract would result in serious injury, financial or other, to the Government.

(c) *Limitations.*(1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in [6.303](#) and [6.304](#). These justifications may be made and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition.

(2) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

(d) *Period of Performance.* The total period of performance of a contract awarded using this authority—

(1) May not exceed the time necessary:

(i) To meet the unusual and compelling requirements of the work to be performed under the contract; and

(ii) For the agency to enter into another contract for the required goods and services through the use of competitive procedures.

(2) May not exceed one year unless the head of the agency entering into the contract determines that exceptional circumstances apply.

(3) The requirements in paragraphs (1) and (2) of this section shall apply to any contract in an amount greater than the simplified acquisition threshold.

(4) The determination of exceptional circumstances is in addition to the approval of the justification in [6.304](#).

(5) The determination may be made after contract award when making the determination prior to award would unreasonably delay the acquisition.

6.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services.

(a) *Authority.*(1) Citations: [10 U.S.C. 2304\(c\)\(3\)](#) or [41 U.S.C. 253\(c\)\(3\)](#).

(2) Full and open competition need not be provided for when it is necessary to award the contract to a particular source or sources in order—

(i) To maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization;

(ii) To establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center; or

(iii) To acquire the services of an expert or neutral person for any current or anticipated litigation or dispute.

(b) *Application.*(1) Use of the authority in paragraph (a)(2)(i) of this subsection may be appropriate when it is necessary to—

(i) Keep vital facilities or suppliers in business or make them available in the event of a national emergency;

(ii) Train a selected supplier in the furnishing of critical supplies or services; prevent the loss of a supplier's ability and employees' skills; or maintain active engineering, research, or development work;

(iii) Maintain properly balanced sources of supply for meeting the requirements of acquisition programs in the interest of industrial mobilization (when the quantity required is substantially larger than the quantity that must be awarded in order to meet the objectives of this authority, that portion

not required to meet such objectives will be acquired by providing for full and open competition, as appropriate, under this part);

(iv) Limit competition for current acquisition of selected supplies or services approved for production planning under the Department of Defense Industrial Preparedness Program to planned producers with whom industrial preparedness agreements for those items exist, or limit award to offerors who agree to enter into industrial preparedness agreements;

(v) Create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in—

(A) The United States or its outlying areas; or

(B) The United States, its outlying areas, or Canada.

(vi) Continue in production, contractors that are manufacturing critical items, when there would otherwise be a break in production; or

(vii) Divide current production requirements among two or more contractors to provide for an adequate industrial mobilization base.

(2) Use of the authority in paragraph (a)(2)(ii) of this subsection may be appropriate when it is necessary to—

(i) Establish or maintain an essential capability for theoretical analyses, exploratory studies, or experiments in any field of science or technology;

(ii) Establish or maintain an essential capability for engineering or developmental work calling for the practical application of investigative findings and theories of a scientific or technical nature; or

(iii) Contract for supplies or services as are necessary incident to paragraphs (b)(2)(i) or (ii) of this subsection.

(3) Use of the authority in paragraph (a)(2)(iii) of this subsection may be appropriate when it is necessary to acquire the services of either—

(i) An expert to use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, whether or not the expert is expected to testify. Examples of such services include, but are not limited to:

(A) Assisting the Government in the analysis, presentation, or defense of any claim or request for adjustment to contract terms and conditions, whether asserted by a contractor or the Government, which is in litigation or dispute, or is anticipated to result in dispute or litigation before any court, administrative tribunal, or agency; or

(B) Participating in any part of an alternative dispute resolution process, including but not limited to evaluators, fact finders, or witnesses, regardless of whether the expert is expected to testify; or

(ii) A neutral person, *e.g.*, mediators or arbitrators, to facilitate the resolution of issues in an alternative dispute resolution process.

(c) *Limitations.* Contracts awarded using this authority shall be supported by the written justifications and approvals described in [6.303](#) and [6.304](#).

6.302-4 International agreement.

(a) *Authority.*(1) Citations: [10 U.S.C. 2304\(c\)\(4\)](#) or [41 U.S.C. 253\(c\)\(4\)](#).

(2) Full and open competition need not be provided for when precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government.

(b) *Application.* This authority may be used in circumstances such as—

(1) When a contemplated acquisition is to be reimbursed by a foreign country that requires that the product be obtained from a particular firm as specified in official written direction such as a Letter of Offer and Acceptance; or

(2) When a contemplated acquisition is for services to be performed, or supplies to be used, in the sovereign territory of another country and the terms of a treaty or agreement specify or limit the sources to be solicited.

(c) *Limitations.* Except for DoD, NASA, and the Coast Guard, contracts awarded using this authority shall be supported by written justifications and approvals described in [6.303](#) and [6.304](#).

6.302-5 Authorized or required by statute.

(a) *Authority.*(1) Citations: [10 U.S.C. 2304\(c\)\(5\)](#) or [41 U.S.C. 253\(c\)\(5\)](#).

(2) Full and open competition need not be provided for when—

(i) A statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source; or

(ii) The agency's need is for a brand name commercial item for authorized resale.

(b) *Application.* This authority may be used when statutes, such as the following, expressly authorize or require that acquisition be made from a specified source or through another agency:

(1) Federal Prison Industries (UNICOR)—[18 U.S.C. 4124](#) (see [Subpart 8.6](#)).

(2) Qualified Nonprofit Agencies for the Blind or other Severely Disabled—[41 U.S.C. 46-48c](#) (see [Subpart 8.7](#)).

(3) Government Printing and Binding—[44 U.S.C. 501-504](#), 1121 (see [Subpart 8.8](#)).

(4) Sole source awards under the 8(a) Program [15 U.S.C. 637](#) (see [Subpart 19.8](#)).

(5) Sole source awards under the HUBZone Act of 1997—[15 U.S.C. 657a](#) (see [19.1306](#)).

(6) Sole source awards under the Veterans Benefits Act of 2003 ([15 U.S.C. 657f](#)).

(c) *Limitations.*(1) This authority shall not be used when a provision of law requires an agency to award a new contract to a specified non-Federal Government entity unless the provision of law specifically—

(i) Identifies the entity involved;

(ii) Refers to [10 U.S.C. 2304\(j\)](#) for armed services acquisitions or section 303(h) of the Federal Property and Administrative Services Act of 1949 for civilian agency acquisitions; and

(iii) States that award to that entity shall be made in contravention of the merit-based selection procedures in [10 U.S.C. 2304\(j\)](#) or section 303(h) of the Federal Property and Administrative Services Act, as appropriate. However, this limitation does not apply—

(A) When the work provided for in the contract is a continuation of the work performed by the specified entity under a preceding contract; or

(B) To any contract requiring the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an executive agency and to report on those matters to the Congress or any agency of the Federal Government.

(2) Contracts awarded using this authority shall be supported by the written justifications and approvals described in [6.303](#) and [6.304](#), except for—

(i) Contracts awarded under (a)(2)(ii), (b)(2), or (b)(4) of this subsection; or

(ii) Contracts awarded under (a)(2)(i) of this subsection when the statute expressly requires that the procurement be made from a specified source. (Justification and approval requirements apply when the statute authorizes, but does not require, that the procurement be made from a specified source.)

(3) The authority in (a)(2)(ii) of this subsection may be used only for purchases of brand-name commercial items for resale through commissaries or other similar facilities. Ordinarily, these purchases will involve articles desired or preferred by customers of the selling activities (but see [6.301](#)(d)).

6.302-6 National security.

(a) *Authority.*(1) Citations: [10 U.S.C. 2304\(c\)\(6\)](#) or [41 U.S.C. 253\(c\)\(6\)](#).

(2) Full and open competition need not be provided for when the disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.

(b) *Application.* This authority may be used for any acquisition when disclosure of the Government's needs would compromise the national security (e.g., would violate security requirements); it shall not be used merely because the acquisition is classified, or merely because access to classified matter will be necessary to submit a proposal or to perform the contract.

(c) *Limitations.*(1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in [6.303](#) and [6.304](#).

(2) See [5.202](#)(a)(1) for synopsis requirements.

(3) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

6.302-7 Public interest.

(a) *Authority.*(1) Citations: [10 U.S.C. 2304\(c\)\(7\)](#) or [41 U.S.C. 253\(c\)\(7\)](#).

(2) Full and open competition need not be provided for when the agency head determines that it is not in the public interest in the particular acquisition concerned.

(b) *Application.* This authority may be used when none of the other authorities in [6.302](#) apply.

(c) *Limitations.*(1) A written determination to use this authority shall be made in accordance with [Subpart 1.7](#), by—

(i) The Secretary of Defense, the Secretary of the Air Force, the Secretary of the Navy, the Secretary of the Army, the Secretary of Homeland Security for the Coast Guard, or the Administrator of the National Aeronautics and Space Administration; or

(ii) The head of any other executive agency. This authority may not be delegated.

(2) The Congress shall be notified in writing of such determination not less than 30 days before award of the contract.

(3) If required by the head of the agency, the contracting officer shall prepare a justification to support the determination under paragraph (c)(1) of this subsection.

(4) This Determination and Finding (D&F) shall not be made on a class basis.

6.303 Justifications.

6.303-1 Requirements.

(a) A contracting officer shall not commence negotiations for a sole source contract, commence negotiations for a contract resulting from an unsolicited proposal, or award any other contract without providing for full and open competition unless the contracting officer—

(1) Justifies, if required in [6.302](#), the use of such actions in writing;

(2) Certifies the accuracy and completeness of the justification; and

(3) Obtains the approval required by [6.304](#).

(b) Technical and requirements personnel are responsible for providing and certifying as accurate and complete necessary data to support their recommendation for other than full and open competition.

(c) Justifications required by paragraph (a) of this section may be made on an individual or class basis. Any justification for contracts awarded under the authority of [6.302-7](#) shall only be made on an individual basis. Whenever a justification is made and approved on a class basis, the contracting officer must ensure that each contract action taken pursuant to the authority of the class justification and approval is within the scope of the class justification and approval and shall document the contract file for each contract action accordingly.

7.000 Scope of part.

This part prescribes policies and procedures for—

- (a) Developing acquisition plans;
- (b) Determining whether to use commercial or Government resources for acquisition of supplies or services;
- (c) Deciding whether it is more economical to lease equipment rather than purchase it; and
- (d) Determining whether functions are inherently governmental.

Subpart 7.1—Acquisition Plans**7.101 Definitions.**

As used in this subpart—

“Acquisition streamlining” means any effort that results in more efficient and effective use of resources to design and develop, or produce quality systems. This includes ensuring that only necessary and cost-effective requirements are included, at the most appropriate time in the acquisition cycle, in solicitations and resulting contracts for the design, development, and production of new systems, or for modifications to existing systems that involve redesign of systems or subsystems.

“Life-cycle cost” means the total cost to the Government of acquiring, operating, supporting, and (if applicable) disposing of the items being acquired.

“Order” means an order placed under a—

- (1) Federal Supply Schedule contract; or
- (2) Task-order contract or delivery-order contract awarded by another agency, (*i.e.*, Governmentwide acquisition contract or multi-agency contract).

“Planner” means the designated person or office responsible for developing and maintaining a written plan, or for the planning function in those acquisitions not requiring a written plan.

7.102 Policy.

(a) Agencies shall perform acquisition planning and conduct market research (see [Part 10](#)) for all acquisitions in order to promote and provide for—

- (1) Acquisition of commercial items or, to the extent that commercial items suitable to meet the agency’s needs are not available, nondevelopmental items, to the maximum extent practicable ([10 U.S.C. 2377](#) and [41 U.S.C. 251, et seq.](#)); and
- (2) Full and open competition (see [Part 6](#)) or, when full and open competition is not required in accordance with [Part 6](#), to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired ([10 U.S.C. 2301\(a\)\(5\)](#) and [41 U.S.C. 253a\(a\)\(1\)](#)).

(b) This planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely man-

ner. Agencies that have a detailed acquisition planning system in place that generally meets the requirements of [7.104](#) and [7.105](#) need not revise their system to specifically meet all of these requirements.

7.103 Agency-head responsibilities.

The agency head or a designee shall prescribe procedures for—

(a) Promoting and providing for full and open competition (see [Part 6](#)) or, when full and open competition is not required in accordance with [Part 6](#), for obtaining competition to the maximum extent practicable, with due regard to the nature of the supplies and services to be acquired ([10 U.S.C. 2301\(a\)\(5\)](#) and [41 U.S.C. 253a\(a\)\(1\)](#)).

(b) Encouraging offerors to supply commercial items, or to the extent that commercial items suitable to meet the agency needs are not available, nondevelopmental items in response to agency solicitations ([10 U.S.C. 2377](#) and [41 U.S.C. 251, et seq.](#)); and

(c) Ensuring that acquisition planners address the requirement to specify needs, develop specifications, and to solicit offers in such a manner to promote and provide for full and open competition with due regard to the nature of the supplies and services to be acquired ([10 U.S.C. 2305\(a\)\(1\)\(A\)](#) and [41 U.S.C. 253a\(a\)\(1\)](#)). (See [Part 6](#) and [10.002](#).)

(d) Establishing criteria and thresholds at which increasingly greater detail and formality in the planning process is required as the acquisition becomes more complex and costly, specifying those cases in which a written plan shall be prepared.

(e) Writing plans either on a systems basis, on an individual contract basis, or on an individual order basis, depending upon the acquisition.

(f) Ensuring that the principles of this subpart are used, as appropriate, for those acquisitions that do not require a written plan as well as for those that do.

(g) Designating planners for acquisitions.

(h) Reviewing and approving acquisition plans and revisions to these plans.

(i) Establishing criteria and thresholds at which design-to-cost and life-cycle-cost techniques will be used.

(j) Establishing standard acquisition plan formats, if desired, suitable to agency needs; and

(k) Waiving requirements of detail and formality, as necessary, in planning for acquisitions having compressed delivery or performance schedules because of the urgency of the need.

(l) Assuring that the contracting officer, prior to contract-
ing, reviews:

(1) The acquisition history of the supplies and services; and

(2) A description of the supplies, including, when necessary for adequate description, a picture, drawing, diagram, or other graphic representation.

(m) Ensuring that agency planners include use of the metric system of measurement in proposed acquisitions in accordance with [15 U.S.C. 205b](#) (see [11.002\(b\)](#)) and agency metric plans and guidelines.

(n) Ensuring that agency planners—

(1) Specify needs for printing and writing paper consistent with the minimum content standards specified in section 505 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition (see [11.303](#)); and

(2) Comply with the policy in [11.002\(d\)](#) regarding procurement of biobased products, products containing recovered materials, and environmentally preferable and energy-efficient products and services.

(o) Ensuring that acquisition planners specify needs and develop plans, drawings, work statements, specifications, or other product descriptions that address Electronic and Information Technology Accessibility Standards (see 36 CFR Part 1194) in proposed acquisitions (see [11.002\(e\)](#)) and that these standards are included in requirements planning, as appropriate (see [Subpart 39.2](#)).

(p) Making a determination, prior to issuance of a solicitation for advisory and assistance services involving the analysis and evaluation of proposals submitted in response to a solicitation, that a sufficient number of covered personnel with the training and capability to perform an evaluation and analysis of proposals submitted in response to a solicitation are not readily available within the agency or from another Federal agency in accordance with the guidelines at [37.204](#).

(q) Ensuring that no purchase request is initiated or contract entered into that would result in the performance of an inherently governmental function by a contractor and that all contracts or orders are adequately managed so as to ensure effective official control over contract or order performance.

(r) Ensuring that knowledge gained from prior acquisitions is used to further refine requirements and acquisition strategies. For services, greater use of performance-based acquisition methods should occur for follow-on acquisitions.

(s) Ensuring that acquisition planners, to the maximum extent practicable—

(1) Structure contract requirements to facilitate competition by and among small business concerns; and

(2) Avoid unnecessary and unjustified bundling that precludes small business participation as contractors (see [7.107](#)) ([15 U.S.C. 631\(j\)](#)).

(t) Ensuring that agency planners on information technology acquisitions comply with the capital planning and investment control requirements in [40 U.S.C. 11312](#) and OMB Circular A-130.

(u) Ensuring that agency planners on information technology acquisitions comply with the information technology security requirements in the Federal Information Security Management Act ([44 U.S.C. 3544](#)), OMB's implementing policies including Appendix III of OMB Circular A-130, and

guidance and standards from the Department of Commerce's National Institute of Standards and Technology.

(v) Ensuring that contracting officers consult the Disaster Response Registry at www.ccr.gov as a part of acquisition planning for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (See [26.205](#)).

7.104 General procedures.

(a) Acquisition planning should begin as soon as the agency need is identified, preferably well in advance of the fiscal year in which contract award or order placement is necessary. In developing the plan, the planner shall form a team consisting of all those who will be responsible for significant aspects of the acquisition, such as contracting, fiscal, legal, and technical personnel. If contract performance is to be in a designated operational area or supporting a diplomatic or consular mission, the planner shall also consider inclusion of the combatant commander or chief of mission, as appropriate. The planner should review previous plans for similar acquisitions and discuss them with the key personnel involved in those acquisitions. At key dates specified in the plan or whenever significant changes occur, and no less often than annually, the planner shall review the plan and, if appropriate, revise it.

