

# FEDERAL ACQUISITION CIRCULAR

November 13, 2014

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Looseleaf pages

Federal Acquisition Circular (FAC) 2005-77 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 2005-77 is effective October 14, 2014 except for Items II and III which are effective November 13, 2014.

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## FAC 2005-77 FILING INSTRUCTIONS

**NOTE:** The FAR is segmented by subparts. The FAR page numbers reflect FAR Subparts. For example, "1.1-5" is page 5 of subpart 1.1.

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### Loose-leaf Only Correction

#### 52.237-10 [Amended]

1. Amend section 52.237-10 by undesignating paragraph (b) as definition "Uncompensated overtime" and; redesignating paragraphs (c) through (f) as paragraphs (b) through (e).

**Replacement pages:** 52.2-249 and 52.2-250.

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### 1.107 Certifications.

In accordance with [41 U.S.C. 1304](#), a new requirement for a certification by a contractor or offeror may not be included in this chapter unless—

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

(b) Written justification for such certification is provided to the Administrator for Federal Procurement Policy by the Federal Acquisition Regulatory Council, and the Administra-

**2.000 Scope of part.**

(a) This part—

(1) Defines words and terms that are frequently used in the FAR;

(2) Provides cross-references to other definitions in the FAR of the same word or term; and

(3) Provides for the incorporation of these definitions in solicitations and contracts by reference.

(b) Other parts, subparts, and sections of this regulation (48 CFR Chapter 1) may define other words or terms and those definitions only apply to the part, subpart, or section where the word or term is defined.

**Subpart 2.1—Definitions****2.101 Definitions.**

(a) A word or a term, defined in this section, has the same meaning throughout this regulation (48 CFR Chapter 1), unless—

(1) The context in which the word or term is used clearly requires a different meaning; or

(2) Another FAR part, subpart, or section provides a different definition for the particular part or portion of the part.

(b) If a word or term that is defined in this section is defined differently in another part, subpart, or section of this regulation (48 CFR Chapter 1), the definition in—

(1) This section includes a cross-reference to the other definitions; and

(2) That part, subpart, or section applies to the word or term when used in that part, subpart, or section.

“Acquisition” means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

“Acquisition planning” means the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.

“Activity Address Code (AAC)” means a distinct six-position code consisting of a combination of alpha and/or numeric characters assigned to identify specific agency offices, units, activities, or organizations by the General Services Administration for civilian agencies and by the Department of Defense for defense agencies.

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

“Advisory and assistance services” means those services provided under contract by nongovernmental sources to support or improve: organizational policy development; decision-making; management and administration; program and/or project management and administration; or R&D activities. It can also mean the furnishing of professional advice or assistance rendered to improve the effectiveness of Federal management processes or procedures (including those of an engineering and technical nature). In rendering the foregoing services, outputs may take the form of information, advice, opinions, alternatives, analyses, evaluations, recommendations, training and the day-to-day aid of support personnel needed for the successful performance of ongoing Federal operations. All advisory and assistance services are classified in one of the following definitional subdivisions:

(1) Management and professional support services, *i.e.*, contractual services that provide assistance, advice or training for the efficient and effective management and operation of organizations, activities (including management and support services for R&D activities), or systems. These services are normally closely related to the basic responsibilities and mission of the agency originating the requirement for the acquisition of services by contract. Included are efforts that support or contribute to improved organization of program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, performance auditing, and administrative technical support for conferences and training programs.

(2) Studies, analyses and evaluations, *i.e.*, contracted services that provide organized, analytical assessments/evaluations in support of policy development, decision-making, management, or administration. Included are studies in support of R&D activities. Also included are acquisitions of models, methodologies, and related software supporting studies, analyses or evaluations.

(3) Engineering and technical services, *i.e.*, contractual services used to support the program office during the acquisition cycle by providing such services as systems engineering and technical direction (see [9.505-1\(b\)](#)) to ensure the effective operation and maintenance of a weapon system or major system as defined in OMB Circular No. A-109 or to provide direct support of a weapon system that is essential to research, development, production, operation or maintenance of the system.

“Affiliates” means associated business concerns or individuals if, directly or indirectly—

(1) Either one controls or can control the other; or

(2) A third party controls or can control both.

“Agency head” or “head of the agency” means the Secretary, Attorney General, Administrator, Governor, Chairperson, or other chief official of an executive agency, unless

otherwise indicated, including any deputy or assistant chief official of an executive agency.

“Alternate” means a substantive variation of a basic provision or clause prescribed for use in a defined circumstance. It adds wording to, deletes wording from, or substitutes specified wording for a portion of the basic provision or clause. The alternate version of a provision or clause is the basic provision or clause as changed by the addition, deletion, or substitution (see [52.105\(a\)](#)).

“Architect-engineer services,” as defined in [40 U.S.C. 1102](#), means—

(1) Professional services of an architectural or engineering nature, as defined by State law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide those services;

(2) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(3) Those other professional services of an architectural or engineering nature, or incidental services, that members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

“Assignment of claims” means the transfer or making over by the contractor to a bank, trust company, or other financing institution, as security for a loan to the contractor, of its right to be paid by the Government for contract performance.

“Assisted acquisition” means a type of interagency acquisition where a servicing agency performs acquisition activities on a requesting agency’s behalf, such as awarding and administering a contract, task order, or delivery order.

“Basic research” means that research directed toward increasing knowledge in science. The primary aim of basic research is a fuller knowledge or understanding of the subject under study, rather than any practical application of that knowledge.

“Best value” means the expected outcome of an acquisition that, in the Government’s estimation, provides the greatest overall benefit in response to the requirement.

“Bid sample” means a product sample required to be submitted by an offeror to show characteristics of the offered products that cannot adequately be described by specifications, purchase descriptions, or the solicitation (*e.g.*, balance, facility of use, or pattern).

“Biobased product” means a product determined by the U.S. Department of Agriculture to be a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products, including

renewable domestic agricultural materials and forestry materials.

“Broad agency announcement” means a general announcement of an agency’s research interest including criteria for selecting proposals and soliciting the participation of all offerors capable of satisfying the Government’s needs (see [6.102\(d\)\(2\)](#)).

“Building or work” means construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not “building” or “work” within the meaning of this definition unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

“Bundled contract” means a contract where the requirements have been consolidated by bundling. (See the definition of bundling.)

“Bundling” means—

(1) Consolidating two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern due to—

- (i) The diversity, size, or specialized nature of the elements of the performance specified;
- (ii) The aggregate dollar value of the anticipated award;
- (iii) The geographical dispersion of the contract performance sites; or
- (iv) Any combination of the factors described in paragraphs (1)(i), (ii), and (iii) of this definition.

(2) “Separate smaller contract” as used in this definition, means a contract that has been performed by one or more small business concerns or that was suitable for award to one or more small business concerns.

