

FEDERAL ACQUISITION CIRCULAR

March 27, 2000

FAC 97-16

Federal Acquisition Circular (FAC) 97-16 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.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97-16 are effective March 27, 2000. For Item II, the rule is mandatory for solicitations issued on or after May 26, 2000, but contracting officers may, at their discretion, include the clauses and provisions in solicitations issued before May 26, 2000. For Item I, the rule is applicable to solicitations issued on or after the rule's effective date.

NOTE TO USERS: Pages included in this and future FACs are separated by effective dates. Please file these pages on their respective effective dates.

FAC 97-16 LIST of SUBJECTS

<u>Item</u>	<u>Title</u>	<u>Page</u>
I	Small Business Competitiveness Demonstration Program (Interim)	i
II	Progress Payments and Related Financing Policies	i and ii
III	Technical Amendments	ii

FAC 97-16 SUMMARY of ITEMS

Federal Acquisition Circular (FAC) 97-16 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Small Business Competitiveness Demonstration Program (FAR Case 1999-012)

This interim rule amends FAR Subpart 19.10 to clarify language pertaining to the Small Business Competitiveness Demonstration (Comp. Demo.) Program, consistent with revisions to the Program that were contained in an OFPP and SBA joint final policy directive dated May 25, 1999.

The interim rule—

- Advises the contracting officer to consider the 8(a) Program and HUBZone Program, in addition to small business set-asides, for acquisitions of \$25,000 or less in one of the four designated industry groups that will not be set aside for emerging small business concerns.

- Adds FAR 19.1006, Exclusions, to specify acquisitions to which Subpart 19.10 does not apply. None of the Small Business Comp. Demo. policies and procedures apply to orders under the Federal Supply Schedule Program or to contracts awarded to educational and nonprofit institutions or governmental entities.

This interim rule only will affect contracting officers at participating agencies when acquiring supplies or services subject to the procedures of the Small Business Comp. Demo. Program. The participating agencies are: Department of Agriculture; Department of Defense, except the National Imagery and Mapping Agency; Department of Energy; Department of Health and Human Services; Department of the Interior; Department of Transportation; Department of Veterans Affairs; Environmental Protection Agency; General Services Administration; and National Aeronautics and Space Administration.

Replacement pages: 19-1 and 19-2; 19-17 and 19-18; and 19-37 and 19-38.

Item II—Progress Payments and Related Financing Policies (FAR Case 1998-400) (98-400)

This final rule revises certain financing policies at FAR Part 32, Contract Financing, and related contract provisions at FAR Part 52. The rule—

- Emphasizes that performance-based payments are the preferred method of contract financing. Performance-based payments are contract financing payments made after achievement of predetermined goals, such as performance objectives or defined events. Contracting officers should consider performance-based payments and deem their use impracticable before deciding to provide customary progress payments;

- Permits contracting officers to provide contract financing on contracts awarded to large businesses if the individual contract is \$2 million or more. Previously, the threshold in the FAR for financing a contract with a large business was \$1 million;

- Permits a large business to bill the Government for subcontract costs that the large business has incurred but not actually paid, if certain conditions are met. Previously, the FAR permitted only small business concerns to bill for subcontract costs that have been incurred but not paid;

- Permits the contracting officer to use performance-based payments in contracts for research and development, and in contracts awarded through competitive negotiation procedures; and

- Is effective on March 27, 2000. However, it is mandatory only for solicitations issued on or after May 26, 2000. Contracting officers may, at their discretion, include the clauses and provisions in this rule in solicitations issued before that date.

Replacement pages: 32-1 thru 32-12 (32-12.1 added); 32-21 thru 32-32; 32-47 thru 32-52; 52-5 and 52-6; 52-77 and 52-78; 52-91 and 52-92; 52-197 thru 52-200; 52-209 thru 52-214; 52-225 and 52-226 (52-226.1 added); and Matrix 35 thru Matrix 38.1.

Item III—Technical Amendments

These amendments update references and make editorial changes at sections 1.106, 1.201-1, 1.304, 6.305, 9.404, 9.405, 15.404-1, 52.212-1, 52.217-9, and 52.219-23.

Replacement pages: 1-3 thru 1-13; 6-7 and 6-8; 9-13 and 9-14; 15-15 and 15-16; 52-35 thru 52-36.1; 52-95 and 52-96; and 52-104.3 and 52-104.4.

FAC 97-16 FILING INSTRUCTIONS

NOTE: The following pages reflect FAR rules and technical amendments that are effective on March 27, 2000.

Remove Pages

1-3 thru 1-13

6-7 and 6-8

9-13 and 9-14

15-15 and 15-16

19-1 and 19-2

19-17 and 19-18

19-37 and 19-38

32-1 thru 32-12

32-21 thru 32-32

32-47 thru 32-52

52-5 and 52-6

52-35 thru 52-36.1

52-77 and 52-78

52-91 and 52-92

52-95 and 52-96

52-104.3 and 52-104.4

52-197 thru 52-200

52-209 thru 52-214

52-225 and 52-226

Matrix 35 thru 38.1

Insert Pages

1-3 thru 1-13

6-7 and 6-8

9-13 and 9-14

15-15 and 15-16

19-1 and 19-2

19-17 and 19-18

19-37 and 19-38

32-1 thru 32-12.1

32-21 thru 32-32

32-47 thru 32-52

52-5 and 52-6

52-35 thru 52-36.1

52-77 and 52-78

52-91 and 52-92

52-95 and 52-96

52-104.3 and 52-104.4

52-197 thru 52-200

52-209 thru 52-214

52-225 thru 52-226.1

Matrix 35 thru 38.1

(2) To achieve efficient operations, the System must shift its focus from “risk avoidance” to one of “risk management.” The cost to the taxpayer of attempting to eliminate all risk is prohibitive. The Executive Branch will accept and manage the risk associated with empowering local procurement officials to take independent action based on their professional judgment.

(3) The Government shall exercise discretion, use sound business judgment, and comply with applicable laws and regulations in dealing with contractors and prospective contractors. All contractors and prospective contractors shall be treated fairly and impartially but need not be treated the same.

(d) *Fulfill public policy objectives.* The System must support the attainment of public policy goals adopted by the Congress and the President. In attaining these goals, and in its overall operations, the process shall ensure the efficient use of public resources.

1.102-3 Acquisition Team.

The purpose of defining the Federal Acquisition Team (Team) in the Guiding Principles is to ensure that participants in the System are identified beginning with the customer and ending with the contractor of the product or service. By identifying the team members in this manner, teamwork, unity of purpose, and open communication among the members of the Team in sharing the vision and achieving the goal of the System are encouraged. Individual team members will participate in the acquisition process at the appropriate time.

1.102-4 Role of the Acquisition Team.

(a) Government members of the Team must be empowered to make acquisition decisions within their areas of responsibility, including selection, negotiation, and administration of contracts consistent with the Guiding Principles. In particular, the contracting officer must have the authority to the maximum extent practicable and consistent with law, to determine the application of rules, regulations, and policies, on a specific contract.

(b) The authority to make decisions and the accountability for the decisions made will be delegated to the lowest level within the System, consistent with law.

(c) The Team must be prepared to perform the functions and duties assigned. The Government is committed to provide training, professional development, and other resources necessary for maintaining and improving the knowledge, skills, and abilities for all Government participants on the Team, both with regard to their particular area of responsibility within the System, and their respective role as a team member. The contractor community is encouraged to do likewise.

(d) The System will foster cooperative relationships between the Government and its contractors consistent with its overriding responsibility to the taxpayers.

(e) The FAR outlines procurement policies and procedures that are used by members of the Acquisition Team. If a policy or procedure, or a particular strategy or practice, is in the best interest of the Government and is not specifically addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, Government members of the Team should not assume it is prohibited. Rather, absence of direction should be interpreted as permitting the Team to innovate and use sound business judgment that is otherwise consistent with law and within the limits of their authority. Contracting officers should take the lead in encouraging business process innovations and ensuring that business decisions are sound.

1.103 Authority.

(a) The development of the FAR System is in accordance with the requirements of the Office of Federal Procurement Policy Act of 1974 (Pub. L. 93-400), as amended by Pub. L. 96-83, and OFPP Policy Letter 85-1, Federal Acquisition Regulations System, dated August 19, 1985.

(b) The FAR is prepared, issued, and maintained, and the FAR System is prescribed jointly by the Secretary of Defense, the Administrator of General Services, and the Administrator, National Aeronautics and Space Administration, under their several statutory authorities.

1.104 Applicability.

The FAR applies to all acquisitions as defined in Part 2 of the FAR, except where expressly excluded.

1.105 Issuance.

1.105-1 Publication and code arrangement.

- (a) The FAR is published in—
- (1) The daily issue of the *Federal Register*;
 - (2) Cumulated form in the *Code of Federal Regulations* (CFR); and
 - (3) A separate loose-leaf edition.

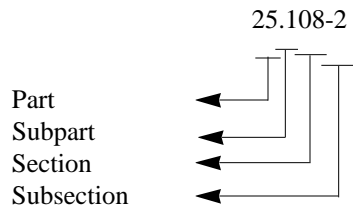
(b) The FAR is issued as Chapter 1 of Title 48, CFR. Subsequent chapters are reserved for agency acquisition regulations that implement or supplement the FAR (see Subpart 1.3). The CFR Staff will assign chapter numbers to requesting agencies.

(c) Each numbered unit or segment (*e.g.*, part, subpart, section, etc.) of an agency acquisition regulation that is codified in the CFR shall begin with the chapter number. However, the chapter number assigned to the FAR will not be included in the numbered units or segments of the FAR.

1.105-2 Arrangement of regulations.

(a) *General.* The FAR is divided into subchapters, parts (each of which deals with a separate aspect of acquisition), subparts, sections, and subsections.

(b) *Numbering.* (1) The numbering system permits the discrete identification of every FAR paragraph. The digits to the left of the decimal point represent the part number. The numbers to the right of the decimal point and to the left of the dash represent, in order, the subpart (one or two digits), and the section (two digits). The number to the right of the dash represents the subsection. Subdivisions may be used at the section and subsection level to identify individual paragraphs.



The following example illustrates the make-up of a FAR number citation (note that subchapters are not used with citations):

(2) Subdivisions below the section or subsection level shall consist of parenthetical alpha numerics reading from highest to lowest indenture as follows: lower case alphabet, Arabic numbers, lower case Roman numerals, and upper case alphabet. The following example is illustrative:

(a)(1)(i)(A)

Subdivisions, below the 4th level, shall repeat the sequence.

(c) *References and citations.* (1) Unless otherwise stated, cross-references indicate parts, subparts, sections, subsections, paragraphs, subparagraphs, or subdivisions of this regulation.

(2) This regulation may be referred to as the Federal Acquisition Regulation or the FAR.

(3) Using the FAR coverage at 9.106-4(d) as a typical illustration, reference to the—

(i) Part would be “FAR Part 9” outside the FAR and “Part 9” within the FAR.

(ii) Subpart would be “FAR Subpart 9.1” outside the FAR and “Subpart 9.1” within the FAR.

(iii) Section would be “FAR 9.106” outside the FAR and “9.106” within the FAR.

(iv) Subsection would be “FAR 9.106-4” outside the FAR and “9.106-4” within the FAR.

(v) Paragraph would be “FAR 9.106-4(d)” outside the FAR and “9.106-4(d)” within the FAR.

(4) Citations of authority (*e.g.*, statutes or Executive orders) in the FAR shall follow the *Federal Register* form guides.

1.105-3 Copies.

Copies of the FAR in *Federal Register*, loose-leaf, CD-ROM, and CFR form may be purchased from the—

Superintendent of Documents
 Government Printing Office (GPO)
 Washington, DC 20402.

1.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from 10 or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply:

FAR segment	OMB Control Number
3.103	9000-0018
3.4	9000-0003
4.102	9000-0033
4.5	9000-0137
4.602	9000-0145
4.603	9000-0145
4.7	9000-0034
4.9	9000-0097
5.405	9000-0036
7.2	9000-0082
8.5	9000-0113
9.1	9000-0011
9.2	9000-0020
14.201	9000-0034
14.202-4	9000-0040
14.202-5	9000-0039
14.205	9000-0002
14.205-4(c)	9000-0037
14.214	9000-0105
14.407	9000-0038
14.5	9000-0041
15.2	9000-0037
15.209	9000-0034
15.4	9000-0013
15.404-1(f)	9000-0080
15.407-2	9000-0078
15.408	9000-0115
19.7	9000-0006
19.12	9000-0150
22.103	9000-0065
22.8	1215-0072
22.11	9000-0066
22.13	1215-0072
22.14	1215-0072
23.602	9000-0107
23.9	9000-0139
27.3	9000-0095
27.4	9000-0090
28.1	9000-0045
28.2	9000-0045
29.304	9000-0059
30.6	9000-0129

FAR segment	OMB Control Number	FAR segment	OMB Control Number
31.205-46	9000-0079	52.214-16	9000-0044
31.205-46(a)(3)	9000-0088	52.214-21	9000-0039
32	9000-0035	52.214-26	9000-0034
32.000	9000-0138	52.214-28	9000-0013
32.1	9000-0070 and 9000-0138	52.215-2	9000-0034
32.2	9000-0138	52.215-1(c)(2)(iv)	9000-0048
32.4	9000-0073	52.215-1(d)	9000-0044
32.5	9000-0010 and 9000-0138	52.215-6	9000-0047
32.7	9000-0074	52.215-9	9000-0078
32.9	9000-0102	52.215-12	9000-0013
32.10	9000-0138	52.215-13	9000-0013
33	9000-0035	52.215-14	9000-0080
34.1	9000-0133	52.215-19	9000-0015
36.213-2	9000-0037	52.215-20	9000-0013
36.603	9000-0004 and 9000-0005	52.215-21	9000-0013
36.701	9000-0037	52.216-2	9000-0068
41.202(c)	9000-0125	52.216-3	9000-0068
42.205(f)	9000-0026	52.216-4	9000-0068
42.7	9000-0013	52.216-5	9000-0071
42.12	9000-0076	52.216-6	9000-0071
42.13	9000-0076	52.216-7	9000-0069
42.14	9000-0056	52.216-10	9000-0067
45	9000-0075	52.216-13	9000-0069
46	9000-0077	52.216-15	9000-0069
47	9000-0061	52.216-16	9000-0067
48	9000-0027	52.216-17	9000-0067
49	9000-0028	52.219-9	9000-0006
50	9000-0029	52.219-10	9000-0006
51.1	9000-0031	52.219-19	9000-0100
51.2	9000-0032	52.219-20	9000-0100
52.203-2	9000-0018	52.219-21	9000-0100
52.203-7	9000-0091	52.219-22	9000-0150
52.204-3	9000-0097	52.219-23	9000-0150
52.204-6	9000-0145	52.219-25	9000-0150
52.207-3	9000-0114	52.222-2	9000-0065
52.208-8	9000-0113	52.222-4	1215-0119
52.208-9	9000-0113	52.222-6	1215-0140
52.209-1(b)	9000-0020	52.222-8	1215-0149 and
52.209-1(c)	9000-0083		1215-0017
52.209-5	9000-0094	52.222-11	9000-0014
52.209-6	9000-0094	52.222-18	9000-0127
52.210-8	9000-0018	52.222-21	1215-0072
52.210-9	9000-0016	52.222-22	1215-0072
52.210-10	9000-0017	2.222-23	1215-0072
52.212-1	9000-0043	52.222-25	1215-0072
52.212-2	9000-0043	52.222-26	1215-0072
52.212-3	9000-0136	52.222-27	1215-0072
52.214-14	9000-0047	52.222-35	1215-0072
52.214-15	9000-0044	52.222-36	1215-0072
		52.222-41	1215-0017 and
			1215-0150
		52.222-46	9000-0066

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1.106

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FAR segment	OMB Control Number	FAR segment	OMB Control Number
52.223-4	9000-0134	52.232-27	9000-0102
52.223-5	9000-0147	52.232-29	9000-0138
52.223-6(b)(5)	9000-0101	52.232-30	9000-0138
52.223-7	9000-0107	52.232-31	9000-0138
52.223-9	9000-0134	52.232-32	9000-0138
52.223-13	9000-0139	52.233-1	9000-0035
52.223-14	9000-0139	52.234-1	9000-0133
52.225-2	9000-0023 and 9000-0024	52.236-5	9000-0062
52.225-4	9000-0130	52.236-13	1220-0029 and 9000-0060
52.225-6	9000-0025	52.236-15	9000-0058
52.225-8	9000-0022	52.236-19	9000-0064
52.225-9	9000-0141	52.241-1	9000-0126
52.225-11	9000-0141	52.241-3	9000-0122
52.227-14	9000-0090	52.241-7	9000-0123
52.227-15	9000-0090	52.241-13	9000-0124
52.227-16	9000-0090	52.242-12	9000-0056
52.227-17	9000-0090	52.243-1	9000-0026
52.227-18	9000-0090	52.243-2	9000-0026
52.227-19	9000-0090	52.243-3	9000-0026
52.227-20	9000-0090	52.243-4	9000-0026
52.227-21	9000-0090	52.243-6	9000-0026
52.227-22	9000-0090	52.243-7	9000-0026
52.227-23	9000-0090	52.245-2	9000-0075
52.228-1	9000-0045	52.245-3	9000-0075
52.228-2	9000-0045	52.245-5	9000-0075
52.228-12	9000-0135	52.245-7	9000-0075
52.228-13	9000-0045	52.245-8	9000-0075
52.228-15	9000-0045	52.245-9	9000-0075
52.228-16	9000-0045	52.245-10	9000-0075
52.229-2	9000-0059	52.245-11	9000-0075
52.230-6	9000-0129	52.245-16	9000-0075
52.232-1	9000-0070	52.245-17	9000-0075
52.232-2	9000-0070	52.245-18	9000-0075
52.232-3	9000-0070	52.246-2	9000-0077
52.232-4	9000-0070	52.246-3	9000-0077
52.232-5	9000-0070	52.246-4	9000-0077
52.232-6	9000-0070	52.246-5	9000-0077
52.232-7	9000-0070	52.246-6	9000-0077
52.232-8	9000-0070	52.246-7	9000-0077
52.232-9	9000-0070	52.246-8	9000-0077
52.232-10	9000-0070	52.246-10	9000-0077
52.232-11	9000-0070	52.246-12	9000-0077
52.232-12	9000-0073	52.246-15	9000-0077
52.232-13	9000-0010	52.247-2	9000-0053
52.232-14	9000-0010	52.247-29	9000-0061
52.232-15	9000-0010	52.247-30	9000-0061
52.232-16	9000-0010	52.247-31	9000-0061
52.232-20	9000-0074	52.247-32	9000-0061
52.232-21	9000-0074	52.247-33	9000-0061
52.232-22	9000-0074	52.247-34	9000-0061

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FAR segment	OMB Control Number	FAR segment	OMB Control Number
52.247-35	9000-0061	SF 1426	9000-0015
52.247-36	9000-0061	SF 1427	9000-0015
52.247-37	9000-0061	SF 1428	9000-0015
52.247-38	9000-0061	SF 1429	9000-0015
52.247-39	9000-0061	SF 1430	9000-0015
52.247-40	9000-0061	SF 1431	9000-0015
52.247-41	9000-0061	SF 1432	9000-0015
52.247-42	9000-0061	SF 1433	9000-0015
52.247-43	9000-0061	SF 1434	9000-0015
52.247-44	9000-0061	SF 1435	9000-0012
52.247-48	9000-0061	SF 1436	9000-0012
52.247-51	9000-0057	SF 1437	9000-0012
52.247-53	9000-0055	SF 1438	9000-0012
52.247-57	9000-0061	SF 1439	9000-0012
52.247-63	9000-0054	SF 1440	9000-0012
52.247-64	9000-0061	SF 1443	9000-0010
52.248-1	9000-0027	SF 1444	9000-0089
52.248-2	9000-0027	SF 1445	9000-0089
52.248-3	9000-0027	SF 1446	9000-0089
52.249-2	9000-0028	SF 1449	9000-0136
52.249-3	9000-0028	OF 312	9000-0150
52.249-5	9000-0028		
52.249-6	9000-0028		
52.249-11	9000-0028		
52.250-1	9000-0029		
53.236-1(a)	9000-0037		
SF 24	9000-0045		
SF 25	9000-0045		
SF 25-A	9000-0045		
SF 28	9000-0001		
SF 34	9000-0045		
SF 35	9000-0045		
SF 129	9000-0002		
SF 254	9000-0004		
SF 255	9000-0005		
SF 273	9000-0045		
SF 274	9000-0045		
SF 275	9000-0045		
SF 294	9000-0006		
SF 295	9000-0007		
SF 1403	9000-0011		
SF 1404	9000-0011		
SF 1405	9000-0011		
SF 1406	9000-0011		
SF 1407	9000-0011		
SF 1408	9000-0011		
SF 1413	9000-0014		
SF 1416	9000-0045		
SF 1417	9000-0037		
SF 1418	9000-0045		
SF 1423	9000-0015		
SF 1424	9000-0015		

1.107 Certifications.

In accordance with Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425), as amended by Section 4301 of the Clinger-Cohen Act of 1996 (Public Law 104-106), 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 Administrator approves in writing the inclusion of such certification requirement.

Subpart 1.2—Administration

1.201 Maintenance of the FAR.

1.201-1 The two councils.

(a) Subject to the authorities discussed in 1.103, revisions to the FAR will be prepared and issued through the coordinated action of two councils, the Defense Acquisition Regulations Council (DAR Council) and the Civilian Agency Acquisition Council (CAACouncil). Members of these councils shall—

- (1) Represent their agencies on a full-time basis;
- (2) Be selected for their superior qualifications in terms of acquisition experience and demonstrated professional expertise; and
- (3) Be funded by their respective agencies.

(b) The chairperson of the CAA Council shall be the representative of the Administrator of General Services. The other members of this council shall be one each representative from the—

(1) Departments of Agriculture, Commerce, Energy, Health and Human Services, Interior, Labor, State, Transportation, and Treasury; and

(2) Environmental Protection Agency, Social Security Administration, Small Business Administration, and Department of Veterans Affairs.

(c) The Director of the DAR Council shall be the representative of the Secretary of Defense. The operation of the DAR Council will be as prescribed by the Secretary of Defense. Membership shall include representatives of the military Departments, the Defense Logistics Agency, and the National Aeronautics and Space Administration.

(d) Responsibility for processing revisions to the FAR is apportioned by the two councils so that each council has cognizance over specified parts or subparts.

(e) Each council shall be responsible for—

(1) Agreeing on all revisions with the other council;

(2) Submitting to the FAR Secretariat (see 1.201-2) the information required under paragraphs 1.501-2(b) and (e) for publication in the *Federal Register* of a notice soliciting comments on a proposed revision to the FAR;

(3) Considering all comments received in response to notice of proposed revisions;

(4) Arranging for public meetings;

(5) Preparing any final revision in the appropriate FAR format and language; and

(6) Submitting any final revision to the FAR Secretariat for publication in the *Federal Register* and printing for distribution.

1.201-2 FAR Secretariat.

(a) The General Services Administration is responsible for establishing and operating the FAR Secretariat to print, publish, and distribute the FAR through the *Code of Federal Regulations* system (including a loose-leaf edition with periodic updates).

(b) Additionally, the FAR Secretariat shall provide the two councils with centralized services for—

(1) Keeping a synopsis of current FAR cases and their status;

(2) Maintaining official files;

(3) Assisting parties interested in reviewing the files on completed cases; and

(4) Performing miscellaneous administrative tasks pertaining to the maintenance of the FAR.

1.202 Agency compliance with the FAR.

Agency compliance with the FAR (see 1.304) is the responsibility of the Secretary of Defense (for the military

departments and defense agencies), the Administrator of General Services (for civilian agencies other than NASA), and the Administrator of NASA (for NASA activities).

Subpart 1.3—Agency Acquisition Regulations

1.301 Policy.

(a)(1) Subject to the authorities in paragraph (c) of this section and other statutory authority, an agency head may issue or authorize the issuance of agency acquisition regulations that implement or supplement the FAR and incorporate, together with the FAR, agency policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between the agency, including any of its suborganizations, and contractors or prospective contractors.

(2) Subject to the authorities in paragraph (c) of this section and other statutory authority, an agency head may issue or authorize the issuance of internal agency guidance at any organizational level (*e.g.*, designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements).

(b) Agency heads shall establish procedures to ensure that agency acquisition regulations are published for comment in the *Federal Register* in conformance with the procedures in Subpart 1.5 and as required by section 22 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 418b), and other applicable statutes, when they have a significant effect beyond the internal operating procedures of the agency or have a significant cost or administrative impact on contractors or offerors. However, publication is not required for issuances that merely implement or supplement higher level issuances that have previously undergone the public comment process, unless such implementation or supplementation results in an additional significant cost or administrative impact on contractors or offerors or effect beyond the internal operating procedures of the issuing organization. Issuances under 1.301(a)(2) need not be publicized for public comment.

(c) When adopting acquisition regulations, agencies shall ensure that they comply with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) as implemented in 5 CFR 1320 (see 1.106) and the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Normally, when a law requires publication of a proposed regulation, the Regulatory Flexibility Act applies and agencies must prepare written analyses, or certifications as provided in the law.

(d) Agency acquisition regulations implementing or supplementing the FAR are, for—

(1) The military departments and defense agencies, issued subject to the authority of the Secretary of Defense;

(2) NASA activities, issued subject to the authorities of the Administrator of NASA; and

(3) The civilian agencies other than NASA, issued by the heads of those agencies subject to the overall authority of the Administrator of General Services or independent authority the agency may have.

1.302 Limitations.

Agency acquisition regulations shall be limited to—

- (a) Those necessary to implement FAR policies and procedures within the agency; and
- (b) Additional policies, procedures, solicitation provisions, or contract clauses that supplement the FAR to satisfy the specific needs of the agency.

1.303 Publication and codification.

(a) Agency-wide acquisition regulations shall be published in the *Federal Register* as required by law, shall be codified under an assigned chapter in Title 48, *Code of Federal Regulations*, and shall parallel the FAR in format, arrangement, and numbering system (but see 1.105-1(c)). Coverage in an agency acquisition regulation that implements a specific part, subpart, section, or subsection of the FAR shall be numbered and titled to correspond to the appropriate FAR number and title. Supplementary material for which there is no counterpart in the FAR shall be codified using chapter, part, subpart, section, or subsection numbers of 70 and up (*e.g.*, for the Department of Interior, whose assigned chapter number in Title 48 is 14, Part 1470, Subpart 1401.70, section 1401.370, or subsection 1401.301-70).

(b) Issuances under 1.301(a)(2) need not be published in the *Federal Register*.