(b) Requirements and logistics personnel should avoid issuing requirements on an urgent basis or with unrealistic delivery or performance schedules, since it generally restricts competition and increases prices. Early in the planning process, the planner should consult with requirements and logistics personnel who determine type, quality, quantity, and delivery requirements.

(c) The planner shall coordinate with and secure the concurrence of the contracting officer in all acquisition planning. If the plan proposes using other than full and open competition when awarding a contract, the plan shall also be coordinated with the cognizant competition advocate.

(d)(1) The planner shall coordinate the acquisition plan or strategy with the cognizant small business specialist when the strategy contemplates an acquisition meeting the dollar amounts in paragraph (d)(2) of this section unless the contract or order is entirely reserved or set-aside for small business under [Part 19](#). The small business specialist shall notify the agency Office of Small and Disadvantaged Business Utilization if the strategy involves contract bundling that is unnecessary, unjustified, or not identified as bundled by the agency. If the strategy involves substantial bundling, the small business specialist shall assist in identifying alternative strategies that would reduce or minimize the scope of the bundling.

(2)(i) The strategy shall be coordinated with the cognizant small business specialist in accordance with paragraph (d)(1) of this section if the estimated contract or order value is—

10.000 Scope of part.

This part prescribes policies and procedures for conducting market research to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services. This part implements the requirements of [41 U.S.C. 253a\(a\)\(1\)](#), [41 U.S.C. 264b](#), [10 U.S.C. 2377](#), and [6 U.S.C. 796](#).

10.001 Policy.

(a) Agencies must—

(1) Ensure that legitimate needs are identified and trade-offs evaluated to acquire items that meet those needs;

(2) Conduct market research appropriate to the circumstances—

(i) Before developing new requirements documents for an acquisition by that agency;

(ii) Before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold;

(iii) Before soliciting offers for acquisitions with an estimated value less than the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost;

(iv) Before soliciting offers for acquisitions that could lead to a bundled contract ([15 U.S.C. 644\(e\)\(2\)\(A\)](#)); and

(v) On an ongoing basis, and to the maximum extent practicable, take advantage of commercially available market research methods in order to identify effectively the capabilities, of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the agency in furtherance of—

(A) A contingency operation or defense against or recovery from nuclear, biological, chemical, or radiological attack; and

(B) Disaster relief to include debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities. (See [26.205](#)).

(3) Use the results of market research to—

(i) Determine if sources capable of satisfying the agency's requirements exist;

(ii) Determine if commercial items or, to the extent commercial items suitable to meet the agency's needs are not available, nondevelopmental items are available that—

(A) Meet the agency's requirements;

(B) Could be modified to meet the agency's requirements; or

(C) Could meet the agency's requirements if those requirements were modified to a reasonable extent;

(iii) Determine the extent to which commercial items or nondevelopmental items could be incorporated at the component level;

(iv) Determine the practices of firms engaged in producing, distributing, and supporting commercial items, such as type of contract, terms for warranties, buyer financing, maintenance and packaging, and marking;

(v) Ensure maximum practicable use of recovered materials (see [Subpart 23.4](#)) and promote energy conservation and efficiency; and

(vi) Determine whether bundling is necessary and justified (see [7.107](#)) ([15 U.S.C. 644\(e\)\(2\)\(A\)](#)).

(vii) Assess the availability of electronic and information technology that meets all or part of the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board at 36 CFR Part 1194 (see [Subpart 39.2](#)).

(b) When conducting market research, agencies should not request potential sources to submit more than the minimum information necessary.

(c) If an agency contemplates awarding a bundled contract, the agency—

(1) When performing market research, should consult with the local Small Business Administration procurement center representative (PCR). If a PCR is not assigned, see [19.402\(a\)](#); and

(2) At least 30 days before release of the solicitation or 30 days prior to placing an order without a solicitation—

(i) Must notify any affected incumbent small business concerns of the Government's intention to bundle the requirement; and

(ii) Should notify any affected incumbent small business concerns of how the concerns may contact the appropriate Small Business Administration representative.

10.002 Procedures.

(a) Acquisitions begin with a description of the Government's needs stated in terms sufficient to allow conduct of market research.

(b) Market research is then conducted to determine if commercial items or nondevelopmental items are available to meet the Government's needs or could be modified to meet the Government's needs.

(1) The extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. Market research involves obtaining information specific to the item being acquired and should include—

(i) Whether the Government's needs can be met by—

(A) Items of a type customarily available in the commercial marketplace;

(B) Items of a type customarily available in the commercial marketplace with modifications; or

(C) Items used exclusively for governmental purposes;

(ii) Customary practices regarding customizing, modifying or tailoring of items to meet customer needs and associated costs;

(iii) Customary practices, including warranty, buyer financing, discounts, contract type considering the nature and risk associated with the requirement, etc., under which commercial sales of the products or services are made;

(iv) The requirements of any laws and regulations unique to the item being acquired;

(v) The availability of items that contain recovered materials and items that are energy efficient;

(vi) The distribution and support capabilities of potential suppliers, including alternative arrangements and cost estimates; and

(vii) Size and status of potential sources (see [Part 19](#)).

(2) Techniques for conducting market research may include any or all of the following:

(i) Contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements.

(ii) Reviewing the results of recent market research undertaken to meet similar or identical requirements.

(iii) Publishing formal requests for information in appropriate technical or scientific journals or business publications.

(iv) Querying the Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies available at www.contractdirectory.gov and other Government and commercial databases that provide information relevant to agency acquisitions.

(v) Participating in interactive, on-line communication among industry, acquisition personnel, and customers.

(vi) Obtaining source lists of similar items from other contracting activities or agencies, trade associations or other sources.

(vii) Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line.

(viii) Conducting interchange meetings or holding presolicitation conferences to involve potential offerors early in the acquisition process.

(c) If market research indicates commercial or nondevelopmental items might not be available to satisfy agency needs, agencies shall reevaluate the need in accordance with [10.001\(a\)\(3\)\(ii\)](#) and determine whether the need can be restated to permit commercial or nondevelopmental items to satisfy the agency's needs.

(d)(1) If market research establishes that the Government's need may be met by a type of item or service customarily available in the commercial marketplace that would meet the definition of a commercial item at [Subpart 2.1](#), the contracting officer shall solicit and award any resultant contract using the policies and procedures in [Part 12](#).

(2) If market research establishes that the Government's need cannot be met by a type of item or service customarily available in the marketplace, [Part 12](#) shall not be used. When publication of the notice at [5.201](#) is required, the contracting officer shall include a notice to prospective offerors that the Government does not intend to use [Part 12](#) for the acquisition.

(e) Agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition.

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Subpart 13.2—Actions At or Below the Micro-Purchase Threshold

13.201 General.

(a) Agency heads are encouraged to delegate micro-purchase authority (see [1.603-3](#)).

(b) The Governmentwide commercial purchase card shall be the preferred method to purchase and to pay for micro-purchases (see [2.101](#)).

(c) Purchases at or below the micro-purchase threshold may be conducted using any of the methods described in [Subpart 13.3](#), provided the purchaser is authorized and trained, pursuant to agency procedures, to use those methods.

(d) Micro-purchases do not require provisions or clauses, except as provided at [4.1105](#) and [32.1110](#). This paragraph takes precedence over any other FAR requirement to the contrary, but does not prohibit the use of any clause.

(e) The requirements in [Part 8](#) apply to purchases at or below the micro-purchase threshold.

(f) The procurement requirements in [Subparts 23.2](#), [23.4](#), and [23.7](#) apply to purchases at or below the micro-purchase threshold.

(g)(1) 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, the micro-purchase threshold is —

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

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

(2) Purchases using this authority must have a clear and direct relationship to the support of a contingency operation or the defense against or recovery from nuclear, biological, chemical, or radiological attack.

13.202 Purchase guidelines.

(a) *Solicitation, evaluation of quotations, and award.*

(1) To the extent practicable, micro-purchases shall be distributed equitably among qualified suppliers.

(2) Micro-purchases may be awarded without soliciting competitive quotations if the contracting officer or individual appointed in accordance with [1.603-3](#)(b) considers the price to be reasonable.

(3) The administrative cost of verifying the reasonableness of the price for purchases may more than offset potential savings from detecting instances of overpricing. Therefore, action to verify price reasonableness need only be taken if—

(i) The contracting officer or individual appointed in accordance with [1.603-3](#)(b) suspects or has information to indicate that the price may not be reasonable (*e.g.*, comparison to the previous price paid or personal knowledge of the supply or service); or

(ii) Purchasing a supply or service for which no comparable pricing information is readily available (*e.g.*, a supply or service that is not the same as, or is not similar to, other supplies or services that have recently been purchased on a competitive basis).

(b) *Documentation.* If competitive quotations were solicited and award was made to other than the low quoter, documentation to support the purchase may be limited to identification of the solicited concerns and an explanation for the award decision.

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Subpart 15.4—Contract Pricing

15.400 Scope of subpart.

This subpart prescribes the cost and price negotiation policies and procedures for pricing negotiated prime contracts (including subcontracts) and contract modifications, including modifications to contracts awarded by sealed bidding.

15.401 Definitions.

As used in this subpart—

“Price” means cost plus any fee or profit applicable to the contract type.

“Subcontract” (except as used in [15.407-2](#)) also includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor ([10 U.S.C. 2306a\(h\)\(2\)](#) and [41 U.S.C. 254b\(h\)\(2\)](#)).

15.402 Pricing policy.

Contracting officers must—

(a) Purchase supplies and services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the offered prices, the contracting officer must not obtain more information than is necessary. To the extent that cost or pricing data are not required by [15.403-4](#), the contracting officer must generally use the following order of preference in determining the type of information required:

(1) No additional information from the offeror, if the price is based on adequate price competition, except as provided by [15.403-3\(b\)](#).

(2) Information other than cost or pricing data:

(i) Information related to prices (e.g., established catalog or market prices or previous contract prices), relying first on information available within the Government; second, on information obtained from sources other than the offeror; and, if necessary, on information obtained from the offeror. When obtaining information from the offeror is necessary, unless an exception under [15.403-1\(b\)\(1\)](#) or (2) applies, such information submitted by the offeror shall include, at a minimum, appropriate information on the prices at which the same or similar items have been sold previously, adequate for evaluating the reasonableness of the price.

(ii) Cost information, that does not meet the definition of cost or pricing data at [2.101](#).

(3) *Cost or pricing data.* The contracting officer should use every means available to ascertain whether a fair and reasonable price can be determined before requesting cost or pricing data. Contracting officers must not require unnecessarily the submission of cost or pricing data, because it leads to increased proposal preparation costs, generally extends acquisition lead time, and consumes additional contractor and Government resources.

(b) Price each contract separately and independently and not—

(1) Use proposed price reductions under other contracts as an evaluation factor; or

(2) Consider losses or profits realized or anticipated under other contracts.

(c) Not include in a contract price any amount for a specified contingency to the extent that the contract provides for a price adjustment based upon the occurrence of that contingency.

15.403 Obtaining cost or pricing data.

15.403-1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(a) Cost or pricing data shall not be obtained for acquisitions at or below the simplified acquisition threshold.

(b) *Exceptions to cost or pricing data requirements.* The contracting officer shall not require submission of cost or pricing data to support any action (contracts, subcontracts, or modifications) (but may require information other than cost or pricing data to support a determination of price reasonableness or cost realism)—

(1) When the contracting officer determines that prices agreed upon are based on adequate price competition (see standards in paragraph (c)(1) of this subsection);

(2) When the contracting officer determines that prices agreed upon are based on prices set by law or regulation (see standards in paragraph (c)(2) of this subsection);

(3) When a commercial item is being acquired (see standards in paragraph (c)(3) of this subsection);

(4) When a waiver has been granted (see standards in paragraph (c)(4) of this subsection); or

(5) When modifying a contract or subcontract for commercial items (see standards in paragraph (c)(3) of this subsection).

(c) *Standards for exceptions from cost or pricing data requirements—* (1) *Adequate price competition.* A price is based on adequate price competition if— (i) Two or more responsible offerors, competing independently, submit priced offers that satisfy the Government’s expressed requirement and if—

(A) Award will be made to the offeror whose proposal represents the best value (see [2.101](#)) where price is a substantial factor in source selection; and

(B) There is no finding that the price of the otherwise successful offeror is unreasonable. Any finding that the price is unreasonable must be supported by a statement of the facts and approved at a level above the contracting officer;

(ii) There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers in response to the solicitation’s expressed requirement, even though only one offer is received from a responsible offeror and if—

(A) Based on the offer received, the contracting officer can reasonably conclude that the offer was submitted with the expectation of competition, *e.g.*, circumstances indicate that—

(1) The offeror believed that at least one other offeror was capable of submitting a meaningful offer; and

(2) The offeror had no reason to believe that other potential offerors did not intend to submit an offer; and

(B) The determination that the proposed price is based on adequate price competition, is reasonable, and is approved at a level above the contracting officer; or

(iii) Price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items, adjusted to reflect changes in market conditions, economic conditions, quantities, or terms and conditions under contracts that resulted from adequate price competition.

(2) *Prices set by law or regulation.* Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws, are sufficient to set a price.

(3) *Commercial items.* (i) Any acquisition of an item that meets the commercial item definition in [2.101](#), or any modification, as defined in paragraph (3)(i) of that definition, that does not change the item from a commercial item to a noncommercial item, is exempt from the requirement for cost or pricing data. If the contracting officer determines that an item claimed to be commercial is, in fact, not commercial and that no other exception or waiver applies, the contracting officer must require submission of cost or pricing data.

(ii) In accordance with section 868 of Pub. L. 110-417:

(A) When purchasing services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, they may be considered commercial items (thus meeting the purpose of [41 U.S.C. 254b](#) and [10 U.S.C. 2306a](#) for truth in negotiations) only if the contracting officer determines in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price of such services.

(B) In order to make this determination, the contracting officer may request the offeror to submit prices paid for the same or similar commercial items under comparable terms and conditions by both Government and commercial customers; and

(C) If the contracting officer determines that the information described in paragraph (c)(3)(ii)(B) of this section is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or

cost, including information on labor costs, material costs and overhead rates may be requested.

(iii) The following requirements apply to minor modifications defined in paragraph (3)(ii) of the definition of a commercial item at [2.101](#) that do not change the item from a commercial item to a noncommercial item:

(A) For acquisitions funded by any agency other than DoD, NASA, or Coast Guard, such modifications of a commercial item are exempt from the requirement for submission of cost or pricing data.

(B) For acquisitions funded by DoD, NASA, or Coast Guard, such modifications of a commercial item are exempt from the requirement for submission of cost or pricing data provided the total price of all such modifications under a particular contract action does not exceed the greater of the threshold for obtaining cost and pricing data in [15.403-4](#) or 5 percent of the total price of the contract at the time of contract award.

(C) For acquisitions funded by DoD, NASA, or Coast Guard such modifications of a commercial item are not exempt from the requirement for submission of cost or pricing data on the basis of the exemption provided for at FAR [15.403-1\(c\)\(3\)](#) if the total price of all such modifications under a particular contract action exceeds the greater of the threshold for obtaining cost and pricing data in [15.403-4](#) or 5 percent of the total price of the contract at the time of contract award.

(iv) Any acquisition for noncommercial supplies or services treated as commercial items at [12.102\(f\)\(1\)](#), except sole source contracts greater than \$16 million, is exempt from the requirements for cost or pricing data ([41 U.S.C. 428a](#)).

(4) *Waivers.* The head of the contracting activity (HCA) may, without power of delegation, waive the requirement for submission of cost or pricing data in exceptional cases. The authorization for the waiver and the supporting rationale shall be in writing. The HCA may consider waiving the requirement if the price can be determined to be fair and reasonable without submission of cost or pricing data. For example, if cost or pricing data were furnished on previous production buys and the contracting officer determines such data are sufficient, when combined with updated information, a waiver may be granted. If the HCA has waived the requirement for submission of cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to provide cost or pricing data. Consequently, award of any lower-tier subcontract expected to exceed the cost or pricing data threshold requires the submission of cost or pricing data unless—

(i) An exception otherwise applies to the subcontract; or

(ii) The waiver specifically includes the subcontract and the rationale supporting the waiver for that subcontract.

15.403-2 Other circumstances where cost or pricing data are not required.

(a) The exercise of an option at the price established at contract award or initial negotiation does not require submission of cost or pricing data.

(b) Cost or pricing data are not required for proposals used solely for overrun funding or interim billing price adjustments.

15.403-3 Requiring information other than cost or pricing data.

(a) *General.* (1) The contracting officer is responsible for obtaining information that is adequate for evaluating the reasonableness of the price or determining cost realism, but the contracting officer should not obtain more information than is necessary (see [15.402\(a\)](#)). If the contracting officer cannot obtain adequate information from sources other than the offeror, the contracting officer must require submission of information other than cost or pricing data from the offeror that is adequate to determine a fair and reasonable price ([10 U.S.C. 2306a\(d\)\(1\)](#) and [41 U.S.C. 254b\(d\)\(1\)](#)). Unless an exception under [15.403-1\(b\)\(1\)](#) or (2) applies, the contracting officer must require that the information submitted by the offeror include, at a minimum, appropriate information on the

prices at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the price. To determine the information an offeror should be required to submit, the contracting officer should consider the guidance in Section 3.3, Chapter 3, Volume I, of the Contract Pricing Reference Guide cited at [15.404-1\(a\)\(7\)](#).