(3) “Single contract” as used in this definition, includes—

- (i) Multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources (see FAR [16.504\(c\)](#)); and



## PART 4—ADMINISTRATIVE MATTERS

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## Subpart 4.6—Contract Reporting

### 4.600 Scope of subpart.

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

### 4.601 Definitions.

As used in this subpart—

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

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

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

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

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

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

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

### 4.602 General.

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

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

(2) A means of measuring and assessing the effect of Federal contracting on the Nation's economy and the extent to which small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, women-owned small business concerns, and AbilityOne nonprofit agencies operating under [41 U.S.C. chapter 85](#), Committee for

Purchase from People Who Are Blind or Severely Disabled, are sharing in Federal contracts;

(3) A means of measuring and assessing the effect of Federal contracting for promoting sustainable technologies, materials, products, and high-performance sustainable buildings. This is accomplished by collecting and reporting agency data on sustainable acquisition, including types of products purchased, the purchase costs, and the exceptions used for other than sustainable acquisition; and

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

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

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

- (1) A complete list of departments, agencies, and other entities that submit data to the FPDS;
- (2) Technical and end-user guidance;
- (3) A computer-based tutorial; and
- (4) Information concerning reports not generated in FPDS.

### 4.603 Policy.

(a) In accordance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), all unclassified Federal award data must be publicly accessible.

(b) Executive agencies shall use FPDS to maintain publicly available information about all unclassified contract actions exceeding the micro-purchase threshold, and any modifications to those actions that change previously reported contract action report data, regardless of dollar value.

(c) Agencies awarding assisted acquisitions or direct acquisitions must report these actions and identify the Program/Funding Agency and Office Codes from the applicable agency codes maintained by each agency at FPDS. These codes represent the agency and office that has provided the predominant amount of funding for the contract action. For assisted acquisitions, the requesting agency will receive socioeconomic credit for meeting agency small business goals, where applicable. Requesting agencies shall provide the appropriate agency/bureau component code as part of the written interagency agreement between the requesting and servicing agencies (see [17.502-1\(b\)\(1\)](#)).

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

### 4.604 Responsibilities.

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

(b)(1) The responsibility for the completion and accuracy of the individual contract action report (CAR) resides with the

contracting officer who awarded the contract action. CARs in a draft or error status in FPDS are not considered complete.

(2) The CAR must be confirmed for accuracy by the contracting officer prior to release of the contract award. The CAR must then be completed in FPDS within three business days after contract award.

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

(4) When the contracting office receives written notification that a contractor has changed its size status in accordance with the clause at [52.219-28](#), Post-Award Small Business Program Rerepresentation, the contracting officer shall update the size status in FPDS within 30 days after receipt of contractor's notification of rerepresentation.

(5) If after award of a contract, the contracting officer receives written notification of SBA's final decision on a protest concerning a size determination, the contracting officer shall update FPDS to reflect the final decision.

(c) The chief acquisition officer of each agency required to report its contract actions must submit to the General Services Administration (GSA), in accordance with FPDS guidance, within 120 days after the end of each fiscal year, an annual certification of whether, and to what degree, agency CAR data for the preceding fiscal year is complete and accurate.

#### 4.605 Procedures.

(a) *Procurement Instrument Identifier (PIID)*. Agencies shall have in place a process that ensures that each PIID reported to FPDS is unique Governmentwide, for all solicitations, contracts, blanket purchase agreements, basic agreements, basic ordering agreements, or orders in accordance with [4.1601](#) to [4.1603](#), and will remain so for at least 20 years from the date of contract award. Other pertinent PIID instructions for FPDS reporting can be found at <https://www.fpds.gov>.

(b) *Data Universal Numbering System*. The contracting officer must identify and report a Data Universal Numbering System (DUNS) number (Contractor Identification Number) for the successful offeror on a contract action. The DUNS number reported must identify the successful offeror's name and address as stated in the offer and resultant contract, and as registered in the System for Award Management database in accordance with the provision at [52.204-7](#), System for Award Management. The contracting officer must ask the offeror to provide its DUNS number by using either the provision at [52.204-6](#), Data Universal Numbering System Number, the provision at [52.204-7](#), System for Award Management, or the provision at [52.212-1](#), Instructions to Offerors—Commercial Items. (For a discussion of the Commercial and Government Entity (CAGE) Code, which is a different identification number, see [subpart 4.18](#).)

(c) *Generic DUNS number*. (1) The use of a generic DUNS number should be limited, and only used in the situa-

tions described in paragraph (c)(2) of this section. Use of a generic DUNS number does not supersede the requirements of either provisions [52.204-6](#) or [52.204-7](#) (if present in the solicitation) for the contractor to have a DUNS number assigned.

(2) Authorized generic DUNS numbers, maintained by the Integrated Award Environment (IAE) program office (<https://www.acquisition.gov>), may be used to report contracts in lieu of the contractor's actual DUNS number only for—

(i) Contract actions valued at or below \$25,000 that are awarded to a contractor that is—

(A) A student;

(B) A dependent of either a veteran, foreign service officer, or military member assigned outside the United States and its outlying areas (as defined in [2.101](#)); or

(C) Located outside the United States and its outlying areas for work to be performed outside the United States and its outlying areas and the contractor does not otherwise have a DUNS number;

(ii) Contracts valued above \$25,000 awarded to individuals located outside the United States and its outlying areas for work to be performed outside the United States and its outlying areas; or

(iii) Contracts when specific public identification of the contracted party could endanger the mission, contractor, or recipients of the acquired goods or services. The contracting officer must include a written determination in the contract file of a decision applicable to authority under this paragraph (c)(2)(iii).

(d) *American Recovery and Reinvestment Act actions*. The contracting officer, when entering data in FPDS, shall use the instructions at <https://www.fpds.gov> to identify any action funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

(e) *Office Codes*. Agencies shall by October 1, 2015—

(1) Use the Activity Address Code (AAC), as defined in [2.101](#), assigned to the issuing contracting office as the contracting office code, and

(2) Use the AAC assigned to the program/funding office providing the predominance of funding for the contract action as the program/funding office code.

#### 4.606 Reporting Data.

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

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

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

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

- (1) Government-wide acquisition contracts.
- (2) Multi-agency contracts.

(B) GSA Federal supply schedules.

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

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

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

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

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

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

(b) *Reporting Other Actions.* Agencies may submit actions other than those listed at paragraph (a)(1) of this section only if they are able to be segregated from FAR-based actions and this is approved in writing by the FPDS Program Office. Prior to the commencement of reporting, agencies must contact the FPDS Program Office if they desire to submit any of the following types of activity:

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

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

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

(4) Grants and entitlement actions.

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

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

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

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

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

(5) Actions that, pursuant to other authority, will not be entered in FPDS (*e.g.*, reporting of the information would compromise national security).

(6) Contract actions in which the required data would constitute classified information.

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

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

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

(10) Interagency agreements other than inter-agency acquisitions required to be reported at 4.606(a)(1).

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

(d) Agencies not subject to the FAR. Agencies not subject to the FAR may be required by other authority (*e.g.*, statute, OMB, or internal agency policy) to report certain information to FPDS. Those agencies not subject to the FAR must first receive approval from the FPDS Program Office prior to reporting to FPDS.

#### **4.607 Solicitation provisions and contract clause.**

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

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

(2) Exceed the simplified acquisition threshold; and

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

(b) Insert the provision at [52.204-6](#), Data Universal Numbering System Number, in solicitations that do not contain the provision at [52.204-7](#), System for Award Management, or meet a condition at [4.605\(c\)\(2\)](#).

(c) Insert the clause at [52.204-12](#), Data Universal Numbering System Number Maintenance, in solicitations and resulting contracts that contain the provision at [52.204-6](#), Data Universal Numbering System.