1.304 Agency control and compliance procedures.

(a) Under the authorities of 1.301(d), agencies shall control and limit issuance of agency acquisition regulations and, in particular, local agency directives that restrain the flexibilities found in the FAR, and shall establish formal procedures for the review of these documents to assure compliance with this Part 1.

(b) Agency acquisition regulations shall not—

- (1) Unnecessarily repeat, paraphrase, or otherwise restate material contained in the FAR or higher-level agency acquisition regulations; or
 - (2) Except as required by law or as provided in Subpart 1.4, conflict or be inconsistent with FAR content.
- (c) Agencies shall evaluate all regulatory coverage in agency acquisition regulations to determine if it could apply to other agencies. Coverage that is not peculiar to one agency shall be recommended for inclusion in the FAR.

Subpart 1.4—Deviations from the FAR

1.400 Scope of subpart.

This subpart prescribes the policies and procedures for authorizing deviations from the FAR. Exceptions pertaining to the use of forms prescribed by the FAR are covered in Part 53 rather than in this subpart.

1.401 Definition.

“Deviation” means any one or combination of the following:

(a) The issuance or use of a policy, procedure, solicitation provision (see definition in 52.101(a)), contract clause (see definition in 52.101(a)), method, or practice of conducting acquisition actions of any kind at any stage of the acquisition process that is inconsistent with the FAR.

(b) The omission of any solicitation provision or contract clause when its prescription requires its use.

(c) The use of any solicitation provision or contract clause with modified or alternate language that is not authorized by the FAR (see definitions of “modification” and “alternate” in 52.101(a)).

(d) The use of a solicitation provision or contract clause prescribed by the FAR on a “substantially as follows” or “substantially the same as” basis (see definitions in 52.101(a)), if such use is inconsistent with the intent, principle, or substance of the prescription or related coverage on the subject matter in the FAR.

(e) The authorization of lesser or greater limitations on the use of any solicitation provision, contract clause, policy, or procedure prescribed by the FAR.

(f) The issuance of policies or procedures that govern the contracting process or otherwise control contracting relationships that are not incorporated into agency acquisition regulations in accordance with 1.301(a).

1.402 Policy.

Unless precluded by law, executive order, or regulation, deviations from the FAR may be granted as specified in this subpart when necessary to meet the specific needs and requirements of each agency. The development and testing of new techniques and methods of acquisition should not be stifled simply because such action would require a FAR deviation. The fact that deviation authority is required should not, of itself, deter agencies in their development and testing of new techniques and acquisition methods. Refer to 31.101 for instructions concerning deviations pertaining to the subject matter of Part 31, Contract Cost Principles and Procedures. Deviations are not authorized with respect to 30.201-3 and 30.201-4, or the requirements of the Cost

Accounting Standards Board (CASB) rules and regulations (48 CFR Chapter 99 (FAR Appendix)). Refer to 30.201-5 for instructions concerning waivers pertaining to Cost Accounting Standards.

1.403 Individual deviations.

Individual deviations affect only one contracting action, and, unless 1.405(e) is applicable, may be authorized by agency heads or their designees. The justification and agency approval shall be documented in the contract file.

1.404 Class deviations.

Class deviations affect more than one contracting action. When it is known that a class deviation will be required on a permanent basis, an agency should propose an appropriate FAR revision to cover the matter. For civilian agencies other than NASA, a copy of each approved class deviation shall be furnished to the FAR Secretariat.

(a) For civilian agencies except NASA, class deviations may be authorized by agency heads or their designees, unless 1.405(e) is applicable. Delegation of this authority shall not be made below the head of a contracting activity. Authorization of class deviations by agency officials is subject to the following limitations:

(1) An agency official who may authorize a class deviation, before doing so, shall consult with the chairperson of the Civilian Agency Acquisition Council (CAA Council), unless that agency official determines that urgency precludes such consultation.

(2) Recommended revisions to the FAR shall be transmitted to the FAR Secretariat by agency heads or their designees for authorizing class deviations.

(b) For DOD, class deviations shall be controlled, processed, and approved in accordance with the Defense FAR Supplement.

(c) For NASA, class deviations shall be controlled and approved by the Associate Administrator for Procurement. Deviations shall be processed in accordance with agency regulations.

1.405 Deviations pertaining to treaties and executive agreements.

(a) “Executive agreements,” as used in this section, means Government-to-Government agreements, including agreements with international organizations, to which the United States is a party.

(b) Any deviation from the FAR required to comply with a treaty to which the United States is a party is authorized, unless the deviation would be inconsistent with FAR coverage based on a law enacted after the execution of the treaty.

(c) Any deviation from the FAR required to comply with an executive agreement is authorized unless the devi-

ation would be inconsistent with FAR coverage based on law.

(d) For civilian agencies other than NASA, a copy of the text deviation authorized under paragraph (b) or (c) of this section shall be transmitted to the FAR Secretariat through a central agency control point.

(e) For civilian agencies other than NASA, if a deviation required to comply with a treaty or an executive agreement is not authorized by paragraph (b) or (c) of this section, then the request for deviation shall be processed through the FAR Secretariat to the Civilian Agency Acquisition Council.

Subpart 1.5—Agency and Public Participation

1.501 Solicitation of agency and public views.

1.501-1 Definition.

“Significant revisions,” as used in this subpart, means revisions that alter the substantive meaning of any coverage in the FAR System having a significant cost or administrative impact on contractors or offerors, or significant effect beyond the internal operating procedures of the issuing agency. This expression, for example, does not include editorial, stylistic, or other revisions that have no impact on the basic meaning of the coverage being revised.

1.501-2 Opportunity for public comments.

(a) Views of agencies and nongovernmental parties or organizations will be considered in formulating acquisition policies and procedures.

(b) The opportunity to submit written comments on proposed significant revisions shall be provided by placing a notice in the *Federal Register*. Each of these notices shall include—

(1) The text of the revision or, if it is impracticable to publish the full text, a summary of the proposal;

(2) The address and telephone number of the individual from whom copies of the revision, in full text, can be requested and to whom comments thereon should be addressed; and

(3) When 1.501-3(b) is applicable, a statement that the revision is effective on a temporary basis pending completion of the public comment period.

(c) A minimum of 30 days and, normally, at least 60 days will be given for the receipt of comments.

1.501-3 Exceptions.

(a) Comments need not be solicited when the proposed coverage does not constitute a significant revision.

(b) Advance comments need not be solicited when urgent and compelling circumstances make solicitation of comments impracticable prior to the effective date of the

coverage, such as when a new statute must be implemented in a relatively short period of time. In such case, the coverage shall be issued on a temporary basis and shall provide for at least a 30 day public comment period.

1.502 Unsolicited proposed revisions.

Consideration shall also be given to unsolicited recommendations for revisions that have been submitted in writing with sufficient data and rationale to permit their evaluation.

1.503 Public meetings.

Public meetings may be appropriate when a decision to adopt, amend, or delete FAR coverage is likely to benefit from significant additional views and discussion.

Subpart 1.6—Career Development, Contracting Authority, and Responsibilities

1.601 General.

(a) Unless specifically prohibited by another provision of law, authority and responsibility to contract for authorized supplies and services are vested in the agency head. The agency head may establish contracting activities and delegate broad authority to manage the agency's contracting functions to heads of such contracting activities. Contracts may be entered into and signed on behalf of the Government only by contracting officers. In some agencies, a relatively small number of high level officials are designated contracting officers solely by virtue of their positions. Contracting officers below the level of a head of a contracting activity shall be selected and appointed under 1.603.

(b) Agency heads may mutually agree to—

- (1) Assign contracting functions and responsibilities from one agency to another; and
- (2) Create joint or combined offices to exercise acquisition functions and responsibilities.

1.602 Contracting officers.

1.602-1 Authority.

(a) Contracting officers have authority to enter into, administer, or terminate contracts and make related determinations and findings. Contracting officers may bind the Government only to the extent of the authority delegated to them. Contracting officers shall receive from the appointing authority (see 1.603-1) clear instructions in writing regarding the limits of their authority. Information on the limits of the contracting officers' authority shall be readily available to the public and agency personnel.

(b) No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.

1.602-2 Responsibilities.

Contracting officers are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships. In order to perform these responsibilities, contracting officers should be allowed wide latitude to exercise business judgment. Contracting officers shall—

(a) Ensure that the requirements of 1.602-1(b) have been met, and that sufficient funds are available for obligation;

(b) Ensure that contractors receive impartial, fair, and equitable treatment; and

(c) Request and consider the advice of specialists in audit, law, engineering, transportation, and other fields, as appropriate.

1.602-3 Ratification of unauthorized commitments.

(a) *Definitions.*

“Ratification,” as used in this subsection, means the act of approving an unauthorized commitment by an official who has the authority to do so.

“Unauthorized commitment,” as used in this subsection, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.

(b) *Policy.* (1) Agencies should take positive action to preclude, to the maximum extent possible, the need for ratification actions. Although procedures are provided in this section for use in those cases where the ratification of an unauthorized commitment is necessary, these procedures may not be used in a manner that encourages such commitments being made by Government personnel.

(2) Subject to the limitations in paragraph (c) of this subsection, the head of the contracting activity, unless a higher level official is designated by the agency, may ratify an unauthorized commitment.

(3) The ratification authority in subparagraph (b)(2) of this subsection may be delegated in accordance with agency procedures, but in no case shall the authority be delegated below the level of chief of the contracting office.

(4) Agencies should process unauthorized commitments using the ratification authority of this subsection instead of referring such actions to the General Accounting Office for resolution. (See 1.602-3(d).)

(5) Unauthorized commitments that would involve claims subject to resolution under the Contract Disputes Act of 1978 should be processed in accordance with Subpart 33.2, Disputes and Appeals.

(c) *Limitations.* The authority in subparagraph (b)(2) of this subsection may be exercised only when—

(1) Supplies or services have been provided to and accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;

(2) The ratifying official has the authority to enter into a contractual commitment;

(3) The resulting contract would otherwise have been proper if made by an appropriate contracting officer;

(4) The contracting officer reviewing the unauthorized commitment determines the price to be fair and reasonable;

(5) The contracting officer recommends payment and legal counsel concurs in the recommendation, unless agency procedures expressly do not require such concurrence;

(6) Funds are available and were available at the time the unauthorized commitment was made; and

(7) The ratification is in accordance with any other limitations prescribed under agency procedures.

(d) *Nonratifiable commitments.* Cases that are not ratifiable under this subsection may be subject to resolution as recommended by the General Accounting Office under its claim procedure (GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 4, Chapter 2), or as authorized by FAR Part 50. Legal advice should be obtained in these cases.

1.603 Selection, appointment, and termination of appointment.

1.603-1 General.

Subsection 414(4) of title 41, United States Code, requires agency heads to establish and maintain a procurement career management program and a system for the selection, appointment, and termination of appointment of contracting officers. Agency heads or their designees may select and appoint contracting officers and terminate their appointments. These selections and appointments shall be consistent with Office of Federal Procurement Policy's (OFPP) standards for skill-based training in performing contracting and purchasing duties as published in OFPP Policy Letter No. 92-3, Procurement Professionalism Program Policy—Training for Contracting Personnel, June 24, 1992.

1.603-2 Selection.

In selecting contracting officers, the appointing official shall consider the complexity and dollar value of the acquisitions to be assigned and the candidate's experience, training, education, business acumen, judgment, character, and reputation. Examples of selection criteria include—

(a) Experience in Government contracting and administration, commercial purchasing, or related fields;

(b) Education or special training in business administration, law, accounting, engineering, or related fields;

(c) Knowledge of acquisition policies and procedures, including this and other applicable regulations;

(d) Specialized knowledge in the particular assigned field of contracting; and

(e) Satisfactory completion of acquisition training courses.

1.603-3 Appointment.

(a) Contracting officers shall be appointed in writing on an SF 1402, Certificate of Appointment, which shall state any limitations on the scope of authority to be exercised, other than limitations contained in applicable law or regulation. Appointing officials shall maintain files containing copies of all appointments that have not been terminated.

(b) Agency heads are encouraged to delegate micro-purchase authority to individuals who are employees of an executive agency or members of the Armed Forces of the United States who will be using the supplies or services being purchased. Individuals delegated this authority are not required to be appointed on an SF 1402, but shall be appointed in writing in accordance with agency procedures.

1.603-4 Termination.

Termination of a contracting officer appointment will be by letter, unless the Certificate of Appointment contains other provisions for automatic termination. Terminations may be for reasons such as reassignment, termination of employment, or unsatisfactory performance. No termination shall operate retroactively.

Subpart 1.7—Determinations and Findings

1.700 Scope of subpart.

This subpart prescribes general policies and procedures for the use of determinations and findings (D&F's). Requirements for specific types of D&F's can be found with the appropriate subject matter.

1.701 Definition.

“Determination and Findings” means a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contracting actions. The “determination” is a conclusion or decision supported by the “findings.” The findings are statements of fact or rationale essential to support the determination and must cover each requirement of the statute or regulation.

1.702 General.

(a) A D&F shall ordinarily be for an individual contract action. Unless otherwise prohibited, class D&F's may be executed for classes of contract actions (see 1.703). The approval granted by a D&F is restricted to the proposed contract action(s) reasonably described in that D&F. D&F's may provide for a reasonable degree of flexibility. Furthermore, in their application, reasonable variations in estimated quantities or prices are permitted, unless the D&F specifies otherwise.

(b) When an option is anticipated, the D&F shall state the approximate quantity to be awarded initially and the extent of the increase to be permitted by the option.

1.703 Class determinations and findings.

(a) A class D&F provides authority for a class of contracting actions. A class may consist of contracting actions for the same or related supplies or services or other contracting actions that require essentially identical justification.

(b) The findings in a class D&F shall fully support the proposed action either for the class as a whole or for each action. A class D&F shall be for a specified period, with the expiration date stated in the document.

(c) The contracting officer shall ensure that individual actions taken pursuant to the authority of a class D&F are within the scope of the D&F.

1.704 Content.

Each D&F shall set forth enough facts and circumstances to clearly and convincingly justify the specific determination made. As a minimum, each D&F shall include, in the prescribed agency format, the following information:

(a) Identification of the agency and of the contracting activity and specific identification of the document as a "Determination and Findings."

(b) Nature and/or description of the action being approved.

(c) Citation of the appropriate statute and/or regulation upon which the D&F is based.

(d) Findings that detail the particular circumstances, facts, or reasoning essential to support the determination. Necessary supporting documentation shall be obtained from appropriate requirements and technical personnel.

(e) A determination, based on the findings, that the proposed action is justified under the applicable statute or regulation.

(f) Expiration date of the D&F, if required (see 1.706).

(g) The signature of the official authorized to sign the D&F (see 1.707) and the date signed.

1.705 Supersession and modification.

(a) If a D&F is superseded by another D&F, that action shall not render invalid any action taken under the original D&F prior to the date of its supersession.

(b) A modification of the D&F will not require cancellation of the solicitation if the D&F, as modified, supports the contracting action.

1.706 Expiration.

Expiration dates are required for class D&F's and are optional for individual D&F's. Authority to act under an individual D&F expires when it is exercised or on an expiration date specified in the document, whichever occurs first. Authority to act under a class D&F expires on the expiration date specified in the document. When a solicitation has been furnished to prospective offerors before the expiration date, the authority under the D&F will continue until award of the contract(s) resulting from the solicitation.

1.707 Signatory authority.

When a D&F is required, it shall be signed by the appropriate official in accordance with agency regulations. Authority to sign or delegate signature authority for the various D&F's is as shown in the applicable FAR part.

* * * * *

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

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

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

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

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

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

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

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

6.303 Justifications.

6.303-1 Requirements.

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

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

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

(3) Obtains the approval required by 6.304.

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

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

(d) If the authority of 6.302-3(a)(2)(i) or 6.302-7 is being cited as a basis for not providing for full and open competition in an acquisition that would otherwise be subject to the

Trade Agreements Act (see Subpart 25.4), the contracting officer must forward a copy of the justification, in accordance with agency procedures, to the agency's point of contact with the Office of the United States Trade Representative.

(e) The justifications for contracts awarded under the authority cited in 6.302-2 may be prepared and approved within a reasonable time after contract award when preparation and approval prior to award would unreasonably delay the acquisitions.

6.303-2 Content.

(a) Each justification shall contain sufficient facts and rationale to justify the use of the specific authority cited. As a minimum, each justification shall include the following information:

(1) Identification of the agency and the contracting activity, and specific identification of the document as a "Justification for other than full and open competition."

(2) Nature and/or description of the action being approved.

(3) A description of the supplies or services required to meet the agency's needs (including the estimated value).

(4) An identification of the statutory authority permitting other than full and open competition.

(5) A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited.

(6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a CBD notice was or will be publicized as required by Subpart 5.2 and, if not, which exception under 5.202 applies.

(7) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.

(8) A description of the market research conducted (see Part 10) and the results or a statement of the reason market research was not conducted.

(9) Any other facts supporting the use of other than full and open competition, such as:

(i) Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.

(ii) When 6.302-1 is cited for follow-on acquisitions as described in 6.302-1(a)(2)(ii), an estimate of the cost to the Government that would be duplicated and how the estimate was derived.

(iii) When 6.302-2 is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the Government.

(10) A listing of the sources, if any, that expressed, in writing, an interest in the acquisition.

(11) A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.

(12) Contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

(b) Each justification shall include evidence that any supporting data that is the responsibility of technical or requirements personnel (*e.g.*, verifying the Government's minimum needs or schedule requirements or other rationale for other than full and open competition) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

6.304 Approval of the justification.

(a) Except for paragraph (b) of this section, the justification for other than full and open competition shall be approved in writing—

(1) For a proposed contract not exceeding \$500,000, the contracting officer's certification required by 6.303-2(a)(12) will serve as approval unless a higher approving level is established in agency procedures.

(2) For a proposed contract over \$500,000 but not exceeding \$10,000,000, by the competition advocate for the procuring activity designated pursuant to 6.501 or an official described in paragraph (a)(3) or (a)(4) of this section. This authority is not delegable.

(3) For a proposed contract over \$10,000,000 but not exceeding \$50,000,000, by the head of the procuring activity, or a designee who—

(i) If a member of the armed forces, is a general or flag officer; or

(ii) If a civilian, is serving in a position in grade GS 16 or above under the General Schedule (or in a comparable or higher position under another schedule).

(4) For a proposed contract over \$50,000,000, by the senior procurement executive of the agency designated pursuant to the OFPP Act (41 U.S.C. 414(3)) in accordance with agency procedures. This authority is not delegable except in the case of the Under Secretary of Defense (Acquisition and Technology), acting as the senior procurement executive for the Department of Defense.

(b) Any justification for a contract awarded under the authority of 6.302-7, regardless of dollar amount, shall be considered approved when the determination required by 6.302-7(c)(1) is made.

(c) A class justification for other than full and open competition shall be approved in writing in accordance with

agency procedures. The approval level shall be determined by the estimated total value of the class.

(d) The estimated dollar value of all options shall be included in determining the approval level of a justification.

6.305 Availability of the justification.

(a) The justifications required by 6.303-1 and any related information shall be made available for public inspection as required by 10 U.S.C. 2304(f)(4) and 41 U.S.C. 253(f)(4). Contracting officers shall carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. Contracting officers shall also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) and the prohibitions against disclosure in 24.202 in determining whether other data should be removed.

(b) If a Freedom of Information request is received, contracting officers shall comply with Subpart 24.2.

Subpart 6.4—Sealed Bidding and Competitive Proposals

6.401 Sealed bidding and competitive proposals.

Sealed bidding and competitive proposals, as described in Parts 14 and 15, are both acceptable procedures for use under Subparts 6.1, 6.2; and, when appropriate, under Subpart 6.3.

(a) *Sealed bids.* (See Part 14 for procedures.) Contracting officers shall solicit sealed bids if—

(1) Time permits the solicitation, submission, and evaluation of sealed bids;

(2) The award will be made on the basis of price and other price-related factors;

(3) It is not necessary to conduct discussions with the responding offerors about their bids; and

(4) There is a reasonable expectation of receiving more than one sealed bid.

(b) *Competitive proposals.* (See Part 15 for procedures.)

(1) Contracting officers may request competitive proposals if sealed bids are not appropriate under paragraph (a) above.

(2) Because of differences in areas such as law, regulations, and business practices, it is generally necessary to conduct discussions with offerors relative to proposed contracts to be made and performed outside the United States, its possessions, or Puerto Rico. Competitive proposals will therefore be used for these contracts unless discussions are not required and the use of sealed bids is otherwise appropriate.

(a) Directly or indirectly (*e.g.*, through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract; or

(b) Conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor.

“Conviction” means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.

“Debarment,” as used in this subpart, means action taken by a debarring official under 9.406 to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor so excluded is “debarred.”

“Debarring official” means—

(a) An agency head; or

(b) A designee authorized by the agency head to impose debarment.

“Indictment” means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

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

“Legal proceedings” means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

“List of Parties Excluded from Federal Procurement and Nonprocurement Programs” means a list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about parties debarred, suspended, or voluntarily excluded under the Nonprocurement Common Rule or the Federal Acquisition Regulation, parties who have been proposed for debarment under the Federal Acquisition Regulation, and parties determined to be ineligible.

“Nonprocurement Common Rule” means the procedures used by Federal Executive Agencies to suspend, debar, or exclude individuals or entities from participation in nonprocurement transactions under Executive Order 12549. Examples of nonprocurement transactions are grants, coop-

erative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements.

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

“Suspending official” means—

(a) An agency head; or

(b) A designee authorized by the agency head to impose suspension.

“Suspension,” as used in this subpart, means action taken by a suspending official under 9.407 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor so disqualified is “suspended.”

“Unfair trade practices,” as used in this subpart, means the commission of any or the following acts by a contractor:

(1) A violation of Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) as determined by the International Trade Commission.

(2) A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the “Coordination Committee” for purposes of the Export Administration Act of 1979 (50 U.S.C. App. 2401, *et seq.*) or any similar bilateral or multilateral export control agreement.

(3) A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the Department or the head of the agency to which such certificate was furnished.

9.404 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(a) The General Services Administration (GSA)—

(1) Compiles and maintains a current list of all parties debarred, suspended, proposed for debarment, or declared ineligible by agencies or by the General Accounting Office;

(2) Periodically revises and distributes the list and issues supplements, if necessary, to all agencies and the General Accounting Office; and

(3) Includes in the list the name and telephone number of the official responsible for its maintenance and distribution.

(b) The List of Parties Excluded from Federal Procurement and Nonprocurement Programs includes the—

(1) Names and addresses of all contractors debarred, suspended, proposed for debarment, or declared ineligible, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) Name of the agency or other authority taking the action;

(3) Cause for the action (see 9.406-2 and 9.407-2 for causes authorized under this subpart) or other statutory or regulatory authority;

(4) Effect of the action;

(5) Termination date for each listing;

(6) DUNS No.; and

(7) Name and telephone number of the point of contact for the action.

(c) Each agency must—

(1) Provide GSA with the information required by paragraph (b) of this section within 5 working days after the action becomes effective;

(2) Notify GSA within 5 working days after modifying or rescinding an action;

(3) Notify GSA of the names and addresses of agency organizations that are to receive the list and the number of copies to be furnished to each;

(4) In accordance with internal retention procedures, maintain records relating to each debarment, suspension, or proposed debarment taken by the agency;

(5) Establish procedures to provide for the effective use of the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, including internal distribution thereof, to ensure that the agency does not solicit offers from, award contracts to, or consent to subcontracts with contractors on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, except as otherwise provided in this subpart; and

(6) Direct inquiries concerning listed contractors to the agency or other authority that took the action.

(d) The List of Parties Excluded from Federal Procurement and Nonprocurement Programs is available as follows:

(1) The printed version is published monthly. Copies may be obtained by purchasing a yearly subscription.

(i) Federal agencies may subscribe through their organization's printing and distribution office.

(ii) The public may subscribe by writing the—

Superintendent of Documents,
U.S. Government Printing Office
Washington, DC 20402

or by calling the Government Printing Office Inquiry and Order Desk at (202) 512-1800.

(2) The electronic version is updated daily and is available via—

(i) The internet at <http://epls.arnet.gov>; or

(ii) Electronic bulletin board. Dial (202) 219-0132.

The settings are N-8-1-F.

(e) For general questions about entries on the List of Parties Excluded from Federal Procurement and

Nonprocurement Programs or additional information on accessing the electronic bulletin board, call GSA at (202) 501-4873 or 501-4740.

9.405 Effect of listing.

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head or a designee determines that there is a compelling reason for such action (see 9.405-2, 9.406-1(c), 9.407-1(d), and 23.506(e)). Contractors debarred, suspended or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors.

(b) Contractors included on the List of Parties Excluded from Procurement Programs as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts, and if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors under those conditions and for that period.

(c) Contractors debarred, suspended, or proposed for debarment are excluded from acting as individual sureties (see Part 28).

(d)(1) After the opening of bids or receipt of proposals, the contracting officer shall review the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(2) Bids received from any listed contractor in response to an invitation for bids shall be entered on the abstract of bids, and rejected unless the agency head or a designee determines in writing that there is a compelling reason to consider the bid.

(3) Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility, unless the agency head or a designee determines, in writing, that there is a compelling reason to do so. If the period of ineligibility expires or is terminated prior to award, the contracting officer may, but is not required to, consider such proposals, quotations, or offers.

(4) Immediately prior to award, the contracting officer shall again review the List of Parties Excluded from Federal Procurement and Nonprocurement Programs to ensure that no award is made to a listed contractor.

to permit negotiation of a fair and reasonable price. Requests for updated offeror information should be limited to information that affects the adequacy of the proposal for negotiations, such as changes in price lists.

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

- (i) The effort made to obtain the data.
- (ii) The need for the item or service.
- (iii) Increased cost or significant harm to the

Government if award is not made.

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

(c) *Commercial items.* (1) At a minimum, the contracting officer must use price analysis to determine whether the price is fair and reasonable whenever the contracting officer acquires a commercial item (see 15.404-1(b)). The fact that a price is included in a catalog does not, in and of itself, make it fair and reasonable. If the contracting officer cannot determine whether an offered price is fair and reasonable, even after obtaining additional information from sources other than the offeror, then the contracting officer must require the offeror to submit information other than cost or pricing data to support further analysis (see 15.403-3(a)(1)).

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

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

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

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

(a)(1) Cost or pricing data shall be obtained only if the contracting officer concludes that none of the exceptions in 15.403-1(b) applies. However, if the contracting officer has sufficient information available to determine price reasonableness, then a waiver under the exception at 15.403-1(b)(4) should be considered. The threshold for obtaining cost or pricing data is \$500,000. Unless an exception applies, cost or pricing data are required before accomplishing any of the following actions expected to exceed the current threshold or, in the case of existing contracts, the threshold specified in the contract:

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

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor have been required to furnish cost or pricing data (but see waivers at 15.403-1(c)(4)).