(2) The contractor's format for submitting the information should be used (see [15.403-5\(b\)\(2\)](#)).

(3) The contracting officer must ensure that information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price. Requests for updated offeror information should be limited to information that affects the adequacy of the proposal for negotiations, such as changes in price lists.

(4) As specified in Section 808 of Public Law 105-261, an offeror who does not comply with a requirement to submit information for a contract or subcontract in accordance with paragraph (a)(1) of this subsection is ineligible for award unless the HCA determines that it is in the best interest of the Government to make the award to that offeror, based on consideration of the following:

- (i) The effort made to obtain the data.
- (ii) The need for the item or service.

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(iii) Increased cost or significant harm to the Government if award is not made.

(b) *Adequate price competition.* When adequate price competition exists (see [15.403-1\(c\)\(1\)](#)), generally no additional information is necessary to determine the reasonableness of price. However, if there are unusual circumstances where it is concluded that additional information is necessary to determine the reasonableness of price, the contracting officer shall, to the maximum extent practicable, obtain the additional information from sources other than the offeror. In addition, the contracting officer may request information to determine the cost realism of competing offers or to evaluate competing approaches.

(c) *Commercial items.* (1) At a minimum, the contracting officer must use price analysis to determine whether the price is fair and reasonable whenever the contracting officer acquires a commercial item (see [15.404-1\(b\)](#)). The fact that a price is included in a catalog does not, in and of itself, make it fair and reasonable. If the contracting officer cannot determine whether an offered price is fair and reasonable, even after obtaining additional information from sources other than the offeror, then the contracting officer must require the offeror to submit information other than cost or pricing data to support further analysis (see [15.404-1](#)).

(2) *Limitations relating to commercial items* ([10 U.S.C. 2306a\(d\)\(2\)](#) and [41 U.S.C. 254b\(d\)](#)). (i) The contracting officer must limit requests for sales data relating to commercial items to data for the same or similar items during a relevant time period.

(ii) The contracting officer must, to the maximum extent practicable, limit the scope of the request for information relating to commercial items to include only information that is in the form regularly maintained by the offeror as part of its commercial operations.

(iii) The Government must not disclose outside the Government information obtained relating to commercial items that is exempt from disclosure under [24.202\(a\)](#) or the Freedom of Information Act ([5 U.S.C. 552\(b\)](#)).

(3) For services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, see [15.403-1\(c\)\(3\)\(ii\)](#).

15.403-4 Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(a)(1) The contracting officer must obtain cost or pricing data only if the contracting officer concludes that none of the exceptions in [15.403-1\(b\)](#) applies. However, if the contracting officer has sufficient information available to determine price reasonableness, then the contracting officer should consider requesting a waiver under the exception at [15.403-1\(b\)\(4\)](#). The threshold for obtaining cost or pricing data is \$650,000. Unless an exception applies, cost or pricing data are required before accomplishing any of the following actions expected to

exceed the current threshold or, for existing contracts, the threshold specified in the contract:

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor were required to submit cost or pricing data (but see waivers at [15.403-1\(c\)\(4\)](#)).

(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or any subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts must consider both increases and decreases (e.g., a \$200,000 modification resulting from a reduction of \$500,000 and an increase of \$300,000 is a pricing adjustment exceeding \$650,000). This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification. Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring cost or pricing data if—

(A) The total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection; or

(B) The partial termination settlement plus the estimate to complete the continued portion of the contract exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection (see [49.105\(c\)\(15\)](#)).

(2) Unless prohibited because an exception at [15.403-1\(b\)](#) applies, the head of the contracting activity, without power of delegation, may authorize the contracting officer to obtain cost or pricing data for pricing actions below the pertinent threshold in paragraph (a)(1) of this subsection, provided the action exceeds the simplified acquisition threshold. The head of the contracting activity shall justify the requirement for cost or pricing data. The documentation shall include a written finding that cost or pricing data are necessary to determine whether the price is fair and reasonable and the facts supporting that finding.

(b) When cost or pricing data are required, the contracting officer shall require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The cost or pricing data.

(2) A certificate of current cost or pricing data, in the format specified in [15.406-2](#), certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of agreement on price or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

(c) If cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data

must not be considered cost or pricing data as defined in [2.101](#) and must not be certified in accordance with [15.406-2](#).

(d) The requirements of this subsection also apply to contracts entered into by an agency on behalf of a foreign government.

15.403-5 Instructions for submission of cost or pricing data or information other than cost or pricing data.

(a) Taking into consideration the policy at [15.402](#), the contracting officer shall specify in the solicitation (see [15.408\(1\)](#) and (m))—

(1) Whether cost or pricing data are required;

(2) That, in lieu of submitting cost or pricing data, the offeror may submit a request for exception from the requirement to submit cost or pricing data;

(3) Any information other than cost or pricing data that is required; and

(4) Necessary preaward or postaward access to offeror's records.

(b)(1) Unless required to be submitted on one of the termination forms specified in [Subpart 49.6](#), the contracting officer may require submission of cost or pricing data in the format indicated in [Table 15-2](#) of [15.408](#), specify an alternative format, or permit submission in the contractor's format.

(2) Information other than cost or pricing data may be submitted in the offeror's own format unless the contracting officer decides that use of a specific format is essential and the format has been described in the solicitation.

(3) Data supporting forward pricing rate agreements or final indirect cost proposals shall be submitted in a form acceptable to the contracting officer.

15.404 Proposal analysis.

15.404-1 Proposal analysis techniques.

(a) *General.* The objective of proposal analysis is to ensure that the final agreed-to price is fair and reasonable.

(1) The contracting officer is responsible for evaluating the reasonableness of the offered prices. The analytical techniques and procedures described in this subsection may be used, singly or in combination with others, to ensure that the final price is fair and reasonable. The complexity and circumstances of each acquisition should determine the level of detail of the analysis required.

(2) Price analysis shall be used when cost or pricing data are not required (see paragraph (b) of this subsection and [15.404-3](#)).

(3) Cost analysis shall be used to evaluate the reasonableness of individual cost elements when cost or pricing data are required. Price analysis should be used to verify that the overall price offered is fair and reasonable.

(4) Cost analysis may also be used to evaluate information other than cost or pricing data to determine cost reasonableness or cost realism.

(5) The contracting officer may request the advice and assistance of other experts to ensure that an appropriate analysis is performed.

(6) Recommendations or conclusions regarding the Government's review or analysis of an offeror's or contractor's proposal shall not be disclosed to the offeror or contractor without the concurrence of the contracting officer. Any discrepancy or mistake of fact (such as duplications, omissions, and errors in computation) contained in the cost or pricing data or information other than cost or pricing data submitted in support of a proposal shall be brought to the contracting officer's attention for appropriate action.

(7) The Air Force Institute of Technology (AFIT) and the Federal Acquisition Institute (FAI) jointly prepared a five-volume set of Contract Pricing Reference Guides to guide pricing and negotiation personnel. The five guides are: I Price Analysis, II Quantitative Techniques for Contract Pricing, III Cost Analysis, IV Advanced Issues in Contract Pricing, and V Federal Contract Negotiation Techniques. These references provide detailed discussion and examples applying pricing policies to pricing problems. They are to be used for instruction and professional guidance. However, they are not directive and should be considered informational only. They are available via the internet at http://www.acq.osd.mil/dpap/cpf/contract_pricing_reference_guides.html.

(b) *Price analysis.* (1) Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

(2) The Government may use various price analysis techniques and procedures to ensure a fair and reasonable price. Examples of such techniques include, but are not limited to, the following:

(i) Comparison of proposed prices received in response to the solicitation. Normally, adequate price competition establishes price reasonableness (see [15.403-1\(c\)\(1\)](#)).

(ii) Comparison of previously proposed prices and previous Government and commercial contract prices with current proposed prices for the same or similar items, if both the validity of the comparison and the reasonableness of the previous price(s) can be established.

(iii) Use of parametric estimating methods/application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.

(iv) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.

(v) Comparison of proposed prices with independent Government cost estimates.

be required or for which any preaward or postaward cost determinations will be subject to [Part 31](#).

(h) *Facilities Capital Cost of Money*. The contracting officer shall insert the provision at [52.215-16](#), Facilities Capital Cost of Money, in solicitations expected to result in contracts that are subject to the cost principles for contracts with commercial organizations (see [Subpart 31.2](#)).

(i) *Waiver of Facilities Capital Cost of Money*. If the prospective contractor does not propose facilities capital cost of money in its offer, the contracting officer shall insert the clause at [52.215-17](#), Waiver of Facilities Capital Cost of Money, in the resulting contract.

(j) *Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions*. The contracting officer shall insert the clause at [52.215-18](#), Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions, in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to [Part 31](#).

(k) *Notification of Ownership Changes*. The contracting officer shall insert the clause at [52.215-19](#), Notification of Ownership Changes, in solicitations and contracts for which it is contemplated that cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to [Subpart 31.2](#).

(l) *Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data*. Considering the hierarchy at [15.402](#), the contracting officer may insert the provision at [52.215-20](#), Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, in solicitations if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required. This provision also provides instructions to offerors on how to request an exception. The contracting officer shall—

(1) Use the provision with its Alternate I to specify a format for cost or pricing data other than the format required by [Table 15-2](#) of this section;

(2) Use the provision with its Alternate II if copies of the proposal are to be sent to the ACO and contract auditor;

(3) Use the provision with its Alternate III if submission via electronic media is required; and

(4) Replace the basic provision with its Alternate IV if cost or pricing data are not expected to be required because an exception may apply, but information other than cost or pricing data is required as described in [15.403-3](#).

(m) *Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications*. Considering the hierarchy at [15.402](#), the contracting officer may insert the clause at [52.215-21](#), Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, in solicitations and contracts if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required for modifications. This clause

also provides instructions to contractors on how to request an exception. The contracting officer shall—

(1) Use the clause with its Alternate I to specify a format for cost or pricing data other than the format required by [Table 15-2](#) of this section;

(2) Use the clause with its Alternate II if copies of the proposal are to be sent to the ACO and contract auditor;

(3) Use the clause with its Alternate III if submission via electronic media is required; and

(4) Replace the basic clause with its Alternate IV if cost or pricing data are not expected to be required because an exception may apply, but information other than cost or pricing data is required as described in [15.403-3](#).

(n) *Limitations on Pass-Through Charges*. (1) The contracting officer shall insert the provision at [52.215-22](#), Limitations on Pass-Through Charges-Identification of Subcontract Effort, in solicitations containing the clause at [52.215-23](#).

(2)(i) Except as provided in paragraph (n)(2)(ii), the contracting officer shall insert the clause [52.215-23](#), Limitations on Pass-Through Charges, in solicitations and contracts including task or delivery orders as follows:

(A) For civilian agencies, insert the clause when—

(1) The total estimated contract or order value exceeds the simplified acquisition threshold as defined in section [2.101](#) and

(2) The contemplated contract type is expected to be a cost-reimbursement type contract as defined in [Subpart 16.3](#); or

(B) For DoD, insert the clause when—

(1) The total estimated contract or order value exceeds the threshold for obtaining cost or pricing data in [15.403-4](#); and

(2) The contemplated contract type is expected to be any contract type except—

(i) A firm-fixed-price contract awarded on the basis of adequate price competition;

(ii) A fixed-price contract with economic price adjustment awarded on the basis of adequate price competition;

(iii) A firm-fixed-price contract for the acquisition of a commercial item; or

(iv) A fixed-price contract with economic price adjustment, for the acquisition of a commercial item.

(ii) The clause may be used when the total estimated contract or order value is below the thresholds identified in [15.408\(n\)\(2\)\(i\)](#) and for any contract type, when the contracting officer determines that inclusion of the clause is appropriate.

(iii) Use the clause [52.215-23](#) with its Alternate I when the contracting officer determines that the prospective contractor has demonstrated that its functions provide added value to the contracting effort and there are no excessive pass-through charges.

TABLE 15-2—INSTRUCTIONS FOR SUBMITTING COST/PRICE PROPOSALS WHEN COST OR PRICING DATA ARE REQUIRED

This document provides instructions for preparing a contract pricing proposal when cost or pricing data are required.

NOTE 1. There is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of cost or pricing data is met when all accurate cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the Contracting Officer or an authorized representative. As later information comes into your possession, it should be submitted promptly to the Contracting Officer in a manner that clearly shows how the information relates to the offeror's price proposal. The requirement for submission of cost or pricing data continues up to the time of agreement on price, or an earlier date agreed upon between the parties if applicable.

NOTE 2. By submitting your proposal, you grant the Contracting Officer or an authorized representative the right to examine records that formed the basis for the pricing proposal. That examination can take place at any time before award. It may include those books, records, documents, and other types of factual information (regardless of form or whether the information is specifically referenced or included in the proposal as the basis for pricing) that will permit an adequate evaluation of the proposed price.

I. General Instructions

- A. You must provide the following information on the first page of your pricing proposal:
- (1) Solicitation, contract, and/or modification number;
 - (2) Name and address of offeror;
 - (3) Name and telephone number of point of contact;
 - (4) Name of contract administration office (if available);
 - (5) Type of contract action (that is, new contract, change order, price revision/redetermination, letter contract, unpressed order, or other);
 - (6) Proposed cost; profit or fee; and total;
 - (7) Whether you will require the use of Government property in the performance of the contract, and, if so, what property;
 - (8) Whether your organization is subject to cost accounting standards; whether your organization has submitted a CASB Disclosure Statement, and if it has been determined adequate; whether you have been notified that you are or may be in noncompliance with your Disclosure Statement or CAS (other than a noncompliance that the cognizant Federal agency official has determined to have an immaterial cost impact), and, if yes, an explanation; whether any aspect of this proposal is inconsistent with your disclosed practices or applicable CAS, and, if so, an explanation; and whether the proposal is consistent with your established estimating and accounting principles and procedures and FAR [Part 31](#), Cost Principles, and, if not, an explanation;
 - (9) The following statement:
This proposal reflects our estimates and/or actual costs as of this date and conforms with the instructions in FAR [15.403-5\(b\)\(1\)](#) and [Table 15-2](#). By submitting this proposal, we grant the Contracting Officer and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and form or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price.
 - (10) Date of submission; and
 - (11) Name, title, and signature of authorized representative.
- B. In submitting your proposal, you must include an index, appropriately referenced, of all the cost or pricing data and information accompanying or identified in the proposal. In addition, you must annotate any future additions and/or revisions, up to the date of agreement on price, or an earlier date agreed upon by the parties, on a supplemental index.
- C. As part of the specific information required, you must submit, with your proposal, cost or pricing data (that is, data that are verifiable and factual and otherwise as defined at FAR [2.101](#)). You must clearly identify on your cover sheet that cost or pricing data are included as part of the proposal. In addition, you must submit with your proposal any information reasonably required to explain your estimating process, including—
- (1) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and
 - (2) The nature and amount of any contingencies included in the proposed price.
- D. You must show the relationship between contract line item prices and the total contract price. You must attach cost-element breakdowns for each proposed line item, using the appropriate format prescribed in the “Formats for Submission of Line Item Summaries” section of this table. You must furnish supporting breakdowns for each cost element, consistent with your cost accounting system.
- E. When more than one contract line item is proposed, you must also provide summary total amounts covering all line items for each element of cost.
- F. Whenever you have incurred costs for work performed before submission of a proposal, you must identify those costs in your cost/price proposal.
- G. If you have reached an agreement with Government representatives on use of forward pricing rates/factors, identify the agreement, include a copy, and describe its nature.
- H. As soon as practicable after final agreement on price or an earlier date agreed to by the parties, but before the award resulting from the proposal, you must, under the conditions stated in FAR [15.406-2](#), submit a Certificate of Current Cost or Pricing Data.

PART 16—TYPES OF CONTRACTS

Sec.

- 16.000 Scope of part.
- 16.001 Definitions.

Subpart 16.1—Selecting Contract Types

- 16.101 General.
- 16.102 Policies.
- 16.103 Negotiating contract type.
- 16.104 Factors in selecting contract types.
- 16.105 Solicitation provision.

Subpart 16.2—Fixed-Price Contracts

- 16.201 General.
- 16.202 Firm-fixed-price contracts.
 - 16.202-1 Description.
 - 16.202-2 Application.
- 16.203 Fixed-price contracts with economic price adjustment.
 - 16.203-1 Description.
 - 16.203-2 Application.
 - 16.203-3 Limitations.
 - 16.203-4 Contract clauses.
- 16.204 Fixed-price incentive contracts.
- 16.205 Fixed-price contracts with prospective price redetermination.
 - 16.205-1 Description.
 - 16.205-2 Application.
 - 16.205-3 Limitations.
 - 16.205-4 Contract clause.
- 16.206 Fixed-ceiling-price contracts with retroactive price redetermination.
 - 16.206-1 Description.
 - 16.206-2 Application.
 - 16.206-3 Limitations.
 - 16.206-4 Contract clause.
- 16.207 Firm-fixed-price, level-of-effort term contracts.
 - 16.207-1 Description.
 - 16.207-2 Application.
 - 16.207-3 Limitations.

Subpart 16.3—Cost-Reimbursement Contracts

- 16.301 General.
 - 16.301-1 Description.
 - 16.301-2 Application.
 - 16.301-3 Limitations.
- 16.302 Cost contracts.
- 16.303 Cost-sharing contracts.
- 16.304 Cost-plus-incentive-fee contracts.