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## Subpart 4.16—Unique Procurement Instrument Identifiers

### 4.1600 Scope of subpart.

This subpart prescribes policies and procedures for assigning unique Procurement Instrument Identifiers (PIID) for each solicitation, contract, agreement, or order and related procurement instrument.

### 4.1601 Policy.

(a) *Establishment of a Procurement Instrument Identifier (PIID)*. Agencies shall have in place a process that ensures that each PIID used to identify a solicitation or contract action is unique Governmentwide, and will remain so for at least 20 years from the date of contract award. The PIID shall be used to identify all solicitation and contract actions. The PIID shall also be used to identify solicitation and contract actions in designated support and reporting systems (e.g., Federal Procurement Data System, System for Award Management), in accordance with regulations, applicable authorities, and agency policies and procedures.)

(b) *Transition of PIID numbering*. No later than October 1, 2017, agencies shall comply with paragraph (a) of this section and use the requirements in [4.1602](#) and [4.1603](#) for all new solicitations and contract awards. Until an agency's transition is complete, it shall maintain its 2013 PIID format that is on record with the General Services Administration's Integrated Award Environment Program Office (which maintains a registry of the agency unique identifier scheme). The 2013 PIID format consisted of alpha characters in the first positions to indicate the agency, followed by alpha-numeric characters; the 2017 format instead has the AAC in the beginning 6 positions.

(c) *Change in the Procurement Instrument Identifier after its assignment*. (1) Agencies shall not change the PIID unless one of the following two circumstances apply:

(i) The PIID serial numbering system is exhausted. In this instance, the contracting officer may assign a new PIID by issuing a contract modification.

(ii) Continued use of a PIID is administratively burdensome (e.g., for implementations of new agency contract writing systems). In this instance, the contracting officer may assign a new PIID by issuing a contract modification.

(2) The modification shall clearly identify both the original and the newly assigned PIID. Issuance of a new PIID is an administrative change (see [43.101](#)).

### 4.1602 Identifying the PIID and supplementary PIID.

(a) *Identifying the PIID in solicitation and contract award documentation (including forms and electronic generated forms)*. Agencies shall include all PIIDs for all related procurement actions as identified in paragraphs (a)(1) through (a)(5) of this section.

(1) *Solicitation*. Identify the PIID for all solicitations. For amendments to solicitations, identify a supplementary PIID, in conjunction with the PIID for the solicitation.

(2) *Contracts and purchase orders*. Identify the PIID for contracts and purchase orders.

(3) *Delivery and task orders*. For delivery and task orders placed by an agency under a contract (e.g., indefinite delivery indefinite quantity (IDIQ) contracts, multi-agency contracts (MAC), Governmentwide acquisition contracts (GWACs), or Multiple Award Schedule (MAS) contracts), identify the PIID for the delivery and task order and the PIID for the contract.

(4) *Blanket purchase agreements and basic ordering agreements*. Identify the PIID for blanket purchase agreements issued in accordance with [13.303](#), and for basic agreements and basic ordering agreements issued in accordance with subpart [16.7](#). For blanket purchase agreements issued in accordance with subpart [8.4](#) under a MAS contract, identify the PIID for the blanket purchase agreement and the PIID for the MAS contract.

(i) *Orders*. For orders against basic ordering agreements or blanket purchase agreements issued in accordance with [13.303](#), identify the PIID for the order and the PIID for the blanket purchase agreement or basic ordering agreement.

(ii) *Orders under subpart 8.4*. For orders against a blanket purchase agreement established under a MAS contract, identify the PIID for the order, the PIID for the blanket purchase agreement, and the PIID for the MAS contract.

(5) *Modifications*. For modifications to actions described in paragraphs (a)(2) through (a)(4) of this section, and in accordance with agency procedures, identify a supplementary PIID for the modification in conjunction with the PIID for the contract, order, or agreement being modified.

(b) *Placement of the PIID on forms*. When the form (including electronic generated format) does not provide spaces or fields for the PIID or supplementary PIID required in paragraph (a) of this section, identify the PIID in accordance with agency procedures.

(c) *Additional agency specific identification information*. If agency procedures require additional identification information in solicitations, contracts, or other related procurement instruments for administrative purposes, separate and clearly identify the additional information from the PIID.

### 4.1603 Procedures.

(a) *Elements of a PIID*. The PIID consists of a combination of thirteen to seventeen alpha and/or numeric characters sequenced to convey certain information. Do not use special characters (such as hyphens, dashes, or spaces).

(1) *Positions 1 through 6*. The first six positions identify the department/agency and office issuing the instrument. Use the AAC assigned to the issuing office for positions 1 through 6. Civilian agency points of contact for obtaining an

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AAC are on the AAC Contact list maintained by the General Services Administration and can be found at [http://www.gsa.gov/graphics/fas/Civilian\\_contacts.pdf](http://www.gsa.gov/graphics/fas/Civilian_contacts.pdf). For Department of Defense (DoD) inquiries, contact the service/agency Central Service Point or DoDAAC Monitor, or if unknown, email [DODAADHQ@DLA.MIL](mailto:DODAADHQ@DLA.MIL) for assistance.

(2) *Positions 7 through 8.* The seventh and eighth positions are the last two digits of the fiscal year in which the procurement instrument is issued or awarded. This is the date the action is signed, not the effective date if the effective date is different.

(3) *Position 9.* Indicate the type of instrument by entering one of the following upper case letters in position nine. Departments and independent agencies may assign those letters identified for department use below in accordance with their agency policy; however, any use must be applied to the entire department or agency.

Instrument	Letter Designation
(i) Blanket purchase agreements.	A
(ii) Invitations for bids.	B
(iii) Contracts of all types except indefinite-delivery contracts (see subpart 16.5).	C
(iv) Indefinite-delivery contracts (including Federal Supply Schedules, Governmentwide acquisition contracts (GWACs), and multi-agency contracts).	D
(v) Reserved for future Federal Governmentwide use.	E
(vi) Task orders, delivery orders or calls under— <ul style="list-style-type: none"> <li><input type="checkbox"/> Indefinite-delivery contracts (including Federal Supply Schedules, Governmentwide acquisition contracts (GWACs), and multi-agency contracts);</li> <li><input type="checkbox"/> Blanket purchase agreements; or</li> <li><input type="checkbox"/> Basic ordering agreements.</li> </ul>	F
(vii) Basic ordering agreements.	G
(viii) Agreements, including basic agreements and loan agreements, but excluding blanket purchase agreements, basic ordering agreements, and leases. Do not use this code for contracts or agreements with provisions for orders or calls.	H
(ix) Do not use this letter.	I

Instrument	Letter Designation
(x) Reserved for future Federal Governmentwide use.	J
(xi) Reserved for departmental or agency use.	K
(xii) Lease agreements.	L
(xiii) Reserved for departmental or agency use.	M
(xiv) Reserved for departmental or agency use.	N
(xv) Do not use this letter.	O
(xvi) Purchase orders (assign V if numbering capacity of P is exhausted during a fiscal year).	P
(xvii) Requests for quotations (assign U if numbering capacity of Q is exhausted during a fiscal year).	Q
(xviii) Requests for proposals.	R
(xix) Reserved for departmental or agency use.	S
(xx) Reserved for departmental or agency use	T
(xxi) See Q, requests for quotations.	U
(xxii) See P, purchase orders.	V
(xxiii) Reserved for future Federal Governmentwide use.	W
(xxiv) Reserved for future Federal Governmentwide use.	X
(xxv) Imprest fund.	Y
(xxvi) Reserved for future Federal Governmentwide use.	Z

(4) *Positions 10 through 17.* Enter the number assigned by the issuing agency in these positions. Agencies may choose a minimum of four characters up to a maximum of eight characters to be used, but the same number of characters must be used agency-wide. If a number less than the maximum is used, do not use leading or trailing zeroes to make it equal the maximum in any system or data transmission. A separate series of numbers may be used for any type of instrument listed in paragraph (a)(3) of this section. An agency may reserve blocks of numbers or alpha-numeric numbers for use by its various components.