(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or any subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts shall consider both increases and decreases (e.g., a \$150,000 modification resulting from a reduction of \$350,000 and an increase of \$200,000 is a pricing adjustment exceeding \$500,000). This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification. Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring cost or pricing data if the total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection, or the partial termination settlement plus the estimate to complete the continued portion of the contract exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection (see 49.105(c)(15)).

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

(b) When cost or pricing data are required, the contracting officer shall require the contractor or prospective

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contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The cost or pricing data.

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

(c) If cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data as defined in 15.401 and shall not be certified in accordance with 15.406-2.

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

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

(a) Taking into consideration the policy at 15.402, the contracting officer shall specify in the solicitation (see 15.408(l) and (m))—

(1) Whether cost or pricing data are required;

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

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

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

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

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

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

15.404 Proposal analysis.**15.404-1 Proposal analysis techniques.**

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

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

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

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

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

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

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

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

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

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

(i) Comparison of proposed prices received in response to the solicitation. Normally, adequate price com-

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19.000 Scope of part.

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

(1) The determination that a concern is eligible for participation in the programs identified in this part;

(2) The respective roles of executive agencies and the Small Business Administration (SBA) in implementing the programs;

(3) Setting acquisitions aside for exclusive competitive participation by small business concerns and HUBZone small business concerns, and sole source awards to HUBZone small business concerns;

(4) The certificate of competency program;

(5) The subcontracting assistance program;

(6) The “8(a)” program, under which agencies contract with the SBA for goods or services to be furnished under a subcontract by a small disadvantaged business concern;

(7) The use of women-owned small business concerns;

(8) The use of a price evaluation adjustment for small disadvantaged business concerns, and the use of a price evaluation preference for HUBZone small business concerns;

(9) The Small Disadvantaged Business Participation Program; and

(10) The Very Small Business Pilot Program.

(b) This part, except for Subpart 19.6, applies only inside the United States, its territories and possessions, Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia. Subpart 19.6 applies worldwide.

19.001 Definitions.

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

(e) At the request of an SBA procurement center representative, the contracting officer shall make available for review at the contracting office (to the extent of the SBA representative's security clearance) all proposed acquisitions in excess of the micro-purchase threshold that have not been unilaterally set aside for small business.

(f) To the extent practicable, unilateral determinations initiated by a contracting officer shall be used as the basis for small business set-asides rather than joint determinations by an SBA procurement center representative and a contracting officer.

(g) All solicitations involving set-asides must specify the applicable small business size standard and product classification (see 19.303).

(h) Except as authorized by law, a contract may not be awarded as a result of a small business set-aside if the cost to the awarding agency exceeds the fair market price.

19.502 Setting aside acquisitions.

19.502-1 Requirements for setting aside acquisitions.

(a) The contracting officer shall set aside an individual acquisition or class of acquisitions for competition among small businesses when—

(1) It is determined to be in the interest of maintaining or mobilizing the Nation's full productive capacity, war or national defense programs; or

(2) Assuring that a fair proportion of Government contracts in each industry category is placed with small business concerns; and the circumstances described in 19.502-2 or 19.502-3(a) exist.

(b) This requirement does not apply to purchases of \$2,500 or less, or purchases from required sources of supply under Part 8 (*e.g.*, Federal Prison Industries, Committee for Purchase from People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts).

19.502-2 Total small business set-asides.

(a) Except for those acquisitions set aside for very small business concerns (see subpart 19.9), each acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500, but not over \$100,000, is automatically reserved exclusively for small business concerns and shall be set aside for small business unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. If the contracting officer does not proceed with the small business set-aside and purchases on an unrestricted basis, the contracting officer shall include in the contract file the reason for this unrestricted purchase. If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should

make an award to that firm. If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside shall be withdrawn and the requirement, if still valid, shall be resolicited on an unrestricted basis. The small business reservation does not preclude the award of a contract with a value not greater than \$100,000 under Subpart 19.8, Contracting with the Small Business Administration, under 19.1007(c), Solicitations equal to or less than the ESB reserve amount, or under 19.1305, HUBZone set-aside procedures.

(b) The contracting officer shall set aside any acquisition over \$100,000 for small business participation when there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns (but see paragraph (c) of this subsection); and (2) award will be made at fair market prices. Total small business set-asides shall not be made unless such a reasonable expectation exists (but see 19.502-3 as to partial set-asides). Although past acquisition history of an item or similar items is always important, it is not the only factor to be considered in determining whether a reasonable expectation exists. In making R&D small business set-asides, there must also be a reasonable expectation of obtaining from small businesses the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances, and schedules.

(c) For small business set-asides other than for construction or services, any concern proposing to furnish a product that it did not itself manufacture must furnish the product of a small business manufacturer unless the SBA has granted either a waiver or exception to the nonmanufacturer rule (see 19.102(f)). In industries where the SBA finds that there are no small business manufacturers, it may issue a waiver to the nonmanufacturer rule (see 19.102(f)(4) and (5)). In addition, SBA has excepted procurements processed under simplified acquisition procedures (see Part 13), where the anticipated cost of the procurement will not exceed \$25,000, from the nonmanufacturer rule. Waivers permit small businesses to provide any firm's product. The exception permits small businesses to provide any domestic firm's product. In both of these cases, the contracting officer's determination in paragraph (b)(1) of this subsection or the decision not to set aside a procurement reserved for small business under paragraph (a) of this subsection will be based on the expectation of receiving offers from at least two responsible small businesses, including nonmanufacturers, offering the products of different concerns.

(d) The requirements of this subsection do not apply to acquisitions over \$25,000 during the period when small business set-asides cannot be considered for the four designated industry groups (see 19.1007(b)).

19.502-3 Partial set-asides.

(a) The contracting officer shall set aside a portion of an acquisition, except for construction, for exclusive small business participation when—

(1) A total set-aside is not appropriate (see 19.502-2);

(2) The requirement is severable into two or more economic production runs or reasonable lots;

(3) One or more small business concerns are expected to have the technical competence and productive capacity to satisfy the set-aside portion of the requirement at a fair market price;

(4) The acquisition is not subject to simplified acquisition procedures; and

(5) A partial set-aside shall not be made if there is a reasonable expectation that only two concerns (one large and one small) with capability will respond with offers unless authorized by the head of a contracting activity on a case-by-case basis. Similarly, a class of acquisitions, not including construction, may be partially set aside. Under certain specified conditions, partial set-asides may be used in conjunction with multiyear contracting procedures.

(b) When the contracting officer determines that a portion of an acquisition is to be set aside, the requirement shall be divided into a set-aside portion and a non-set-aside portion, each of which shall (1) be an economic production run or reasonable lot and (2) have terms and a delivery schedule comparable to the other. When practicable, the set-aside portion should make maximum use of small business capacity.

(c)(1) The contracting officer shall award the non-set-aside portion using normal contracting procedures.

(2)(i) After all awards have been made on the non-set-aside portion, the contracting officer shall negotiate with eligible concerns on the set-aside portion, as provided in the solicitation, and make award. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non-set-aside portion. Negotiations shall be conducted with small business concerns in the order of priority as indicated in the solicitation (but see (c)(2)(ii) of this section). The set-aside portion shall be awarded as provided in the solicitation. An offeror entitled to receive the award for quantities of an item under the non-set-aside portion and who accepts the award of additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the acquisition. This does not prevent acceptance by the contracting officer of voluntary reductions in the price from the low eligible offeror before award, acceptance of voluntary refunds, or the change of prices after award by negotiation of a contract modification.

(ii) If equal low offers are received on the non-set-aside portion from concerns eligible for the set-aside portion, the concern that is awarded the non-set-aside part

of the acquisition shall have first priority with respect to negotiations for the set-aside.

19.502-4 Methods of conducting set-asides.

(a) Total small business set-asides may be conducted by using simplified acquisition procedures (see Part 13), sealed bids (see Part 14), or competitive proposals (see Part 15). Partial small business set-asides may be conducted using sealed bids (see Part 14), or competitive proposals (see Part 15).

(b) Except for offers on the non-set-aside portion of partial set-asides, offers received from concerns that do not qualify as small business concerns shall be considered non-responsive and shall be rejected. However, before rejecting an offer otherwise eligible for award because of questions concerning the size representation, an SBA determination must be obtained (see Subpart 19.3).

19.502-5 Insufficient causes for not setting aside an acquisition.

None of the following is, in itself, sufficient cause for not setting aside an acquisition:

(a) A large percentage of previous contracts for the required item(s) has been placed with small business concerns.

(b) The item is on an established planning list under the Industrial Readiness Planning Program. However, a total small business set-aside shall not be made when the list contains a large business Planned Emergency Producer of the item(s) who has conveyed a desire to supply some or all of the required items.

(c) The item is on a Qualified Products List. However, a total small business set-aside shall not be made if the list contains the products of large businesses unless none of the large businesses desire to participate in the acquisition.

(d) A period of less than 30 days is available for receipt of offers.

(e) The acquisition is classified.

(f) Small business concerns are already receiving a fair proportion of the agency's contracts for supplies and services.

(g) A class small business set-aside of the item or service has been made by another contracting activity.

(h) A "brand name or equal" product description will be used in the solicitation.

19.503 Setting aside a class of acquisitions for small business.

(a) A class of acquisitions of selected products or services, or a portion of the acquisitions, may be set aside for exclusive participation by small business concerns if individual acquisitions in the class will meet the criteria in 19.502-1, 19.502-2, or 19.502-3(a). The determination to

(b) Insert the clause at 52.219-5 with its Alternate II when Alternate I does not apply, the acquisition is processed under simplified acquisition procedures, and the total amount of the contract does not exceed \$25,000.

Subpart 19.10—Small Business Competitiveness Demonstration Program

19.1001 General.

The Small Business Competitiveness Demonstration Program was established by the Small Business Competitiveness Demonstration Program Act of 1988, Public Law 100-656 (15 U.S.C. 644 note). The program is implemented by a joint OFPP and SBAPolicy Directive and Implementation Plan, dated May 25, 1999. The program consists of two major components—

- (a) Unrestricted competition in four designated industry groups; and
- (b) Enhanced small business participation in 10 agency targeted industry categories.

19.1002 Definitions.

“Emerging small business,” as used in this subpart, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

“Emerging small business reserve amount,” for the designated groups described in 19.1005, means a threshold established by the Office of Federal Procurement Policy of—

- (1) \$25,000 for construction, refuse systems and related services, and nonnuclear ship repair; and
- (2) \$50,000 for architectural and engineering services.

19.1003 Purpose.

The purpose of the Program is to—

- (a) Assess the ability of small businesses to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. This portion of the program is limited to the four designated industry groups listed in section 19.1005.
- (b) Expand small business participation in 10 targeted industry categories through continued use of set-aside procedures, increased management attention, and specifically tailored acquisition procedures, as implemented through agency procedures.
- (c) Measure the extent to which awards are made to a new category of small businesses known as emerging small businesses (ESB's), and to provide for certain acquisitions to be reserved for ESB participation only. This portion of

the program is also limited to the four designated industry groups listed in section 19.1005.

19.1004 Participating agencies.

The following agencies have been identified as participants in the demonstration program:

- The Department of Agriculture.
- The Department of Defense, except the National Imagery and Mapping Agency.
- The Department of Energy.
- The Department of Health and Human Services.
- The Department of the Interior.
- The Department of Transportation.
- The Department of Veterans Affairs.
- The Environmental Protection Agency.
- The General Services Administration.
- The National Aeronautics and Space Administration.

19.1005 Applicability.

(a) *Designated industry groups.* (1) Construction under standard industrial classification (SIC) codes that comprise Major Groups 15, 16, and 17 (excluding dredging—Federal Procurement Data System (FPDS) service codes Y216 and Z216).

(2) Refuse systems and related services including portable sanitation services, under SIC code 4212 or 4953, limited to FPDS service code S205.

(3) Nonnuclear ship repair (including overhauls and conversions) performed on nonnuclear propelled and non-propelled ships under SIC code 3731, limited to FPDS service codes J998 (repair performed east of the 108th meridian) and J999 (repair performed west of the 108th meridian).

(4) Architectural and engineering services (including surveying and mapping) under SIC code 7389, 8711, 8712, or 8713 (limited to FPDS service codes C111 through C216, C219, T002, T004, T008, T009, T014, and R404), which are awarded under the qualification-based selection procedures required by 40 U.S.C. 541, *et seq.* (the “Brooks A-E Act”) (see Subpart 36.6).

(b) *Targeted industry categories.* Each participating agency, in consultation with the Small Business Administration, designates its own targeted industry categories for enhanced small business participation.

19.1006 Exclusions.

This subpart does not apply to—

- (a) Orders placed against Federal Supply Schedules;
- (b) Contract awards to educational and nonprofit organizations; or
- (c) Contract awards to governmental entities.

19.1007 Procedures.

(a) *General.* (1) All solicitations must include the applicable SIC code and size standards.

(2) The face of each award made pursuant to the program must contain a statement that the award is being issued pursuant to the Small Business Competitiveness Demonstration Program.

(b) *Solicitations greater than the ESB reserve amount.*

(1) Solicitations for acquisitions in any of the four designated industry groups that have an anticipated dollar value greater than the emerging small business reserve amount must not be considered for small business set-asides under Subpart 19.5. However, agencies may reinstate the use of small business set-asides as necessary to meet their assigned goals, but only within organizational units that failed to meet the small business participation goal.

(2) Acquisitions in the designated industry groups must continue to be considered for placement under the 8(a) Program (see Subpart 19.8) and the HUBZone Program (see Subpart 19.13).

(c) *Solicitations equal to or less than the ESB reserve amount.* (1) Solicitations for acquisitions in the four designated industry groups with an estimated value equal to or less than the emerging small business reserve amount must be set aside for ESBs, provided that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible ESBs that will be competitive in terms of market price, quality, and delivery. If no such reasonable expectation exists, the contracting officer must—

(i) For acquisitions \$25,000 or less, proceed in accordance with Subpart 19.5, 19.8, or 19.13; or

(ii) For acquisitions greater than \$25,000 and less than or equal to the ESB reserve amount, proceed in accordance with paragraph (b) of this section.

(2) If the contracting officer proceeds with the ESB set-aside and receives a quotation from only one ESB at a reasonable price, the contracting officer must make the award. If there is no quote from an ESB, or the quote is not at a reasonable price, then the contracting officer must cancel the ESB set-aside and proceed in accordance with paragraph (c)(1)(i) or (ii) of this section.

(d) *Expanding small business participation in targeted industry categories.* Each participating agency must develop and implement a time-phased strategy with incremental goals, including reporting on goal attainment. To the extent practicable, provisions that encourage and promote teaming and joint ventures must be considered. These provisions should permit small business firms to effectively compete for contracts that individual small businesses would be ineligible to compete for because of lack of production capacity or capability.

19.1008 Solicitation provisions.

(a) Insert in full text the provision at 52.219-19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program, in all solicitations in the four designated industry groups.

(b) Insert in full text the provision at 52.219-20, Notice of Emerging Small Business Set-Aside, in all solicitations for emerging small businesses in accordance with 19.1007(c).

(c) Insert in full text the provision at 52.219-21, Small Business Size Representation for Targeted Industry Categories under the Small Business Competitiveness Demonstration Program, in all solicitations issued in each of the targeted industry categories under the Small Business Competitiveness Demonstration Program that are expected to result in a contract award in excess of \$25,000.

Subpart 19.11—Price Evaluation Adjustment for Small Disadvantaged Business Concerns**19.1101 General.**

A price evaluation adjustment for small disadvantaged business concerns shall be applied as determined by the Department of Commerce (see 19.201(b)). Joint ventures may qualify provided the requirements set forth in 13 CFR 124.1002(f) are met.

19.1102 Applicability.

(a) Use the price evaluation adjustment in competitive acquisitions in the authorized SIC Major Groups.

(b) Do not use the price evaluation adjustment in acquisitions—

(1) That are less than or equal to the simplified acquisition threshold;

(2) That are awarded pursuant to the 8(a) Program;

(3) That are set aside for small business concerns;

(4) That are set aside for HUBZone small business concerns;

(5) Where price is not a selection factor so that a price evaluation adjustment would not be considered (*e.g.*, architect/engineer acquisitions); or

(6) Where all fair and reasonable offers are accepted (*e.g.*, the award of multiple award schedule contracts).

19.1103 Procedures.

(a) Give offers from small disadvantaged business concerns a price evaluation adjustment by adding the factor determined by the Department of Commerce to all offers, except—

(1) Offers from small disadvantaged business concerns that have not waived the evaluation adjustment; or, if a price evaluation adjustment for small disadvantaged business concerns is authorized on a regional basis, offers from small disadvantaged business concerns, whose address is in

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32.000 Scope of part.

This part prescribes policies and procedures for contract financing and other payment matters. This includes—

- (a) Payment methods, including partial payments and progress payments based on percentage or stage of completion;
- (b) Loan guarantees, advance payments, and progress payments based on costs;
- (c) Administration of debts to the Government arising out of contracts;
- (d) Contract funding, including the use of contract clauses limiting costs or funds;
- (e) Assignment of claims to aid in private financing;
- (f) Selected payment clauses;
- (g) Financing of purchases of commercial items;
- (h) Performance-based payments; and
- (i) Electronic funds transfer payments.

32.001 Definitions.

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

“Customary contract financing” means that financing deemed by an agency to be available for routine use by contracting officers. Most customary contract financing arrangements should be usable by contracting officers without specific reviews or approvals by higher management.

“Unusual contract financing” means any financing not deemed customary contract financing by the agency. Unusual contract financing is financing that is legal and proper under applicable laws, but that the agency has not authorized contracting officers to use without specific reviews or approvals by higher management.

32.002 Applicability of subparts.

(a) The following sections and subparts of this part are applicable to all purchases subject to Part 32:

- (1) Sections 32.000 through 32.005.
- (2) Subpart 32.3, Loan Guarantees for Defense Production.
- (3) Subpart 32.6, Contract Debts.
- (4) Subpart 32.7, Contract Funding.
- (5) Subpart 32.8, Assignment of Claims.
- (6) Subpart 32.9, Prompt Payment.
- (7) Subpart 32.11, Electronic Funds Transfer.

(b) Subpart 32.2, Commercial Item Purchase Financing, is applicable only to purchases of commercial items under authority of Part 12.

(c) The following subparts of this part are applicable to all purchases made under any authority other than Part 12:

- (1) Subpart 32.1, Non-Commercial Item Purchase Financing.
- (2) Subpart 32.4, Advance Payments For Non-Commercial Items.
- (3) Subpart 32.5, Progress Payments Based on Costs.
- (4) Subpart 32.10, Performance-Based Payments.

32.003 Simplified acquisition procedures financing.

Unless agency regulations otherwise permit, contract financing shall not be provided for purchases made under the authority of Part 13.

32.004 Contract performance in foreign countries.

The enforceability of contract provisions for security of Government financing in a foreign jurisdiction is dependent upon local law and procedure. Prior to providing contract financing where foreign jurisdictions may become involved, the contracting officer shall ensure the Government's security is enforceable. This may require the provision of additional or different security than that normally provided for in the standard contract clauses.

32.005 Consideration for contract financing.

(a) *Requirement.* When a contract financing clause is included at the inception of a contract, there shall be no separate consideration for the contract financing clause. The value of the contract financing to the contractor is expected to be reflected in either (1) a bid or negotiated price that will be lower than such price would have been in the absence of the contract financing, or (2) contract terms and conditions, other than price, that are more beneficial to the Government than they would have been in the absence of the contract financing. Adequate new consideration is required for changes to, or the addition of, contract financing after award.

(b) *Amount of new consideration.* The contractor may provide new consideration by monetary or nonmonetary means, provided the value is adequate. The fair and reasonable consideration should approximate the amount by which the price would have been less had the contract financing terms been contained in the initial contract. In the absence of definite information on this point, the contracting officer should apply the following criteria in evaluating whether the proposed new consideration is adequate:

- (1) The value to the contractor of the anticipated amount and duration of the contract financing at the imputed financial costs of the equivalent working capital.
- (2) The estimated profit rate to be earned through contract performance.

(c) *Interest.* Except as provided in Subpart 32.4, Advance Payments for Non-Commercial Items, the contract

shall not provide for any other type of specific charges, such as interest, for contract financing.

32.006 Reduction or suspension of contract payments upon finding of fraud.

32.006-1 General.

(a) Under Title 10 of the United States Code, the statutory authority implemented by this section is available only to the Department of Defense; this statutory authority is not available to the National Aeronautics and Space Administration or the United States Coast Guard. Under the Federal Property and Administrative Services Act (41 U.S.C. 255), this statutory authority is available to all agencies subject to that Act.

(b) 10 U.S.C. 2307(h)(2) and 41 U.S.C. 255, as amended by the Federal Acquisition Streamlining Act of 1994, Public Law 103-355, provide for a reduction or suspension of further payments to a contractor when the agency head determines there is substantial evidence that the contractor's request for advance, partial, or progress payments is based on fraud. This authority does not apply to commercial interim payments under Subpart 32.2, or performance-based payments under Subpart 32.10.

(c) The agency head may not delegate his or her responsibilities under these statutes below Level IV of the Executive Schedule.

(d) Authority to reduce or suspend payments under these statutes is in addition to other Government rights, remedies, and procedures.

(e) In accordance with these statutes, agency head determinations and decisions under this section may be made for an individual contract or any group of contracts affected by the fraud.

32.006-2 Definitions.

As used in this section—

“Remedy coordination official” means the person or entity in the agency who coordinates within that agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities. (See 10 U.S.C. 2307(h)(10) and 41 U.S.C. 255(g)(9).)

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

32.006-3 Responsibilities.

(a) Agencies shall establish appropriate procedures to implement the policies and procedures of this section.

(b) Government personnel shall report suspected fraud related to advance, partial, or progress payments in accordance with agency regulations.

32.006-4 Procedures.

(a) In any case in which an agency's remedy coordination official finds substantial evidence that a contractor's request for advance, partial, or progress payments under a contract awarded by that agency is based on fraud, the remedy coordination official shall recommend that the agency head reduce or suspend further payments to the contractor. The remedy coordination official shall submit to the agency head a written report setting forth the remedy coordination official's findings that support each recommendation.

(b) Upon receiving a recommendation from the remedy coordination official under paragraph (a) of this subsection, the agency head shall determine whether substantial evidence exists that the request for payment under a contract is based on fraud.

(c) If the agency head determines that substantial evidence exists, the agency head may reduce or suspend further payments to the contractor under the affected contract(s). Such reduction or suspension shall be reasonably commensurate with the anticipated loss to the Government resulting from the fraud.

(d) In determining whether to reduce or suspend further payment(s), as a minimum, the agency head shall consider—

(1) A recommendation from investigating officers that disclosure of the allegations of fraud to the contractor may compromise an ongoing investigation;

(2) The anticipated loss to the Government as a result of the fraud;

(3) The contractor's overall financial condition and ability to continue performance if payments are reduced or suspended;

(4) The contractor's essentiality to the national defense, or to the execution of the agency's official business; and

(5) Assessment of all documentation concerning the alleged fraud, including documentation submitted by the contractor in its response to the notice required by paragraph (e) of this subsection.

(e) Before making a decision to reduce or suspend further payments, the agency head shall, in accordance with agency procedures—

(1) Notify the contractor in writing of the action proposed by the remedy coordination official and the reasons therefor (such notice must be sufficiently specific to permit the contractor to collect and present evidence addressing the aforesaid reasons); and

(2) Provide the contractor an opportunity to submit information within a reasonable time, in response to the action proposed by the remedy coordination official.

(f) When more than one agency has contracts affected by the fraud, the agencies shall consider designating one

agency as the lead agency for making the determination and decision.

(g) The agency shall retain in its files the written justification for each—

(1) Decision of the agency head whether to reduce or suspend further payments; and

(2) Recommendation received by an agency head in connection with such decision.

(h) Not later than 180 calendar days after the date of the reduction or suspension action, the remedy coordination official shall—

(1) Review the agency head's determination on which the reduction or suspension decision is based; and

(2) Transmit a recommendation to the agency head as to whether the reduction or suspension should continue.

32.006-5 Reporting.

(a) In accordance with 41 U.S.C. 255, the head of an agency, other than the Department of Defense, shall prepare a report for each fiscal year in which a recommendation has been received pursuant to 32.006-4(a). Reports within the Department of Defense shall be prepared in accordance with 10 U.S.C. 2307.

(b) In accordance with 41 U.S.C. 255 and 10 U.S.C. 2307, each report shall contain—

(1) Each recommendation made by the remedy coordination official;

(2) The actions taken on the recommendation(s), with reasons for such actions; and

(3) An assessment of the effects of each action on the Government.

Subpart 32.1—Non-Commercial Item Purchase Financing

32.100 Scope of subpart.

This subpart provides policies and procedures applicable to contract financing and payment for any purchases other than purchases of commercial items in accordance with Part 12.

32.101 Authority.

The basic authority for the contract financing described in this part is contained in section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255), section 2307 of the Armed Services Procurement Act (10 U.S.C. 2307), and Title III of the Defense Production Act of 1950 (50 U.S.C. App. 2091), as amended.

32.102 Description of contract financing methods.

(a) Advance payments are advances of money by the Government to a prime contractor before, in anticipation of,

and for the purpose of complete performance under one or more contracts. They are expected to be liquidated from payments due to the contractor incident to performance of the contracts. Since they are not measured by performance, they differ from partial, progress, or other payments based on the performance or partial performance of a contract. Advance payments may be made to prime contractors for the purpose of making advances to subcontractors.

(b) Progress payments based on costs are made on the basis of costs incurred by the contractor as work progresses under the contract. This form of contract financing does not include—

(1) Payments based on the percentage or stage of completion accomplished;

(2) Payments for partial deliveries accepted by the Government;

(3) Partial payments for a contract termination proposal; or

(4) Performance-based payments.

(c) Loan guarantees are made by Federal Reserve banks, on behalf of designated guaranteeing agencies, to enable contractors to obtain financing from private sources under contracts for the acquisition of supplies or services for the national defense.

(d) Partial payments for accepted supplies and services that are only a part of the contract requirements are authorized under 41 U.S.C. 255 and 10 U.S.C. 2307. Office of Management and Budget Circular A-125, Prompt Payment, requires agencies to pay for partial delivery of supplies or partial performance of services unless specifically prohibited by the contract. Although partial payments generally are treated as a method of payment and not as a method of contract financing, using partial payments can assist contractors to participate in Government contracts without, or with minimal, contract financing. When appropriate, contract statements of work and pricing arrangements shall be designed to permit acceptance and payment for discrete portions of the work, as soon as accepted (but see 32.903(f)(2)).