- 16.305 Cost-plus-award-fee contracts.
- 16.306 Cost-plus-fixed-fee contracts.
- 16.307 Contract clauses.

Subpart 16.4—Incentive Contracts

- 16.401 General.
- 16.402 Application of predetermined, formula-type incentives.
 - 16.402-1 Cost incentives.
 - 16.402-2 Performance incentives.
 - 16.402-3 Delivery incentives.
 - 16.402-4 Structuring multiple-incentive contracts.
- 16.403 Fixed-price incentive contracts.
 - 16.403-1 Fixed-price incentive (firm target) contracts.
 - 16.403-2 Fixed-price incentive (successive targets) contracts.
- 16.404 Fixed-price contracts with award fees.
- 16.405 Cost-reimbursement incentive contracts.
 - 16.405-1 Cost-plus-incentive-fee contracts.
 - 16.405-2 Cost-plus-award-fee contracts.
- 16.406 Contract clauses.

Subpart 16.5—Indefinite-Delivery Contracts

- 16.500 Scope of subpart.
- 16.501-1 Definitions.
- 16.501-2 General.
- 16.502 Definite-quantity contracts.
- 16.503 Requirements contracts.
- 16.504 Indefinite-quantity contracts.
- 16.505 Ordering.
- 16.506 Solicitation provisions and contract clauses.

Subpart 16.6—Time-and-Materials, Labor-Hour, and Letter Contracts

- 16.601 Time-and-materials contracts.
- 16.602 Labor-hour contracts.
- 16.603 Letter contracts.
 - 16.603-1 Description.
 - 16.603-2 Application.
 - 16.603-3 Limitations.
 - 16.603-4 Contract clauses.

Subpart 16.7—Agreements

- 16.701 Scope.
- 16.702 Basic agreements.
- 16.703 Basic ordering agreements.

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16.000 Scope of part.

This part describes types of contracts that may be used in acquisitions. It prescribes policies and procedures and provides guidance for selecting a contract type appropriate to the circumstances of the acquisition.

16.001 Definitions.

As used in this part—

Award-Fee Board means the team of individuals identified in the award-fee plan who have been designated to assist the Fee-Determining Official in making award-fee determinations.

Fee-Determining Official (FDO) means the designated Agency official(s) who reviews the recommendations of the Award-Fee Board in determining the amount of award fee to be earned by the contractor for each evaluation period.

Rollover of unearned award fee means the process of transferring unearned award fee, which the contractor had an opportunity to earn, from one evaluation period to a subsequent evaluation period, thus allowing the contractor an additional opportunity to earn that previously unearned award fee.

Subpart 16.1—Selecting Contract Types**16.101 General.**

(a) A wide selection of contract types is available to the Government and contractors in order to provide needed flexibility in acquiring the large variety and volume of supplies and services required by agencies. Contract types vary according to—

- (1) The degree and timing of the responsibility assumed by the contractor for the costs of performance; and
- (2) The amount and nature of the profit incentive offered to the contractor for achieving or exceeding specified standards or goals.

(b) The contract types are grouped into two broad categories: fixed-price contracts (see [Subpart 16.2](#)) and cost-reimbursement contracts (see [Subpart 16.3](#)). The specific contract types range from firm-fixed-price, in which the contractor has full responsibility for the performance costs and resulting profit (or loss), to cost-plus-fixed-fee, in which the contractor has minimal responsibility for the performance costs and the negotiated fee (profit) is fixed. In between are the various incentive contracts (see [Subpart 16.4](#)), in which the contractor's responsibility for the performance costs and the profit or fee incentives offered are tailored to the uncertainties involved in contract performance.

16.102 Policies.

(a) Contracts resulting from sealed bidding shall be firm-fixed-price contracts or fixed-price contracts with economic price adjustment.

(b) Contracts negotiated under [Part 15](#) may be of any type or combination of types that will promote the Government's interest, except as restricted in this part (see [10 U.S.C. 2306\(a\)](#) and [41 U.S.C. 254\(a\)](#)). Contract types not described in this regulation shall not be used, except as a deviation under [Subpart 1.4](#).

(c) The cost-plus-a-percentage-of-cost system of contracting shall not be used (see [10 U.S.C. 2306\(a\)](#) and [41 U.S.C. 254\(b\)](#)). Prime contracts (including letter contracts) other than firm-fixed-price contracts shall, by an appropriate clause, prohibit cost-plus-a-percentage-of-cost subcontracts (see clauses prescribed in [Subpart 44.2](#) for cost-reimbursement contracts and [Subparts 16.2](#) and [16.4](#) for fixed-price contracts).

(d) No contract may be awarded before the execution of any determination and findings (D&F's) required by this part. Minimum requirements for the content of D&F's required by this part are specified in [1.704](#).

16.103 Negotiating contract type.

(a) Selecting the contract type is generally a matter for negotiation and requires the exercise of sound judgment. Negotiating the contract type and negotiating prices are closely related and should be considered together. The objective is to negotiate a contract type and price (or estimated cost and fee) that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.

(b) A firm-fixed-price contract, which best utilizes the basic profit motive of business enterprise, shall be used when the risk involved is minimal or can be predicted with an acceptable degree of certainty. However, when a reasonable basis for firm pricing does not exist, other contract types should be considered, and negotiations should be directed toward selecting a contract type (or combination of types) that will appropriately tie profit to contractor performance.

(c) In the course of an acquisition program, a series of contracts, or a single long-term contract, changing circumstances may make a different contract type appropriate in later periods than that used at the outset. In particular, contracting officers should avoid protracted use of a cost-reimbursement or time-and-materials contract after experience provides a basis for firmer pricing.

(d) Each contract file shall include documentation to show why the particular contract type was selected. Exceptions to this requirement are—

- (1) Fixed-price acquisitions made under simplified acquisition procedures;
- (2) Contracts on a firm fixed-price basis other than those for major systems or research and development; and
- (3) Awards on the set-aside portion of sealed bid partial set-asides for small business.

16.104 Factors in selecting contract types.

There are many factors that the contracting officer should consider in selecting and negotiating the contract type. They include the following:

(a) *Price competition.* Normally, effective price competition results in realistic pricing, and a fixed-price contract is ordinarily in the Government's interest.

(b) *Price analysis.* Price analysis, with or without competition, may provide a basis for selecting the contract type. The degree to which price analysis can provide a realistic pricing standard should be carefully considered. (See [15.404-1\(b\)](#).)

(c) *Cost analysis.* In the absence of effective price competition and if price analysis is not sufficient, the cost estimates of the offeror and the Government provide the bases for negotiating contract pricing arrangements. It is essential that the uncertainties involved in performance and their possible impact upon costs be identified and evaluated, so that a contract type that places a reasonable degree of cost responsibility upon the contractor can be negotiated.

(d) *Type and complexity of the requirement.* Complex requirements, particularly those unique to the Government, usually result in greater risk assumption by the Government. This is especially true for complex research and development contracts, when performance uncertainties or the likelihood of changes makes it difficult to estimate performance costs in advance. As a requirement recurs or as quantity production begins, the cost risk should shift to the contractor, and a fixed-price contract should be considered.

(e) *Urgency of the requirement.* If urgency is a primary factor, the Government may choose to assume a greater proportion of risk or it may offer incentives to ensure timely contract performance.

(f) *Period of performance or length of production run.* In times of economic uncertainty, contracts extending over a rel-

atively long period may require economic price adjustment terms.

(g) *Contractor's technical capability and financial responsibility.*

(h) *Adequacy of the contractor's accounting system.* Before agreeing on a contract type other than firm-fixed-price, the contracting officer shall ensure that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type. This factor may be critical when the contract type requires price revision while performance is in progress, or when a cost-reimbursement contract is being considered and all current or past experience with the contractor has been on a fixed-price basis.

(i) *Concurrent contracts.* If performance under the proposed contract involves concurrent operations under other contracts, the impact of those contracts, including their pricing arrangements, should be considered.

(j) *Extent and nature of proposed subcontracting.* If the contractor proposes extensive subcontracting, a contract type reflecting the actual risks to the prime contractor should be selected.

(k) *Acquisition history.* Contractor risk usually decreases as the requirement is repetitively acquired. Also, product descriptions or descriptions of services to be performed can be defined more clearly.

16.105 Solicitation provision.

The contracting officer shall complete and insert the provision at [52.216-1](#), Type of Contract, in a solicitation unless it is for—

(a) A fixed-price acquisition made under simplified acquisition procedures; or

(b) Information or planning purposes.

Subpart 16.3—Cost-Reimbursement Contracts

16.301 General.

16.301-1 Description.

Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer.

16.301-2 Application.

Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

16.301-3 Limitations.

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

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

(2) Appropriate Government surveillance during performance will 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 with an educational institution, modify the clause by deleting from paragraph (a) the words “[Subpart 31.2](#)” and substituting for them “[Subpart 31.3](#).” If the contract is with a State or local government, modify the clause by deleting from paragraph (a) the words “[Subpart 31.2](#)” and substituting for them “[Subpart 31.6](#).” If the contract is with a nonprofit organization other than an educational institution, a State or local government, or a nonprofit organization exempted under OMB Circular No. A-122, modify the clause by deleting from paragraph (a) the words “[Subpart 31.2](#)” and substituting for them “[Subpart 31.7](#).” If the contract is a time-and-materials contract, the clause at [52.216-7](#) applies 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.

(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.

(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.

Subpart 16.4—Incentive Contracts

16.401 General.

(a) Incentive contracts as described in this subpart are appropriate when a firm-fixed-price contract is not appropriate and the required supplies or services can be acquired at lower costs and, in certain instances, with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the contractor's performance. Incentive contracts are designed to obtain specific acquisition objectives by—

(1) Establishing reasonable and attainable targets that are clearly communicated to the contractor; and

(2) Including appropriate incentive arrangements designed to—

(i) motivate contractor efforts that might not otherwise be emphasized; and

(ii) discourage contractor inefficiency and waste.

(b) When predetermined, formula-type incentives on technical performance or delivery are included, increases in profit or fee are provided only for achievement that surpasses the targets, and decreases are provided for to the extent that such targets are not met. The incentive increases or decreases are applied to performance targets rather than minimum performance requirements.

(c) The two basic categories of incentive contracts are fixed-price incentive contracts (see [16.403](#) and [16.404](#)) and cost-reimbursement incentive contracts (see [16.405](#)). Since it is usually to the Government's advantage for the contractor to assume substantial cost responsibility and an appropriate share of the cost risk, fixed-price incentive contracts are preferred when contract costs and performance requirements are reasonably certain. Cost-reimbursement incentive contracts are subject to the overall limitations in [16.301](#) that apply to all cost-reimbursement contracts.

(d) A determination and finding, signed by the head of the contracting activity, shall be completed for all incentive- and award-fee contracts justifying that the use of this type of contract is in the best interest of the Government. This determination shall be documented in the contract file and, for award-fee contracts, shall address all of the suitability items in [16.401\(e\)\(1\)](#).

(e) Award-fee contracts are a type of incentive contract.

(1) *Application.* An award-fee contract is suitable for use when—

(i) The work to be performed is such that it is neither feasible nor effective to devise predetermined objective

incentive targets applicable to cost, schedule, and technical performance;

(ii) The likelihood of meeting acquisition objectives will be enhanced by using a contract that effectively motivates the contractor toward exceptional performance and provides the Government with the flexibility to evaluate both actual performance and the conditions under which it was achieved; and

(iii) Any additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits as documented by a risk and cost benefit analysis to be included in the Determination and Findings referenced in [16.401\(e\)\(5\)\(iii\)](#).

(2) *Award-fee amount.* The amount of award fee earned shall be commensurate with the contractor's overall cost, schedule, and technical performance as measured against contract requirements in accordance with the criteria stated in the award-fee plan. Award fee shall not be earned if the contractor's overall cost, schedule, and technical performance is below satisfactory. The basis for all award-fee determinations shall be documented in the contract file to include, at a minimum, a determination that overall cost, schedule and technical performance is or is not at a satisfactory level. This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government.

(3) *Award-fee plan.* All contracts providing for award fees shall be supported by an award-fee plan that establishes the procedures for evaluating award fee and an Award-Fee Board for conducting the award-fee evaluation. Award-fee plans shall—

(i) Be approved by the FDO unless otherwise authorized by agency procedures;

(ii) Identify the award-fee evaluation criteria and how they are linked to acquisition objectives which shall be defined in terms of contract cost, schedule, and technical performance. Criteria should motivate the contractor to enhance performance in the areas rated, but not at the expense of at least minimum acceptable performance in all other areas;

(iii) Describe how the contractor's performance will be measured against the award-fee evaluation criteria;

(iv) Utilize the adjectival rating and associated description as well as the award-fee pool earned percentages shown below in Table 16-1. Contracting officers may supplement the adjectival rating description. The method used to determine the adjectival rating must be documented in the award-fee plan;

Table 16-1

Award-Fee Adjectival Rating	Award-Fee Pool Available To Be Earned	Description
Excellent	91%-100%	Contractor has exceeded almost all of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
Very Good	76%-90%	Contractor has exceeded many of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
Good	51%-75%	Contractor has exceeded some of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
Satisfactory	No Greater Than 50%	Contractor has met overall cost, schedule, and technical performance requirements of the contract as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
Unsatisfactory	0%	Contractor has failed to meet overall cost, schedule, and technical performance requirements of the contract as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.

(v) Prohibit earning any award fee when a contractor’s overall cost, schedule, and technical performance is below satisfactory;

(vi) Provide for evaluation period(s) to be conducted at stated intervals during the contract period of performance so that the contractor will periodically be informed of the quality of its performance and the areas in which improvement is expected (e.g. six months, nine months, twelve months, or at specific milestones); and

(vii) Define the total award-fee pool amount and how this amount is allocated across each evaluation period.

(4) *Rollover of unearned award fee.* The use of rollover of unearned award fee is prohibited.

(5) *Limitations.* No award-fee contract shall be awarded unless—

(i) All of the limitations in [16.301-3](#), that are applicable to cost-reimbursement contracts only, are complied with;

(ii) An award-fee plan is completed in accordance with the requirements in [16.401\(e\)\(3\)](#); and

(iii) A determination and finding is completed in accordance with [16.401\(d\)](#) addressing all of the suitability items in [16.401\(e\)\(1\)](#).

(f) *Incentive- and Award-Fee Data Collection and Analysis.* Each agency shall collect relevant data on award fee and incentive fees paid to contractors and include performance measures to evaluate such data on a regular basis to determine effectiveness of award and incentive fees as a tool for improving contractor performance and achieving desired program

outcomes. This information should be considered as part of the acquisition planning process (see [7.105](#)) in determining the appropriate type of contract to be utilized for future acquisitions.

(g) *Incentive- and Award-Fee Best Practices.* Each agency head shall provide mechanisms for sharing proven incentive strategies for the acquisition of different types of products and services among contracting and program management officials.

16.402 Application of predetermined, formula-type incentives.

16.402-1 Cost incentives.

(a) Most incentive contracts include only cost incentives, which take the form of a profit or fee adjustment formula and are intended to motivate the contractor to effectively manage costs. No incentive contract may provide for other incentives without also providing a cost incentive (or constraint).

(b) Except for award-fee contracts (see [16.404](#) and [16.401\(e\)](#)), incentive contracts include a target cost, a target profit or fee, and a profit or fee adjustment formula that (within the constraints of a price ceiling or minimum and maximum fee) provides that—

(1) Actual cost that meets the target will result in the target profit or fee;

(2) Actual cost that exceeds the target will result in downward adjustment of target profit or fee; and

(3) Actual cost that is below the target will result in upward adjustment of target profit or fee.

16.402-2 Performance incentives.

(a) Performance incentives may be considered in connection with specific product characteristics (*e.g.*, a missile range, an aircraft speed, an engine thrust, or a vehicle maneuverability) or other specific elements of the contractor's performance. These incentives should be designed to relate profit or fee to results achieved by the contractor, compared with specified targets.

(b) To the maximum extent practicable, positive and negative performance incentives shall be considered in connection with service contracts for performance of objectively measurable tasks when quality of performance is critical and incentives are likely to motivate the contractor.

(c) Technical performance incentives may be particularly appropriate in major systems contracts, both in development (when performance objectives are known and the fabrication of prototypes for test and evaluation is required) and in production (if improved performance is attainable and highly desirable to the Government).

(d) Technical performance incentives may involve a variety of specific characteristics that contribute to the overall performance of the end item. Accordingly, the incentives on individual technical characteristics must be balanced so that no one of them is exaggerated to the detriment of the overall performance of the end item.

(e) Performance tests and/or assessments of work performance are generally essential in order to determine the degree of attainment of performance targets. Therefore, the contract must be as specific as possible in establishing test criteria (such as testing conditions, instrumentation precision, and data interpretation) and performance standards (such as the quality levels of services to be provided).

(f) Because performance incentives present complex problems in contract administration, the contracting officer should negotiate them in full coordination with Government engineering and pricing specialists.

(g) It is essential that the Government and contractor agree explicitly on the effect that contract changes (*e.g.*, pursuant to the Changes clause) will have on performance incentives.

(h) The contracting officer must exercise care, in establishing performance criteria, to recognize that the contractor should not be rewarded or penalized for attainments of Government-furnished components.