(5) *Illustration of PIID.* The following illustrates a properly configured PIID using four characters in the final positions:

Position	Contents	
1-6	Identification of department/agency office (AAC)	N00062
7-8	Last two digits of the fiscal year in which the procurement instrument is issued or	17
9	Type of instrument	C
10-13	Four position agency assigned number	0001

(b) *Elements of a supplementary PIID.* Use the supplementary PIID to identify amendments to solicitations and modifications to contracts, orders, and agreements.

(1) *Amendments to solicitations.* Number amendments to solicitations sequentially using a four position numeric serial number added to the 13-17 character PIID beginning with 0001.

(2) *Modifications to contracts, orders, and agreements.* Number modifications to contracts, orders, and agreements using a six position alpha or numeric, or a combination thereof, added to the 13-17 character PIID. For example, a modification could be numbered P00001. This would be added to the end of the 13-17 character PIID illustrated in (a)(5) of this section.

(i) *Position 1.* Identify the office issuing the modification. The letter P shall be designated for modifications issued by the procuring contracting office. The letter A shall be used for modifications issued by the contract administration office (if other than the procuring contracting office).

(ii) *Positions 2 through 6.* These positions may be alpha, numeric, or a combination thereof, in accordance with agency procedures.

Each office authorized to issue modifications shall assign the supplementary identification numbers in sequence (unless provided otherwise in agency procedures). Do not assign the numbers until it has been determined that a modification is to be issued.

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**PART 28—BONDS AND INSURANCE**

*Sec.*

- 28.000 Scope of part.
- 28.001 Definitions.

**Subpart 28.1—Bonds and Other Financial Protections**

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- 28.101 Bid guarantees.
- 28.101-1 Policy on use.
- 28.101-2 Solicitation provision or contract clause.
- 28.101-3 Authority of an attorney-in-fact for a bid bond.
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- 28.102 Performance and payment bonds and alternative payment protections for construction contracts.
- 28.102-1 General.
- 28.102-2 Amount required.
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- 28.103-1 General.
- 28.103-2 Performance bonds.
- 28.103-3 Payment bonds.
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- 28.104 Annual performance bonds.
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- 28.105-1 Advance payment bonds.
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- 28.106 Administration.
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**Subpart 28.2—Sureties and Other Security for Bonds**

- 28.200 Scope of subpart.
- 28.201 Requirements for security.
- 28.202 Acceptability of corporate sureties.
- 28.203 Acceptability of individual sureties.
- 28.203-1 Security interests by an individual surety.

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- 28.203-6 Contract clause.
- 28.203-7 Exclusion of individual sureties.
- 28.204 Alternatives in lieu of corporate or individual sureties.
- 28.204-1 United States bonds or notes.
- 28.204-2 Certified or cashier’s checks, bank drafts, money orders, or currency.
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**Subpart 28.3—Insurance**

- 28.301 Policy.
- 28.302 Notice of cancellation or change.
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- 28.304 Risk-pooling arrangements.
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- 28.308 Self-insurance.
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- 28.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
- 28.311-1 Contract clause.
- 28.311-2 Agency solicitation provisions and contract clauses.
- 28.312 Contract clause for insurance of leased motor vehicles.
- 28.313 Contract clauses for insurance of transportation or transportation-related services.

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**28.204 Alternatives in lieu of corporate or individual sureties.**

(a) Any person required to furnish a bond to the Government may furnish any of the types of security listed in [28.204-1](#) through [28.204-3](#) instead of a corporate or individual surety for the bond. When any of those types of security are deposited, a statement shall be incorporated in the bond form pledging the security in lieu of execution of the bond form by corporate or individual sureties. The contractor shall execute the bond forms as the principal. Agencies shall establish safeguards to protect against loss of the security and shall return the security or its equivalent to the contractor when the bond obligation has ceased.

(b) Upon written request by any contractor securing a performance or payment bond by any of the types of security listed in [28.204-1](#) through [28.204-3](#), the contracting officer may release a portion of the security only when the conditions allowing the partial release of lien in [28.203-5\(c\)](#) are met. The contractor shall, as a condition of the partial release, furnish an affidavit agreeing that the release of such security does not relieve the contractor of its obligations under the bond(s).

(c) The contractor may satisfy a requirement for bond security by furnishing a combination of the types of security listed in [28.204-1](#) through [28.204-3](#) or a combination of bonds supported by these types of security and additional surety bonds under [28.202](#) or [28.203](#). During the period for which a bond supported by security is required, the contractor may substitute one type of security listed in [28.204-1](#) through [28.204-3](#) for another, or may substitute, in whole or combination, additional surety bonds under [28.202](#) or [28.203](#).

**28.204-1 United States bonds or notes.**

Any person required to furnish a bond to the Government has the option, instead of furnishing a surety or sureties on the bond, of depositing certain United States bonds or notes in an amount equal at their par value to the penal sum of the bond (the Act of February 24, 1919 ([31 U.S.C. 9303](#)) and Treasury Department Circular No. 154 dated July 1, 1978 (31 CFR Part 225)). In addition, a duly executed power of attorney and agreement authorizing the collection or sale of such United States bonds or notes in the event of default of the principal on the bond shall accompany the deposited bonds or notes. The contracting officer may—

(a) Turn securities over to the finance or other authorized agency official; or

(b) Deposit them with the Treasurer of the United States, a Federal Reserve Bank (or branch with requisite facilities), or other depository designated for that purpose by the Secretary of the Treasury, under procedures prescribed by the agency concerned and Treasury Department Circular No. 154 (exception: The contracting officer shall deposit all bonds and notes received in the District of Columbia with the Treasurer of the United States).

**28.204-2 Certified or cashier's checks, bank drafts, money orders, or currency.**

Any person required to furnish a bond has an option to furnish a certified or cashier's check, bank draft, Post Office money order, or currency, in an amount equal to the penal sum of the bond, instead of furnishing surety or sureties on the bonds. Those furnishing checks, drafts, or money orders shall draw them to the order of the appropriate Federal agency.

**28.204-3 Irrevocable letter of credit.**

(a) Any person required to furnish a bond has the option to furnish a bond secured by an irrevocable letter of credit (ILC) in an amount equal to the penal sum required to be secured (see [28.204](#)). A separate ILC is required for each bond.

(b) The ILC shall be irrevocable, require presentation of no document other than a written demand and the ILC (and letter of confirmation, if any), expire only as provided in paragraph (f) of this subsection, and be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (g) of this subsection.

(c) To draw on the ILC, the contracting officer shall use the sight draft set forth in the clause at [52.228-14](#), and present it with the ILC (including letter of confirmation, if any) to the issuing financial institution or the confirming financial institution (if any).

(d) If the contractor does not furnish an acceptable replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the contracting officer shall immediately draw on the ILC.