(e)(1) Progress payments based on a percentage or stage of completion are authorized by the statutes cited in 32.101.

(2) This type of progress payment may be used as a payment method under agency procedures. Agency procedures must ensure that payments are commensurate with work accomplished, which meets the quality standards established under the contract. Furthermore, progress payments may not exceed 80 percent of the eligible costs of work accomplished on undefinitized contract actions.

(f) Performance-based payments are contract financing payments made on the basis of—

(1) Performance measured by objective, quantifiable methods;

(2) Accomplishment of defined events; or

(3) Other quantifiable measures of results.

32.103

32.103 Progress payments under construction contracts.

When satisfactory progress has not been achieved by a contractor during any period for which a progress payment is to be made, a percentage of the progress payment may be retained. Retainage should not be used as a substitute for good contract management, and the contracting officer should not withhold funds without cause. Determinations to retain and the specific amount to be withheld shall be made by the contracting officers on a case-by-case basis. Such decisions will be based on the contracting officer's assessment of past performance and the likelihood that such performance will continue. The amount of retainage withheld shall not exceed 10 percent of the approved estimated amount in accordance with the terms of the contract and may be adjusted as the contract approaches completion to recognize better than expected performance, the ability to rely on alternative safeguards, and other factors. Upon completion of all contract requirements, retained amounts shall be paid promptly.

32.104 Providing contract financing.

(a) Prudent contract financing can be a useful working tool in Government acquisition by expediting the performance of essential contracts. Contracting officers must consider the criteria in this part in determining whether to include contract financing in solicitations and contracts. Resolve reasonable doubts by including contract financing in the solicitation. The contracting officer must—

(1) Provide Government financing only to the extent actually needed for prompt and efficient performance, considering the availability of private financing and the probable impact on working capital of the predelivery expenditures and production lead-times associated with the contract, or groups of contracts or orders (*e.g.*, issued under indefinite-delivery contracts, basic ordering agreements, or their equivalent);

(2) Administer contract financing so as to aid, not impede, the acquisition;

(3) Avoid any undue risk of monetary loss to the Government through the financing;

(4) Include the form of contract financing deemed to be in the Government's best interest in the solicitation (see 32.106 and 32.113); and

(5) Monitor the contractor's use of the contract financing provided and the contractor's financial status.

(b) If the contractor is a small business concern, the contracting officer must give special attention to meeting the contractor's contract financing need. However, a contractor's receipt of a certificate of competency from the Small Business Administration has no bearing on the contractor's need for or entitlement to contract financing.

(c) Subject to specific agency regulations and paragraph (d) of this section, the contracting officer—

(1) May provide customary contract financing in accordance with 32.113; and

(2) Must not provide unusual contract financing except as authorized in 32.114.

(d) Unless otherwise authorized by agency procedures, the contracting officer may provide contract financing in the form of performance-based payments (see Subpart 32.10) or customary progress payments (see Subpart 32.5) if the following conditions are met:

(1) The contractor—

(i) Will not be able to bill for the first delivery of products for a substantial time after work must begin (normally 4 months or more for small business concerns, and 6 months or more for others), and will make expenditures for contract performance during the predelivery period that have a significant impact on the contractor's working capital; or

(ii) Demonstrates actual financial need or the unavailability of private financing.

(2) If the contractor is not a small business concern—

(i) For an individual contract, the contract price is \$2 million or more; or

(ii) For an indefinite-delivery contract, a basic ordering agreement or a similar ordering instrument, the contracting officer expects the aggregate value of orders or contracts that individually exceed the simplified acquisition threshold to have a total value of \$2 million or more. The contracting officer must limit financing to those orders or contracts that exceed the simplified acquisition threshold.

(3) If the contractor is a small business concern—

(i) For an individual contract, the contract price exceeds the simplified acquisition threshold; or

(ii) For an indefinite-delivery contract, a basic ordering agreement or a similar ordering instrument, the contracting officer expects the aggregate value of orders or contracts to exceed the simplified acquisition threshold.

32.105 Uses of contract financing.

(a) Contract financing methods covered in this part are intended to be self-liquidating through contract performance. Consequently, agencies shall only use the methods for financing of contractor working capital, not for the expansion of contractor-owned facilities or the acquisition of fixed assets. However, under loan guarantees, exceptions may be made for—

(1) Facilities expansion of a minor or incidental nature, if a relatively small part of the guaranteed loan is used for the expansion and the contractor's repayment would not be delayed or impaired; or

(2) Other instances of facilities expansion for which contract financing is appropriate under agency procedures.

(b) The limitations in this section do not apply to contracts under which facilities are being acquired for Government ownership.

32.106 Order of preference.

The contracting officer must consider the following order of preference when a contractor requests contract financing, unless an exception would be in the Government's best interest in a specific case:

(a) Private financing without Government guarantee. It is not intended, however, that the contracting officer require the contractor to obtain private financing—

- (1) At unreasonable terms; or
- (2) From other agencies.

(b) Customary contract financing other than loan guarantees and certain advance payments (see 32.113).

(c) Loan guarantees.

(d) Unusual contract financing (see 32.114).

(e) Advance payments (see exceptions in 32.402(b)).

32.107 Need for contract financing not a deterrent.

(a) If the contractor or offeror meets the standards prescribed for responsible prospective contractors at 9.104, the contracting officer shall not treat the contractor's need for contract financing as a handicap for a contract award; *e.g.*, as a responsibility factor or evaluation criterion.

(b) The contractor should not be disqualified from contract financing solely because the contractor failed to indicate a need for contract financing before the contract was awarded.

32.108 Financial consultation.

Each contracting office should have available and use the services of contract financing personnel competent to evaluate credit and financial problems. In resolving any questions concerning—

(a) The financial capability of an offeror or contractor to perform a contract, or

(b) What form of contract financing is appropriate in a given case, the contracting officer should consult the appropriate contract financing office.

32.109 Termination financing.

To encourage contractors to invest their own funds in performance despite the susceptibility of the contract to termination for the convenience of the Government, the contract financing procedures under this part may be applied to the financing of terminations either in connection with or independently of financing for contract performance (see 49.112-1).

32.110 Payment of subcontractors under cost-reimbursement prime contracts.

If the contractor makes financing payments to a subcontractor under a cost-reimbursement prime contract, the contracting officer should accept the financing payments as reimbursable costs of the prime contract only under the following conditions:

(a) The payments are made under the criteria in Subpart 32.5 for customary progress payments based on costs, 32.202-1 for commercial item purchase financing, or 32.1003 for performance-based payments, as applicable.

(b) If customary progress payments are made, the payments do not exceed the progress payment rate in 32.501-1, unless unusual progress payments to the subcontractor have been approved in accordance with 32.501-2.

(c) If customary progress payments are made, the subcontractor complies with the liquidation principles of 32.503-8, 32.503-9, and 32.503-10.

(d) If performance-based payments are made, the subcontractor complies with the liquidation principles of 32.1004(d).

(e) The subcontract contains financing payments terms as prescribed in this part.

32.111 Contract clauses for non-commercial purchases.

(a) The contracting officer shall insert the following clauses, appropriately modified with respect to payment due dates, in accordance with agency regulations—

(1) The clause at 52.232-1, Payments, in solicitations and contracts when a fixed-price supply contract, a fixed-price service contract, or a contract for nonregulated communication services is contemplated;

(2) The clause at 52.232-2, Payment under Fixed-Price Research and Development Contracts, in solicitations and contracts when a fixed-price research and development contract is contemplated;

(3) The clause at 52.232-3, Payments under Personal Services Contracts, in solicitations and contracts for personal services;

(4) The clause at 52.232-4, Payments under Transportation Contracts and Transportation-Related Services Contracts, in solicitations and contracts for transportation or transportation-related services;

(5) The clause at 52.232-5, Payments under Fixed-Price Construction Contracts, in solicitations and contracts for construction when a fixed-price contract is contemplated; and

(6) The clause at 52.232-6, Payments under Communication Service Contracts with Common Carriers, in solicitations and contracts for regulated communication services by common carriers.

32.112-1

(b) The contracting officer shall insert the clause at 52.232-7, Payments under Time-and-Materials and Labor-Hour Contracts, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated. If (i) the nature of the work to be performed requires the contractor to furnish material that is regularly sold to the general public in the normal course of business by the contractor and (ii) the price is under the limitations prescribed in 16.601(b)(3), the contracting officer shall use the clause with its Alternate I. If a labor-hour contract is contemplated, and if no specific reimbursement for materials furnished is intended, the contracting officer may use the clause with its Alternate II.

(c) The contracting officer shall insert the following clauses, appropriately modified with respect to payment due dates in accordance with agency regulations:

(1) The clause at 52.232-8, Discounts for Prompt Payment, in solicitations and contracts when a fixed-price supply contract or fixed-price service contract is contemplated.

(2) A clause, substantially the same as the clause at 52.232-9, Limitation on Withholding of Payments, in solicitations and contracts when a supply contract, research and development contract, service contract, time-and-materials contract, or labor-hour contract is contemplated that includes two or more terms authorizing the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed.

(d) The contracting officer shall insert the following clauses, appropriately modified with respect to payments due dates in accordance with agency regulations:

(1) The clause at 52.232-10, Payments under Fixed-Price Architect-Engineer Contracts, in fixed-price architect-engineer contracts.

(2) The clause at 52.232-11, Extras, in solicitations and contracts when a fixed-price supply contract, fixed-price service contract, or a transportation contract is contemplated.

32.112 Nonpayment of subcontractors under contracts for noncommercial items.

32.112-1 Subcontractor assertions of nonpayment.

(a) In accordance with Section 806(a)(4) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, upon the assertion by a subcontractor or supplier of a Federal contractor that the subcontractor or supplier has not been paid in accordance with the payment terms of the subcontract, purchase order, or other agreement with the prime contractor, the contracting officer may determine—

(1) For a construction contract, whether the contractor has made—

(i) Progress payments to the subcontractor or supplier in compliance with Chapter 39 of Title 31, United States Code (Prompt Payment Act); or

(ii) Final payment to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor;

(2) For a contract other than construction, whether the contractor has made progress payments, final payments, or other payments to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor; or

(3) For any contract, whether the contractor's certification of payment of a subcontractor or supplier accompanying its payment request to the Government is accurate.

(b) If, in making the determination in paragraphs (a)(1) and (2) of this subsection, the contracting officer finds the prime contractor is not in compliance, the contracting officer may—

(1) Encourage the contractor to make timely payment to the subcontractor or supplier; or

(2) If authorized by the applicable payment clauses, reduce or suspend progress payments to the contractor.

(c) If the contracting officer determines that a certification referred to in paragraph (a)(3) of this subsection is inaccurate in any material respect, the contracting officer shall initiate administrative or other remedial action.

32.112-2 Subcontractor requests for information.

(a) In accordance with Section 806(a)(1) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, upon the request of a subcontractor or supplier under a Federal contract for a non-commercial item, the contracting officer shall promptly advise the subcontractor or supplier as to—

(1) Whether the prime contractor has submitted requests for progress payments or other payments to the Federal Government under the contract; and

(2) Whether final payment under the contract has been made by the Federal Government to the prime contractor.

(b) In accordance with 5 U.S.C. 552(b)(1), this subsection does not apply to matters that are—

(1) Specifically authorized under criteria established by an Executive order to be kept classified in the interest of national defense or foreign policy; and

(2) Properly classified pursuant to such Executive order.

32.113 Customary contract financing.

The solicitation must specify the customary contract financing offerors may propose. The following are custom-

any contract financing when provided in accordance with this part and agency regulations:

(a) Financing of shipbuilding, or ship conversion, alteration, or repair, when agency regulations provide for progress payments based on a percentage or stage of completion.

(b) Financing of construction or architect-engineer services purchased under the authority of Part 36.

(c) Financing of contracts for supplies or services awarded under the sealed bid method of procurement in accordance with Part 14 through progress payments based on costs in accordance with Subpart 32.5.

(d) Financing of contracts for supplies or services awarded under the competitive negotiation method of procurement in accordance with Part 15, through either progress payments based on costs in accordance with Subpart 32.5, or performance-based payments in accordance with Subpart 32.10 (but not both).

(e) Financing of contracts for supplies or services awarded under a sole-source acquisition as defined in Part 6 and using the procedures of Part 15, through either progress payments based on costs in accordance with Subpart 32.5, or performance-based payments in accordance with Subpart 32.10 (but not both).

(f) Financing of contracts for supplies or services through advance payments in accordance with Subpart 32.4.

(g) Financing of contracts for supplies or services through guaranteed loans in accordance with Subpart 32.3.

(h) Financing of contracts for supplies or services through any appropriate combination of advance payments, guaranteed loans, and either performance-based payments or progress payments (but not both) in accordance with their respective subparts.

32.114 Unusual contract financing.

Any contract financing arrangement that deviates from this part is unusual contract financing. Unusual contract financing shall be authorized only after approval by the head of the agency or as provided for in agency regulations.

Subpart 32.2—Commercial Item Purchase Financing

32.200 Scope of subpart.

This subpart provides policies and procedures for commercial financing arrangements under commercial purchases pursuant to Part 12.

32.201 Statutory authority.

10 U.S.C. 2307(f) and 41 U.S.C. 255(f) provide that payment for commercial items may be made under such terms and conditions as the head of the agency determines are

appropriate or customary in the commercial marketplace and are in the best interest of the United States.

32.202 General.

32.202-1 Policy.

(a) *Use of financing in contracts.* It is the responsibility of the contractor to provide all resources needed for performance of the contract. Thus, for purchases of commercial items, financing of the contract is normally the contractor's responsibility. However, in some markets the provision of financing by the buyer is a commercial practice. In these circumstances, the contracting officer may include appropriate financing terms in contracts for commercial purchases when doing so will be in the best interest of the Government.

(b) *Authorization.* Commercial interim payments and commercial advance payments may be made under the following circumstances—

(1) The contract item financed is a commercial supply or service;

(2) The contract price exceeds the simplified acquisition threshold;

(3) The contracting officer determines that it is appropriate or customary in the commercial marketplace to make financing payments for the item;

(4) Authorizing this form of contract financing is in the best interest of the Government (see paragraph (e) of this subsection);

(5) Adequate security is obtained (see 32.202-4);

(6) Prior to any performance of work under the contract, the aggregate of commercial advance payments shall not exceed 15 percent of the contract price;

(7) The contract is awarded on the basis of competitive procedures or, if only one offer is solicited, adequate consideration is obtained (based on the time value of the additional financing to be provided) if the financing is expected to be substantially more advantageous to the offeror than the offeror's normal method of customer financing; and

(8) The contracting officer obtains concurrence from the payment office concerning liquidation provisions when required by 32.206(e).

(c) *Difference from non-commercial financing.* Government financing of commercial purchases under this subpart is expected to be different from that used for non-commercial purchases under Subpart 32.1 and its related subparts. While the contracting officer may adapt techniques and procedures from the non-commercial subparts for use in implementing commercial contract financing arrangements, the contracting officer must have a full understanding of effects of the differing contract environ-

ments and of what is needed to protect the interests of the Government in commercial contract financing.

(d) *Unusual contract financing.* Any contract financing arrangement not in accord with the requirements of agency regulations or this part is unusual contract financing and requires advance approval in accordance with agency procedures. If not otherwise specified, such unusual contract financing shall be approved by the head of the contracting activity.

(e) *Best interest of the Government.* The statutes cited in 32.201 do not allow contract financing by the Government unless it is in the best interest of the United States. Agencies may establish standards to determine whether contract financing is in the best interest of the Government. These standards may be for certain types of procurements, certain types of items, or certain dollar levels of procurements.

32.202-2 Types of payments for commercial item purchases.

These definitions incorporate the requirements of the statutory commercial financing authority and the implementation of the Prompt Payment Act.

“Commercial advance payment” means a payment made before any performance of work under the contract. The aggregate of these payments shall not exceed 15 percent of the contract price. These payments are contract financing payments for prompt payment purposes (*i.e.*, not subject to the interest penalty provisions of the Prompt Payment Act in accordance with Subpart 32.9). These payments are not subject to Subpart 32.4, Advance Payments for Non-Commercial Items.

“Commercial interim payment” means any payment that is not a commercial advance payment or a delivery payment. These payments are contract financing payments for prompt payment purposes (*i.e.*, not subject to the interest penalty provisions of the Prompt Payment Act in accordance with Subpart 32.9). A commercial interim payment is given to the contractor after some work has been done, whereas a commercial advance payment is given to the contractor when no work has been done.

“Delivery payment” means a payment for accepted supplies or services, including payments for accepted partial deliveries. Commercial financing payments are liquidated by deduction from these payments. Delivery payments are invoice payments for prompt payment purposes.

32.202-3 Conducting market research about financing terms.

Contract financing may be a subject included in the market research conducted in accordance with Part 10. If market research for contract financing is conducted, the contracting officer should consider—

(a) The extent to which other buyers provide contract financing for purchases in that market;

(b) The overall level of financing normally provided;

(c) The amount or percentages of any payments equivalent to commercial advance payments (see 32.202-2);

(d) The basis for any payments equivalent to commercial interim payments (see 32.202-2), as well as the frequency, and amounts or percentages; and

(e) Methods of liquidation of contract financing payments and any special or unusual payment terms applicable to delivery payments (see 32.202-2).

32.202-4 Security for Government financing.

(a) *Policy.* (1) 10 U.S.C. 2307(f) and 41 U.S.C. 255(f) require the Government to obtain adequate security for Government financing. The contracting officer shall specify in the solicitation the type of security the Government will accept. If the Government is willing to accept more than one form of security, the offeror shall be required to specify the form of security it will provide. If acceptable to the contracting officer, the resulting contract shall specify the security (see 32.206(b)(1)(iv)).

(2) Subject to agency regulations, the contracting officer may determine the offeror’s financial condition to be adequate security, provided the offeror agrees to provide additional security should that financial condition become inadequate as security (see paragraph (c) of the clause at 52.232-29, Terms for Financing of Purchases of Commercial Items). Assessment of the contractor’s financial condition shall consider both net worth and liquidity. If the contracting officer finds the offeror’s financial condition is not adequate security, the contracting officer shall require other adequate security. Paragraphs (b), (c), and (d) of this subsection list other (but not all) forms of security that the contracting officer may find acceptable.

(3) The value of the security must be at least equal to the maximum unliquidated amount of contract financing payments to be made to the contractor. The value of security may be adjusted periodically during contract performance, as long as it is always equal to or greater than the amount of unliquidated financing.

(b) *Paramount lien.* (1) The statutes cited in 32.201 provide that if the Government’s security is in the form of a lien, such lien is paramount to all other liens and is effective immediately upon the first payment, without filing, notice, or other action by the United States.

(2) When the Government’s security is in the form of a lien, the contract shall specify what the lien is upon, *e.g.*, the work in process, the contractor’s plant, or the contractor’s inventory. Contracting officers may be flexible in the choice of assets. The contract must also give the Government a right to verify the existence and value of the assets.

(3) Provision of Government financing shall be conditioned upon a contractor certification that the assets subject to the lien are free from any prior encumbrances. Prior liens may result from such things as capital equipment loans, installment purchases, working capital loans, various lines of credit, and revolving credit arrangements.

(c) *Other assets as security.* Contracting officers may consider the guidance at 28.203-2, 28.203-3, and 28.204 in determining which types of assets may be acceptable as security. For the purpose of applying the guidance in Part 28 to this subsection, the term “surety” and/or “individual surety” should be interpreted to mean “offeror” and/or “contractor.”

(d) *Other forms of security.* Other acceptable forms of security include—

(1) An irrevocable letter of credit from a federally insured financial institution;

(2) A bond from a surety, acceptable in accordance with Part 28 (note that the bond must guarantee repayment of the unliquidated contract financing);

(3) A guarantee of repayment from a person or corporation of demonstrated liquid net worth, connected by significant ownership to the contractor; or

(4) Title to identified contractor assets of adequate worth.

(e) *Management of risk and security.* In establishing contract financing terms, the contracting officer must be aware of certain risks. For example, very high amounts of financing early in the contract (front-end loading) may unduly increase the risk to the Government. The security and the amounts and timing of financing payments must be analyzed as a whole to determine whether the arrangement will be in the best interest of the Government.

32.203 Determining contract financing terms.

When the criteria in 32.202-1(b) are met, the contracting officer may either specify the financing terms in the solicitation (see 32.204) or permit each offeror to propose its own customary financing terms (see 32.205). When the contracting officer has sufficient information on financing terms that are customary in the commercial marketplace for the item, those terms may be specified in the solicitation.

32.204 Procedures for contracting officer-specified commercial contract financing.

The financing terms shall be included in the solicitation. Contract financing shall not be a factor in the evaluation of resulting proposals, and proposals of alternative financing terms shall not be accepted (but see 14.208 and 15.206 concerning amendments of solicitations). However, an offer stating that the contracting officer-specified contract financing terms will not be used by the offeror does not alter the evaluation of the offer, nor does it render the offer nonre-

sponsive or otherwise unacceptable. In the event of award to an offeror who declined the proposed contract financing, the contract financing provisions shall not be included in the resulting contract. Contract financing shall not be a basis for adjusting offerors' proposed prices, because the effect of contract financing is reflected in each offeror's proposed prices.

32.205 Procedures for offeror-proposed commercial contract financing.

(a) Under this procedure, each offeror may propose financing terms. The contracting officer must then determine which offer is in the best interests of the United States.

(b) *Solicitations.* The contracting officer must include in the solicitation the provision at 52.232-31, Invitation to Propose Financing Terms. The contracting officer must also—

(1) Specify the delivery payment (invoice) dates that will be used in the evaluation of financing proposals; and

(2) Specify the interest rate to be used in the evaluation of financing proposals (see paragraph (c)(4) of this section).

(c) *Evaluation of proposals.* (1) When contract financing terms vary among offerors, the contracting officer must adjust each proposed price for evaluation purposes to reflect the cost of providing the proposed financing in order to determine the total cost to the Government of that particular combination of price and financing.

(2) Contract financing results in the Government making payments earlier than it otherwise would. In order to determine the cost to the Government of making payments earlier, the contracting officer must compute the imputed cost of those financing payments and add it to the proposed price to determine the evaluated price for each offeror.

(3) The imputed cost of a single financing payment is the amount of the payment multiplied by the annual interest rate, multiplied by the number of years, or fraction thereof, between the date of the financing payment and the date the amount would have been paid as a delivery payment. The imputed cost of financing is the sum of the imputed costs of each of the financing payments.

(4) The contracting officer must calculate the time value of proposal-specified contract financing arrangements using as the interest rate the nominal discount rate specified in Appendix C of the Office of Management and Budget (OMB) Circular A-94, “Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs”, appropriate to the period of contract financing. Where the period of proposed financing does not match the periods in the OMB Circular, the interest rate for the period closest to the finance period shall be used. Appendix C is updated yearly, and is

available from the Office of Economic Policy in the Office of Management and Budget (OMB).

32.206 Solicitation provisions and contract clauses.

(a) The contract shall contain the paragraph entitled “Payment” of the clause at 52.212-4, Contract Terms and Conditions—Commercial Items. If the contract will provide for contract financing, the contracting officer shall construct a solicitation provision and contract clause. This solicitation provision shall be constructed in accordance with 32.204 or 32.205. If the procedure at 32.205 is used, the solicitation provision at 52.232-31, Invitation to Propose Financing Terms, shall be included. The contract clause shall be constructed in accordance with the requirements of this subpart and any agency regulations.

(b) Each contract financing clause shall include:

(1) A description of the—

(i) Computation of the financing payment amounts (see paragraph (c) of this section);

(ii) Specific conditions of contractor entitlement to those financing payments (see paragraph (c) of this section);

(iii) Liquidation of those financing payments by delivery payments (see paragraph (e) of this section);

(iv) Security the contractor will provide for financing payments and any terms or conditions specifically applicable thereto (see 32.202-4); and

(v) Frequency, form, and any additional content of the contractor's request for financing payment (in addition to the requirements of the clause at 52.232-29, Terms for Financing of Purchases of Commercial Items; and

(2) Unless agency regulations authorize alterations, the unaltered text of the clause at 52.232-29, Terms for Financing of Purchases of Commercial Items.

(c) *Computation of amounts, and contractor entitlement provisions.* (1) Contracts shall provide that delivery payments shall be made only for completed supplies and services accepted by the Government in accordance with the terms of the contract. Contracts may provide for commercial advance and commercial interim payments based upon a wide variety of bases, including (but not limited to) achievement or occurrence of specified events, the passage of time, or specified times prior to the delivery date(s). The basis for payment must be objectively determinable. The clause written by the contracting officer shall specify, to the extent access is necessary, the information and/or facilities to which the Government shall have access for the purpose of verifying the contractor's entitlement to payment of contract financing.

(2) If the contract is awarded using the offeror-proposed procedure at 32.205, the clause constructed by the contracting officer under paragraph (b)(1) of this section shall contain the following:

(i) A statement that the offeror's proposed listing of earliest times and greatest amounts of projected financing payments submitted in accordance with paragraph (d)(2) of the provision at 52.232-31, Invitation to Propose Financing Terms, is incorporated into the contract, and

(ii) A statement that financing payments shall be made in the lesser amount and on the later of the date due in accordance with the financing terms of the contract, or in the amount and on the date projected in the listing of earliest times and greatest amounts incorporated in the contract.

(3) If the security accepted by the contracting officer is the contractor's financial condition, the contracting officer shall incorporate in the clause constructed under paragraph (b)(1) of this section the following—

(i) A statement that the contractor's financial condition has been accepted as adequate security for commercial financing payments; and

(ii) A statement that the contracting officer may exercise the Government's rights to require other security under paragraph (c), Security for Government Financing, of the clause at 52.232-29, Terms for Financing of Purchases of Commercial Items, in the event the contractor's financial condition changes and is found not to be adequate security.

(d) *Instructions for multiple appropriations.* If contract financing is to be computed for the contract as a whole, and if there is more than one appropriation account (or sub-account) funding payments under the contract, the contracting officer shall include, in the contract, instructions for distribution of financing payments to the respective funds accounts. Distribution instructions and contract liquidation instructions must be mutually consistent.

(e) *Liquidation.* Liquidation of contract financing payments shall be on the same basis as the computation of contract financing payments; that is, financing payments computed on a whole contract basis shall be liquidated on a whole contract basis; and a payment computed on a line item basis shall be liquidated against that line item. If liquidation is on a whole contract basis, the contracting officer shall use a uniform liquidation percentage as the liquidation method, unless the contracting officer obtains the concurrence of the cognizant payment office that the proposed liquidation provisions can be executed by that office, or unless agency regulations provide alternative liquidation methods.