16.402-3 Delivery incentives.

(a) Delivery incentives should be considered when improvement from a required delivery schedule is a significant Government objective. It is important to determine the Government's primary objectives in a given contract

(*e.g.*, earliest possible delivery or earliest quantity production).

(b) Incentive arrangements on delivery should specify the application of the reward-penalty structure in the event of Government-caused delays or other delays beyond the control, and without the fault or negligence, of the contractor or subcontractor.

16.402-4 Structuring multiple-incentive contracts.

A properly structured multiple-incentive arrangement should—

(a) Motivate the contractor to strive for outstanding results in all incentive areas; and

(b) Compel trade-off decisions among the incentive areas, consistent with the Government's overall objectives for the acquisition. Because of the interdependency of the Government's cost, the technical performance, and the delivery goals, a contract that emphasizes only one of the goals may jeopardize control over the others. Because outstanding results may not be attainable for each of the incentive areas, all multiple-incentive contracts must include a cost incentive (or constraint) that operates to preclude rewarding a contractor for superior technical performance or delivery results when the cost of those results outweighs their value to the Government.

16.403 Fixed-price incentive contracts.

(a) *Description.* A fixed-price incentive contract is a fixed-price contract that provides for adjusting profit and establishing the final contract price by application of a formula based on the relationship of total final negotiated cost to total target cost. The final price is subject to a price ceiling, negotiated at the outset. The two forms of fixed-price incentive contracts, firm target and successive targets, are further described in [16.403-1](#) and [16.403-2](#) below.

(b) *Application.* A fixed-price incentive contract is appropriate when—

(1) A firm-fixed-price contract is not suitable;

(2) The nature of the supplies or services being acquired and other circumstances of the acquisition are such that the contractor's assumption of a degree of cost responsibility will provide a positive profit incentive for effective cost control and performance; and

(3) If the contract also includes incentives on technical performance and/or delivery, the performance requirements provide a reasonable opportunity for the incentives to have a meaningful impact on the contractor's management of the work.

(c) *Billing prices.* In fixed-price incentive contracts, billing prices are established as an interim basis for payment. These billing prices may be adjusted, within the ceiling limits, upon request of either party to the contract, when it becomes apparent that final negotiated cost will be substantially different from the target cost.

16.403-1 Fixed-price incentive (firm target) contracts.

(a) *Description.* A fixed-price incentive (firm target) contract specifies a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a profit adjustment formula. These elements are all negotiated at the outset. The price ceiling is the maximum that may be paid to the contractor, except for any adjustment under other contract clauses. When the contractor completes performance, the parties negotiate the final cost, and the final price is established by applying the formula. When the final cost is less than the target cost, application of the formula results in a final profit greater than the target profit; conversely, when final cost is more than target cost, application of the formula results in a final profit less than the target profit, or even a net loss. If the final negotiated cost exceeds the price ceiling, the contractor absorbs the difference as a loss. Because the profit varies inversely with the cost, this contract type provides a positive, calculable profit incentive for the contractor to control costs.

(b) *Application.* A fixed-price incentive (firm target) contract is appropriate when the parties can negotiate at the outset a firm target cost, target profit, and profit adjustment formula that will provide a fair and reasonable incentive and a ceiling that provides for the contractor to assume an appropriate share of the risk. When the contractor assumes a considerable or major share of the cost responsibility under the adjustment formula, the target profit should reflect this responsibility.

(c) *Limitations.* This contract type may be used only when—

(1) The contractor's accounting system is adequate for providing data to support negotiation of final cost and incentive price revision; and

(2) Adequate cost or pricing information for establishing reasonable firm targets is available at the time of initial contract negotiation.

(d) *Contract schedule.* The contracting officer shall specify in the contract schedule the target cost, target profit, and target price for each item subject to incentive price revision.

16.403-2 Fixed-price incentive (successive targets) contracts.

(a) *Description.* (1) A fixed-price incentive (successive targets) contract specifies the following elements, all of which are negotiated at the outset:

(i) An initial target cost.

(ii) An initial target profit.

(iii) An initial profit adjustment formula to be used for establishing the firm target profit, including a ceiling and floor for the firm target profit. (This formula normally provides for a lesser degree of contractor cost responsibility than would a formula for establishing final profit and price.)

(iv) The production point at which the firm target cost and firm target profit will be negotiated (usually before delivery or shop completion of the first item).

(v) A ceiling price that is the maximum that may be paid to the contractor, except for any adjustment under other contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

(2) When the production point specified in the contract is reached, the parties negotiate the firm target cost, giving consideration to cost experience under the contract and other pertinent factors. The firm target profit is established by the formula. At this point, the parties have two alternatives, as follows:

(i) They may negotiate a firm fixed price, using the firm target cost plus the firm target profit as a guide.

(ii) If negotiation of a firm fixed price is inappropriate, they may negotiate a formula for establishing the final price using the firm target cost and firm target profit. The final cost is then negotiated at completion, and the final profit is established by formula, as under the fixed-price incentive (firm target) contract (see [16.403-1](#) above).

(b) *Application.* A fixed-price incentive (successive targets) contract is appropriate when—

(1) Available cost or pricing information is not sufficient to permit the negotiation of a realistic firm target cost and profit before award;

(2) Sufficient information is available to permit negotiation of initial targets; and

(3) There is reasonable assurance that additional reliable information will be available at an early point in the contract performance so as to permit negotiation of either (i) a firm fixed price or (ii) firm targets and a formula for establishing final profit and price that will provide a fair and reasonable incentive. This additional information is not limited to experience under the contract, itself, but may be drawn from other contracts for the same or similar items.

(c) *Limitations.* This contract type may be used only when—

(1) The contractor's accounting system is adequate for providing data for negotiating firm targets and a realistic profit adjustment formula, as well as later negotiation of final costs; and

(2) Cost or pricing information adequate for establishing a reasonable firm target cost is reasonably expected to be available at an early point in contract performance.

(d) *Contract schedule.* The contracting officer shall specify in the contract schedule the initial target cost, initial target profit, and initial target price for each item subject to incentive price revision.

16.404 Fixed-price contracts with award fees.

Award-fee provisions may be used in fixed-price contracts when the Government wishes to motivate a contractor and other incentives cannot be used because contractor performance cannot be measured objectively. Such contracts shall establish a fixed price (including normal profit) for the effort.

This price will be paid for satisfactory contract performance. Award fee earned (if any) will be paid in addition to that fixed price. See [16.401](#)(e) for the requirements relative to utilizing this contract type.

16.405 Cost-reimbursement incentive contracts.

See [16.301](#) for requirements applicable to all cost-reimbursement contracts, for use in conjunction with the following subsections.

16.405-1 Cost-plus-incentive-fee contracts.

(a) *Description.* The cost-plus-incentive-fee contract is a cost-reimbursement contract that provides for the initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. This contract type specifies a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula. After contract performance, the fee payable to the contractor is determined in accordance with the formula. The formula provides, within limits, for increases in fee above target fee when total allowable costs are less than target costs, and decreases in fee below target fee when total allowable costs exceed target costs. This increase or decrease is intended to provide an incentive for the contractor to manage the contract effectively. When total allowable cost is greater than or less than the range of costs within which the fee-adjustment formula operates, the contractor is paid total allowable costs, plus the minimum or maximum fee.

(b) *Application.* (1) A cost-plus-incentive-fee contract is appropriate for services or development and test programs when—

(i) A cost-reimbursement contract is necessary (see [16.301-2](#)); and

(ii) A target cost and a fee adjustment formula can be negotiated that are likely to motivate the contractor to manage effectively.

(2) The contract may include technical performance incentives when it is highly probable that the required development of a major system is feasible and the Government has established its performance objectives, at least in general terms. This approach also may apply to other acquisitions, if the use of both cost and technical performance incentives is desirable and administratively practical.

(3) The fee adjustment formula should provide an incentive that will be effective over the full range of reasonably foreseeable variations from target cost. If a high maximum fee is negotiated, the contract shall also provide for a low minimum fee that may be a zero fee or, in rare cases, a negative fee.

(c) *Limitations.* No cost-plus-incentive-fee contract shall be awarded unless all limitations in [16.301-3](#) are complied with.

16.405-2 Cost-plus-award-fee contracts.

A cost-plus-award-fee contract is a cost-reimbursement contract that provides for a fee consisting of (1) a base amount fixed at inception of the contract, if applicable and at the discretion of the contracting officer, and (2) an award amount that the contractor may earn in whole or in part during performance and that is sufficient to provide motivation for excellence in the areas of cost, schedule, and technical performance. See [16.401](#)(e) for the requirements relative to utilizing this contract type.

16.406 Contract clauses.

(a) Insert the clause at [52.216-16](#), Incentive Price Revision—Firm Target, in solicitations and contracts when a fixed-price incentive (firm target) contract is contemplated. If the contract calls for supplies or services to be ordered under a provisioning document or Government option and the prices are to be subject to the incentive price revision under the clause, the contracting officer shall use the clause with its Alternate I.

(b) Insert the clause at [52.216-17](#), Incentive Price Revision—Successive Targets, in solicitations and contracts when a fixed-price incentive (successive targets) contract is contemplated. If the contract calls for supplies or services to be ordered under a provisioning document or Government option and the prices are to be subject to incentive price revision under the clause, the contracting officer shall use the clause with its Alternate I.

(c) The clause at [52.216-7](#), Allowable Cost and Payment, is prescribed in [16.307](#)(a) for insertion in solicitations and contracts when a cost-plus-incentive-fee contract or a cost-plus-award-fee contract is contemplated.

(d) The clause at [52.216-10](#), Incentive Fee, is prescribed in [16.307](#)(d) for insertion in solicitations and contracts when a cost-plus-incentive-fee contract is contemplated.

(e) Insert an appropriate award-fee clause in solicitations and contracts when an award-fee contract is contemplated, provided that the clause—

(1) Is prescribed by or approved under agency acquisition regulations;

(2) Is compatible with the clause at [52.216-7](#), Allowable Cost and Payment; and

(3) Expressly provides that the award amount and the award-fee determination methodology are unilateral decisions made solely at the discretion of the Government.

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18.000 Scope of part.

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

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

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

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

18.001 Definition.

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

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

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

(c) When the President declares an incident of national significance, emergency declaration, or a major disaster declaration.

Subpart 18.1—Available Acquisition Flexibilities

18.101 General.

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

18.102 Central contractor registration.

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

18.103 Synopses of proposed contract actions.

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

18.104 Unusual and compelling urgency.

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

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

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

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

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

18.107 AbilityOne specification changes.

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

18.108 Qualifications requirements.

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

18.109 Priorities and allocations.

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

18.110 Soliciting from a single source.

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

18.111 Oral requests for proposals.

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

18.112 Letter contracts.

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

18.113 Interagency acquisitions under the Economy Act.

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

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

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

18.115 HUBZone sole source awards.

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

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

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

18.117 Overtime approvals.

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

18.118 Trade agreements.

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

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

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

18.120 Bid guarantees.

The chief of the contracting office may waive the requirement to obtain a bid guarantee for emergency acquisitions

when a performance bond or a performance bond and payment bond is required. (See [28.101-1\(c\)](#).)

18.121 Advance payments.

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

18.122 Assignment of claims.

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

18.123 Electronic funds transfer.

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

18.124 Protest to GAO.

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

18.125 Contractor rent-free use of Government property.

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

18.126 Extraordinary contractual actions.

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

- (a) Amending contracts without consideration (see [50.103-2\(a\)](#));
- (b) Correcting or mitigating mistakes in a contract (see [50.103-2\(b\)](#)); and
- (c) Formalizing informal commitments (See [50.103-2\(c\)](#)).

PART 26—OTHER SOCIOECONOMIC PROGRAMS

Sec.

NOTE: This part has been created to facilitate promulgation of additional FAR and agency level socioeconomic coverage which properly fall under FAR Subchapter D—Socioeconomic Programs, but neither implements nor supplements existing FAR [Parts 19, 20](#), or [22](#) through [25](#).

Subpart 26.1—Indian Incentive Program

- 26.100 Scope of subpart.
- 26.101 Definitions.
- 26.102 Policy.
- 26.103 Procedures.
- 26.104 Contract clause.

Subpart 26.2—Disaster or Emergency Assistance Activities

- 26.200 Scope of subpart.
- 26.201 Definitions.
- 26.202 Local area preference.
- 26.202-1 Local area set-aside.
- 26.202-2 Evaluation preference.

- 26.203 Transition of work.
- 26.204 Justification for expenditures to other than local firms.
- 26.205 Disaster Response Registry.
- 26.206 Solicitation provision and contract clauses.

Subpart 26.3—Historically Black Colleges and Universities and Minority Institutions

- 26.300 Scope of subpart.
- 26.301 [Reserved]
- 26.302 General policy.
- 26.303 Data collection and reporting requirements.
- 26.304 Solicitation provision.

Subpart 26.4—Food Donations to Nonprofit Organizations

- 26.400 Scope of subpart.
- 26.401 Definitions.
- 26.402 Policy.
- 26.403 Procedures.
- 26.404 Contract clause.

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Subpart 26.2—Disaster or Emergency Assistance Activities

26.200 Scope of subpart.

This subpart implements the Robert T. Stafford Disaster Relief and Emergency Assistance Act ([42 U.S.C. 5150](#)), which provides a preference for local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities.

26.201 Definitions.

“Emergency response contract” means a contract with private entities that supports assistance activities in a major disaster or emergency area, such as debris clearance, distribution of supplies, or reconstruction.

“Local firm” means a private organization, firm, or individual residing or doing business primarily in a major disaster or emergency area.

“Major disaster or emergency area” means the area included in the official Presidential declaration(s) and any additional areas identified by the Department of Homeland Security. Major disaster declarations and emergency declarations are published in the Federal Register and are available at <http://www.fema.gov/news/disasters.fema>.

26.202 Local area preference.

When awarding emergency response contracts during the term of a major disaster or emergency declaration by the President of the United States under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act ([42 U.S.C. 5121](#), *et seq.*), preference shall be given, to the extent feasible and practicable, to local firms. Preference may be given through a local area set-aside or an evaluation preference.

26.202-1 Local area set-aside.

The contracting officer may set aside solicitations to allow only local firms within a specific geographic area to compete (see [6.207](#)).

(a) The contracting officer, in consultation with the requirements office, shall define the specific geographic area for the local set-aside.

(b) A major disaster or emergency area may span counties in several contiguous States. The set-aside area need not include all the counties in the declared disaster/emergency area(s), but cannot go outside it.

(c) The contracting officer shall also determine whether a local area set-aside should be further restricted to small business concerns in the set-aside area (see [Part 19](#)).

26.202-2 Evaluation preference.

The contracting officer may use an evaluation preference, when authorized in agency regulations or procedures.

26.203 Transition of work.

(a) In anticipation of potential emergency response requirements, agencies involved in response planning should consider awarding emergency response contracts before a major disaster or emergency occurs to ensure immediate response and relief. These contracts should be structured to respond to immediate emergency response needs, and should not be structured in any way that may inhibit the transition of emergency response work to local firms (*e.g.*, unnecessarily broad scopes of work or long periods of performance).

(b) [42 U.S.C. 5150\(b\)\(2\)](#) requires that agencies performing response, relief, and reconstruction activities transition to local firms any work performed under contracts in effect on the date on which the President declares a major disaster or emergency, unless the head of such agency determines in writing that it is not feasible or practicable. This determination may be made on an individual contract or class basis. The written determination shall be prepared within a reasonable time given the circumstances of the emergency.

(c) In effecting the transition, agencies are not required to terminate or renegotiate existing contracts. Agencies should transition the work at the earliest practical opportunity after consideration of the following:

(1) The potential duration of the disaster or emergency.

(2) The severity of the disaster or emergency.

(3) The scope and structure of the existing contract, including its period of performance and the milestone(s) at which a transition is reasonable (*e.g.*, before exercising an option).

(4) The potential impact of a transition, including safety, national defense, and mobilization.

(5) The expected availability of qualified local offerors who can provide the products or services at a reasonable price.

(d) The agency shall transition the work to local firms using the local area set-aside identified in [26.202-1](#).

26.204 Justification for expenditures to other than local firms.

(a) [42 U.S.C. 5150\(b\)\(1\)](#) requires that, subsequent to any Presidential declaration of a major disaster or emergency, any expenditure of Federal funds, under an emergency response contract not awarded to a local firm, must be justified in writing in the contract file. The justification should include consideration for the scope of the major disaster or emergency and the immediate requirements or needs of supplies and services to ensure life is protected, victims are cared for, and property is protected.

(b) The justification may be made on an individual or class basis. The contracting officer approves the justification.

26.205 Disaster Response Registry.

(a) Contracting officers shall consult the Disaster Response Registry at www.ccr.gov to determine the availabil-

ity of contractors for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas.

(b) A list of prospective vendors voluntarily participating in the Disaster Response Registry can be retrieved using the CCR Search tool on the CCR webpage. These vendors may be identified by selecting the criteria for “Disaster Response Contractors”. Contractors are required to register with CCR in order to gain access to the Disaster Response Registry.

26.206 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the provision at [52.226-3](#), Disaster or Emergency Area Representation, in solicitations involving the local area set-aside. For commercial items, see [12.301](#)(e)(4).