(e) If, after the period of performance of a contract where ILCs are used to support payment bonds, there are outstanding claims against the payment bond, the contracting officer shall draw on the ILC prior to the expiration date of the ILC to cover these claims.

(f) The period for which financial security is required shall be as follows:

(1) If used as a bid guarantee, the ILC should expire no earlier than 60 days after the close of the bid acceptance period.

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the contracting officer provides the financial institution with a written state-

ment waiving the right to payment. The period of required coverage shall be:

(i) For contracts subject to the Bonds statute, the later of—

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Bonds statute, the later of—

(A) 90 days following final payment; or

(B) For performance bonds only, until completion of any warranty period.

(g) Only federally insured financial institutions rated investment grade shall issue or confirm the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

(1) The offeror/contractor is required by paragraph (d) of the clause at [52.228-14](#), Irrevocable Letter of Credit, to provide the contracting officer a credit rating from a recognized commercial rating service that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC.

(2) To support the credit rating of the financial institution(s) issuing or confirming the ILC, the contracting officer shall verify the following information:

(i) *Federal insurance*: Each financial institution is federally insured. Verification of federal insurance is available through the Federal Deposit Insurance Corporation (FDIC) institution directory at the website <http://www2.fdic.gov/idas/index.asp>.

(ii) *Current credit rating*. The current credit rating for each financial institution is investment grade and that the credit rating is from a Nationally Recognized Statistical Rating Organization (NRSRO). NRSROs can be located at the website <http://www.sec.gov/answers/nrsro.htm> maintained by the SEC.

(3) The rating services listed in the website <http://www.sec.gov/answers/nrsro.htm> use different rating scales (e.g., AAA, AA, A, BBB, BB, B, CCC, CC, C, and D; or Aaa, Aa, A, Baa, Ba, B, Caa, Ca, and C) to provide evaluations of institutional credit risk; however, all such systems specify the range of investment grade ratings (e.g., BBB-AAA or Baa-Aaa in the examples in this section) and permit evaluation of the relative risk associated with a specific institution. If the contracting officer learns that a financial institution's rating has dropped below investment grade level, the contracting officer shall give the contractor 30 days to substitute an acceptable ILC or shall draw on the ILC using the sight draft in paragraph (g) of the clause at [52.228-14](#).

(h) A copy of the Uniform Customs and Practice (UCP) for Documentary Credits, 2006 Edition, International Chamber of Commerce Publication No. 600, is available from:

ICC Books USA,  
1212 Avenue of the Americas, 21st Floor  
New York NY 10036;

Phone: 212-703-5066;

Fax: 212-391-6568;

E-mail: [iccbooks@uscib.org](mailto:iccbooks@uscib.org);

Via the Internet at: <http://store.iccbooksusa.net>.

#### 28.204-4 Contract clause.

Insert the clause at [52.228-14](#), Irrevocable Letter of Credit, in solicitations and contracts for services, supplies, or construction, when a bid guarantee, or performance bonds, or performance and payment bonds are required.

(a) The Contractor shall submit one of the following payment protections:

\_\_\_\_\_

\_\_\_\_\_

(b) The amount of the payment protection shall be 100 percent of the contract price.

(c) The submission of the payment protection is required within \_\_\_\_\_ days of contract award.

(d) The payment protection shall provide protection for the full contract performance period plus a one-year period.

(e) Except for escrow agreements and payment bonds, which provide their own protection procedures, the Contracting Officer is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a nonpayment has occurred, and to withhold such funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.

(f) When a tripartite escrow agreement is used, the Contractor shall utilize only suppliers of labor and material that signed the escrow agreement.

(End of clause)

**52.228-14 Irrevocable Letter of Credit.**

As prescribed in 28.204-4, insert the following clause:

IRREVOCABLE LETTER OF CREDIT (NOV 2014)

(a) "Irrevocable letter of credit" (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and—

(1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the

period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

(i) For contracts subject to 40 U.S.C. chapter 31, subchapter III, Bonds, the later of—

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to 40 U.S.C. chapter 31, subchapter III, Bonds, the later of—

(A) 90 days following final payment; or

(B) For performance bonds only, until completion of any warranty period.

(d)(1) Only federally insured financial institutions rated investment grade by a commercial rating service shall issue or confirm the ILC.

(2) Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

(3) The Offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institutions have the required credit rating as of the date of issuance of the ILC.

(4) The current rating for a financial institution is available through any of the following rating services registered with the U.S. Securities and Exchange Commission (SEC) as a Nationally Recognized Statistical Rating Organization (NRSRO). NRSRO's can be located at the website <http://www.sec.gov/answers/nrsro.htm> maintained by the SEC.

(e) The following format shall be used by the issuing financial institution to create an ILC:

\_\_\_\_\_  
[Issuing Financial Institution's Letterhead  
or Name and Address]

Issue Date \_\_\_\_\_

Irrevocable Letter of Credit No. \_\_\_\_\_

Account party's name \_\_\_\_\_

Account party's address \_\_\_\_\_

For Solicitation No. \_\_\_\_\_ (for reference only)

To: [U.S. Government agency]

[U.S. Government agency's address]

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States \$ \_\_\_\_\_. This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [issuing financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on \_\_\_\_\_, or any automatically extended expiration date.

2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. *[This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.]* It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, International Chamber of Commerce Publication No. \_\_\_\_\_ *(Insert version in effect at the time of ILC issuance, e.g., "Publication 600, 2006 edition")* and to the extent not inconsistent therewith, to the laws of \_\_\_\_\_ *[State of confirming financial institution, if any, otherwise State of issuing financial institution].*

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

\_\_\_\_\_  
*[Issuing financial institution]*

(f) The following format shall be used by the financial institution to confirm an ILC:

\_\_\_\_\_  
*[Confirming Financial Institution's Letterhead or Name and Address]*  
(Date) \_\_\_\_\_  
Our Letter of Credit Advice Number \_\_\_\_\_  
Beneficiary: \_\_\_\_\_ *[U.S. Government agency]*  
Issuing Financial Institution: \_\_\_\_\_  
Issuing Financial Institution's LC No.: \_\_\_\_\_

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by \_\_\_\_\_ *[name*

*of issuing financial institution]* for drawings of up to United States dollars \_\_\_\_\_/U.S. \$ \_\_\_\_\_ and expiring with our close of business on \_\_\_\_\_ *[the expiration date]*, or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at \_\_\_\_\_.

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. *[This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.]* It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 days prior to any such expiration date, we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, International Chamber of Commerce Publication No. \_\_\_\_\_ *(Insert version in effect at the time of ILC issuance, e.g., "Publication 600, 2006 edition")* and to the extent not inconsistent therewith, to the laws of \_\_\_\_\_ *[State of confirming financial institution].*

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

\_\_\_\_\_  
*[Confirming financial institution]*

(g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:

SIGHT DRAFT  
\_\_\_\_\_  
*[City, State]*  
(Date) \_\_\_\_\_  
*[Name and address of financial institution]*

Pay to the order of \_\_\_\_\_ *[Beneficiary Agency]*  
\_\_\_\_\_ the sum of United States \$ \_\_\_\_\_. This draft is drawn under Irrevocable Letter of Credit No. \_\_\_\_\_.