(f) *Prompt payment for commercial purchase payments.* The provisions of Subpart 32.9, Prompt Payment, apply to contract financing and invoice payments for commercial purchases in the same manner they apply to non-commercial purchases. The contracting officer is responsible for including in the contract all the information necessary to implement prompt payment. In particular, contracting officers must be careful to clearly differentiate in the contract

between contract financing and invoice payments and between items having different prompt payment times.

(g) *Installment payment financing for commercial items.* Contracting officers may insert the clause at 52.232-30, Installment Payments for Commercial Items, in solicitations and contracts in lieu of constructing a specific clause in accordance with paragraphs (b) through (e) of this section, if the contract action qualifies under the criteria at 32.202-1(b) and installment payments for the item are either customary or are authorized in accordance with agency procedures.

(1) *Description.* Installment payment financing is payment by the Government to a contractor of a fixed number of equal interim financing payments prior to delivery and acceptance of a contract item. The installment payment arrangement is designed to reduce administrative costs. However, if a contract will have a large number of deliveries, the administrative costs may increase to the point where installment payments are not in the best interests of the Government.

(2) *Authorized types of installment payment financing and rates.* Installment payments may be made using the clause at 52.232-30, Installment Payments for Commercial Items, either at the 70 percent financing rate cited in the clause or at a lower rate in accordance with agency procedures.

(3) *Calculating the amount of installment financing payments.* The contracting officer shall identify in the contract schedule those items for which installment payment financing is authorized. Monthly installment payment amounts are to be calculated by the contractor pursuant to the instructions in the contract clause only for items authorized to receive installment payment financing.

(4) *Liquidating installment payments.* If installment payments have been made for an item, the amount paid to the contractor upon acceptance of the item by the Government shall be reduced by the amount of installment payments made for the item. The contractor's request for final payment for each item is required to show this calculation.

32.207 Administration and payment of commercial financing payments.

(a) *Responsibility.* The contracting officer responsible for administration of the contract shall be responsible for review and approval of contract financing requests.

(b) *Approval of financing requests.* Unless otherwise provided in agency regulations, or by agreement with the appropriate payment official—

(1) The contracting officer shall be responsible for receiving, approving, and transmitting all contract financing requests to the appropriate payment office; and

(2) Each approval shall specify the amount to be paid, necessary contractual information, and the account(s) (see 32.206(d)) to be charged for the payment.

(c) *Management of security.* After contract award, the contracting officer responsible for approving requests for financing payments shall be responsible for determining that the security continues to be adequate. If the contractor's financial condition is the Government's security, this contracting officer is also responsible for monitoring the contractor's financial condition.

Subpart 32.3—Loan Guarantees for Defense Production

32.300 Scope of subpart.

This subpart prescribes policies and procedures for designated agencies' guarantees of loans made by private financial institutions to borrowers performing contracts related to national defense (see 30.102).

32.301 Definitions.

"Borrower," as used in this subpart, means a contractor, subcontractor (at any tier), or other supplier who receives a guaranteed loan.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System.

"Guaranteed loan" or "V loan," as used in this subpart, means a loan, revolving credit fund, or other financial arrangement made pursuant to Regulation V of the Federal Reserve Board, under which the guaranteeing agency is obligated, on demand of the lender, to purchase a stated percentage of the loan and to share any losses in the amount of the guaranteed percentage.

"Guaranteeing agency," as used in this subpart, means any agency that the President has authorized to guarantee loans, through Federal Reserve Banks, for expediting national defense production.

32.302 Authority.

Congress has authorized Federal Reserve Banks to act, on behalf of guaranteeing agencies, as fiscal agents of the United States in the making of loan guarantees for defense

[The next page is 32-13.]

in the proposed advance payment clause, a copy (an outline of which is annexed to this authorization) (the following terms:) *[Insert the appropriate terms.]* (All prior authorizations for advance payments under Contract No. _____ are superseded.)

[Signature]

[Name Typed]

[Title of Authorized Official]

[Each Findings, Determination, and Authorization shall be individually prepared to fit the particular circumstances at hand. Subparagraphs (a)(1), (2), (3) and (4) and paragraphs (b) and (c) shall be used in each case. If the contract is (a) for experimental, developmental or research work and with a nonprofit educational or research institution, or (b) only for management and operation of a Government-owned plant, subparagraph (a)(5) should not be included. If the advance payment is to be made without interest to the contractor, include subparagraph (a)(6), (7), or (8). If any advance payments have previously been authorized for the contract, include the final sentence of paragraph (c). The alternate parenthetical wording or other modifications may be used as appropriate. The paragraphs actually used shall be renumbered sequentially.]

32.411 Agreement for special bank account.

The contracting officer shall use substantially the following form of agreement for a special bank account for advance payments:

AGREEMENT FOR SPECIAL BANK ACCOUNT

This agreement is entered into this _____ day of _____, 19____, between the United States of America, (the Government), represented by the Contracting Officer executing this agreement, _____ *[Insert the name of the contractor]*, a _____ *[Insert the name of the State of incorporation]* corporation (the Contractor), and _____, a banking corporation under the laws of _____, located at _____ (the Bank).

RECITALS

(a) Under date of _____, 19____, the Government and the Contractor entered into Contract No. _____, or a related supplemental agreement, providing for advance payments to the Contractor. A copy of the advance payment terms was furnished to the Bank.

(b) The contract or supplemental agreement requires that amounts advanced to the Contractor be deposited separate from the Contractor's general or other funds, in a Special Bank Account at a member bank of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (12 U.S.C. 1811). The parties agree to deposit the amounts with the Bank, which meets the requirement.

(c) This Special Bank Account is designated "_____ *[Insert the contractor's name]*, _____ *[Insert the name of the Government agency]* Special Bank Account."

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, the parties agree to the following conditions:

(a) The Government shall have a lien on the credit balance in the account to secure the repayment of all advance payments made to the Contractor. The lien is paramount to any lien or claim of the Bank regarding the account.

(b) The Bank is bound by the terms of the contract relating to the deposit and withdrawal of funds in the Special Bank Account, but is not responsible for the application of funds withdrawn from the account. The Bank shall act on written directions from the Contracting Officer, the administering office, or a duly authorized representative of either. The Bank is not liable to any party to this agreement for any action that complies with the written directions. Any written directions received by the Bank through the Contracting Officer on _____ *[Insert the name of the agency]* stationery and purporting to be signed by, or by the direction of _____ or duly authorized representative, shall be, as far as the rights, duties, and liabilities of the Bank are concerned, considered as being properly issued and filed with the Bank by the _____ *[Insert the name of the agency]*.

(c) The Government, or its authorized representatives, shall have access to the books and records maintained by the Bank regarding the Special Bank Account at all reasonable times and for all reasonable purposes, including (but not limited to), the inspection or copying of the books and records and any and all pertinent memoranda, checks, correspondence, or documents. The Bank shall preserve the books and records for a period of 6 years after the closing of this Special Bank Account.

(d) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings regarding the Special Bank Account, the Bank will promptly notify _____ *[Insert the name of the administering office]*.

32.412

(e) While this Special Bank Account exists, the Bank shall inform the Government each month of the Bank's published prime interest rate and changes to the rate during the month. The Bank shall give this information to the Contracting Officer on the last business day of the month. *[This covenant will not be included in Special Bank Account Agreements covering interest-free advance payments.]*

Each of the parties to this agreement has executed the agreement on _____, 19____.

[Signatures and Official Titles]

32.412 Contract clause.

(a) The contracting officer shall insert the clause at 52.232-12, Advance Payments, in solicitations and contracts under which the Government will provide advance payments, except as provided in 32.412(b).

(b) If the agency desires to waive the countersignature requirement because of the contractor's financial strength, good performance record, and favorable experience concerning cost disallowances, the contracting officer shall use the clause with its Alternate I.

(c) If a cost-reimbursement contract is contemplated, the contracting officer shall use the clause with its Alternate II.

(d) If the agency considers a more rapid liquidation appropriate, the contracting officer shall use the clause with its Alternate III.

(e) If the agency provides advance payments under the contract at no interest to the prime contractor, the contracting officer shall use the clause with its Alternate IV.

(f) If the requirement for a special bank account is eliminated in accordance with 32.409-3(e) or (g), the contracting officer shall insert in the solicitation or contract the clause set forth in Alternate V of 52.232-12, Advance Payments, instead of the basic clause.

Subpart 32.5—Progress Payments Based on Costs

32.500 Scope of subpart.

This subpart prescribes policies, procedures, forms, solicitation provisions, and contract clauses for providing contract financing through progress payments based on costs. This subpart does not apply to—

(a) Payments under cost-reimbursement contracts, but see 32.110 for progress payments made to subcontractors under cost-reimbursement prime contracts; or

(b) Contracts for construction or for shipbuilding or ship conversion, alteration, or repair, when the contracts provide for progress payments based on a percentage or stage of completion.

32.501 General.

Progress payments may be customary or unusual. Customary progress payments are those made under the general guidance in this subpart, using the customary progress payment rate, the cost base, and frequency of payment established in the Progress Payments clause, and either the ordinary liquidation method or the alternate method as provided in subsections 32.503-8 and 32.503-9. Any other progress payments are considered unusual, and may be used only in exceptional cases when authorized in accordance with subsection 32.501-2.

32.501-1 Customary progress payment rates.

(a) The customary progress payment rate is 80 percent, applicable to the total costs of performing the contract. The customary rate for contracts with small business concerns is 85 percent.

(b) The contracting officer must—

(1) Consider any rate higher than those permitted in paragraph (a) of this section an unusual progress payment; and

(2) Not include a higher rate in a contract unless advance agency approval is obtained as prescribed in 32.501-2.

(c) When advance payments and progress payments are authorized under the same contract, the contracting officer must not authorize a progress payment rate higher than the customary rate.

(d) In accordance with 10 U.S.C. 2307(e)(2) and 41 U.S.C. 255, the limit for progress payments is 80 percent on work accomplished under undefinitized contract actions. The contracting officer must not authorize a higher rate under unusual progress payments or other customary progress payments for the undefinitized actions.

32.501-2 Unusual progress payments.

(a) The contracting officer may provide unusual progress payments only if—

(1) The contract necessitates predelivery expenditures that are large in relation to contract price and in relation to the contractor's working capital and credit;

(2) The contractor fully documents an actual need to supplement any private financing available, including guaranteed loans; and

(3) The contractor's request is approved by the head of the contracting activity or a designee. In addition, see 32.502-2.

(b) The excess of the unusual progress payment rate approved over the customary progress payment rate should be the lowest amount possible under the circumstances.

(c) Progress payments will not be considered unusual merely because they are on letter contracts or the definitive contracts that supersede letter contracts.

32.501-3 Contract price.

(a) For the purpose of making progress payments and determining the limitation on progress payments, the contract price shall be as follows:

(1) Under firm-fixed-price contracts, the contract price is the current contract price plus any unpriced modifications for which funds have been obligated.

(2) If the contract is redeterminable or subject to economic price adjustment, the contract price is the initial price until modified.

(3) Under a fixed-price incentive contract, the contract price is the target price plus any unpriced modifications for which funds have been obligated. However, if the contractor's properly incurred costs exceed the target price, the contracting officer may provisionally increase the price up to the ceiling or maximum price.

(4) Under a letter contract, the contract price is the maximum amount obligated by the contract as modified.

(5) Under an unpriced order issued against a basic ordering agreement, the contract price is the maximum amount obligated by the order, as modified.

(6) Any portion of the contract specifically providing for reimbursement of costs only shall be excluded from the contract price.

(b) The contracting officer shall not make progress payments or increase the contract price beyond the funds obligated under the contract, as amended.

32.501-4 [Reserved]

32.501-5 Other protective terms.

If the contracting officer considers it necessary for protection of the Government's interest, protective terms such as the following may be used in addition to the Progress Payments clause of the contract:

- (a) Personal or corporate guarantees.
- (b) Subordinations or standbys of indebtedness.
- (c) Special bank accounts.
- (d) Protective covenants of the kinds in paragraph (p) of the clause at 52.232-12, Advance Payments.
- (e) A provision, included in the solicitation and resultant contract when first article testing is required (see Subpart 9.3), limiting progress payments on first article work by a stated amount or percentage.

32.502 Preaward matters.

This section covers matters that generally are relevant only before contract award. This does not preclude taking actions discussed here after award, if appropriate; *e.g.*, postaward addition of a Progress Payments clause for consideration.

32.502-1 Use of customary progress payments.

The contracting officer may use a Progress Payments clause in solicitations and contracts, in accordance with this subpart. The contracting officer must reject as nonresponsive bids conditioned on progress payments when the solicitation did not provide for progress payments.

32.502-2 Contract finance office clearance.

The contracting officer shall obtain the approval of the contract finance office or other offices designated under agency procedures before taking any of the following actions:

- (a) Providing a progress payment rate higher than the customary rate (see 32.501-1).
- (b) Deviating from the progress payments terms prescribed in this part.
- (c) Providing progress payments to a contractor—
 - (1) Whose financial condition is in doubt;
 - (2) Who has had an advance payment request or loan guarantee denied for financial reasons (or approved but withdrawn or lapsed) within the previous 12 months; or
 - (3) Who is named in the consolidated list of contractors indebted to the United States (known commonly as the "Hold-up List").

32.502-3 Solicitation provisions.

(a) The contracting officer shall insert the provision at 52.232-13, Notice of Progress Payments, in invitations for bids and requests for proposals that include a Progress Payments clause.

(b)(1) Under the authority of the statutes cited in 32.101, an invitation for bids may restrict the availability of progress payments to small business concerns only.

(2) The contracting officer shall insert the provision at 52.232-14, Notice of Availability of Progress Payments Exclusively for Small Business Concerns, in invitations for bids if it is anticipated that—

- (i) Both small business concerns and others may submit bids in response to the same invitation and
- (ii) Only the small business bidders would need progress payments.

(c) The contracting officer shall insert the provision at 52.232-15, Progress Payments Not Included, in invitations for bids if the solicitation will not contain one of the provisions prescribed in paragraphs (a) and (b) of this section.

32.502-4 Contract clauses.

(a)(1) Insert the clause at 52.232-16, Progress Payments, in—

- (i) Solicitations that may result in contracts providing for progress payments based on costs; and

(ii) Fixed-price contracts under which the Government will provide progress payments based on costs.

(2) If advance agency approval has been given in accordance with 32.501-1, the contracting officer may substitute a different customary rate for other than small business concerns for the progress payment and liquidation rate indicated.

(3) If an unusual progress payment rate is approved for the prime contractor (see 32.501-2), substitute the approved rate for the customary rate in paragraphs (a)(1), (a)(5), and (b) of the clause.

(4) If the liquidation rate is changed from the customary progress payment rate (see 32.503-8 and 32.503-9), substitute the new rate for the rate in paragraphs (a)(1), (a)(5), and (b) of the clause.

(5) If an unusual progress payment rate is approved for a subcontract (see 32.504(c) and 32.501-2), modify paragraph (j)(6) of the clause to specify the new rate, the name of the subcontractor, and that the new rate shall be used for that subcontractor in lieu of the customary rate.

(b) If the contractor is a small business concern, use the clause with its Alternate I.

(c) If the contract is a letter contract, use the clause with its Alternate II.

(d) If the contractor is not a small business concern, and progress payments are authorized under an indefinite-delivery contract, basic ordering agreement, or their equivalent, use the clause with its Alternate III.

(e) If the nature of the contract necessitates separate progress payment rates for portions of work that are clearly severable and accounting segregation would be maintained (*e.g.*, annual production requirements), describe the application of separate progress payment rates in a supplementary special provision within the contract. The contractor must submit separate progress payment requests and subsequent invoices for the severable portions of work in order to maintain accounting integrity.

32.503 Postaward matters.

This section covers matters that are generally relevant only after award of a contract. This does not preclude taking actions discussed here before award, if appropriate; *e.g.*, preaward review of accounting systems and controls.

32.503-1 Contractor requests.

Each contractor request for progress payment must—

(a) Be submitted on Standard Form 1443, Contractor's Request for Progress Payment, in accordance with the form instructions and the contract terms;

(b) Include any additional information reasonably requested by the contracting officer; and

(c) Be \$2,500 or more, unless agency procedures authorize a lower amount.

32.503-2 Supervision of progress payments.

(a) The extent of progress payments supervision, by prepayment review or periodic review, should vary inversely with the contractor's experience, performance record, reliability, quality of management, and financial strength, and with the adequacy of the contractor's accounting system and controls. Supervision shall be of a kind and degree sufficient to provide timely knowledge of the need for, and timely opportunity for, any actions necessary to protect Government interests.

(b) The administering office must keep itself informed of the contractor's overall operations and financial condition, since difficulties encountered and losses suffered in operations outside the particular progress payment contract may affect adversely the performance of that contract and the liquidation of the progress payments.

(c) For contracts with contractors—

(1) Whose financial condition is doubtful or not strong in relation to progress payments outstanding or to be outstanding;

(2) With management of doubtful capacity;

(3) Whose accounting controls are found by experience to be weak; or

(4) Experiencing substantial difficulties in performance, full information on progress under the contract involved (including the status of subcontracts) and on the contractor's other operations and overall financial condition should be obtained and analyzed frequently, with a view to protecting the Government's interests better and taking such action as may be proper to make contract performance more certain.

(d) So far as practicable, all cost problems, particularly those involving indirect costs, that are likely to create disagreements in future administration of the contract should be identified and resolved at the inception of the contract (see 31.109).

32.503-3 Initiation of progress payments and review of accounting system.

(a) For contractors that the administrative contracting officer (ACO) has found by previous experience or recent audit review (within the last 12 months) to be—

(1) Reliable, competent, and capable of satisfactory performance;

(2) Possessed of an adequate accounting system and controls; and

(3) In sound financial condition, progress payments in amounts requested by the contractor should be approved as a matter of course.

(b) For all other contractors, the ACO shall not approve progress payments before determining (1) that (i) the contractor will be capable of liquidating any progress payments or (ii) the Government is otherwise protected against loss by additional protective provisions, and (2) that the contractor's accounting system and controls are adequate for proper administration of progress payments. The services of the responsible audit agency or office should be used to the greatest extent practicable. However, if the auditor so advises, a complete audit may not be necessary.

32.503-4 Approval of progress payment requests.

(a) When the reliability of the contractor and the adequacy of the contractor's accounting system and controls have been established (see 32.503-3 of this section) the ACO may, in approving any particular progress payment request (including initial requests on new contracts), rely upon that accounting system and upon the contractor's certification, without requiring audit or review of the request before payment.

(b) The ACO should not routinely ask for audits of progress payment requests. However, when there is reason to—

(1) Question the reliability or accuracy of the contractor's certification; or

(2) Believe that the contract will involve a loss, the ACO should ask for a review or audit of the request before payment is approved or the request is otherwise disposed of.

(c) When there is reason to doubt the amount of a progress payment request, only the doubtful amount should be withheld, subject to later adjustment after review or audit; any clearly proper and due amounts should be paid without awaiting resolution of the differences.

32.503-5 Administration of progress payments.

(a) While the ACO may, in approving progress payment requests under 32.503-3 of this section, rely on the contractor's accounting system and certification without prepayment review, postpayment reviews (including audits when considered necessary) shall be made periodically, or when considered desirable by the ACO to determine the validity of progress payments already made and expected to be made.

(b) These postpayment reviews or audits shall, as a minimum, include a determination of whether or not—

(1) The unliquidated progress payments are fairly supported by the value of the work accomplished on the undelivered portion of the contract;

(2) The applicable limitation on progress payments in the Progress Payments clause has been exceeded;

(3)(i) The unpaid balance of the contract price will be adequate to cover the anticipated cost of completion; or

(ii) The contractor has adequate resources to complete the contract; and

(4) There is reason to doubt the adequacy and reliability of the contractor's accounting system and controls and certification.

(c) Under indefinite-delivery contracts, the contracting officer should administer progress payments made under each individual order as if the order constituted a separate contract, unless agency procedures provide otherwise.

32.503-6 Suspension or reduction of payments.

(a) *General.* The Progress Payments clause provides a Government right to reduce or suspend progress payments, or to increase the liquidation rate, under specified conditions. These conditions and actions are discussed in paragraphs (b) through (g) of this subsection.

(1) The contracting officer shall take these actions only in accordance with the contract terms and never precipitately or arbitrarily. These actions should be taken only after—

(i) Notifying the contractor of the intended action and providing an opportunity for discussion;

(ii) Evaluating the effect of the action on the contractor's operations, based on the contractor's financial condition, projected cash requirements, and the existing or available credit arrangements; and

(iii) Considering the general equities of the particular situation.

(2) The contracting officer shall take immediate unilateral action only if warranted by circumstances such as overpayments or unsatisfactory contract performance.

(3) In all cases, the contracting officer shall (i) act fairly and reasonably, (ii) base decisions on substantial evidence, and (iii) document the contract file. Findings made under paragraph (c) of the Progress Payments clause shall be in writing.

(b) *Contractor noncompliance.* (1) The contractor must comply with all material requirements of the contract. This includes the requirement to maintain an efficient and reliable accounting system and controls, adequate for the proper administration of progress payments. If the system or controls are deemed inadequate, progress payments shall be suspended (or the portion of progress payments associated with the unacceptable portion of the contractor's accounting system shall be suspended) until the necessary changes have been made.

(2) If the contractor fails to comply with the contract without fault or negligence, the contracting officer will not take action permitted by paragraph (c)(1) of the Progress Payments clause, other than to correct overpayments and collect amounts due from the contractor.

(c) *Unsatisfactory financial condition.* (1) If the contracting officer finds that contract performance (including

full liquidation of progress payments) is endangered by the contractor's financial condition, or by a failure to make progress, the contracting officer shall require the contractor to make additional operating or financial arrangements adequate for completing the contract without loss to the Government.

(2) If the contracting officer concludes that further progress payments would increase the probable loss to the Government, the contracting officer shall suspend progress payments and all other payments until the unliquidated balance of progress payments is eliminated.

(d) *Excessive inventory.* If the inventory allocated to the contract exceeds reasonable requirements (including a reasonable accumulation of inventory for continuity of operations), the contracting officer should, in addition to requiring the transfer of excessive inventory from the contract, take one or more of the following actions, as necessary, to avoid or correct overpayment:

(1) Eliminate the costs of the excessive inventory from the costs eligible for progress payments, with appropriate reduction in progress payments outstanding.

(2) Apply additional deductions to billings for deliveries (increase liquidation).

(e) *Delinquency in payment of costs of performance.* (1) If the contractor is delinquent in paying the costs of contract performance in the ordinary course of business, the contracting officer shall evaluate whether the delinquency is caused by an unsatisfactory financial condition and, if so, shall apply the guidance in paragraph (c) of this section. If the contractor's financial condition is satisfactory, the contracting officer shall not deny progress payments if the contractor agrees to—

(i) Cure the payment delinquencies;

(ii) Avoid further delinquencies; and

(iii) Make additional arrangements adequate for completing the contract without loss to the Government.

(2) If the contractor has, in good faith, disputed amounts claimed by subcontractors, suppliers, or others, the contracting officer shall not consider the payments delinquent until the amounts due are established by the parties through litigation or arbitration. However, the amounts shall be excluded from costs eligible for progress payments so long as they are disputed.

(3) Determinations of delinquency in making contributions under employee pension, profit sharing, or stock ownership plans, and exclusion of costs for such contributions from progress payment requests, shall be in accordance with paragraph (a)(3) of the clause at 52.232-16, Progress Payments, without regard to the provisions of 32.503-6.

(f) *Fair value of undelivered work.* Progress payments must be commensurate with the fair value of work accom-

plished in accordance with contract requirements. Governed by the principles of paragraphs (c) and (e) of this subsection, the contracting officer must adjust progress payments when necessary to ensure that the fair value of undelivered work equals or exceeds the amount of unliquidated progress payments. On loss contracts, the application of a loss ratio as described in paragraph (g) of this subsection constitutes this adjustment.

(g) *Loss contracts.* (1) If the sum of the total costs incurred under a contract plus the estimated costs to complete the performance are likely to exceed the contract price, the contracting officer shall compute a loss ratio factor and adjust future progress payments to exclude the element of loss. The loss ratio factor is computed as follows:

(i) Revise the current contract price used in progress payment computations (the current ceiling price under fixed-price incentive contracts) to include any pending change orders and unpriced orders to the extent funds for the orders have been obligated.

(ii) Divide the revised contract price by the sum of the total costs incurred to date plus the estimated additional costs of completing the contract performance.

(2) If the contracting officer believes a loss is probable, future progress payment requests shall be modified as follows:

(i) The contract price shall be the revised amount computed under subparagraph (g)(1)(i) of this section.

(ii) The total costs eligible for progress payments shall be the product of—

(A) the sum of paid costs eligible for progress payments times;

(B) the loss ratio factor computed under subparagraph (g)(1)(ii) of this section.

(iii) The costs applicable to items delivered, invoiced, and accepted shall not include costs in excess of the contract price of the items.

(3) The contracting officer may use audit assistance, technical services, management reports, and other sources of pertinent data to evaluate progress payment requests. If the contracting officer concludes that the contractor's figures in the contractor's progress payment request are not correct, the contracting officer shall—

(i) In the manner prescribed in paragraph (g)(4) of this section, prepare a supplementary analysis to be attached to the contractor's request;

(ii) Advise the contractor in writing of the differences; and

(iii) Adjust all further progress payments in accordance with paragraph (g)(1) of this section, using the contracting officer's figures, until the difference is resolved.

(4) The following is an example of the supplementary analysis required in paragraph (g)(3) of this subsection:

SECTION I:

Contract price	\$2,850,000
Change orders and unpriced orders (to extent funds have been obligated)	\$ 150,000
Revised contract price	\$3,000,000

SECTION II:

Total costs incurred to date	\$2,700,000
Estimated additional costs to complete	\$ 900,000
Total costs to complete	\$3,600,000

Loss ratio factor $\frac{\$3,000,000}{\$3,600,000} = 83.3\%$

Total costs eligible for progress payments ...	\$2,700,000
Loss ratio factor	x 83.3%
Recognized costs for progress payments	\$2,249,100
Progress payment rate	x 80.0%
Alternate amount to be used	\$1,799,280

SECTION III:

Factored costs of items delivered*	\$ 750,000
Recognized costs applicable to undelivered items	(\$2,249,100—\$750,000) \$1,499,100

*This amount must be the same as the contract price of the items delivered.

32.503-7 [Reserved]

32.503-8 Liquidation rates—ordinary method.