(b) The contracting officer shall insert the clause at [52.226-4](#), Notice of Disaster or Emergency Area Set-aside in solicitations and contracts involving local area set-asides.

(c) The contracting officer shall insert the clause at [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area, in all solicitations and contracts that involve local area set-asides.

the contract. All costs specifically identified with other final cost objectives of the contractor are direct costs of those cost objectives and are not to be charged to the contract directly or indirectly.

(b) For reasons of practicality, the contractor may treat any direct cost of a minor dollar amount as an indirect cost if the accounting treatment—

- (1) Is consistently applied to all final cost objectives; and
- (2) Produces substantially the same results as treating the cost as a direct cost.

31.203 Indirect costs.

(a) For contracts subject to full CAS coverage, allocation of indirect costs shall be based on the applicable provisions. For all other contracts, the applicable CAS provisions in paragraphs (b) through (h) of this section apply.

(b) After direct costs have been determined and charged directly to the contract or other work, indirect costs are those remaining to be allocated to intermediate or two or more final cost objectives. No final cost objective shall have allocated to it as an indirect cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective.

(c) The contractor shall accumulate indirect costs by logical cost groupings with due consideration of the reasons for incurring such costs. The contractor shall determine each grouping so as to permit use of an allocation base that is common to all cost objectives to which the grouping is to be allocated. The base selected shall allocate the grouping on the basis of the benefits accruing to intermediate and final cost objectives. When substantially the same results can be achieved through less precise methods, the number and composition of cost groupings should be governed by practical considerations and should not unduly complicate the allocation.

(d) Once an appropriate base for allocating indirect costs has been accepted, the contractor shall not fragment the base by removing individual elements. All items properly includable in an indirect cost base shall bear a pro rata share of indirect costs irrespective of their acceptance as Government contract costs. For example, when a cost input base is used for the allocation of G&A costs, the contractor shall include in the base all items that would properly be part of the cost input base, whether allowable or unallowable, and these items shall bear their pro rata share of G&A costs.

(e) The method of allocating indirect costs may require revision when there is a significant change in the nature of the business, the extent of subcontracting, fixed-asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances.

(f) Separate cost groupings for costs allocable to offsite locations may be necessary to permit equitable distribution of costs on the basis of the benefits accruing to the several cost objectives.

(g) A base period for allocating indirect costs is the cost accounting period during which such costs are incurred and accumulated for allocation to work performed in that period.

(1) For contracts subject to full or modified CAS coverage, the contractor shall follow the criteria and guidance in 48 CFR 9904.406 for selecting the cost accounting periods to be used in allocating indirect costs.

(2) For contracts other than those subject to paragraph (g)(1) of this section, the base period for allocating indirect costs shall be the contractor's fiscal year used for financial reporting purposes in accordance with generally accepted accounting principles. The fiscal year will normally be 12 months, but a different period may be appropriate (e.g., when a change in fiscal year occurs due to a business combination or other circumstances).

(h) Special care should be exercised in applying the principles of paragraphs (c), (d), and (e) of this section when Government-owned contractor-operated (GOCO) plants are involved. The distribution of corporate, division or branch office G&A expenses to such plants operating with little or no dependence on corporate administrative activities may require more precise cost groupings, detailed accounts screening, and carefully developed distribution bases.

(i) Indirect costs that meet the definition of "excessive pass-through charge" in [52.215-23](#), are unallowable.

31.204 Application of principles and procedures.

(a) Costs are allowable to the extent they are reasonable, allocable, and determined to be allowable under [31.201](#), [31.202](#), [31.203](#), and [31.205](#). These criteria apply to all of the selected items that follow, even if particular guidance is provided for certain items for emphasis or clarity.

(b)(1) For the following subcontract types, costs incurred as reimbursements or payments to a subcontractor are allowable to the extent the reimbursements or payments are for costs incurred by the subcontractor that are consistent with this part:

(i) Cost-reimbursement.

(ii) Fixed-price incentive.

(iii) Price redeterminable (*i.e.*, fixed-price contracts with prospective price redetermination and fixed-ceiling-price contracts with retroactive price redetermination).

(2) The requirements of paragraph (b)(1) of this section apply to any tier above the first firm-fixed-price subcontract or fixed-price subcontract with economic price adjustment provisions.

(c) Costs incurred as payments under firm-fixed-price subcontracts or fixed-price subcontracts with economic price adjustment provisions or modifications thereto, for which subcontract cost analysis was performed are allowable if the price was negotiated in accordance with [31.102](#).

(d) Section [31.205](#) does not cover every element of cost. Failure to include any item of cost does not imply that it is either allowable or unallowable. The determination of allowability shall be based on the principles and standards in this subpart and the treatment of similar or related selected items. When more than one subsection in [31.205](#) is relevant to a contractor cost, the cost shall be apportioned among the applicable subsections, and the determination of allowability of each portion shall be based on the guidance contained in the applicable subsection. When a cost, to which more than one subsection in [31.205](#) is relevant, cannot be apportioned, the determination of allowability shall be based on the guidance contained in the subsection that most specifically deals with, or best captures the essential nature of, the cost at issue.

31.205 Selected costs.

31.205-1 Public relations and advertising costs.

(a) “Public relations” means all functions and activities dedicated to—

- (1) Maintaining, protecting, and enhancing the image of a concern or its products; or
- (2) Maintaining or promoting reciprocal understanding and favorable relations with the public at large, or any segment of the public. The term public relations includes activities associated with areas such as advertising, customer relations, etc.

(b) “Advertising” means the use of media to promote the sale of products or services and to accomplish the activities referred to in paragraph (d) of this subsection, regardless of the medium employed, when the advertiser has control over the form and content of what will appear, the media in which it will appear, and when it will appear. Advertising media include but are not limited to conventions, exhibits, free goods, samples, magazines, newspapers, trade papers, direct mail, dealer cards, window displays, outdoor advertising, radio, and television.

(c) Public relations and advertising costs include the costs of media time and space, purchased services performed by outside organizations, as well as the applicable portion of salaries, travel, and fringe benefits of employees engaged in the functions and activities identified in paragraphs (a) and (b) of this subsection.

(d) The only allowable advertising costs are those that are—

- (1) Specifically required by contract, or that arise from requirements of Government contracts, and that are exclusively for—
 - (i) Acquiring scarce items for contract performance; or
 - (ii) Disposing of scrap or surplus materials acquired for contract performance;

(2) Costs of activities to promote sales of products normally sold to the U.S. Government, including trade shows, which contain a significant effort to promote exports from the United States. Such costs are allowable, notwithstanding paragraphs (f)(1), (f)(3), (f)(4)(ii), and (f)(5) of this subsection. However, such costs do not include the costs of memorabilia (e.g., models, gifts, and souvenirs), alcoholic beverages, entertainment, and physical facilities that are used primarily for entertainment rather than product promotion; or

(3) Allowable in accordance with [31.205-34](#).

(e) Allowable public relations costs include the following:

- (1) Costs specifically required by contract.
- (2) Costs of—
 - (i) Responding to inquiries on company policies and activities;
 - (ii) Communicating with the public, press, stockholders, creditors, and customers; and
 - (iii) Conducting general liaison with news media and Government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern such as notice of contract awards, plant closings or openings, employee layoffs or rehires, financial information, etc.

(3) Costs of participation in community service activities (e.g., blood bank drives, charity drives, savings bond drives, disaster assistance, etc.) (But see paragraph (f)(8) of this section.)

(4) Costs of plant tours and open houses (but see paragraph (f)(5) of this subsection).

(5) Costs of keel laying, ship launching, commissioning, and roll-out ceremonies, to the extent specifically provided for by contract.

(f) Unallowable public relations and advertising costs include the following:

(1) All public relations and advertising costs, other than those specified in paragraphs (d) and (e) of this subsection, whose primary purpose is to promote the sale of products or services by stimulating interest in a product or product line (except for those costs made allowable under [31.205-38\(b\)\(5\)](#)), or by disseminating messages calling favorable attention to the contractor for purposes of enhancing the company image to sell the company’s products or services.

(2) All costs of trade shows and other special events which do not contain a significant effort to promote the export sales of products normally sold to the U.S. Government.

(3) Costs of sponsoring meetings, conventions, symposia, seminars, and other special events when the principal purpose of the event is other than dissemination of technical information or stimulation of production.

- (4) Costs of ceremonies such as—
 - (i) Corporate celebrations and
 - (ii) New product announcements.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

52.000	Scope of part.	52.205	[Reserved]
Subpart 52.1—Instructions for Using Provisions and Clauses		52.206	[Reserved]
52.100	Scope of subpart.	52.207-1	Notice of Standard Competition.
52.101	Using Part 52.	52.207-2	Notice of Streamlined Competition.
52.102	Incorporating provisions and clauses.	52.207-3	Right of First Refusal of Employment.
52.103	Identification of provisions and clauses.	52.207-4	Economic Purchase Quantity—Supplies.
52.104	Procedures for modifying and completing provisions and clauses.	52.207-5	Option to Purchase Equipment.
52.105	Procedures for using alternates.	52.208-1	[Reserved]
52.106	[Reserved]	52.208-2	[Reserved]
52.107	Provisions and clauses prescribed in Subpart 52.1 .	52.208-3	[Reserved]
Subpart 52.2—Text of Provisions and Clauses		52.208-4	Vehicle Lease Payments.
52.200	Scope of subpart.	52.208-5	Condition of Leased Vehicles.
52.201	[Reserved]	52.208-6	Marking of Leased Vehicles.
52.202-1	Definitions.	52.208-7	Tagging of Leased Vehicles.
52.203-1	[Reserved]	52.208-8	Required Sources for Helium and Helium Usage Data.
52.203-2	Certificate of Independent Price Determination.	52.208-9	Contractor Use of Mandatory Sources of Supply or Services.
52.203-3	Gratuities.	52.209-1	Qualification Requirements.
52.203-4	[Reserved]	52.209-2	Prohibition on Contracting with Inverted Domestic Corporations-Representation.
52.203-5	Covenant Against Contingent Fees.	52.209-3	First Article Approval—Contractor Testing.
52.203-6	Restrictions on Subcontractor Sales to the Government.	52.209-4	First Article Approval—Government Testing.
52.203-7	Anti-Kickback Procedures.	52.209-5	Certification Regarding Responsibility Matters.
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity.	52.209-6	Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
52.203-9	[Reserved]	52.210	[Reserved]
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity.	52.211-1	Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29.
52.203-11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.	52.211-2	Availability of Specifications, Standards, and Data Item Descriptions Listed in the Acquisition Streamlining and Standardization Information System (ASSIST).
52.203-12	Limitation on Payments to Influence Certain Federal Transactions.	52.211-3	Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.
52.203-13	Contractor Code of Business Ethics and Conduct.	52.211-4	Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.
52.203-14	Display of Hotline Poster(s).	52.211-5	Material Requirements.
52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009.	52.211-6	Brand Name or Equal.
52.204-1	Approval of Contract.	52.211-7	Alternatives to Government-Unique Standards.
52.204-2	Security Requirements.	52.211-8	Time of Delivery.
52.204-3	Taxpayer Identification.	52.211-9	Desired and Required Time of Delivery.
52.204-4	Printed or Copied Double-Sided on Recycled Paper.	52.211-10	Commencement, Prosecution, and Completion of Work.
52.204-5	Women-Owned Business (Other Than Small Business).	52.211-11	Liquidated Damages—Supplies, Services, or Research and Development.
52.204-6	Data Universal Numbering System (DUNS) Number.	52.211-12	Liquidated Damages—Construction.
52.204-7	Central Contractor Registration.	52.211-13	Time Extensions.
52.204-8	Annual Representations and Certifications.		
52.204-9	Personal Identity Verification of Contractor Personnel.		
52.204-10	Reporting Subcontract Awards.		
52.204-11	American Recovery and Reinvestment Act—Reporting Requirements.		

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- 52.211-14 Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use.
 - 52.211-15 Defense Priority and Allocation Requirements.
 - 52.211-16 Variation in Quantity.
 - 52.211-17 Delivery of Excess Quantities.
 - 52.211-18 Variation in Estimated Quantity.
 - 52.212-1 Instructions to Offerors—Commercial Items.
 - 52.212-2 Evaluation—Commercial Items.
 - 52.212-3 Offeror Representations and Certifications—Commercial Items.
 - 52.212-4 Contract Terms and Conditions—Commercial Items.
 - 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.
 - 52.213-1 Fast Payment Procedure.
 - 52.213-2 Invoices.
 - 52.213-3 Notice to Supplier.
 - 52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).
 - 52.214-1 [Reserved]
 - 52.214-2 [Reserved]
 - 52.214-3 Amendments to Invitations for Bids.
 - 52.214-4 False Statements in Bids.
 - 52.214-5 Submission of Bids.
 - 52.214-6 Explanation to Prospective Bidders.
 - 52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.
 - 52.214-8 [Reserved]
 - 52.214-9 [Reserved]
 - 52.214-10 Contract Award—Sealed Bidding.
 - 52.214-11 [Reserved]
 - 52.214-12 Preparation of Bids.
 - 52.214-13 Telegraphic Bids.
 - 52.214-14 Place of Performance—Sealed Bidding.
 - 52.214-15 Period for Acceptance of Bids.
 - 52.214-16 Minimum Bid Acceptance Period.
 - 52.214-17 [Reserved]
 - 52.214-18 Preparation of Bids—Construction.
 - 52.214-19 Contract Award—Sealed Bidding—Construction.
 - 52.214-20 Bid Samples.
 - 52.214-21 Descriptive Literature.
 - 52.214-22 Evaluation of Bids for Multiple Awards.
 - 52.214-23 Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.
 - 52.214-24 Multiple Technical Proposals.
 - 52.214-25 Step Two of Two-Step Sealed Bidding.
 - 52.214-26 Audit and Records—Sealed Bidding.
 - 52.214-27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.
 - 52.214-28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.
 - 52.214-29 Order of Precedence—Sealed Bidding.
 - 52.214-30 [Reserved]
 - 52.214-31 Facsimile Bids.
 - 52.214-32 [Reserved]
 - 52.214-33 [Reserved]
 - 52.214-34 Submission of Offers in the English Language.
 - 52.214-35 Submission of Offers in U.S. Currency.
 - 52.215-1 Instructions to Offerors—Competitive Acquisition.
 - 52.215-2 Audit and Records—Negotiation.
 - 52.215-3 Request for Information or Solicitation for Planning Purposes.
 - 52.215-4 [Reserved]
 - 52.215-5 Facsimile Proposals.
 - 52.215-6 Place of Performance.
 - 52.215-7 [Reserved]
 - 52.215-8 Order of Precedence—Uniform Contract Format.
 - 52.215-9 Changes or Additions to Make-or-Buy Program.
 - 52.215-10 Price Reduction for Defective Cost or Pricing Data.
 - 52.215-11 Price Reduction for Defective Cost or Pricing Data—Modifications.
 - 52.215-12 Subcontractor Cost or Pricing Data.
 - 52.215-13 Subcontractor Cost or Pricing Data—Modifications.
 - 52.215-14 Integrity of Unit Prices.
 - 52.215-15 Pension Adjustments and Asset Reversions.
 - 52.215-16 Facilities Capital Cost of Money.
 - 52.215-17 Waiver of Facilities Capital Cost of Money.
 - 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.
 - 52.215-19 Notification of Ownership Changes.
 - 52.215-20 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.
 - 52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.
 - 52.215-22 Limitations on Pass-Through Charges—Identification of Subcontract Effort.
 - 52.215-23 Limitations on Pass-Through Charges.
 - 52.216-1 Type of Contract.
 - 52.216-2 Economic Price Adjustment—Standard Supplies.
 - 52.216-3 Economic Price Adjustment—Semistandard Supplies.
 - 52.216-4 Economic Price Adjustment—Labor and Material.
 - 52.216-5 Price Redetermination—Prospective.
 - 52.216-6 Price Redetermination—Retroactive.
 - 52.216-7 Allowable Cost and Payment.
 - 52.216-8 Fixed Fee.
 - 52.216-9 Fixed Fee—Construction.
 - 52.216-10 Incentive Fee.
 - 52.216-11 Cost Contract—No Fee.

(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

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

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

(End of clause)

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

As prescribed in [4.607\(b\)](#), insert the following provision:

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

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

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

(End of provision)

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

As prescribed in [4.607\(a\)](#), insert the following provision:

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

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

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

(1) An offeror may obtain a DUNS number—

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

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

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

(i) Company legal business name.

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

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

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

(v) Company telephone number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

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

(End of provision)

52.204-7 Central Contractor Registration.

As prescribed in [4.1105](#), use the following clause:

CENTRAL CONTRACTOR REGISTRATION (APR 2008)

(a) Definitions. As used in this clause—

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

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

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

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

“Registered in the CCR database” means that—

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

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

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

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

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

(1) An offeror may obtain a DUNS number—

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

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

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

(i) Company legal business.

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

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

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

(v) Company Telephone Number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

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

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

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

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

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

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

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

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

ered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated by the contract, order, or blanket purchase agreement.

(e) *FAST PAY container identification.* The Contractor shall mark all outer shipping containers “FAST PAY” When outer shipping containers are not marked “FAST PAY,” the payment office may make fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

(End of clause)

52.213-2 Invoices.