\_\_\_\_\_  
[Beneficiary Agency]

\_\_\_\_\_  
[By]

(End of clause)

### 52.228-15 Performance and Payment Bonds— Construction.

As prescribed in [28.102-3\(a\)](#), insert a clause substantially as follows:

#### PERFORMANCE AND PAYMENT BONDS—CONSTRUCTION (OCT 2010)

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

“Original contract price” means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) *Amount of required bonds.* Unless the resulting contract price is \$150,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) *Performance bonds (Standard Form 25).* The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) *Payment Bonds (Standard Form 25A).* The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) *Additional bond protection.*(i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) *Furnishing executed bonds.* The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) *Surety or other security for bonds.* The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the *Federal Register* or may be obtained from the:

U.S. Department of the Treasury  
Financial Management Service  
Surety Bond Branch

3700 East West Highway, Room 6F01  
Hyattsville, MD 20782.

Or via the internet at <http://www.fms.treas.gov/c570/>.

(e) *Notice of subcontractor waiver of protection (40 U.S.C. 3133(c)).* Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

(End of clause)

### 52.228-16 Performance and Payment Bonds—Other Than Construction.

As prescribed in [28.103-4](#), insert a clause substantially as follows:

#### PERFORMANCE AND PAYMENT BONDS—OTHER THAN CONSTRUCTION (NOV 2006)

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

“Original contract price” means the award price of the contract or, for requirements contracts, the price payable for the estimated quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) The Contractor shall furnish a performance bond ([Standard Form 1418](#)) for the protection of the Government in an amount equal to \_\_\_\_\_ percent of the original contract price and a payment bond ([Standard Form 1416](#)) in an amount equal to \_\_\_\_\_ percent of the original contract price.

(c) The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within \_\_\_\_\_ days, but in any event, before starting work.

(d) The Government may require additional performance and payment bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bonds or to obtain additional bonds.

(e) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the *Federal Register*, or may be obtained from the:

U.S. Department of the Treasury  
Financial Management Service  
Surety Bond Branch  
3700 East West Highway, Room 6F01  
Hyattsville, MD 20782.

Or via the internet at <http://www.fms.treas.gov/c570/>.

(End of clause)

*Alternate I (July 2000).* As prescribed in [28.103-4](#), substitute the following paragraphs (b) and (d) for paragraphs (b) and (d) of the basic clause:

(b) The Contractor shall furnish a performance bond ([Standard Form 1418](#)) for the protection of the Government in an amount equal to \_\_\_\_\_ percent of the original contract price.

(d) The Government may require additional performance bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

#### 52.229-1 State and Local Taxes.

As prescribed in [29.401-1](#), insert the following clause:

##### STATE AND LOCAL TAXES (APR 1984)

Notwithstanding the terms of the Federal, State, and Local Taxes clause, the contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The Contractor shall state separately on its invoices taxes excluded from the contract price, and the Government agrees either to pay the amount of the taxes to the Contractor or provide evidence necessary to sustain an exemption.

(End of clause)

#### 52.229-2 North Carolina State and Local Sales and Use Tax.

As prescribed in [29.401-2](#), insert the following clause in solicitations and contracts for construction to be performed in North Carolina:

##### NORTH CAROLINA STATE AND LOCAL SALES AND USE TAX (APR 1984)

(a) "Materials," as used in this clause, means building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure erected, altered, or repaired under this contract.

(b) If this is a fixed-price contract, the contract price includes North Carolina State and local sales and use taxes to be paid on materials, notwithstanding any other provision of this contract. If this is a cost-reimbursement contract, any North Carolina State and local sales and use taxes paid by the Contractor on materials shall constitute an allowable cost under this contract.

(c) At the time specified in paragraph (d) of this section, the Contractor shall furnish the Contracting Officer certified statements setting forth the cost of the materials purchased from each vendor and the amount of North Carolina State and local sales and use taxes paid. In the event the Contractor makes several purchases from the same vendor, the certified statement shall indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the North Carolina State and local sales and use taxes paid. The statement shall also include the cost of any tangible personal property withdrawn from the Contractor's warehouse stock and the amount of North Carolina State and local sales or use

tax paid on this property by the Contractor. Any local sales or use taxes included in the Contractor's statements must be shown separately from the State sales or use taxes. The Contractor shall furnish any additional information the Commissioner of Revenue of the State of North Carolina may require to substantiate a refund claim for sales or use taxes. The Contractor shall also obtain and furnish to the Contracting Officer similar certified statements by its subcontractors.

(d) If this contract is completed before the next October 1, the certified statements to be furnished pursuant to paragraph (c) of this clause shall be submitted within 60 days after completion. If this contract is not completed before the next October 1, the certified statements shall be submitted on or before November 30 of each year and shall cover taxes paid during the 12-month period that ended the preceding September 30.

(e) The certified statements to be furnished pursuant to paragraph (c) of this clause shall be in the following form:

I hereby certify that during the period \_\_\_\_\_ to \_\_\_\_\_ [insert dates], \_\_\_\_\_ [insert name of Contractor or subcontractor] paid North Carolina State and local sales and use taxes aggregating \$ \_\_\_\_\_ (State) and \$ \_\_\_\_\_ (local), with respect to building materials, supplies, fixtures, and equipment that have become a part of or annexed to a building or structure erected, altered, or repaired by \_\_\_\_\_ [insert name of Contractor or subcontractor] for the United States of America, and that the vendors from whom the property was purchased, the dates and numbers of the invoices covering the purchases, the total amount of the invoices of each vendor, the North Carolina State and local sales and use taxes paid on the property (shown separately), and the cost of property withdrawn from warehouse stock and North Carolina State and local sales or use taxes paid on this property are as set forth in the attachments.

(End of clause)

*Alternate I (Apr 1984).* If the requirement is for vessel repair to be performed in North Carolina, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) "Materials," as used in this clause, means materials, supplies, fixtures, and equipment that become a part of or are annexed to any vessel altered or repaired under this contract.

#### 52.229-3 Federal, State, and Local Taxes.

As prescribed in [29.401-3](#), insert the following clause:

##### FEDERAL, STATE, AND LOCAL TAXES (FEB 2013)

(a) As used in this clause—

"After-imposed Federal tax" means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

“After-relieved Federal tax” means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

“All applicable Federal, State, and local taxes and duties” means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

“Contract date” means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

“Local taxes” includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

(b)(1) The contract price includes all applicable Federal, State, and local taxes and duties, except as provided in subparagraph (b)(2)(i) of this clause.

(2) Taxes imposed under 26 U.S.C. 5000C may not be—

(i) Included in the contract price; nor

(ii) Reimbursed.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor’s fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(End of clause)

#### 52.229-4 Federal, State, and Local Taxes (State and Local Adjustments).

As prescribed in [29.401-3](#), insert the following clause:

FEDERAL, STATE, AND LOCAL TAXES (STATE AND LOCAL ADJUSTMENTS) (FEB 2013)

(a) As used in this clause—

“After-imposed tax” means any new or increased Federal, State, or local tax or duty, or tax that was excluded on the contract date but whose exclusion was later revoked or amount of exemption reduced during the contract period, other than an excepted tax, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

“After-relieved tax” means any amount of Federal, State, or local tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

“All applicable Federal, State, and local taxes and duties” means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

“Contract date” means the effective date of this contract and, for any modification to this contract, the effective date of the modification.

“Excepted tax” means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. “Excepted tax” does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor’s possession of, interest in, or use of property, title to which is in the Government.