The Government recoups progress payments through the deduction of liquidations from payments that would otherwise be due to the contractor for completed contract items. To determine the amount of the liquidation, the contracting officer applies a liquidation rate to the contract price of contract items delivered and accepted. The ordinary method is that the liquidation rate is the same as the progress payment rate. At the beginning of a contract, the contracting officer must use this method.

32.503-9 Liquidation rates—alternate method.

(a) The liquidation rate determined under 32.503-8 shall apply throughout the period of contract performance unless the contracting officer adjusts the liquidation rate under the alternate method in this 32.503-9. The objective of the alternate liquidation rate method is to permit the contractor to retain the earned profit element of the contract prices for completed items in the liquidation process. The contracting officer may reduce the liquidation rate if—

- (1) The contractor requests a reduction in the rate;
- (2) The rate has not been reduced in the preceding 12 months;

(3) The contract delivery schedule extends at least 18 months from the contract award date;

(4) Data on actual costs are available—

- (i) For the products delivered, or
- (ii) If no deliveries have been made, for a performance period of at least 12 months;

(5) The reduced liquidation rate would result in the Government recouping under each invoice the full extent of the progress payments applicable to the costs allocable to that invoice;

(6) The contractor would not be paid for more than the costs of items delivered and accepted (less allocable progress payments) and the earned profit on those items;

(7) The unliquidated progress payments would not exceed the limit prescribed in paragraph (a)(4) of the Progress Payments clause;

(8) The parties agree on an appropriate rate; and

(9) The contractor agrees to certify annually, or more often if requested by the contracting officer, that the alternate rate continues to meet the conditions of subsections 5, 6, and 7 of this section. The certificate must be accompanied by adequate supporting information.

(b) The contracting officer shall change the liquidation rate in the following circumstances:

(1) The rate shall be increased for both previous and subsequent transactions, if the contractor experiences a lower profit rate than the rate anticipated at the time the liquidation rate was associated with contract items already delivered, as well as subsequent progress payments.

(2) The rate shall be increased or decreased in keeping with the successive changes to the contract price or target profit when—

(i) The target profit is changed under a fixed-price incentive contract with successive targets; or

(ii) A redetermined price involves a change in the profit element under a contract with prospective price re-determination at stated intervals.

(c) Whenever the liquidation rate is changed, the contracting officer shall issue a contract modification to specify the new rate in the Progress Payments clause. Adequate consideration for these contract modifications is provided by the consideration included in the initial contract. The parties shall promptly make the payment or liquidation required in the circumstances.

32.503-10 Establishing alternate liquidation rates.

(a) The contracting officer must ensure that the liquidation rate is—

(1) High enough to result in Government recoupment of the applicable progress payments on each billing; and

(2) Supported by documentation included in the administration office contract file.

32.503-11

(b) The minimum liquidation rate is the expected progress payments divided by the contract price. Each of these factors is discussed below:

(1) The contracting officer must compute the expected progress payments by multiplying the estimated cost of performing the contract by the progress payment rate.

(2) For purposes of computing the liquidation rate, the contracting officer may adjust the estimated cost and the contract price to include the estimated value of any work authorized but not yet priced and any projected economic adjustments; however, the contracting officer's adjustment must not exceed the Government's estimate of the price of all authorized work or the funds obligated for the contract.

(3) The following are examples of the computation. Assuming an estimated price of \$2,200,000 and total estimated costs eligible for progress payments of \$2,000,000:

(i) If the progress payment rate is 80 percent, the minimum liquidation rate should be 72.7 percent, computed as follows:

$$\frac{\$2,000,000 \times 80\%}{\$2,200,000} = 72.7\%$$

(ii) If the progress payment rate is 85 percent, the minimum liquidation rate should be 77.3 percent, computed as follows:

$$\frac{\$2,000,000 \times 85\%}{\$2,200,000} = 77.3\%$$

(4) Minimum liquidation rates will generally be expressed to tenths of a percent. Decimals between tenths will be rounded up to the next highest tenth (not necessarily the nearest tenth), since rounding down would produce a rate below the minimum rate calculated.

32.503-11 Adjustments for price reduction.

(a) If a retroactive downward price reduction occurs under a redeterminable contract that provides for progress payments, the contracting officer shall—

(1) Determine the refund due and obtain repayment from the contractor for the excess of payments made for delivered items over amounts due as recomputed at the reduced prices; and

(2) Increase the unliquidated progress payments amount for overdeductions made from the contractor's billings for items delivered.

(b) The contracting officer shall also increase the unliquidated progress payments amount if the contractor makes an interim or voluntary price reduction under a redeterminable or incentive contract.

32.503-12 Maximum unliquidated amount.

(a) The contracting officer shall ensure that any excess of the unliquidated progress payments over the contractual limitation in paragraph (a) of the Progress Payments clause in the contract is promptly corrected through one or more of the following actions:

- (1) Increasing the liquidation rate.
- (2) Reducing the progress payment rate.
- (3) Suspending progress payments.

(b) The excess described in paragraph (a) of this section is most likely to arise under the following circumstances:

- (1) The costs of performance exceed the contract price.
- (2) The alternate method of liquidation (see 32.503-9) is used and the actual costs of performance exceed the cost estimates used to establish the liquidation rate.
- (3) The rate of progress or the quality of contract performance is unsatisfactory.
- (4) The rate of rejections, waste, or spoilage is excessive.

(c) As required, the services of the responsible audit agency or office should be fully utilized, along with the services of qualified cost analysis and engineering personnel.

32.503-13 [Reserved]

32.503-14 Protection of Government title.

(a) Since the Progress Payments clause gives the Government title to all of the materials, work-in-process, finished goods, and other items of property described in paragraph (d) of the Progress Payments clause, under the contract under which progress payments have been made, the ACO must ensure that the Government title to these inventories is not compromised by other encumbrances. Ordinarily, the ACO, in the absence of reason to believe otherwise, may rely upon the contractor's certification contained in the progress payment request.

(b) If the ACO becomes aware of any arrangement or condition that would impair the Government's title to the property affected by progress payment, the ACO shall require additional protective provisions (see 32.501-5) to establish and protect the Government's title.

(c) The existence of any such encumbrance is a violation of the contractor's obligations under the contract, and the ACO may, if necessary, suspend or reduce progress payments under the terms of the Progress Payments clause covering failure to comply with any material requirement of the contract. In addition, if the contractor fails to disclose an existing encumbrance in the progress payments certification, the ACO should consult with legal counsel concerning possible violation of 31 U.S.C. 3729, the False Claims Act.

32.503-15 Application of Government title terms.

(a) Property to which the Government obtains title by operation of the Progress Payments clause solely is not, as a consequence, Government-furnished property.

(b) Although property title is vested in the Government under the Progress Payments clause, the acquisition, handling, and disposition of certain types of property are governed by other clauses, as follows:

(1) The clause at 52.245-17, Special Tooling, for special tooling.

(2) The termination clauses at 52.249, for termination inventory.

(c) The contractor may sell or otherwise dispose of current production scrap in the ordinary course of business on its own volition, even if title has vested in the Government under the Progress Payments clause. The contracting officer shall require the contractor to credit the costs of the contract performance with the proceeds of the scrap disposition.

(d) When the title to materials or other inventories is vested in the Government under the Progress Payments clause, the contractor may transfer the inventory items from the contract for its own use or other disposition only if, and on terms, approved by the contracting officer. The contractor shall—

(1) Eliminate the costs allocable to the transferred property from the costs of contract performance, and

(2) Repay or credit to the Government an amount equal to the unliquidated progress payments, allocable to the transferred property.

(e) If excess property remains after the contract performance is complete and all contractor obligations under the contract are satisfied, including full liquidation of progress payments, the excess property is outside the scope of the Progress Payments clause. Therefore, the contractor holds title to it.

32.503-16 Risk of loss.

(a) Under the Progress Payments clause, and except for normal spoilage, the contractor bears the risk for loss, theft, destruction, or damage to property affected by the clause, even though title is vested in the Government, unless the Government has expressly assumed this risk. The clauses prescribed in this regulation related to progress payments, default, and terminations do not constitute a Government assumption of this risk.

(b) If a loss occurs in connection with property for which the contractor bears the risk, the contractor is obligated to repay to the Government the amount of unliquidated progress payments based on costs allocable to the property.

(c) The contractor is not obligated to pay for the loss of property for which the Government has assumed the risk of

loss. However, a serious loss may impede the satisfactory progress of contract performance, so that the contracting officer may need to act under paragraph (c)(5) of the Progress Payments clause.

32.504 Subcontracts under prime contracts providing progress payments.

(a) Subcontracts may include either performance-based payments, provided they meet the criteria in 32.1003, or progress payments, provided they meet the criteria in Subpart 32.5 for customary progress payments, but not both. Subcontracts for commercial purchases may include commercial item purchase financing terms, provided they meet the criteria in 32.202-1.

(b) The contractor's requests for progress payments may include the full amount of commercial item purchase financing payments, performance-based payments, or progress payments to a subcontractor, whether paid or unpaid, provided that unpaid amounts are limited to amounts that the contractor will pay—

(1) In accordance with the terms and conditions of a subcontract or invoice; and

(2) Ordinarily prior to the submission of the contractor's next progress payment request to the Government.

(c) If the contractor is considering making unusual progress payments to a subcontractor, the parties will be guided by the policies in 32.501-2. If the Government approves unusual progress payments for the subcontract, the contracting officer must issue a contract modification to specify the new rate in paragraph (j)(6) of the clause at 52.232-16, Progress Payments, in the prime contract. This will allow the contractor to include the progress payments to the subcontractor in the cost basis for progress payments by the Government. This modification is not a deviation and does not require the clearance prescribed in 32.502-2(b).

(d) The contractor has a duty to ensure that financing payments to subcontractors conform to the standards and principles prescribed in paragraph (j) of the Progress Payments clause in the prime contract. Although the contracting officer should, to the extent appropriate, review the subcontract as part of the overall administration of progress payments in the prime contract, there is no special requirement for contracting officer review or consent merely because the subcontract includes financing payments, except as provided in paragraph (c) of this section. However, the contracting officer must ensure that the contractor has installed the necessary management control systems, including internal audit procedures.

(e) When financing payments are in the form of progress payments, the Progress Payments clause at 52.232-16 requires that the subcontract include the substance of the

Progress Payments clause in the prime contract, modified to indicate that the contractor, not the Government, awards the subcontract and administers the progress payments. The following exceptions apply to wording modifications:

(1) The subcontract terms on title to property under progress payments shall provide for vesting of title in the Government, not the contractor, as in paragraph (d) of the Progress Payments clause in the prime contract. A reference to the contractor may, however, be substituted for "Government" in paragraph (d)(2)(iv) of the clause.

(2) In the subcontract terms on reports and access to records, the contractor shall not delete the references to "Contracting Officer" and "Government" in adapting paragraph (g) of the Progress Payments clause in the contract, but may expand the terms as follows:

(i) The term "Contracting Officer" may be changed to "Contracting Officer or Prime Contractor."

(ii) The term "the Government" may be changed to "the Government or Prime Contractor."

(3) The subcontract special terms regarding default shall include paragraph (h) of the Progress Payments clause in the contract through its subdivision (i). The rest of paragraph (h) is optional.

(f) When financing payments are in the form of performance-based payments, the Performance-Based Payments clause at 52.232-32 requires that the subcontract terms include the substance of the Performance-Based Payments clause, modified to indicate that the contractor, not the Government, awards the subcontract and administers the performance-based payments, and include appropriately worded modifications similar to those noted in paragraph (e) of this section.

(g) When financing payments are in the form of commercial item purchase financing, the subcontract must include a contract financing clause structured in accordance with 32.206.

Subpart 32.6—Contract Debts

32.600 Scope of subpart.

This subpart prescribes policies and procedures for the Government's actions in ascertaining and collecting contract debts, charging interest on the debts, deferring collections, and compromising and terminating certain debts.

32.601 Definition.

"Responsible official," as used in this subpart, means the contracting officer (see Subpart 2.1) or other official designated under agency procedures to administer the collection of contract debts and applicable interest.

32.602 General.

The contract debts covered in this subpart arise in various ways. The following are some examples:

(a) Damages or excess costs related to defaults in performance.

(b) Breach of contract obligations concerning progress payments, advance payments, or Government-furnished property or material.

(c) Government expense of correcting defects.

(d) Overpayments related to errors in quantity or billing or deficiencies in quality.

(e) Retroactive price reductions resulting from contract terms for price redetermination or for determination of prices under incentive type contracts.

(f) Overpayments disclosed by quarterly statements required under price redetermination or incentive contracts.

(g) Delinquency in contractor payments due under agreements or arrangements for deferral or postponement of collections.

(h) Reimbursement of costs, as provided in 33.102(b) and 33.104(h)(1), paid by the Government where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification.

32.603 Applicability.

Except as otherwise specified, this subpart applies to all debts to the Government arising in connection with contracts and subcontracts for the acquisition of supplies or services, and debts arising from the Government's payment of costs, as provided in 33.102(b) and 33.104(h)(1), where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification.

32.604 Exclusions.

This subpart does not apply to claims of the Government against military or civilian employees or their dependents arising in connection with current or past employment by the Government. Sections 32.613, 32.614, and 32.616 do not apply to claims against common carriers for transportation overcharges and freight and cargo losses.

32.605 Responsibilities and cooperation among Government officials.

(a) To protect the Government's interests, contracting officers, contract financing offices, disbursing officials, and auditors shall cooperate fully with each other to—

(1) Discover promptly when a contract debt arises;

(2) Ascertain the correct amount of the debt;

(3) Act promptly and effectively to collect the debt;

(4) Administer deferment of collection agreements;

and

(5) Provide up-to-date information on the status of the debt.

(b) For most kinds of contract debts, including reimbursement of protest costs, the contracting officer has the primary responsibility for determining the amounts of and collecting contract debt. Under some agency procedures, however, the individual who is responsible for payment under the contract; *e.g.*, the disbursing officer, may have this primary responsibility.

32.606 Debt determination and collection.

(a) If any indication of a contract debt arises, the responsible official shall determine promptly whether an actual debt is due the Government and the amount. Any unwarranted delay may contribute to—

- (1) Loss of timely availability of the funds to the program for which the funds were initially provided;
- (2) Increased difficulty in collecting the debt; or
- (3) Actual monetary loss to the Government.

(b) In determining the amount of any contract debt, the responsible official shall fairly consider both the Government's claim and any contract claims by the contractor against the Government. This determination does not constitute a settlement of such claims, nor is it a contracting officer's final determination under the Contract Disputes Act of 1978.

(c) The responsible official shall establish a control record for each contract debt, to include at least the following information:

- (1) The name and address of the contractor.
- (2) The contract number, if any.
- (3) A description of the debt.
- (4) The amount of debt and the appropriation to be credited.
- (5) The date the debt was determined.
- (6) The dates of demands for payment.
- (7) The amounts and dates of collections, as they occur.
- (8) The date of any appeal filed or action brought in the Court of Claims under the Disputes clause.
- (9) The status of collections. Examples include—
 - (i) Actions reported to the disbursing officer (name, location, and date);
 - (ii) Funds requested to be withheld by the disbursing officer;
 - (iii) Funds requested to be withheld by other offices (date and office);
 - (iv) Deferral or installment payment arrangement requested;
 - (v) Deferral or installment request reviewed;
 - (vi) Supplemental information requested to support deferral requests; and

(vii) Actions transferred to the contract financing office.

(d) Except in cases in which an agreement has been entered into for deferment of collections (32.613) or bankruptcy proceedings against the contractor have been initiated, the contractor shall be required to liquidate the debt by—

- (1) Cash payment in a lump sum, on demand; or
- (2) Credit against existing unpaid bills due the contractor.

(e) The responsible officials shall use all proper means available to them for collecting debts as rapidly as possible. Practices for ascertaining and collecting debts shall be comprehensive, dynamic, and as uniform as practicable. Full consideration shall be given to personal contact and followup.

32.607 Tax credit.

(a) If the contractor is entitled to a tax credit under section 1481 of the Internal Revenue Code (26 U.S.C. 1481) and requests recognition of the credit in the debt collection, the responsible official shall comply.

(b) The tax credit shall be considered to reduce the amount of the debt as of the date when interest on the debt begins to accrue.

(c) The amount of the debt reduction shall be the amount of the tax credit certificate, if a certificate was issued by the Internal Revenue Service (IRS). If the IRS has not yet issued a certificate, the responsible official may accept the contractor's estimate of the tax credit amount until the certificate is issued, subject to any verification that the responsible official considers appropriate.

(d) A reduction for a tax credit does not apply to a debt arising from a subcontract.

32.608 Negotiation of contract debts.

(a) The responsible official shall ensure that any negotiations concerning debt determinations are completed expeditiously. If consistent with the contract, the official shall make a unilateral determination promptly if the contractor is delinquent in any of the following actions:

- (1) Furnishing pertinent information.
- (2) Negotiating expeditiously.
- (3) Entering into an agreement on a fair and reasonable price revision.
- (4) Signing an interim memorandum evidencing a negotiated pricing agreement involving refund.
- (5) Executing an appropriate contract modification reflecting the result of negotiations.

(b) The amount of indebtedness determined unilaterally shall be an amount that—

- (1) Is proper based on the merits of the case;

(2) Does not exceed an amount that would have been considered acceptable in a negotiated agreement; and

(3) Is consistent with the contract terms.

(c) For unilateral debt determinations, the contracting officer shall issue a decision as required by the clause at 52.233-1, Disputes. Such decision shall include a demand for payment (see 33.211(a)(4)(vi)). No demand for payment under 32.610 shall be issued prior to a contracting officer's final decision. A copy of the final decision shall be sent to the appropriate finance office.

32.609 Memorandum of pricing agreement with refund.

(a) If a refund to the Government is agreed upon in negotiations under a price revision type of contract, the responsible official shall promptly write a memorandum to document the agreement and the contract debt. The memorandum shall be signed by the negotiators for the Government and the contractor. If the procedures of either

the agency or the contractor require approval of the negotiation results by higher authority, the memorandum shall be written without prejudice to the final pricing. After negotiations are completed, a supplemental agreement shall be executed without delay.

(b) The amount of refund shall be computed promptly, without waiting for itemization of adjustment of past billings, accounting adjustments, or the adjusted invoices.

32.610 Demand for payment of contract debt.

(a) A demand for payment shall be made as soon as the responsible official has computed the amount of refund due. If the debt arises from excess costs for a default termination, the demand shall be made without delay, as explained in 49.402-6.

(b) The demand shall include the following:

(1) A description of the debt, including the debt amount.

tract for the purchase of a commercial item as defined in 2.101, including a brand-name commercial item for authorized resale (*e.g.*, commissary items).

(2) As authorized in 32.906(a) and only as permitted by agency policies and procedures, the contracting officer may insert in paragraph (b) of the clause a period shorter than 30 days (but not less than 7 days) for making contract financing payments.

(3) As provided in 32.904, agency policies and procedures may authorize amendment of paragraphs (a)(1)(i) and (ii) of the clause to insert a period shorter than 30 days (but not less than 7 days) for making contract invoice payments.

32.909 Contractor inquiries.

Questions concerning delinquent payments should be directed to the designated billing office or designated payment office. If a question involves a disagreement in payment amount or timing, it should be directed to the contracting officer for resolution. The contracting officer shall coordinate within appropriate contracting channels and seek the advice of other offices as may be necessary to resolve disagreements. Small business concerns may obtain additional assistance related to payment issues, late payment interest penalties, and information on the Prompt Payment Act, by contacting the Agency's local representative from the Office of Small and Disadvantaged Business Utilization.

Subpart 32.10—Performance-Based Payments

32.1000 Scope of subpart.

This subpart provides policy and procedures for performance-based payments under noncommercial purchases pursuant to Subpart 32.1. This subpart does not apply to—

- (a) Payments under cost-reimbursement contracts;
- (b) Contracts for architect-engineer services or construction, or for shipbuilding or ship conversion, alteration, or repair, when the contracts provide for progress payments based upon a percentage or stage of completion; or
- (c) Contracts awarded through sealed bid procedures.

32.1001 Policy.

(a) Performance-based payments are the preferred Government financing method when the contracting officer finds them practical, and the contractor agrees to their use.

(b) Performance-based payments are contract financing payments that are not payment for accepted items.

(c) Performance-based payments are fully recoverable, in the same manner as progress payments, in the event of default. Except as provided in 32.1003(c), the contracting officer must not use performance-based payments when other forms of contract financing are provided.

(d) For Government accounting purposes, the Government should treat performance-based payments like progress payments based on costs under Subpart 32.5.

(e) Performance-based payments are contract financing payments and, therefore, are not subject to the interest-penalty provisions of prompt payment (see Subpart 32.9). However, each agency must make these payments in accordance with the agency's policy for prompt payment of contract financing payments.

32.1002 Bases for performance-based payments.

Performance-based payments may be made on any of the following bases—

- (a) Performance measured by objective, quantifiable methods;
- (b) Accomplishment of defined events; or
- (c) Other quantifiable measures of results.

32.1003 Criteria for use.

Performance-based payments shall be used only if the following conditions are met:

- (a) The contracting officer and offeror are able to agree on the performance-based payment terms;
- (b) The contract is a definitized fixed-price type contract; and
- (c) The contract does not provide for other methods of contract financing, except that advance payments in accordance with Subpart 32.4, or guaranteed loans in accordance with Subpart 32.3 may be used.

32.1004 Procedures.

Performance-based payments may be made either on a whole contract or on a deliverable item basis, unless otherwise prescribed by agency regulations. Financing payments to be made on a whole contract basis are applicable to the entire contract, and not to specific deliverable items. Financing payments to be made on a deliverable item basis are applicable to a specific individual deliverable item. (A deliverable item for these purposes is a separate item with a distinct unit price. Thus, a contract line item for 10 airplanes, with a unit price of \$1,000,000 each, has 10 deliverable items—the separate planes. A contract line item for 1 lot of 10 airplanes, with a lot price of \$10,000,000, has only one deliverable item—the lot.)

(a) *Establishing performance bases.* (1) The basis for performance-based payments may be either specifically described events (*e.g.*, milestones) or some measurable criterion of performance. Each event or performance criterion that will trigger a finance payment must be an integral and necessary part of contract performance and must be identified in the contract, along with a description of what constitutes successful performance of the event or attainment of the performance criterion. The signing of contracts

or modifications, the exercise of options, or other such actions must not be events or criteria for performance-based payments. An event need not be a critical event in order to trigger a payment, but the Government must be able to readily verify successful performance of each such event or performance criterion.

(2) Events or criteria may be either severable or cumulative. The successful completion of a severable event or criterion is independent of the accomplishment of any other event or criterion. Conversely, the successful accomplishment of a cumulative event or criterion is dependent upon the previous accomplishment of another event. A contract may provide for more than one series of severable and/or cumulative performance events or criteria performed in parallel. The contracting officer must include the following in the contract:

(i) The contract must not permit payment for a cumulative event or criterion until the dependent event or criterion has been successfully completed.

(ii) The contract must specifically identify severable events or criteria.

(iii) The contract must identify which events or criteria are preconditions for the successful achievement of each cumulative event or criterion.

(iv) Because performance-based payments are contract financing, events or criteria must not serve as a vehicle to reward the contractor for completion of performance levels over and above what is required for successful completion of the contract.

(v) If payment of performance-based finance amounts is on a deliverable item basis, each event or performance criterion must be part of the performance necessary for that deliverable item and must be identified to a specific contract line item or subline item.

(b) *Establishing performance-based finance payment amounts.* (1) The contracting officer must establish a complete, fully defined schedule of events or performance criteria and payment amounts when negotiating contract terms. If a contract action significantly affects the price, or event or performance criterion, the contracting officer responsible for pricing the contract modification must adjust the performance-based payment schedule appropriately.

(2) Total performance-based payments must—

(i) Reflect prudent contract financing provided only to the extent needed for contract performance (see 32.104(a)); and

(ii) Not exceed 90 percent of the contract price if on a whole contract basis, or 90 percent of the delivery item price if on a delivery item basis.

(3) The contract must specifically state the amount of each performance-based payment either as a dollar amount or as a percentage of a specifically identified price (*e.g.*,

contract price, or unit price of the deliverable item). The payment of contract financing has a cost to the Government in terms of interest paid by the Treasury to borrow funds to make the payment. Because the contracting officer has wide discretion as to the timing and amount of the performance-based payments, the contracting officer must ensure that—

(i) The total contract price is fair and reasonable, all factors considered; and

(ii) Performance-based payment amounts are commensurate with the value of the performance event or performance criterion, and are not expected to result in an unreasonably low or negative level of contractor investment in the contract. To confirm sufficient investment, the contracting officer may request expenditure profile information from offerors, but only if other information in the proposal, or information otherwise available to the contracting officer, is expected to be insufficient.

(4) Unless agency procedures prescribe the bases for establishing performance-based payment amounts, contracting officers may establish them on any rational basis, including (but not limited to)—

(i) Engineering estimates of stages of completion;

(ii) Engineering estimates of hours or other measures of effort to be expended in performance of an event or achievement of a performance criterion; or

(iii) The estimated projected cost of performance of particular events.

(5) When subsequent contract modifications are issued, the contracting officer must adjust the performance-based payment schedule as necessary to reflect the actions required by those contract modifications.

(c) *Instructions for multiple appropriations.* If there is more than one appropriation account (or subaccount) funding payments on the contract, the contracting officer must provide instructions to the Government payment office for distribution of financing payments to the respective funds accounts. Distribution instructions must be consistent with the contract's liquidation provisions.

(d) *Liquidating performance-based finance payments.* Performance-based amounts must be liquidated by deducting a percentage or a designated dollar amount from the delivery payments. The contracting officer must specify the liquidation rate or designated dollar amount in the contract. The method of liquidation must ensure complete liquidation no later than final payment.

(1) If the contracting officer establishes the performance-based payments on a delivery item basis, the liquidation amount for each line item is the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount.

(2) If the performance-based finance payments are on a whole contract basis, liquidation is by predesignated liquidation amounts or liquidation percentages.

(e) *Competitive negotiated solicitations.* (1) If a solicitation requests offerors to propose performance-based payments, the solicitation must specify—

(i) What, if any, terms must be included in all offers; and

(ii) The extent to which and how offeror-proposed performance-based payment terms will be evaluated. Unless agencies prescribe other evaluation procedures, if the contracting officer anticipates that the cost of providing performance-based payments would have a significant impact on determining the best value offer, the solicitation should include an adjustment of proposed prices to reflect the estimated cost to the Government of providing each offeror's proposed performance-based payments (see Alternate I to the provision at 52.232-28).