As prescribed in [13.302-5\(b\)](#), insert the following clause:

INVOICES (APR 1984)

The Contractor’s invoices must be submitted before payment can be made. The Contractor will be paid on the basis of the invoice, which must state—

(a) The starting and ending dates of the subscription delivery; and

(b) Either that orders have been placed in effect for the addressees required, or that the orders will be placed in effect upon receipt of payment.

(End of clause)

52.213-3 Notice to Supplier.

As prescribed in [13.302-5\(c\)](#), insert the following clause:

NOTICE TO SUPPLIER (APR 1984)

This is a firm order ONLY if your price does not exceed the maximum line item or total price in the Schedule. Submit invoices to the Contracting Officer. If you cannot perform in exact accordance with this order, WITHHOLD PERFORMANCE, and notify the Contracting Officer immediately, giving your quotation.

(End of clause)

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

As prescribed in [13.302-5\(d\)](#), insert the following clause:

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS
(OTHER THAN COMMERCIAL ITEMS) (OCT 2009)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

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

(ii) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999) (E.O. 11246).

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

(iv) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).

(v) [52.225-13](#), Restrictions on Certain Foreign Purchases (JUNE 2008) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

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

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

(2) Listed below are additional clauses that apply:

(i) [52.232-1](#), Payments (APR 1984).

(ii) [52.232-8](#), Discounts for Prompt Payment (FEB 2002).

(iii) [52.232-11](#), Extras (APR 1984).

(iv) [52.232-25](#), Prompt Payment (OCT 2008).

(v) [52.233-1](#), Disputes (JULY 2002).

(vi) [52.244-6](#), Subcontracts for Commercial Items (AUG 2009).

(vii) [52.253-1](#), Computer Generated Forms (JAN 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

(i) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (AUG 2009) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

(ii) [52.222-20](#), Walsh-Healey Public Contracts Act (DEC 1996) ([41 U.S.C. 35-45](#)) (Applies to supply contracts over \$10,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).

(iii) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)) (Applies to contracts of \$100,000 or more).

(iv) [52.222-36](#), Affirmative Action for Workers with Disabilities (JUNE 1998) ([29 U.S.C. 793](#)). (Applies to contracts over \$10,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, *United States* includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

(v) [52.222-37](#), Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible

ble Veterans (SEPT 2006) ([38 U.S.C. 4212](#)) (Applies to contracts of \$100,000 or more).

(vi) [52.222-41](#), Service Contract Act of 1965 (NOV 2007) ([41 U.S.C. 351](#), *et seq.*) (Applies to service contracts over \$2,500 that are subject to the Service Contract Act and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer continental shelf lands.)

(vii) [52.223-5](#), Pollution Prevention and Right-to-Know Information (AUG 2003) (E.O. 13148) (Applies to services performed on Federal facilities).

(viii) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)) (Unless exempt pursuant to [23.204](#), applies to contracts when energy-consuming products listed in the ENERGY STAR® Program or Federal Energy Management Program (FEMP) will be—

(A) Delivered;

(B) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(C) Furnished by the Contractor for use by the Government; or

(D) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.)

(ix) [52.225-1](#), Buy American Act—Supplies (FEB 2009) ([41 U.S.C. 10a-10d](#)) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition—

(A) Is set aside for small business concerns; or

(B) Cannot be set aside for small business concerns (see [19.502-2](#)), and does not exceed \$25,000).

(x) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information.)

(xi) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999). (Applies when the payment will be made by EFT and the payment office does not use the CCR database as its source of EFT information.)

(xii) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. App. 1241](#)). (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at [47.504\(d\)](#).)

(2) Listed below are additional clauses that may apply:

(i) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (SEPT 2006) (Applies to contracts over \$30,000).

(ii) [52.211-17](#), Delivery of Excess Quantities (SEPT 1989) (Applies to fixed-price supplies).

(iii) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Pub. L. 110-247) (Applies to contracts greater than \$25,000 that provide for the provision, the service, or the sale of food in the United States.)

(iv) [52.247-29](#), F.o.b. Origin (FEB 2006) (Applies to supplies if delivery is f.o.b. origin).

(v) [52.247-34](#), F.o.b. Destination (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) *FAR 52.252-2, Clauses Incorporated by Reference (FEB 1998)*. This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]

(d) *Inspection/Acceptance*. The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights—

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) *Excusable delays*. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) *Termination for the Government's convenience*. The Government reserves the right to terminate this contract, or

mercial 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 cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with [Table 15-2](#) of FAR [15.408](#).

(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 1997). As prescribed in [15.408\(m\)](#), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic clause.

(b)(1) The Contractor shall submit cost or pricing data and supporting attachments prepared in the following format:

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 1997). As prescribed in [15.408\(m\)](#), replace the text of the basic clause with the following:

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

(b) Provide information described below: *[Insert description of the information and the format that are required, including 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 1 (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.

participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the—

U.S. Department of the Interior
 Bureau of Indian Affairs (BIA)
 Attn: Chief, Division of Contracting and Grants
 Administration
 1849 C Street, NW,
 MS-2626-MIB
 Washington, DC 20240-4000.

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

- (i) The estimated cost of a cost-type contract.
- (ii) The target cost of a cost-plus-incentive-fee prime contract.
- (iii) The target cost and ceiling price of a fixed-price incentive prime contract.
- (iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

(End of clause)

52.226-2 Historically Black College or University and Minority Institution Representation.

As prescribed in [26.304](#), insert the following provision:

HISTORICALLY BLACK COLLEGE OR UNIVERSITY AND
 MINORITY INSTITUTION REPRESENTATION (OCT 2008)

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

“Historically black college or university” means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

“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](#)).

(b) *Representation.* The offeror represents that it—

- is is not a historically black college or university;
- is is not a minority institution.

(End of provision)

52.226-3 Disaster or Emergency Area Representation.

As prescribed in [26.206](#)(a), insert the following provision:

DISASTER OR EMERGENCY AREA REPRESENTATION
 (NOV 2007)

(a) *Set-aside area.* The area covered in this contract is:

[*Contracting Officer to fill in with definite geographic boundaries.*]

(b) *Representations.* The offeror represents that it does does not reside or primarily do business in the designated set-aside area.

(c) An offeror is considered to be residing or primarily doing business in the set-aside area if, during the last twelve months—

- (1) The offeror had its main operating office in the area; and
- (2) That office generated at least half of the offeror’s gross revenues and employed at least half of the offeror’s permanent employees.

(d) If the offeror does not meet the criteria in paragraph (c) of this provision, factors to be considered in determining whether an offeror resides or primarily does business in the set-aside area include—

- (1) Physical location(s) of the offeror’s permanent office(s) and date any office in the set-aside area(s) was established;
- (2) Current state licenses;
- (3) Record of past work in the set-aside area(s) (*e.g.*, how much and for how long);
- (4) Contractual history the offeror has had with subcontractors and/or suppliers in the set-aside area;
- (5) Percentage of the offeror’s gross revenues attributable to work performed in the set-aside area;
- (6) Number of permanent employees the offeror employs in the set-aside area;

(7) Membership in local and state organizations in the set-aside area; and

(8) Other evidence that establishes the offeror resides or primarily does business in the set-aside area. For example, sole proprietorships may submit utility bills and bank statements.

(e) If the offeror represents it resides or primarily does business in the set-aside area, the offeror shall furnish documentation to support its representation if requested by the Contracting Officer. The solicitation may require the offeror to submit with its offer documentation to support the representation.

(End of provision)

52.226-4 Notice of Disaster or Emergency Area Set-Aside.

As prescribed in [26.206](#)(b), insert the following clause:

NOTICE OF DISASTER OR EMERGENCY AREA SET-ASIDE
(NOV 2007)

(a) *Set-aside area.* Offers are solicited only from businesses residing or primarily doing business in

[*Contracting Officer to fill in with definite geographic boundaries.*] Offers received from other businesses shall not be considered.

(b) This set-aside is in addition to any small business set-aside contained in this contract.

(End of clause)

52.226-5 Restrictions on Subcontracting Outside Disaster or Emergency Area.

As prescribed in [26.206](#)(c), insert the following clause:

RESTRICTIONS ON SUBCONTRACTING OUTSIDE
DISASTER OR EMERGENCY AREA (NOV 2007)

(a) *Definitions.* The definitions of the following terms used in this clause are found in the Small Business Administration regulations at 13 CFR 125.6(e): cost of the contract, cost of contract performance incurred for personnel, cost of manufacturing, cost of materials, personnel, and subcontracting.

(b) The Contractor agrees that in performance of the contract in the case of a contract for—

(1) *Services (except construction).* At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the Contractor or employees of other businesses residing or primarily doing business in the area designated in the clause at FAR [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside;

(2) *Supplies (other than procurement from a nonmanufacturer of such supplies).* The Contractor or employees of other businesses residing or primarily doing business in the set-aside area shall perform work for at least 50 percent of the

cost of manufacturing the supplies, not including the cost of materials;

(3) *General construction.* The Contractor will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees or employees of other businesses residing or primarily doing business in the set-aside area; or

(4) *Construction by special trade Contractors.* The Contractor will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees or employees of other businesses residing or primarily doing business in the set-aside area.

(End of clause)

52.226-6 Promoting Excess Food Donation to Nonprofit Organizations.

As prescribed in [26.404](#), insert the following clause:

PROMOTING EXCESS FOOD DONATION TO NONPROFIT
ORGANIZATIONS (MAR 2009)

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

“Apparently wholesome food” means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

“Excess food” means food that—

(1) Is not required to meet the needs of the executive agencies; and

(2) Would otherwise be discarded.

“Food-insecure” means inconsistent access to sufficient, safe, and nutritious food.

“Nonprofit organization” means any organization that is—

(1) Described in section 501(c) of the Internal Revenue Code of 1986; and

(2) Exempt from tax under section 501(a) of that Code.

(b) In accordance with the Federal Food Donation Act of 2008 (Pub. L. 110-247), the Contractor is encouraged, to the maximum extent practicable and safe, to donate excess, apparently wholesome food to nonprofit organizations that provide assistance to food-insecure people in the United States.

(c) *Costs.* (1) The Contractor, including any subcontractors, shall assume the responsibility for all the costs and the logistical support to collect, transport, maintain the safety of, or distribute the excess, apparently wholesome food to the nonprofit organization(s) that provides assistance to food-insecure people.

(2) The Contractor will not be reimbursed for any costs incurred or associated with the donation of excess foods. Any costs incurred for excess food donations are unallowable.

(d) *Liability.* The Government and the Contractor, including any subcontractors, shall be exempt from civil and crimi-

under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

Alternate I (Dec 2007). As prescribed in [27.409\(b\)\(2\)](#), substitute the following definition for “limited rights data” in paragraph (a) of the basic clause:

“Limited rights data” means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Alternate II (Dec 2007). As prescribed in [27.409\(b\)\(3\)](#), insert the following paragraph (g)(3) in the basic clause:

(g)(3) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be entitled to be withheld. If delivery of that data is required, the Contractor shall affix the following “Limited Rights Notice” to the data and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

LIMITED RIGHTS NOTICE (DEC 2007)

(a) These data are submitted with limited rights under Government Contract No. _____ (and subcontract _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any; provided that the Government makes such disclosure subject to prohibition against further use and disclosure: [*Agencies may list additional purposes as set forth in [27.404-2\(c\)\(1\)](#) or if none, so state.*]

(b) This notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate III (Dec 2007). As prescribed in [27.409\(b\)\(4\)](#), insert the following paragraph (g)(4) in the basic clause:

(g)(4)(i) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be entitled to be withheld. If delivery of that computer software is required, the Contractor shall affix the following “Restricted Rights Notice” to the computer software and the Government will treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the notice:

Restricted Rights Notice (Dec 2007)

(a) This computer software is submitted with restricted rights under Government Contract No. _____ (and subcontract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use with the computer(s) for which it was acquired, including use at any Government installation to which the computer(s) may be transferred;

(2) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, *provided* that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Contractors or their subcontractors in accordance with paragraphs (b)(1) through (4) of this notice; and

(6) Used or copied for use with a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is copyrighted computer software, it is licensed to the Government with the minimum rights set forth in paragraph (b) of this notice.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.

(e) This notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form notice may be used instead:

Restricted Rights Notice Short Form (Jun 1987)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. _____ (and subcontract, if appropriate) with _____ (name of Contractor and subcontractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of [17 U.S.C. 401](#), it will be presumed to be licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

Alternate IV (Dec 2007). As prescribed in [27.409\(b\)\(5\)](#), substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

(c) *Copyright*—(1) *Data first produced in the performance of the contract.* Except as otherwise specifically provided in this contract, the Contractor may assert copyright in any data first produced in the performance of this contract. When asserting copyright, the Contractor shall affix the applicable copyright notice of [17 U.S.C. 401 or 402](#), and an acknowledgment of Government sponsorship (including contract number), to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, non-exclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public), by or on behalf of the Government.

Alternate V (Dec 2007). As prescribed in [27.409\(b\)\(6\)](#), add the following paragraph (j) to the basic clause:

(j) The Contractor agrees, except as may be otherwise specified in this contract for specific data deliverables listed as not subject to this paragraph, that the Contracting Officer may, up to three years after acceptance of all deliverables under this contract, inspect at the Contractor’s facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Contractor’s assertion of limited rights or restricted rights status of the data or for evaluating work performance. When the Contractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if a particular representative made the inspection, the Contracting Officer shall designate an alternate inspector.

52.227-15 Representation of Limited Rights Data and Restricted Computer Software.

As prescribed in [27.409\(c\)](#), insert the following provision:

REPRESENTATION OF LIMITED RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE (DEC 2007)

(a) This solicitation sets forth the Government’s known delivery requirements for data (as defined in the clause at [52.227-14](#), Rights in Data—General). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at [52.227-16](#), if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data—General clause at [52.227-14](#) included in this contract. Under the latter clause, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data instead. The latter clause also may be used with its Alternates II and/

or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of Alternate V with this latter clause provides the Government the right to inspect such data at the Contractor’s facility.

(b) By completing the remainder of this paragraph, the offeror represents that it has reviewed the requirements for the delivery of technical data or computer software and states [*off-error check appropriate block*]—

[] (1) None of the data proposed for fulfilling the data delivery requirements qualifies as limited rights data or restricted computer software; or

[] (2) Data proposed for fulfilling the data delivery requirements qualify as limited rights data or restricted computer software and are identified as follows:

(c) Any identification of limited rights data or restricted computer software in the offeror’s response is not determinative of the status of the data should a contract be awarded to the offeror.

(End of provision)

52.227-16 Additional Data Requirements.

As prescribed in [27.409\(d\)](#), insert the following clause:

ADDITIONAL DATA REQUIREMENTS (JUNE 1987)

(a) In addition to the data (as defined in the clause at [52.227-14](#), Rights in Data—General clause or other equivalent included in this contract) specified elsewhere in this contract to be delivered, the Contracting Officer may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The Rights in Data—General clause or other equivalent included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Contractor to deliver any data the withholding of which is authorized by the Rights in Data—General or other equivalent clause of this contract, or data which are specifically identified in this contract as not subject to this clause.