“Local taxes” includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

(b)(1) Unless otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties, except as provided in subparagraph (b)(2)(i) of this clause.

(2) Taxes imposed under 26 U.S.C. 5000C may not be—

(i) Included in the contract price; nor

(ii) Reimbursed.

(c) The contract price shall be increased by the amount of any after-imposed tax, or of any tax or duty specifically excluded from the contract price by a term or condition of this contract that the Contractor is required to pay or bear, including any interest or penalty, if the Contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor’s fault, negligence, or failure to follow instructions of the Contracting Officer.

(d) The contract price shall be decreased by the amount of any after-relieved tax. The Government shall be entitled to interest received by the Contractor incident to a refund of taxes to the extent that such interest was earned after the Contractor was paid by the Government for such taxes. The Gov-

ernment shall be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.

(e) The contract price shall be decreased by the amount of any Federal, State, or local tax, other than an excepted tax, that was included in the contract price and that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to Federal, State, and local taxes and duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.

(h) The Government shall furnish evidence appropriate to establish exemption from any Federal, State, or local tax when—

(1) The Contractor requests such exemption and states in writing that it applies to a tax excluded from the contract price; and

(2) A reasonable basis exists to sustain the exemption.

(End of clause)

#### 52.229-5 [Reserved]

#### 52.229-6 Taxes—Foreign Fixed-Price Contracts.

As prescribed in [29.402-1\(a\)](#), insert the following clause:

##### TAXES—FOREIGN FIXED-PRICE CONTRACTS (FEB 2013)

(a) To the extent that this contract provides for furnishing supplies or performing services outside the United States and its outlying areas, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

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

“Contract date” means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

“Country concerned” means any country, other than the United States and its outlying areas, in which expenditures under this contract are made.

“Tax” and “taxes” include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

“All applicable taxes and duties” means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract, pursuant to written ruling or regulation in effect on the contract date.

“After-imposed tax” means any new or increased tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced dur-

ing the contract period, other than excepted tax, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

“After-relieved tax” means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the contract date.

“Excepted tax” means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. “Excepted tax” does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor's possession of, interest in, or use of property, title to which is in the U.S. Government.

(c)(1) Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States, except as provided in subparagraph (c)(2) of this clause.

(2) Taxes imposed under 26 U.S.C. 5000C may not be—

(i) Included in the contract price; nor

(ii) Reimbursed.

(d)(1) Except as provided in subparagraph (d)(2) of this clause, the contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the contract price by a provision of this contract that the Contractor is required to pay or bear, including any interest or penalty, if the Contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) of this clause.

(2) The contract price may not be increased to offset taxes imposed under 26 U.S.C. 5000C.

(e) The contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States shall be entitled to interest received by the Contractor incident to a refund of taxes to the extent that such interest was earned after the Contractor was paid by the Government of the United States for such taxes. The Government of the United States shall be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.

(f) The contract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the contract and that the Contractor is required to pay or

bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) of this clause.

(g) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(h) If the Contractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the contract price or was the basis of an increase in the contract price, the amount of the reduction shall be paid or credited to the Government of the United States as the Contracting Officer directs.

(i) The Contractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the Contractor, any subcontractor, or the transactions or property covered by this contract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(j) The Contractor shall promptly notify the Contracting Officer of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.

(End of clause)

#### **52.229-7 Taxes—Fixed-Price Contracts with Foreign Governments.**

As prescribed in [29.402-1\(b\)](#), insert the following clause:

TAXES—FIXED-PRICE CONTRACTS WITH FOREIGN GOVERNMENTS (FEB 2013)

(a) "Contract date," as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

(b)(1) The contract price, including the prices in any subcontracts under this contract, does not include any tax or duty that the Government of the United States and the Government of \_\_\_\_\_ [*insert name of the foreign government*] have agreed shall not apply to expenditures made by the United States in \_\_\_\_\_ [*insert name of country*], or any tax or duty not applicable to this contract or any subcontracts under this contract, pursuant to the laws of \_\_\_\_\_ [*insert name of country*]. If any such tax or duty has been included in the contract price, through error or otherwise, the contract price shall be correspondingly reduced.

(2) Taxes imposed under 26 U.S.C. 5000C may not be included in the contract price.

(c) If, after the contract date, the Government of the United States and the Government of \_\_\_\_\_ [*insert name of the for-*

*ign government*] agree that any tax or duty included in the contract price shall not apply to expenditures by the United States in \_\_\_\_\_ [*insert name of country*], the contract price shall be reduced accordingly.

(d) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(End of clause)

#### **52.229-8 Taxes—Foreign Cost-Reimbursement Contracts.**

As prescribed in [29.402-2\(a\)](#), insert the following clause:

TAXES—FOREIGN COST-REIMBURSEMENT CONTRACTS (MAR 1990)

(a) Any tax or duty from which the United States Government is exempt by agreement with the Government of \_\_\_\_\_ [*insert name of the foreign government*], or from which the Contractor or any subcontractor under this contract is exempt under the laws of \_\_\_\_\_ [*insert name of country*], shall not constitute an allowable cost under this contract.

(b) If the Contractor or subcontractor under this contract obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the reduction shall be paid or credited at the time of such offset to the Government of the United States as the Contracting Officer directs.

(End of clause)

#### **52.229-9 Taxes—Cost-Reimbursement Contracts with Foreign Governments.**

As prescribed in [29.402-2\(b\)](#), insert the following clause:

TAXES—COST-REIMBURSEMENT CONTRACTS WITH FOREIGN GOVERNMENTS (MAR 1990)

(a) Any tax or duty from which the United States Government is exempt by agreement with the Government of \_\_\_\_\_ [*insert name of the foreign government*], or from which any subcontractor under this contract is exempt under the laws of \_\_\_\_\_ [*insert name of country*], shall not constitute an allowable cost under this contract.

(b) If any subcontractor obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the reduction shall be paid (not credited to the contract) to the Treasurer of the United States at the time the Federal income tax return is filed.

(End of clause)

#### **52.229-10 State of New Mexico Gross Receipts and Compensating Tax.**

As prescribed in [29.401-4\(b\)](#), insert the following clause:

STATE OF NEW MEXICO GROSS RECEIPTS AND  
COMPENSATING TAX (APR 2003)

(a) Within thirty (30) days after award of this contract, the Contractor shall advise the State of New Mexico of this contract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico and shall identify the contract number.

(b) The Contractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the contract fee and costs paid for performance of this contract, or of any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Contractor or its subcontractors will be determined in accordance with the Allowable Cost and Payment clause of this contract except as provided in paragraph (d) of this clause.

(c) The Contractor shall submit applications for Nontaxable Transaction Certificates, Form CSR-3C, to the:

State of New Mexico Taxation and Revenue Dept.  
Revenue Division  
PO Box 630  
Santa Fe, New Mexico 87509

When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Contractor shall use these certificates strictly in accordance with this contract, and the agreement between the (\*\_\_\_\_\_ ) and the New Mexico Taxation and Revenue Department.

(d) The Contractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Contractor for use in the performance of this contract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor's liability for the gross receipt taxes and those taxes, which are then passed on to the Contractor, shall not be reimbursable as an allowable cost by the Government.

(e) The Contractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.

(f) Out-of-state purchase of tangible personal property by the Contractor which would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the contractor only if such property is not used for Federal purposes.