(2) The contracting officer must—

(i) Review the proposed terms to ensure they comply with this section; and

(ii) Use the adjustment method in 32.205(c) if the price is to be adjusted for evaluation purposes in accordance with paragraph (e)(1)(ii) of this section.

32.1005 Solicitation provision and contract clause.

(a) Insert the clause at 52.232-32, Performance-Based Payments, with the description of the basis for payment and liquidation as required in 32.1004 in—

(1) Solicitations that may result in contracts providing for performance-based payments; and

(2) Fixed-price contracts under which the Government will provide performance-based payments.

(b)(1) Insert the solicitation provision at 52.232-28, Invitation to Propose Performance-Based Payments, in negotiated solicitations that invite offerors to propose performance-based payments.

(2) Use the provision with its Alternate I in competitive negotiated solicitations if the Government intends to adjust proposed prices for proposal evaluation purposes (see 32.1004(e)).

32.1006 [Reserved]

32.1007 Administration and payment of performance-based payments.

(a) *Responsibility.* The contracting officer responsible for administration of the contract shall be responsible for review and approval of performance-based payments.

(b) *Approval of financing requests.* Unless otherwise provided in agency regulations, or by agreement with the appropriate payment official—

(1) The contracting officer shall be responsible for receiving, approving, and transmitting all performance-based payment requests to the appropriate payment office; and

(2) Each approval shall specify the amount to be paid, necessary contractual information, and the appropriation account(s) (see 32.1004(c)) to be charged for the payment.

(c) *Reviews.* The contracting officer is responsible for determining what reviews are required for protection of the Government's interests. The contracting officer should consider the contractor's experience, performance record, reliability, financial strength, and the adequacy of controls established by the contractor for the administration of performance-based payments. Based upon the risk to the Government, post-payment reviews and verifications should normally be arranged as considered appropriate by the contracting officer. If considered necessary by the contracting officer, pre-payment reviews may be required.

(d) *Incomplete performance.* The contracting officer shall not approve a performance-based payment until the specified event or performance criterion has been successfully accomplished in accordance with the contract. If an event is cumulative, the contracting officer shall not approve the performance-based payment unless all identified preceding events or criteria are accomplished.

(e) *Government-caused delay.* Entitlement to a performance-based payment is solely on the basis of successful performance of the specified events or performance criteria. However, if there is a Government-caused delay, the contracting officer may renegotiate the performance-based payment schedule, to facilitate contractor billings for any successfully accomplished portions of the delayed event or criterion.

32.1008 Suspension or reduction of performance-based payments.

The contracting officer shall apply the policy and procedures in paragraphs (a), (b), (c), and (e) of 32.503-6, Suspension or reduction of payments, whenever exercising the Government's rights to suspend or reduce performance-based payments in accordance with paragraph (e) of the clause at 52.232-32, Performance-Based Payments.

32.1009 Title.

(a) Since the clause at 52.232-32, Performance-Based Payments, gives the Government title to the property described in paragraph (f) of the clause, the contracting officer must ensure that the Government title is not compromised by other encumbrances. Ordinarily, the contracting officer, in the absence of reason to believe otherwise, may rely upon the contractor's certification contained in the payment request.

(b) If the contracting officer becomes aware of any arrangement or condition that would impair the Government's title to the property affected by the Performance-Based Payments clause, the contracting officer shall require additional protective provisions.

(c) The existence of any such encumbrance is a violation of the contractor's obligations under the contract, and the contracting officer may, if necessary, suspend or reduce payments under the terms of the Performance-Based Payments clause covering failure to comply with a material requirement of the contract. In addition, if the contractor fails to disclose an existing encumbrance in the certification, the contracting officer should consult with legal counsel concerning possible violation of 31 U.S.C. 3729, the False Claims Act.

32.1010 Risk of loss.

(a) Under the clause at 52.232-32, Performance-Based Payments, and except for normal spoilage, the contractor bears the risk for loss, theft, destruction, or damage to property affected by the clause, even though title is vested in the Government, unless the Government has expressly assumed this risk. The clauses prescribed in this regulation related to performance-based payments, default, and terminations do not constitute a Government assumption of risk.

(b) If a loss occurs in connection with property for which the contractor bears the risk, and the property is needed for performance, the contractor is obligated to repay the Government the performance-based payments related to the property.

(c) The contractor is not obligated to pay for the loss of property for which the Government has assumed the risk of loss. However, a serious loss may impede the satisfactory progress of contract performance, so that the contracting officer may need to act under paragraph (e)(2) of the Performance-Based Payments clause. In addition, while the contractor is not required to repay previous performance-based payments in the event of a loss for which the Government has assumed the risk, such a loss may prevent the contractor from making the certification required by the Performance-Based Payments clause.

Subpart 32.11—Electronic Funds Transfer

32.1100 Scope of subpart.

This subpart provides policy and procedures for contract financing and delivery payments to contractors by electronic funds transfer (EFT).

32.1101 Statutory requirements.

31 U.S.C. 3332 requires, subject to implementing regulations of the Secretary of the Treasury at 31 CFR part 208, that EFT be used to make all contract payments.

32.1102 Definitions.

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

“EFT information” means information necessary for making a payment by EFT through specified EFT mechanisms.

“Governmentwide commercial purchase card”, as used in this part, means a card that is similar in nature to a commercial credit card that is used to make financing and delivery payments for supplies and services. The purchase card is an EFT method and it may be used as a means to meet the requirement to pay by EFT, to the extent that purchase card limits do not preclude such payments.

“Payment information” means the payment advice provided by the Government to the contractor that identifies what the payment is for, any computations or adjustments made by the Government, and any information required by the Prompt Payment Act.

32.1103 Applicability.

The Government shall provide all contract payments through EFT except if—

(a) The office making payment under a contract that requires payment by EFT, loses the ability to release payment by EFT. To the extent authorized by 31 CFR part 208, the payment office shall make necessary payments pursuant to paragraph (a)(2) of the clause at either 52.232-33 or 52.232-34 until such time as it can make EFT payments;

(b) The payment is to be received by or on behalf of the contractor outside the United States and Puerto Rico (but see 32.1106(b));

(c) A contract is paid in other than United States currency (but see 32.1106(b));

(d) Payment by EFT under a classified contract (see 4.401) could compromise the safeguarding of classified information or national security, or where arrangements for appropriate EFT payments would be impractical due to security considerations;

(e) A contract is awarded by a deployed contracting officer in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13), or a contract is awarded by any contracting officer in the conduct of emergency operations, such as

responses to natural disasters or national or civil emergencies, if—

- (1) EFT is not known to be possible; or
- (2) EFT payment would not support the objectives of the operation;
- (f) The agency does not expect to make more than one payment to the same recipient within a one-year period;
- (g) An agency's need for supplies and services is of such unusual and compelling urgency that the Government would be seriously injured unless payment is made by a method other than EFT;
- (h) There is only one source for supplies and services and the Government would be seriously injured unless payment is made by a method other than EFT; or
- (i) Otherwise authorized by Department of the Treasury Regulations at 31 CFR part 208.

32.1104 Protection of EFT information.

The Government shall protect against improper disclosure of contractors' EFT information.

32.1105 Assignment of claims.

The use of EFT payment methods is not a substitute for a properly executed assignment of claims in accordance with Subpart 32.8. EFT information that shows the ultimate recipient of the transfer to be other than the contractor, in the absence of a proper assignment of claims, is considered to be incorrect EFT information within the meaning of the "Suspension of Payment" paragraphs of the EFT clauses at 52.232-33 and 52.232-34.

32.1106 EFT mechanisms.

(a) *Domestic EFT mechanisms.* The EFT clauses at 52.232-33 and 52.232-34 are designed for use with the domestic United States banking system, using United States currency, and only the specified mechanisms (U.S. Automated Clearing House, and Fedwire Transfer System) of EFT. However, the head of an agency may authorize the use of any other EFT mechanism for domestic EFT with the concurrence of the office or agency responsible for making payments.

(b) *Nondomestic EFT mechanisms and other than United States currency.* The Government shall provide payment by other than EFT for payments received by or on behalf of the contractor outside the United States and Puerto Rico or for contracts paid in other than United States currency. However, the head of an agency may authorize appropriate use of EFT with the concurrence of the office or agency responsible for making payments if—

- (1) The political, financial, and communications infrastructure in a foreign country supports payment by EFT; or

- (2) Payments of other than United States currency may be made safely.

32.1107 Payment information.

The payment or disbursing office shall forward to the contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System.

32.1108 Payment by Governmentwide commercial purchase card.

A Governmentwide commercial purchase card charge authorizes the third party (*e.g.*, financial institution) that issued the purchase card to make immediate payment to the contractor. The Government reimburses the third party at a later date for the third party's payment to the contractor.

(a) The clause at 52.232-36, Payment by Third Party, governs when a contractor submits a charge against the purchase card for contract payment. The clause provides that the contractor shall make such payment requests by a charge to a Government account with the third party at the time the payment clause(s) of the contract authorizes the contractor to submit a request for payment, and for the amount due in accordance with the terms of the contract. To the extent that such a payment would otherwise be approved, the charge against the purchase card should not be disputed when the charge is reported to the Government by the third party. To the extent that such payment would otherwise not have been approved, an authorized individual (see 1.603-3) shall take action to remove the charge, such as by disputing the charge with the third party or by requesting that the contractor credit the charge back to the Government under the contract.

(b) Written contracts to be paid by purchase card should include the clause at 52.232-36, Payment by Third Party, as prescribed by 32.1110(d). However, payment by a purchase card also may be made under a contract that does not contain the clause to the extent the contractor agrees to accept that method of payment.

(c) The clause at 52.232-36, Payment by Third Party, requires that the contract—

- (1) Identify the third party and the particular purchase card to be used; and
- (2) Not include the purchase card account number. The purchase card account number should be provided separately to the contractor.

32.1109 EFT information submitted by offerors.

If offerors are required to submit EFT information prior to award, the successful offeror is not responsible for resubmitting this information after award of the contract except to make changes, or to place the information on invoices if required by agency procedures. Therefore,

contracting officers shall forward EFT information provided by the successful offeror to the appropriate office.

32.1110 Solicitation provision and contract clauses.

(a) Unless payment will be made exclusively through use of the Governmentwide commercial purchase card or other third party payment arrangement (see 13.301 and paragraph (d) of this section) or an exception listed in 32.1103(a) through (i) applies—

(1) The contracting officer shall insert the clause at 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, in all solicitations and contracts if the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information. The contracting officer also shall insert this clause if the payment office does not currently have the ability to make payment by EFT, but will use the CCR database as its source of EFT information when it begins making payments by EFT;

(2)(i) The contracting officer shall insert the clause at 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration, in all other solicitations and contracts. The contracting officer also shall insert this clause if the payment office currently does not have the ability to make payment by EFT, but will use a source other than the CCR database for EFT information when it begins making payments by EFT.

(ii)(A) If permitted by agency procedures, the contracting officer may insert in paragraph (b)(1) of the clause, a particular time after award, such as a fixed number of days, or event such as the submission of the first request for payment.

(B) If no agency procedures are prescribed, the time period inserted in paragraph (b)(1) of the clause shall be “no later than 15 days prior to submission of the first request for payment.”

(b) If the head of the agency has authorized, in accordance with 32.1106, to use a nondomestic EFT mechanism, the contracting officer shall insert in solicitations and contracts a clause substantially the same as 52.232-33 or 52.232-34 that clearly addresses the nondomestic EFT mechanism.

(c) If EFT information is to be submitted to other than the payment office in accordance with agency procedures, the contracting officer shall insert in solicitations and contracts the clause at 52.232-35, Designation of Office for Government Receipt of Electronic Funds Transfer Information, or a clause substantially the same as 52.232-35

that clearly informs the contractor where to send the EFT information.

(d) If payment under a written contract will be made by a charge to a Government account with a third party such as a Governmentwide commercial purchase card, then the contracting officer shall insert the clause at 52.232-36, Payment by Third Party, in solicitations and contracts. Payment by a purchase card may also be made under a contract that does not contain the clause at 52.232-36, to the extent the contractor agrees to accept that method of payment.

(e) If the contract or agreement provides for the use of delivery orders, and provides that the ordering office designate the method of payment for individual orders, the contracting officer shall insert, in the solicitation and contract or agreement, the clause at 52.232-37, Multiple Payment Arrangements, and, to the extent they are applicable, the clauses at—

(1) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration;

(2) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration; and

(3) 52.232-36, Payment by Third Party.

(f) If more than one disbursing office will make payment under a contract or agreement, the contracting officer, or ordering office (if the contract provides for choices between EFT clauses on individual orders or classes of orders), shall include or identify the EFT clause appropriate for each office and shall identify the applicability by disbursing office and contract line item.

(g) If the solicitation contains the clause at 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration, and an offeror is required to submit EFT information prior to award—

(1) The contracting officer shall insert in the solicitation the provision at 52.232-38, Submission of Electronic Funds Transfer Information with Offer, or a provision substantially the same; and

(2) For sealed bid solicitations, the contracting officer shall amend 52.232-38 to ensure that a bidder's EFT information—

(i) Is not a part of the bid to be opened at the public opening; and

(ii) May not be released to members of the general public who request a copy of the bid.

* * * * *

FAC 97-16 MARCH 27, 2000

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 52.232-9 Limitation on Withholding of Payments.
- 52.232-10 Payments under Fixed-Price Architect-Engineer Contracts.
- 52.232-11 Extras.
- 52.232-12 Advance Payments.
- 52.232-13 Notice of Progress Payments.
- 52.232-14 Notice of Availability of Progress Payments Exclusively for Small Business Concerns.
- 52.232-15 Progress Payments Not Included.
- 52.232-16 Progress Payments.
- 52.232-17 Interest.
- 52.232-18 Availability of Funds.
- 52.232-19 Availability of Funds for the Next Fiscal Year.
- 52.232-20 Limitation of Cost.
- 52.232-21 Limitation of Cost (Facilities).
- 52.232-22 Limitation of Funds.
- 52.232-23 Assignment of Claims.
- 52.232-24 Prohibition of Assignment of Claims.
- 52.232-25 Prompt Payment.
- 52.232-26 Prompt Payment for Fixed-Price Architect-Engineer Contracts.
- 52.232-27 Prompt Payment for Construction Contracts.
- 52.232-28 Invitation to Propose Performance-Based Payments.
- 52.232-29 Terms for Financing of Purchases of Commercial Items.
- 52.232-30 Installment Payments for Commercial Items.
- 52.232-31 Invitation to Propose Financing Terms.
- 52.232-32 Performance-Based Payments.
- 52.232-33 Payment by Electronic Funds Transfer—Central Contractor Registration.
- 52.232-34 Payment by Electronic Funds Transfer—Other than Central Contractor Registration.
- 52.232-35 Designation of Office for Government Receipt of Electronic Funds Transfer Information.
- 52.232-36 Payment by Third Party.
- 52.232-37 Multiple Payment Arrangements.
- 52.232-38 Submission of Electronic Funds Transfer Information with Offer.
- 52.233-1 Disputes.
- 52.233-2 Service of Protest.
- 52.233-3 Protest after Award.
- 52.234-1 Industrial Resources Developed Under Defense Production Act Title III.
- 52.235 [Reserved]
- 52.236-1 Performance of Work by the Contractor.
- 52.236-2 Differing Site Conditions.
- 52.236-3 Site Investigation and Conditions Affecting the Work.
- 52.236-4 Physical Data.
- 52.236-5 Material and Workmanship.
- 52.236-6 Superintendence by the Contractor.
- 52.236-7 Permits and Responsibilities.
- 52.236-8 Other Contracts.
- 52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.
- 52.236-10 Operations and Storage Areas.
- 52.236-11 Use and Possession Prior to Completion.
- 52.236-12 Cleaning Up.
- 52.236-13 Accident Prevention.
- 52.236-14 Availability and Use of Utility Services.
- 52.236-15 Schedules for Construction Contracts.
- 52.236-16 Quantity Surveys.
- 52.236-17 Layout of Work.
- 52.236-18 Work Oversight in Cost-Reimbursement Construction Contracts.
- 52.236-19 Organization and Direction of the Work.
- 52.236-20 [Reserved]
- 52.236-21 Specifications and Drawings for Construction.
- 52.236-22 Design Within Funding Limitations.
- 52.236-23 Responsibility of the Architect-Engineer Contractor.
- 52.236-24 Work Oversight in Architect-Engineer Contracts.
- 52.236-25 Requirements for Registration of Designers.
- 52.236-26 Preconstruction Conference.
- 52.236-27 Site Visit (Construction).
- 52.236-28 Preparation of Proposals—Construction.
- 52.237-1 Site Visit.
- 52.237-2 Protection of Government Buildings, Equipment, and Vegetation.
- 52.237-3 Continuity of Services.
- 52.237-4 Payment by Government to Contractor.
- 52.237-5 Payment by Contractor to Government.
- 52.237-6 Incremental Payment by Contractor to Government.
- 52.237-7 Indemnification and Medical Liability Insurance.
- 52.237-8 Restriction on Severance Payments to Foreign Nationals.
- 52.237-9 Waiver of Limitation on Severance Payments to Foreign Nationals.
- 52.237-10 Identification of Uncompensated Overtime.
- 52.238 [Reserved]
- 52.239-1 Privacy or Security Safeguards.
- 52.240 [Reserved]
- 52.241 Utility Services Provisions and Clauses.
- 52.241-1 Electric Service Territory Compliance Representation.
- 52.241-2 Order of Precedence—Utilities.
- 52.241-3 Scope and Duration of Contract.
- 52.241-4 Change in Class of Service.
- 52.241-5 Contractor's Facilities.
- 52.241-6 Service Provisions.
- 52.241-7 Change in Rates or Terms and Conditions of Service for Regulated Services.
- 52.241-8 Change in Rates or Terms and Conditions of Service for Unregulated Services.
- 52.241-9 Connection Charge.
- 52.241-10 Termination Liability.
- 52.241-11 Multiple Service Locations.
- 52.241-12 Nonrefundable, Nonrecurring Service Charge.
- 52.241-13 Capital Credits.
- 52.242-1 Notice of Intent to Disallow Costs.
- 52.242-2 Production Progress Reports.
- 52.242-3 Penalties for Unallowable Costs.52.242-Certification of Final Indirect Costs.
- 52.242-5—52.242-9 [Reserved]
- 52.242-10 F.o.b. Origin—Government Bills of Lading or Prepaid Postage.
- 52.242-11 F.o.b. Origin—Government Bills of Lading or Indicia Mail.

52.242-12	Report of Shipment (REPSHIP).	52.246-12	Inspection of Construction.
52.242-13	Bankruptcy.	52.246-13	Inspection—Dismantling, Demolition, or Removal of Improvements.
52.242-14	Suspension of Work.	52.246-14	Inspection of Transportation.
52.242-15	Stop-Work Order.	52.246-15	Certificate of Conformance.
52.242-16	Stop-Work Order—Facilities.	52.246-16	Responsibility for Supplies.
52.242-17	Government Delay of Work.	52.246-17	Warranty of Supplies of a Noncomplex Nature.
52.243-1	Changes—Fixed-Price.	52.246-18	Warranty of Supplies of a Complex Nature.
52.243-2	Changes—Cost-Reimbursement.	52.246-19	Warranty of Systems and Equipment under Performance Specifications or Design Criteria.
52.243-3	Changes—Time-and-Materials or Labor-Hours.	52.246-20	Warranty of Services.
52.243-4	Changes.	52.246-21	Warranty of Construction.
52.243-5	Changes and Changed Conditions.	52.246-22	[Reserved]
52.243-6	Change Order Accounting.	52.246-23	Limitation of Liability.
52.243-7	Notification of Changes.	52.246-24	Limitation of Liability—High-Value Items.
52.244-1	[Reserved]	52.246-25	Limitation of Liability—Services.
52.244-2	Subcontracts.	52.247-1	Commercial Bill of Lading Notations.
52.244-3	[Reserved]	52.247-2	Permits, Authorities, or Franchises.
52.244-4	Subcontractors and Outside Associates and Consultants (Architect-Engineer Services).	52.247-3	Capability to Perform a Contract for the Relocation of a Federal Office.
52.244-5	Competition in Subcontracting.	52.247-4	Inspection of Shipping and Receiving Facilities.
52.244-6	Subcontracts for Commercial Items and Commercial Components.	52.247-5	Familiarization with Conditions.
52.245-1	Property Records.	52.247-6	Financial Statement.
52.245-2	Government Property (Fixed-Price Contracts).	52.247-7	Freight Excluded.
52.245-3	Identification of Government-Furnished Property.	52.247-8	Estimated Weights or Quantities Not Guaranteed.
52.245-4	Government-Furnished Property (Short Form).	52.247-9	Agreed Weight—General Freight.
52.245-5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).	52.247-10	Net Weight—General Freight.
52.245-6	Liability for Government Property (Demolition Services Contracts).	52.247-11	Net Weight—Household Goods or Office Furniture.
52.245-7	Government Property (Consolidated Facilities).	52.247-12	Supervision, Labor, or Materials.
52.245-8	Liability for the Facilities.	52.247-13	Accessorial Services—Moving Contracts.
52.245-9	Use and Charges.	52.247-14	Contractor Responsibility for Receipt of Shipment.
52.245-10	Government Property (Facilities Acquisition).	52.247-15	Contractor Responsibility for Loading and Unloading.
52.245-11	Government Property (Facilities Use).	52.247-16	Contractor Responsibility for Returning Undelivered Freight.
52.245-12	Contract Purpose (Nonprofit Educational Institutions).	52.247-17	Charges.
52.245-13	Accountable Facilities (Nonprofit Educational Institutions).	52.247-18	Multiple Shipments.
52.245-14	Use of Government Facilities.	52.247-19	Stopping in Transit for Partial Unloading.
52.245-15	Transfer of Title to the Facilities.	52.247-20	Estimated Quantities or Weights for Evaluation of Offers.
52.245-16	Facilities Equipment Modernization.	52.247-21	Contractor Liability for Personal Injury and/or Property Damage.
52.245-17	Special Tooling.	52.247-22	Contractor Liability for Loss of and/or Damage to Freight other than Household Goods.
52.245-18	Special Test Equipment.	52.247-23	Contractor Liability for Loss of and/or Damage to Household Goods.
52.245-19	Government Property Furnished “As Is.”	52.247-24	Advance Notification by the Government.
52.246-1	Contractor Inspection Requirements.	52.247-25	Government-Furnished Equipment With or Without Operators.
52.246-2	Inspection of Supplies—Fixed-Price.	52.247-26	Government Direction and Marking.
52.246-3	Inspection of Supplies—Cost-Reimbursement.	52.247-27	Contract Not Affected by Oral Agreement.
52.246-4	Inspection of Services—Fixed-Price.	52.247-28	Contractor's Invoices.
52.246-5	Inspection of Services—Cost-Reimbursement.	52.247-29	F.o.b. Origin.
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52.246-7	Inspection of Research and Development— Fixed Price.	52.247-31	F.o.b. Origin, Freight Allowed.
52.246-8	Inspection of Research and Development— Cost Reimbursement.	52.247-32	F.o.b. Origin, Freight Prepaid.
52.246-9	Inspection of Research and Development (Short Form).	52.247-33	F.o.b. Origin, with Differentials.
52.246-10	Inspection of Facilities.	52.247-34	F.o.b. Destination.
52.246-11	Higher-Level Contract Quality Requirement.		

_____ Percent decrease [*Contracting Officer insert percentage*]

This increase or decrease shall apply to _____.*

(End of clause)

* Contracting Officer shall insert in the blank the designation(s) to which the percentages apply, such as—

- (1) The total contract quantity;
- (2) Item 1 only;
- (3) Each quantity specified in the delivery schedule;
- (4) The total item quantity for each destination; or
- (5) The total quantity of each item without regard to destination.

52.211-17 Delivery of Excess Quantities.

As prescribed in 11.703(b), insert the following clause:

DELIVERY OF EXCESS QUANTITIES (SEP 1989)

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and the Government receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. The Government may retain such excess quantities up to \$250 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of \$250 will, at the option of the Government, either be returned at the Contractor's expense or retained and paid for by the Government at the contract unit price.

(End of clause)

52.211-18 Variation in Estimated Quantity.

As prescribed in 11.703(c), insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated that authorizes a variation in the estimated quantity of unit-priced items:

VARIATION IN ESTIMATED QUANTITY (APR 1984)

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting

Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgement of the Contracting Officer, is justified.

(End of clause)

52.212-1 Instructions to Offerors—Commercial Items.

As prescribed in 12.301(b)(1), insert the following provision:

INSTRUCTIONS TO OFFERORS—COMMERCIAL ITEMS
(MAR 2000)

(a) *Standard industrial classification (SIC) code and small business size standard.* The SIC code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) *Submission of offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show—

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt of offers;
- (3) The name, address, and telephone number of the offeror;
- (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
- (5) Terms of any express warranty;
- (6) Price and any discount terms;
- (7) "Remit to" address, if different than mailing address;
- (8) A completed copy of the representations and certifications at FAR 52.212-3;
- (9) Acknowledgment of Solicitation Amendments;
- (10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and

(11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or

information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) *Period for acceptance of offers.* The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) *Product samples.* When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

(e) *Multiple offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) *Late submissions, modifications, revisions, and withdrawals of offers.* (1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

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

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

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

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

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be

received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(g) *Contract award (not applicable to Invitation for Bids).* The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) *Multiple awards.* The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) *Availability of requirements documents cited in the solicitation.* (1)(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to—

GSA Federal Supply Service Specifications Section
Suite 8100
470 East L'Enfant Plaza, SW
Washington, DC 20407

Telephone (202) 619-8925
Facsimile (202) 619-8978.

(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.

(2) The DoD Index of Specifications and Standards (DoDISS) and documents listed in it may be obtained from the—

Department of Defense Single Stock Point (DoDSSP)
Building 4, Section D
700 Robbins Avenue
Philadelphia, PA 19111-5094

Telephone (215) 697-2667/2179
Facsimile (215) 697-1462.

(i) Automatic distribution may be obtained on a subscription basis.

(ii) Order forms, pricing information, and customer support information may be obtained—

(A) By telephone at (215) 697-2667/2179; or

(B) Through the DoDSSP Internet site at <http://assist.daps.mil>.

(3) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(j) *Data Universal Numbering System (DUNS) Number.* (Applies to offers exceeding \$25,000.) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” followed by the DUNS number that identifies the offeror’s name and address. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet to obtain one at no charge. An offeror within the United States may call 1-800-333-0505. The offeror may obtain more information regarding the DUNS number, including locations of local Dun and Bradstreet Information Services offices for offerors located outside the United States, from the Internet home page at <http://www.customerservice@dnb.com>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@mail.dnb.com.