(c) When data are to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) The Contracting Officer may release the Contractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009.	3.907-7	C	Yes	Yes	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-1 Approval of Contract.	4.103	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-2 Security Requirements.	4.404(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	4.404(b)	C	Yes	I					A														
Alternate II	4.404(c)	C	Yes	I							A						A						
52.204-3 Taxpayer Identification.	4.905	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-4 Printed or Copied Double-Sided on Recycled Paper.	4.303	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-5 Women-Owned Business (Other Than Small Business)	4.607(b)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-6 Data Universal Numbering System (DUNS) Number.	4.607(a)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-7 Central Contractor Registration.	4.1105 ✓	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-8 Annual Representations and Certifications	4.1202	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-9 Personal Identity Verification of Contractor Personnel.	4.1303	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-10 Reporting Subcontract Awards	4.1401(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-11 American Recovery and Reinvestment Act—Reporting Requirements.	4.1502	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.207-1 Notice of Standard Competition.	7.305(a)	P	Yes	L	A				A														
52.207-2 Notice of Streamlined Competition.	7.305(b)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.207-3 Right of First Refusal of Employment.	7.305(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.207-4 Economic Purchase Quantity—Supplies.	7.203	P	No	K	A	A																	
52.207-5 Option to Purchase Equipment.	7.404	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.208-4 Vehicle Lease Payments.	8.1104(a)	C	Yes	I																			
52.208-5 Condition of Leased Vehicles.	8.1104(b)	C	Yes	I																			
52.208-6 Marking of Leased Vehicles.	8.1104(c)	C	Yes	I																			
52.208-7 Tagging of Leased Vehicles.	8.1104(d)	C	Yes	I																			
52.208-8 Required Sources for Helium and Helium Usage Data.	8.505	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.208-9 Contractor Use of Mandatory Sources of Supply or Services.	8.004	C	Yes	I	A	A																	
52.209-1 Qualification Requirements.	9.206-2	C	No	I	A	A																	

FAC 2005-37 OCTOBER 14, 2009

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.215-14 Integrity of Unit Prices.	15.408(f)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	15.408(f)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.215-15 Pension Adjustments and Asset Reversions.	15.408(g)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.215-16 Facilities Capital Cost of Money.	15.408(h)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.215-17 Waiver of Facilities Capital Cost of Money.	15.408(i)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.	15.408(j)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.215-19 Notification of Ownership Changes.	15.408(k)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.215-20 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.	15.408(l)	P	No	L	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	
Alternate I	15.408(l)	P	No	L	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate II	15.408(l)	P	No	L	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate III	15.408(l)	P	No	L	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate IV	15.408(l)	P	No	L	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.	15.408(m)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	
Alternate I	15.408(m)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate II	15.408(m)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate III	15.408(m)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate IV	15.408(m)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.215-22 Limitations on Pass-Through Charges—Identification of Subcontract Effort.	15.408(n)(1)	P	Yes	L	A	R	A	R	A	R	A	R	A	A	A	A	A	A	A	A	A	A	
52.215-23 Limitations on Pass-Through Charges.	15.408(n)(2)	C	Yes	I	A	R	A	R	A	R	A	R	A	A	A	A	A	A	A	A	A	A	
Alternate I	15.408(n)(2)(iii)	C	Yes	I	A	R	A	R	A	R	A	R	A	A	A	A	A	A	A	A	A	A	
52.216-1 Type of Contract.	16.105	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.216-2 Economic Price Adjustment—Standard Supplies.	16.203-4(a)	C	No	I	O									O									
52.216-3 Economic Price Adjustment—Semistandard Supplies.	16.203-4(b)	C	No	I	O									O									
52.216-4 Economic Price Adjustment—Labor and Material.	16.203-4(c)	C	Yes	I	O									O									
52.216-5 Price Redetermination—Prospective.	16.205-4	C	Yes	I										A									

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
																								PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT
<u>52.216-6</u> Price Redetermination—Retroactive.	<u>16.206-4</u>	C	Yes	I			A		A		A		A	A	A	A		A						
<u>52.216-7</u> Allowable Cost and Payment.	<u>16.307(a)</u>	C	Yes	I		A		A		A			A	A	A	A	A		A	A				
Alternate I	<u>16.307(a)(2)</u>	C	Yes	I							A													
<u>52.216-8</u> Fixed Fee.	<u>16.307(b)</u>	C	Yes	I		A		A		A			A	A	A	A	A		A	A				
<u>52.216-9</u> Fixed Fee—Construction.	<u>16.307(c)</u>	C	Yes	I								A												
<u>52.216-10</u> Incentive Fee.	<u>16.307(d)</u>	C	Yes	I		A		A		A			A	A	A	A	A		A	A				
<u>52.216-11</u> Cost Contract—No Fee.	<u>16.307(e)(1)</u>	C	Yes	I		A		A		A			A	A	A	A	A		A	A				
Alternate I	<u>16.307(e)(2)</u>	C	Yes	I																				
<u>52.216-12</u> Cost-Sharing Contract—No Fee.	<u>16.307(f)(1)</u>	C	Yes	I		A		A		A			A	A	A	A	A		A	A				
Alternate I	<u>16.307(f)(2)</u>	C	Yes	I																				
<u>52.216-15</u> Predetermined Indirect Cost Rates.	<u>16.307(g)</u>	C	Yes	I																				
<u>52.216-16</u> Incentive Price Revision—Firm Target.	<u>16.406(a)</u>	C	Yes	I	A		A		A				A	A	A	A	A		A	A				
Alternate I	<u>16.406(a)</u>	C	Yes	I	A				A				A	A	A	A	A		A	A				
<u>52.216-17</u> Incentive Price Revision—Successive Targets.	<u>16.406(b)</u>	C	Yes	I	A		A		A				A	A	A	A	A		A	A				
Alternate I	<u>16.406(b)</u>	C	Yes	I	A				A				A	A	A	A	A		A	A				
<u>52.216-18</u> Ordering.	<u>16.506(a)</u>	C	No	I																				
<u>52.216-19</u> Order Limitations.	<u>16.506(b)</u>	C	No	I																				
<u>52.216-20</u> Definite Quantity.	<u>16.506(c)</u>	C	Yes	I																				
<u>52.216-21</u> Requirements.	<u>16.506(d)(1)</u>	C	No	I																				
Alternate I	<u>16.506(d)(2)</u>	C	Yes	I																				
Alternate II	<u>16.506(d)(3)</u>	C	Yes	I																				
Alternate III	<u>16.506(d)(4)</u>	C	Yes	I																				
Alternate IV	<u>16.506(d)(5)</u>	C	Yes	I																				
<u>52.216-22</u> Indefinite Quantity.	<u>16.506(e)</u>	C	No	I																				
<u>52.216-23</u> Execution and Commencement of Work. (See Note 1.)	<u>16.603-4(b)(1)</u>	C	No	I	A		A		A				A	A	A	A	A		A	A			A	
<u>52.216-24</u> Limitation of Government Liability. (See Note 1.)	<u>16.603-4(b)(2)</u>	C	No	I	R		R		R				R	R	R	R	R		R	R			R	
<u>52.216-25</u> Contract Definitization. (See Note 1.)	<u>16.603-4(b)(3)</u>	C	No	I	R		R		R				R	R	R	R	R		R	R			R	
Alternate I (See Note 1.)	<u>16.603-4(b)(3)</u>	C	No	I	A		A		A				A	A	A	A	A		A	A			A	
<u>52.216-26</u> Payments of Allowable Costs Before Definitization. (See Note 1.)	<u>16.603-4(c)</u>	C	Yes	I																				
<u>52.216-27</u> Single or Multiple Awards.	<u>16.506(f)</u>	P	Yes	L																				
<u>52.216-28</u> Multiple Awards for Advisory and Assistance Services.	<u>16.506(g)</u>	P	Yes	L																				

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.216-29 T&M/LH Proposal Requirements—Non-commercial Item Acquisition with Adequate Price Competition	16.601(e)(1)	P	Yes	L✓									A										
52.216-30 T&M/LH Proposal Requirements—Non-commercial Item Acquisition without Adequate Price Competition	16.601(e)(2)	P	No	L✓									A										
52.216-31 T&M/LH Proposal Requirements—Commercial Item Acquisition	16.601(e)(3)	P	Yes	I									A										
52.217-2 Cancellation Under Multiyear Contracts.	17.109(a)	C	Yes	I	A				A											A			
52.217-3 Evaluation Exclusive of Options.	17.208(a)	P	Yes	M	A	A			A				A							A			
52.217-4 Evaluation of Options Exercised at Time of Contract Award.	17.208(b)	P	Yes	M	A	A			A				A							A			
52.217-5 Evaluation of Options.	17.208(c)	P	Yes	M	A	A			A				A							A			
52.217-6 Option for Increased Quantity.	17.208(d)	C	Yes	I	A				A											A			
52.217-7 Option for Increased Quantity—Separately Priced Line Item.	17.208(e)	C	Yes	I	A	A							A							A			
52.217-8 Option to Extend Services.	17.208(f)	C	Yes	I					A				A							A			
52.217-9 Option to Extend the Term of the Contract.	17.208(g)	C	No	I					A				A							A			
52.219-1 Small Business Program Representations.	19.308(a)(1)	P	No	K	A	A			A				A							A			
Alternate I	19.308(a)(2)	P	No	K	A	A			A				A							A			
52.219-2 Equal Low Bids.	19.308(c)	P	No	K	A				A											A			
52.219-3 Notice of Total HUBZone Set-Aside.	19.1308(a)	C	Yes	I	A	A			A				A							A			
52.219-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.	19.1308(b)	C	Yes	I	A	A			A				A							A			
52.219-6 Notice of Total Small Business Set-Aside.	19.508(c)	C	Yes	I	A	A			A				A							A			
Alternate I	19.508(c)	C	Yes	I	A								A										
Alternate II	19.508(c)	C	Yes	I	A								A										
52.219-7 Notice of Partial Small Business Set-Aside.	19.508(d)	C	Yes	I	A	A			A				A							A			
Alternate I	19.508(d)	C	Yes	I	A								A										
Alternate II	19.508(d)	C	Yes	I	A								A										
52.219-8 Utilization of Small Business Concerns.	19.708(a)	C	Yes	I	A	A			A				A							A			

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.219-9 Small Business Subcontracting Plan.	19.708(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	19.708(b)(1)	C	Yes	I	A		A		A		A			A		A						A	
Alternate II	19.708(b)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-10 Incentive Subcontracting Program.	19.708(c)(1)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.219-11 Special 8(a) Contract Conditions. (See Note 2.)	19.811-3(a)	C	Yes	I																			
52.219-12 Special 8(a) Subcontract Conditions. (See Note 2.)	19.811-3(b)	C	No	I																			
52.219-14 Limitations on Subcontracting. (See Note 2.)	19.508(e) or 19.811-3(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-16 Liquidated Damages—Subcontracting Plan.	19.708(b)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-17 Section 8(a) Award. (See Note 2.)	19.811-3(c)	C	No	I																			
52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns. (See Note 2.)	19.811-3(d)	C	No	I																			
Alternate I (See Note 2.)	19.811-3(d)(1)	C	No	I																			
Alternate II (See Note 2.)	19.811-3(d)(2)	C	No	I																			
52.219-19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.	19.1008(a)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-20 Notice of Emerging Small Business Set-Aside.	19.1008(b)	P	No	K																			
52.219-21 Small Business Size Representation for Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.	19.1008(c)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-22 Small Disadvantaged Business Status.	19.308(b)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	19.308(b)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	19.1104	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.	19.1104	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	19.1104	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	19.1104	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-24 Small Disadvantaged Business Participation Program—Targets.	19.1204(a)	P	Yes	L	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.219-25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.	19.1204(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

FAC 2005–32 MARCH 31, 2009

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.225-9 Buy American Act—Construction Materials.	25.1102(a)	C	No								A	A											
52.225-10 Notice of Buy American Act Requirement—Construction Materials.	25.1102(b)(1)	P	No								A	A											
Alternate I	25.1102(b)(2)	P	No								A	A											
52.225-11 Buy American Act—Construction Materials under Trade Agreements.	25.1102(c)	C	No								A	A											
Alternate I	25.1102(c)(3)	C	No								A	A											
52.225-12 Notice of Buy American Act Requirement—Construction Materials under Trade Agreements.	25.1102(d)(1)	P	No								A	A											
Alternate I	25.1102(d)(2)	P	No								A	A											
Alternate II	25.1102(d)(3)	P	No								A	A											
52.225-13 Restrictions on Certain Foreign Purchases.	25.1103(a)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.225-14 Inconsistency Between English Version and Translation of Contract.	25.1103(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-17 Evaluation of Foreign Currency Offers.	25.1103(c)	P	Yes	M	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-18 Place of Manufacture.	25.1101(f)	P	No	K	R	R							A										
52.225-19 Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States.	25.301-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-20 Prohibition on Conducting Restricted Business Operations in Sudan—Certification.	25.1103(d)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-21 Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials.	25.1102(e)(1)	C	No						A														
52.225-22 Notice of Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials.	25.1102(e)(1)	P	No						A														
Alternate I	25.1102(e)(1)	P	No						A														
52.225-23 Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements.	25.1102(e)(1)	C	No						A														

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
Alternate I	25.1102(e)(1)	C	No								A	A											
52.225-24 Notice of Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements.	25.1102(e)(1)	P	No								A	A											
Alternate I	25.1102(e)(1)	P	No								A	A											
Alternate II	25.1102(e)(1)	P	No								A	A											
52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.	26.104	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.226-2 Historically Black College or University and Minority Institution Representation.	26.304	P	No	K	A	A	A	A	A	A			A		A					A			
52.226-3 Disaster or Emergency Area Representation.	26.206(a)	P	No	K	A	A			A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.226-4 Notice of Disaster or Emergency Area Set-Aside.	26.206(b)	C	Yes	I	A	A			A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.226-5 Restrictions on Subcontracting Outside Disaster or Emergency Area.	26.206(c)	C	Yes	I	A	A			A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.226-6 Promoting Excess Food Donation to Nonprofit Organizations.	26.404	C	No	I					R	A										A	A	A	A
52.227-1 Authorization and Consent.	27.201-2(a)(1)	C	Yes	I	A	A			A		A	A			A	A	A	A	A	A	A	O	
Alternate I	27.201-2(a)(2)	C	Yes	I			A	A			A	A			A	A	A	A	A	A			
Alternate II	27.201-2(a)(3)	C	Yes	I			A				A												
52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.	27.201-2(b)	C	Yes	I	A	A																	
52.227-3 Patent Indemnity.	27.201-2(c)(1)	C	Yes	I	A	A			A	A										A			
Alternate I	27.201-2(c)(2)	C	Yes	I	A	A			A	A										A			
Alternate II	27.201-2(c)(2)	C	Yes	I	A	A			A	A										A			
Alternate III	27.201-2(c)(3)	C	Yes	I																A			
52.227-4 Patent Indemnity—Construction Contracts.	27.201-2(d)(1)	C	Yes								A	A				A							
Alternate I	27.201-2(d)(2)	C	Yes								O	O				O							
52.227-5 Waiver of Indemnity.	27.201-2(e)	C	Yes	I	A	A	A	A	A	A	A	A				A				A			
52.227-6 Royalty Information.	27.202-5(a)(1)	P	No	K	A	A	A	A	A	A	A	A				A				A			
Alternate I	27.202-5(a)(2)	P	No	K												A				A			
52.227-7 Patents—Notice of Government License.	27.202-5(b)	P	No	K	A	A	A	A	A	A	A	A				A				A			
52.227-9 Refund of Royalties.	27.202-5(c)	C	Yes	I	A	A	A	A	A	A	A	A				A				A			

FAC 2005-37 FILING INSTRUCTIONS

NOTE: The following pages reflect FAR final rule amendments. Please do not file until their effective date of November 13, 2009.

Remove Pages

Part 18 TOC
18-1 and 18-2
18.1-1 and 18.1-2
18.2-1 and 18.2-2

Insert Pages

Part 18 TOC
18-1 and 18-2
18.1-1 and 18.1-2
18.2-1 and 18.2-2

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PART 18—EMERGENCY ACQUISITIONS

Sec.

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

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18.000 Scope of part.

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

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

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

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

18.001 Definition.

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

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

Subpart 18.1—Available Acquisition Flexibilities

18.101 General.

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

18.102 Central contractor registration.

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

18.103 Synopses of proposed contract actions.

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

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

18.104 Unusual and compelling urgency.

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

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

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

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

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

18.107 AbilityOne specification changes.

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

18.108 Qualifications requirements.

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

18.109 Priorities and allocations.

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

18.110 Soliciting from a single source.

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

18.111 Oral requests for proposals.

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

18.112 Letter contracts.

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

18.113 Interagency acquisitions under the Economy Act.

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

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

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

18.115 HUBZone sole source awards.

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

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

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

18.117 Overtime approvals.

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

18.118 Trade agreements.

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

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

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

18.120 Bid guarantees.

The chief of the contracting office may waive the requirement to obtain a bid guarantee for emergency acquisitions

when a performance bond or a performance bond and payment bond is required. (See [28.101-1\(c\)](#).)

18.121 Advance payments.

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

18.122 Assignment of claims.

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

18.123 Electronic funds transfer.

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

18.124 Protest to GAO.

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

18.125 Contractor rent-free use of Government property.

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

18.126 Extraordinary contractual actions.

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

- (a) Amending contracts without consideration (see [50.103-2\(a\)](#));
- (b) Correcting or mitigating mistakes in a contract (see [50.103-2\(b\)](#)); and
- (c) Formalizing informal commitments (See [50.103-2\(c\)](#)).

Subpart 18.2—Emergency Acquisition Flexibilities

18.201 Contingency operation.

- (a) *Contingency operation* is defined in [2.101](#).
- (b) *Micro-purchase threshold*. The threshold increases when the head of the agency determines the supplies or services are to be used to support a contingency operation. (See [2.101](#) and [13.201\(g\)](#).)
- (c) *Simplified acquisition threshold*. The threshold increases when the head of the agency determines the supplies or services are to be used to support a contingency operation. (See [2.101](#).)
- (d) *SF 44, Purchase Order-Invoice-Voucher*. The normal threshold for the use of the [SF 44](#) is at or below the micro-purchase threshold. Agencies may, however, establish higher dollar limitations for purchases made to support a contingency operation. (See [13.306](#).)
- (e) *Test program for certain commercial items*. The threshold limits authorized for use of the test program may be increased for acquisitions to support a contingency operation. (See [13.500\(e\)](#).)

18.202 Defense or recovery from certain attacks.

- (a) *Micro-purchase threshold*. The threshold increases when the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. (See [2.101](#).)
- (b) *Simplified acquisition threshold*. The threshold increases when the head of the agency determines the supplies or services are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. (See [2.101](#).)
- (c) *Commercial items to facilitate defense and recovery*. Contracting officers may treat any acquisition of supplies or services as an acquisition of commercial items if the head of the agency determines the acquisition is to be used to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack. (See [12.102\(f\)\(1\)](#) and [13.500\(e\)](#).)

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

18.203 Emergency declaration or major disaster declaration.

- (a) *Disaster or emergency assistance activities*. Preference will be given to local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities when the President has made a declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Preference may take the form of local area set-asides or an evaluation preference. (See [6.207](#) and [Subpart 26.2](#).)
- (b) *Ocean transportation by U.S. flag vessels*. The provisions of the Cargo Preference Act of 1954 may be waived in emergency situations. (See [47.502\(c\)](#).)

18.204 Resources.

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

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