(g) The (\*\_\_\_\_\_ ) may receive information regarding the Contractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the (\*\_\_\_\_\_ ), may participate in any matters or proceedings pertaining to this clause or the above-mentioned Agreement. This shall not preclude the Contractor from having its own representative nor does it obligate the (\*\_\_\_\_\_ ) to represent its Contractor.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in each subcontract

which meets the criteria in [29.401-4\(b\)\(1\)](#) through (3) of the Federal Acquisition Regulation, 48 CFR Part 29.

(i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

[\*Insert appropriate agency name in blanks.]

(End of clause)

**52.230-1 Cost Accounting Standards Notices and Certification.**

As prescribed in [30.201-3](#), insert the following provision:

COST ACCOUNTING STANDARDS NOTICES AND  
CERTIFICATION (MAY 2012)

Note: This notice does not apply to small businesses or foreign governments. This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

I. DISCLOSURE STATEMENT—COST ACCOUNTING  
PRACTICES AND CERTIFICATION

(a) Any contract in excess of \$700,000 resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

CAUTION: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

tor's final payment, all title that has not passed to the Contractor shall vest in the Contractor, unless specifically designated in the Schedule as being retained by the Government. The Government shall not be responsible for the condition of, or any loss or damage to, the property.

(c) The Contractor shall promptly remove from the site all property acquired by the Contractor. The Government will not permit storage of property on the site beyond the completion date. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition of the granting of this permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(End of clause)

#### **52.237-7 Indemnification and Medical Liability Insurance.**

As prescribed in [37.403](#), insert the following clause:

##### INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (JAN 1997)

(a) It is expressly agreed and understood that this is a non-personal services contract, as defined in Federal Acquisition Regulation (FAR) [37.101](#), under which the professional services rendered by the Contractor are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided, but retains no control over professional aspects of the services rendered, including by example, the Contractor's professional medical judgment, diagnosis, or specific medical treatments. The Contractor shall be solely liable for and expressly agrees to indemnify the Government with respect to any liability producing acts or omissions by it or by its employees or agents. The Contractor shall maintain during the term of this contract liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: \* \_\_\_\_\_.

(b) An apparently successful offeror, upon request by the Contracting Officer, shall furnish prior to contract award evidence of its insurability concerning the medical liability insurance required by paragraph (a) of this clause.

(c) Liability insurance may be on either an occurrences basis or on a claims-made basis. If the policy is on a claims-made basis, an extended reporting endorsement (tail) for a period of not less than 3 years after the end of the contract term must also be provided.

(d) Evidence of insurance documenting the required coverage for each health care provider who will perform under this contract shall be provided to the Contracting Officer prior to the commencement of services under this contract. If the insurance is on a claims-made basis and evidence of an extended reporting endorsement is not provided prior to the

commencement of services, evidence of such endorsement shall be provided to the Contracting Officer prior to the expiration of this contract. Final payment under this contract shall be withheld until evidence of the extended reporting endorsement is provided to the Contracting Officer.

(e) The policies evidencing required insurance shall also contain an endorsement to the effect that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. If, during the performance period of the contract the Contractor changes insurance providers, the Contractor must provide evidence that the Government will be indemnified to the limits specified in paragraph (a) of this clause, for the entire period of the contract, either under the new policy, or a combination of old and new policies.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts under this contract for health care services and shall require such subcontractors to provide evidence of and maintain insurance in accordance with paragraph (a) of this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

(End of clause)

\* Contracting Officer insert the dollar value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests.

#### **52.237-8 Restriction on Severance Payments to Foreign Nationals.**

As prescribed in [37.113-2\(a\)](#), use the following provision:

##### RESTRICTION ON SEVERANCE PAYMENTS TO FOREIGN NATIONALS (AUG 2003)

(a) The Federal Acquisition Regulation (FAR), at [31.205-6\(g\)\(6\)](#), limits the cost allowability of severance payments to foreign nationals employed under a service contract performed outside the United States unless the agency grants a waiver pursuant to FAR [37.113-1](#) before contract award.

(b) In making the determination concerning the granting of a waiver, the agency will determine that—

(1) The application of the severance pay limitations to the contract would adversely affect the continuation of a program, project, or activity that provides significant support services for—

(i) Members of the armed forces stationed or deployed outside the United States; or

(ii) Employees of an executive agency posted outside the United States;

(2) The Contractor has taken (or has established plans to take) appropriate actions within its control to minimize the amount and number of incidents of the payment of severance pay to employees under the contract who are foreign nationals; and

(3) The payment of severance pay is necessary in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract, or is necessary to comply with a collective bargaining agreement.

(End of provision)

#### **52.237-9 Waiver of Limitation on Severance Payments to Foreign Nationals.**

As prescribed in [37.113-2\(b\)](#), use the following clause:

WAIVER OF LIMITATION ON SEVERANCE PAYMENTS TO FOREIGN NATIONALS (MAY 2014)

(a) Pursuant to [10 U.S.C. 2324\(e\)\(3\)\(A\)](#) or [41 U.S.C. 4304\(b\)\(1\)](#), as applicable, the cost allowability limitations in FAR [31.205-6\(g\)\(6\)](#) are waived.

(b) This clause may be incorporated into subcontracts issued under this contract, if approved by the Contracting Officer.

(End of clause)

#### **52.237-10 Identification of Uncompensated Overtime.**

As prescribed in [37.115-3](#), insert the following provision:

IDENTIFICATION OF UNCOMPENSATED OVERTIME  
(OCT 1997)

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

“Uncompensated overtime” means the hours worked without additional compensation in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

“Uncompensated overtime rate” is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour work week basis at \$20 per hour would be converted to an uncompensated overtime rate of \$17.78 per hour ( $\$20.00 \times 40$  divided by  $45 = \$17.78$ ).

(b) For any proposed hours against which an uncompensated overtime rate is applied, the offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, by labor category at the same level of detail as compensated hours, and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools

for personnel whose regular hours are normally charged direct.

(c) The offeror’s accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a risk assessment and will be evaluated for award in accordance with that assessment.

(e) The offeror shall include a copy of its policy addressing uncompensated overtime with its proposal.

(End of provision)

#### **52.237-11 Accepting and Dispensing of \$1 Coin.**

As prescribed in [37.116-2](#), insert the following clause:

ACCEPTING AND DISPENSING OF \$1 COIN (SEPT 2008)

(a) This clause applies to service contracts that involve business operations conducted in U.S. coin and currency, including vending machines, on any premises owned by the United States or under the control of any agency or instrumentality of the United States. All such business operations must be compliant with the requirements in paragraphs (b) and (c) of this clause on and after January 1, 2008.

(b) All business operations conducted under this contract that involve coins or currency, including vending machines, shall be fully capable of—

(1) Accepting \$1 coins in connection with such operations; and

(2) Dispensing \$1 coins in connection with such operations, unless the vending machine does not receive currency denominations greater than \$1.

(c) The Contractor shall ensure that signs and notices are displayed denoting the capability of accepting and dispensing \$1 coins with business operations on all premises where coins or currency are accepted or dispensed, including on each vending machine.

(End of clause)

#### **52.238 [Reserved]**

#### **52.239-1 Privacy or Security Safeguards.**

As prescribed in [39.107](#), insert a clause substantially the same as the following:

PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)

(a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer’s written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.