(End of provision)

52.212-2 Evaluation—Commercial Items

As prescribed in 12.301(c), the Contracting Officer may insert a provision substantially as follows:

EVALUATION—COMMERCIAL ITEMS (JAN 1999)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

[The next page is 52-37.]

be added to the unliquidated progress payment account, consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reduction in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(h) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percent-age-of-cost basis.

(i) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (c) of this section are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (e), (f), and (g) of this section, and pending final settlement of the disagreement on appeal, by failure to appeal, or by agreement, this decision shall be treated as an executed contract modification.

(j) *Termination.* If this contract is terminated before price redetermination, prices shall be established in accordance with this clause for completed supplies and services not terminated. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(End of clause)

52.216-7 Allowable Cost and Payment.

As prescribed in 16.307(a), insert the following clause:

ALLOWABLE COST AND PAYMENT (MAR 2000)

(a) *Invoicing.* The Government shall make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(b) *Reimbursing costs.* (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term “costs” includes only—

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments will be made—

(1) In accordance with the terms and conditions of a subcontract or invoice; and

(2) Ordinarily prior to the submission of the Contractor’s next payment request to the Government;

(B) Materials issued from the Contractor’s inventory and placed in the production process for use on the contract;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—

(i) The Contractor’s practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor’s indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor’s expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks.

(d) *Final indirect cost rates.* (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Within 120 days after settlement of the final indirect cost rates covering the year in which this contract is physically complete (or longer, if approved in writing by the Contracting Officer), the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

(5) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(e) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates—

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be—

(1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

(h) *Final payment.* (1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(4) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except—

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, exclud-

52.216-22 Indefinite Quantity.

As prescribed in 16.506(e), insert the following clause:

INDEFINITE QUANTITY (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after _____ [*insert date*].

(End of clause)

52.216-23 Execution and Commencement of Work.

As prescribed in 16.603-4(b)(1), insert the following clause in solicitations and contracts when a letter contract is contemplated, except that it may be omitted from letter contracts awarded on SF 26:

EXECUTION AND COMMENCEMENT OF WORK (APR 1984)

The Contractor shall indicate acceptance of this letter contract by signing three copies of the contract and returning them to the Contracting Officer not later than _____ [*insert date*]. Upon acceptance by both parties, the Contractor shall proceed with performance of the work, including purchase of necessary materials.

(End of clause)

52.216-24 Limitation of Government Liability.

As prescribed in 16.603-4(b)(2), insert the following clause in solicitations and contracts when a letter contract is contemplated:

LIMITATION OF GOVERNMENT LIABILITY (APR 1984)

(a) In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding _____ dollars.

(b) The maximum amount for which the Government shall be liable if this contract is terminated is _____ dollars.

(End of clause)

52.216-25 Contract Definitization.

As prescribed in 16.603-4(b)(3), insert the following clause:

CONTRACT DEFINITIZATION (OCT 1997)

(a) A _____ [*insert specific type of contract*] definitive contract is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the letter contract, (2) all clauses required by law on the date of execution of the definitive contract, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a _____ [*insert specific type of proposal; e.g., fixed-price or cost-and-fee*] proposal and cost or pricing data supporting its proposal.

(b) The schedule for definitizing this contract is [*insert target date for definitization of the contract and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of make-or-buy and subcontracting plans and cost or pricing data*]:

(c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph (b) of this section, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with Subpart 15.4 and Part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by—

(i) All clauses required by the FAR on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with subparagraph (c)(1) of this section, all clauses, terms, and conditions included in this letter contract shall continue in effect, except those that by their nature apply only to a letter contract.

(End of clause)

Alternate I (Apr 1984). In letter contracts awarded on the basis of price competition, add the following paragraph (d) to the basic clause:

(d) The definitive contract resulting from this letter contract will include a negotiated _____ [insert "price ceiling" or "firm fixed price"] in no event to exceed _____ [insert the proposed price upon which the award was based].

52.216-26 Payments of Allowable Costs Before Definitization.

As prescribed in 16.603-4(c), insert the following clause:

PAYMENTS OF ALLOWABLE COSTS BEFORE DEFINITIZATION
(MAR 2000)

(a) *Reimbursement rate.* Pending the placing of the definitive contract referred to in this letter contract, the Government will promptly reimburse the Contractor for all allowable costs under this contract at the following rates:

(1) One hundred percent of approved costs representing financing payments to subcontractors under fixed-price subcontracts, provided that the Government's payments to the Contractor will not exceed 80 percent of the allowable costs of those subcontractors.

(2) One hundred percent of approved costs representing cost-reimbursement subcontracts; *provided*, that the Government's payments to the Contractor shall not exceed 85 percent of the allowable costs of those subcontractors.

(3) Eighty-five percent of all other approved costs.

(b) *Limitation of reimbursement.* To determine the amounts payable to the Contractor under this letter contract, the Contracting Officer shall determine allowable costs in accordance with the applicable cost principles in Part 31 of the Federal Acquisition Regulation (FAR). The total reimbursement made under this paragraph shall not exceed 85

percent of the maximum amount of the Government's liability, as stated in this contract.

(c) *Invoicing.* Payments shall be made promptly to the Contractor when requested as work progresses, but (except for small business concerns) not more often than every 2 weeks, in amounts approved by the Contracting Officer. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost incurred by the Contractor in the performance of this contract.

(d) *Allowable costs.* For the purpose of determining allowable costs, the term "costs" includes—

(1) Those recorded costs that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(2) When the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(i) Supplies and services purchased directly for the contract, provided payments will be made—

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily prior to the submission of the Contractor's next payment request to the Government;

(ii) Materials issued from the Contractor's stores inventory and placed in the production process for use on the contract;

(iii) Direct labor;

(iv) Direct travel;

(v) Other direct in-house costs; and

(vi) Properly allocable and allowable indirect costs as shown on the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(3) The amount of financing payments that the Contractor has paid by cash, check, or other forms of payment to subcontractors.

(e) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks.

(f) *Audit.* At any time before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of costs audited. Any payment may be—

(1) Reduced by any amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for overpayments or underpayments made on preceding invoices or vouchers.

(End of clause)

once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within _____ [insert the period of time within which the Contracting Officer may exercise the option].

(End of clause)

52.217-9 Option to Extend the Term of the Contract.

As prescribed in 17.208(g), insert a clause substantially the same as the following:

OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within _____ [insert the period of time within which the Contracting Officer may exercise the option]; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least _____ days [60 days unless a different number of days is inserted] before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed _____ (months)(years).

(End of clause)

52.218 [Reserved]

52.219-1 Small Business Program Representations.

As prescribed in 19.307(a)(1), insert the following provision:

SMALL BUSINESS PROGRAM REPRESENTATIONS (MAY 1999)

(a)(1) The standard industrial classification (SIC) code for this acquisition is _____ [insert SIC code].

(2) The small business size standard is _____ [insert size standard].

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) *Representations.* (1) The offeror represents as part of its offer that it is, is not a small business concern.

(2) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, for general statistical

purposes, that it is, is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents as part of its offer that it is, is not a women-owned small business concern.

(c) *Definitions.*

“Small business concern,” as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (a) of this provision.

“Women-owned small business concern,” as used in this provision, means a small business concern—

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

(2) Whose management and daily business operations are controlled by one or more women.

(d) *Notice.* (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall—

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(End of provision)

Alternate I (Nov 1999). As prescribed in 19.307(a)(2), add the following paragraph (b)(4) to the basic provision:

(4) [Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, as part of its offer, that—

(i) It is, is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office of owner-

ship, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (b)(4)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [*The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.*] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

Alternate II (Nov 1999). As prescribed in 19.307(a)(3), add the following paragraph (b)(5) to the basic provision:

(5) [*Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.*] The offeror shall check the category in which its ownership falls:

Black American.
 Hispanic American.
 Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

Individual/concern, other than one of the preceding.

52.219-2 Equal Low Bids.

As prescribed in 19.307(c), insert the following provision:

EQUAL LOW BIDS (OCT 1995)

(a) This provision applies to small business concerns only.

(b) The bidder's status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

(c) Failure to identify the labor surplus areas as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

(End of provision)

52.219-3 Notice of Total HUBZone Set-Aside.

As prescribed in 19.1308(a), insert the following clause:

NOTICE OF TOTAL HUBZONE SET-ASIDE (JAN 1999)

(a) *Definition.* "HUBZone small business concern," as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) *General.* (1) Offers are solicited only from HUBZone small business concerns. Offers received from concerns that are not HUBZone small business concerns shall not be considered.

(2) Any award resulting from this solicitation will be made to a HUBZone small business concern.

(c) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than acquisition from a non-manufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(d) A HUBZone joint venture agrees that, in the performance of the contract, the applicable percentage specified in

52.219-23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

As prescribed in 19.1104, insert the following clause:

NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS (OCT 1999)

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

“Small disadvantaged business concern” means an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition; and either—

(1) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B; and

(i) No material change in disadvantaged ownership and control has occurred since its certification;

(ii) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iii) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net).

(2) It has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR part 124, subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted. In this case, in order to receive the benefit of a price evaluation adjustment, an offeror must receive certification as a small disadvantaged business concern by the Small Business Administration prior to contract award; or

(3) Is a joint venture as defined in 13 CFR 124.1002(f).

“Historically black college or university” means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense (DoD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

“Minority institution” means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)) which, for purposes of this clause, includes a Hispanic-serving institution of higher education as defined in Section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)).

“United States” means the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, and the District of Columbia.

(b) *Evaluation adjustment.* (1) The Contracting Officer will evaluate offers by adding a factor of ____ [*Contracting Officer insert the percentage*] percent to the price of all offers, except—

(i) Offers from small disadvantaged business concerns that have not waived the adjustment;

(ii) An otherwise successful offer of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is equaled or exceeded (see section 25.402 of the Federal Acquisition Regulation (FAR));

(iii) An otherwise successful offer where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government;

(iv) For DoD, NASA, and Coast Guard acquisitions, an otherwise successful offer from a historically black college or university or minority institution; and

(v) For DoD acquisitions, an otherwise successful offer of qualifying country end products (see sections 225.000-70 and 252.225-7001 of the Defense FAR Supplement).

(2) The Contracting Officer will apply the factor to a line item or a group of line items on which award may be made. The Contracting Officer will apply other evaluation factors described in the solicitation before application of the factor. The factor may not be applied if using the adjustment would cause the contract award to be made at a price that exceeds the fair market price by more than the factor in paragraph (b)(1) of this clause.

(c) *Waiver of evaluation adjustment.* A small disadvantaged business concern may elect to waive the adjustment, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply to offers that waive the adjustment.

____ Offeror elects to waive the adjustment.

(d) *Agreements.* (1) A small disadvantaged business concern, that did not waive the adjustment, agrees that in performance of the contract, in the case of a contract for—

(i) Services, except construction, at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern;

(ii) Supplies (other than procurement from a non-manufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern;

(iii) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern; or

(iv) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(2) A small disadvantaged business concern submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

Alternate I (Oct 1998). As prescribed in 19.1104, substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause:

(2) A small disadvantaged business concern submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small business concerns in the United States. This paragraph does not apply in connection with construction or service contracts.

Alternate II (Oct 1998) As prescribed in 19.1104, substitute the following paragraph (b)(1)(i) for paragraph (b)(1)(i) of the basic clause:

(i) Offers from small disadvantaged business concerns, that have not waived the adjustment, whose address is in a region for which an evaluation adjustment is authorized;

52.219-24 Small Disadvantaged Business Participation Program—Targets.

As prescribed in 19.1204(a), insert a provision substantially the same as the following:

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—TARGETS (JAN 1999)

(a) This solicitation contains a source selection factor or subfactor related to the participation of small disadvantaged business (SDB) concerns in the contract. Credit under that evaluation factor or subfactor is not available to an SDB concern that qualifies for a price evaluation adjustment under the clause at FAR 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, unless the SDB concern specifically waives the price evaluation adjustment.

(b) In order to receive credit under the source selection factor or subfactor, the offeror must provide, with its offer, targets, expressed as dollars and percentages of total contract value, for SDB participation in any of the Standard Industrial Classification (SIC) Major Groups as determined

by the Department of Commerce. The targets may provide for participation by a prime contractor, joint venture partner, teaming arrangement member, or subcontractor; however, the targets for subcontractors must be listed separately.

(End of provision)

52.219-25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.

As prescribed in 19.1204(b), insert the following clause:

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—DISADVANTAGED STATUS AND REPORTING (OCT 1999)

(a) *Disadvantaged status for joint venture partners, team members, and subcontractors.* This clause addresses disadvantaged status for joint venture partners, teaming arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor shall obtain representations of small disadvantaged status from joint venture partners, teaming arrangement members, and subcontractors through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR 52.219-22, Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern, is identified as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net) or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

(b) *Reporting requirement.* If this contract contains SDB participation targets, the Contractor shall report on the participation of SDB concerns at contract completion, or as otherwise provided in this contract. Reporting may be on Optional Form 312, Small Disadvantaged Business Participation Report, or in the Contractor's own format providing the same information. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, reports may be submitted with the final Subcontracting Report for Individual Contracts (Standard Form 294) at the completion of the contract.

(End of clause)

52.219-26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.

As prescribed in 19.1204(c), insert a clause substantially the same as the following:

clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) *Final payment.* The Government shall pay the amount due the Contractor under this contract after—

- (1) Completion and acceptance of all work;
- (2) Presentation of a properly executed voucher; and
- (3) Presentation of release of all claims against the

Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) *Limitation because of undefinitized work.* Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(j) *Interest computation on unearned amounts.* In accordance with 31 U.S.C. 3903(c)(1), the amount payable under subparagraph (d)(2) of this clause shall be—

- (1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and
- (2) Deducted from the next available payment to the Contractor.

(End of clause)

52.232-6 Payment under Communication Service Contracts with Common Carriers.

As prescribed in 32.111(a)(6), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for regulated communication services by common carriers:

PAYMENT UNDER COMMUNICATION SERVICE CONTRACTS WITH COMMON CARRIERS (APR 1984)

The Government shall pay the Contractor, in arrears, upon submission of invoices for services and facilities furnished in accordance with the terms of CSAs issued under this contract, the rates and charges for the services and facilities as set forth in the clause entitled "Rates, Charges and Services."

ities as set forth in the clause entitled "Rates, Charges and Services."

(End of clause)

52.232-7 Payments under Time-and-Materials and Labor-Hour Contracts.

As prescribed in 32.111(b), insert the following clause:

PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (MAR 2000)

The Government will pay the Contractor as follows upon the submission of invoices or vouchers approved by the Contracting Officer:

(a) *Hourly rate.* (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer), to the Contracting Officer or designee. The Contractor shall substantiate vouchers by evidence of actual payment and by individual daily job timecards, or other substantiation approved by the Contracting Officer. Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract, and subject to the terms of (e) of this section, pay the voucher as approved by the Contracting Officer.

(2) Unless otherwise prescribed in the Schedule, the Contracting Officer shall withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (f) of this section.

(3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(b) *Materials and subcontracts.* (1) The Contracting Officer will determine allowable costs of direct materials in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract. Direct materials, as used in this clause, are those materials that enter directly into the end product, or that are used or

consumed directly in connection with the furnishing of the end product.

(2) The Contractor may include reasonable and allocable material handling costs in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Contractor's usual accounting practices consistent with Subpart 31.2 of the FAR.

(3) The Government will reimburse the Contractor for items and services purchased directly for the contract only when payments of cash, checks, or other forms of payment have been made for such purchased items or services.

(4)(i) The Government will reimburse the Contractor for costs of subcontracts that are authorized under the subcontracts clause of this contract, provided that the costs are consistent with paragraph (b)(5) of this clause.

(ii) The Government will limit reimbursable costs in connection with subcontracts to the amounts paid for items and services purchased directly for the contract only when the Contractor has made or will make payments of cash, checks, or other forms of payment to the subcontractor—

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily prior to the submission of the Contractor's next payment request to the Government.

(iii) The Government will not reimburse the Contractor for any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under paragraph (a)(1) of this clause.

(5) To the extent able, the Contractor shall—

(i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. The Contractor shall give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The Contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government.

(c) *Total cost.* It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this con-

tract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during performing this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(d) *Ceiling price.* The Government shall not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(e) *Audit.* At any time before final payment under this contract the Contracting Officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of (f) and (g) of this section), the Government shall promptly pay any balance due the Contractor. The completion invoice or voucher, and substantiating material,

shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(f) *Assignment.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.

(2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(g) *Refunds.* The Contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Contractor or any assignee, that arise under the materials portion of this contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Government. The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the Contracting Officer.

(End of clause)

Alternate I (Mar 2000). If the nature of the work to be performed requires the Contractor to furnish material that the Contractor regularly sells to the general public in the normal course of business, and the price is under the limitations prescribed in 16.601(b)(3), add the following paragraph (6) to paragraph (b) of the basic clause:

(b)(6) If the nature of the work to be performed requires the Contractor to furnish material that the Contractor regularly sells to the general public in the normal course of business, the price to be paid for such material, notwithstanding the other requirements of this paragraph (b), shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to the Government, provided that in no event shall such price be in excess of the Contractor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.

Alternate II (Jan 1986). If a labor-hour contract is contemplated, and if no specific reimbursement for materials furnished is intended, the Contracting Officer may add the following paragraph (h) to the basic clause:

(h) The terms of this clause that govern reimbursement for materials furnished are considered to have been deleted.

52.232-8 Discounts for Prompt Payment.

As prescribed in 32.111(c)(1), insert the following clause:

DISCOUNTS FOR PROMPT PAYMENT (MAY 1997)

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

(End of clause)

52.232-9 Limitation on Withholding of Payments.

As prescribed in 32.111(c)(2), insert a clause substantially as follows, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a supply contract, service contract, time-and-materials contract, labor-hour

contract, or research and development contract is contemplated that includes two or more terms authorizing the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed:

LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984)

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; *pro-vided*, that this limitation shall not apply to—

- (a) Withholdings pursuant to any clause relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this contract;
- (c) The recovery of overpayments; and
- (d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

(End of clause)

52.232-10 Payments under Fixed-Price Architect-Engineer Contracts.

As prescribed in 32.111(d)(1), insert the following clause:

PAYMENTS UNDER FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (AUG 1987)

(a) Estimates shall be made monthly of the amount and value of the work and services performed by the Contractor under this contract which meet the standards of quality established under this contract. The estimates shall be prepared by the Contractor and accompanied by any supporting data required by the Contracting Officer.

(b) Upon approval of the estimate by the Contracting Officer, payment upon properly executed vouchers shall be made to the Contractor, as soon as practicable, of 90 percent of the approved amount, less all previous payments; *pro-vided*, that payment may be made in full during any months in which the Contracting Officer determines that performance has been satisfactory. Also, whenever the Contracting Officer determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the Government, the Contracting Officer may release the excess amount to the Contractor.

(c) Upon satisfactory completion by the Contractor and acceptance by the Contracting Officer of the work done by the Contractor under the “Statement of Architect-Engineer Services”, the Contractor will be paid the unpaid balance of any money due for work under the statement, including

retained percentages relating to this portion of the work. Upon satisfactory completion and final acceptance of the construction work, the Contractor shall be paid any unpaid balance of money due under this contract.

(d) Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the Contracting Officer a release of all claims against the Government arising under or by virtue of this contract, other than any claims that are specifically excepted by the Contractor from the operation of the release in amounts stated in the release.

(e) Notwithstanding any other provision in this contract, and specifically paragraph (b) of this clause, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A “contract action” is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of clause)

52.232-11 Extras.

As prescribed in 32.111(d)(2), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a fixed-price supply contract, fixed-price service contract, or transportation contract is contemplated:

EXTRAS (APR 1984)

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

(End of clause)

52.232-12 Advance Payments.

As prescribed in 32.412(a), insert the following clause:

ADVANCE PAYMENTS (MAY 1999)

(a) *Requirements for payment.* Advance payments will be made under this contract (1) upon submission of properly certified invoices or vouchers by the Contractor, and approval by the administering office, _____ [*insert the name of the office designated under agency procedures*], or (2) under a letter of credit. The amount of the invoice or voucher submitted plus all advance payments previously

52.232-15 Progress Payments Not Included.

As prescribed in 32.502-3(c), insert the following provision in invitations for bids if the solicitation will not contain one of the provisions prescribed in 32.502-3(a) and (b):

PROGRESS PAYMENTS NOT INCLUDED (APR 1984)

A progress payments clause is not included in this solicitation, and will not be added to the resulting contract at the time of award. Bids conditioned upon inclusion of a progress payment clause in the resulting contract will be rejected as nonresponsive.

(End of provision)

52.232-16 Progress Payments.

As prescribed in 32.502-4(a), insert the following clause:

PROGRESS PAYMENTS (MAR 2000)

The Government will make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts of \$2,500 or more approved by the Contracting Officer, under the following conditions:

(a) *Computation of amounts.* (1) Unless the Contractor requests a smaller amount, the Government will compute each progress payment as 80 percent of the Contractor's total costs incurred under this contract whether or not actually paid, plus financing payments to subcontractors (see paragraph (j) of this clause), less the sum of all previous progress payments made by the Government under this contract. The Contracting Officer will consider cost of money that would be allowable under FAR 31.205-10 as an incurred cost for progress payment purposes.

(2) The amount of financing and other payments for supplies and services purchased directly for the contract are limited to the amounts that have been paid by cash, check, or other forms of payment, or that will be paid to subcontractors—

(i) In accordance with the terms and conditions of a subcontract or invoice; and

(ii) Ordinarily prior to the submission of the Contractor's next payment request to the Government.

(3) The Government will exclude accrued costs of Contractor contributions under employee pension plans until actually paid unless—

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be

excluded from the Contractor's total costs for progress payments until paid).

(4) The Contractor shall not include the following in total costs for progress payment purposes in paragraph (a)(1) of this clause:

(i) Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.

(ii) Costs incurred by subcontractors or suppliers.

(iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(iv) Payments made or amounts payable to subcontractors or suppliers, except for—

(A) Completed work, including partial deliveries, to which the Contractor has acquired title; and

(B) Work under cost-reimbursement or time-and-material subcontracts to which the Contractor has acquired title.

(5) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this contract, for which delivery and invoicing by the Contractor and acceptance by the Government are incomplete.

(6) The total amount of progress payments shall not exceed 80 percent of the total contract price.

(7) If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs (a)(4) or (a)(5) above, the Contractor shall repay the amount of such excess to the Government on demand.

(8) Notwithstanding any other terms of the contract, the Contractor agrees not to request progress payments in dollar amounts of less than \$2,500. The Contracting Officer may make exceptions.

(b) *Liquidation.* Except as provided in the Termination for Convenience of the Government clause, all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress payments, the unliquidated progress payments, or 80 percent of the amount invoiced, whichever is less. The Contractor shall repay to the Government any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Government reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (f) and (g) below).

(2) Performance of this contract is endangered by the Contractor's—

- (i) Failure to make progress; or
- (ii) Unsatisfactory financial condition.

(3) Inventory allocated to this contract substantially exceeds reasonable requirements.

(4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.

(5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.

(6) The Contractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) above, and that rate is less than the progress payment rate stated in subparagraph (a)(1) above.

(d) *Title.* (1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) "Property," as used in this clause, includes all of the below-described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices.

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;

(iii) Nondurable (*i.e.*, noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (ii) above; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract;

e.g., the termination or special tooling clauses, shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract without requesting the Contracting Officer's approval, but the proceeds shall be credited against the costs of performance.

(5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. The Contractor shall (i) exclude the allocable costs of the property from the costs of contract performance, and (ii) repay to the Government any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all progress payments, title shall vest in the Contractor for all property (or the proceeds thereof) not—

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(e) *Risk of loss.* Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.

(f) *Control of costs and property.* The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) *Reports and access to records.* The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by the Contracting Officer for the administration of this clause. Also, the Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's books, records, and accounts.

(h) *Special terms regarding default.* If this contract is terminated under the Default clause, (i) the Contractor shall, on demand, repay to the Government the amount of unliquidated progress payments and (ii) title shall vest in the Contractor, on full liquidation of progress payments, for all

property for which the Government elects not to require delivery under the Default clause. The Government shall be liable for no payment except as provided by the Default clause.

(i) *Reservations of rights.* (1) No payment or vesting of title under this clause shall—

(i) Excuse the Contractor from performance of obligations under this contract; or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause—

(i) Shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this contract; and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(j) *Financing payments to subcontractors.* The financing payments to subcontractors mentioned in paragraphs (a)(1) and (a)(2) of this clause shall be all financing payments to subcontractors or divisions, if the following conditions are met:

(1) The amounts included are limited to—

(i) The unliquidated remainder of financing payments made; plus

(ii) Any unpaid subcontractor requests for financing payments.

(2) The subcontract or interdivisional order is expected to involve a minimum of approximately 6 months between the beginning of work and the first delivery; or, if the subcontractor is a small business concern, 4 months.

(3) If the financing payments are in the form of progress payments, the terms of the subcontract or interdivisional order concerning progress payments—

(i) Are substantially similar to the terms of this clause for any subcontractor that is a large business concern, or this clause with its Alternate I for any subcontractor that is a small business concern;

(ii) Are at least as favorable to the Government as the terms of this clause;

(iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the Contractor;

(iv) Are in conformance with the requirements of FAR 32.504(e); and

(v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if—

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(4) If the financing payments are in the form of performance-based payments, the terms of the subcontract or interdivisional order concerning payments—

(i) Are substantially similar to the Performance-Based Payments clause at FAR 52.232-32 and meet the criteria for, and definition of, performance-based payments in FAR Part 32;

(ii) Are in conformance with the requirements of FAR 32.504(f); and

(iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if—

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(5) If the financing payments are in the form of commercial item financing payments, the terms of the subcontract or interdivisional order concerning payments—

(i) Are constructed in accordance with FAR 32.206(c) and included in a subcontract for a commercial item purchase that meets the definition and standards for acquisition of commercial items in FAR Parts 2 and 12;

(ii) Are in conformance with the requirements of FAR 32.504(g); and

(iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if—

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(6) If financing is in the form of progress payments, the progress payment rate in the subcontract is the customary rate used by the contracting agency, depending on whether the subcontractor is or is not a small business concern.

(7) Concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, the parties agree that the proceeds shall be applied to reducing any unliquidated financing payments by the Government to the Contractor under this contract.

(8) If no unliquidated financing payments to the Contractor remain, but there are unliquidated financing payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this

clause to be in any subcontract, as if all such rights had been assigned and transferred to the Contractor.

(9) To facilitate small business participation in subcontracting under this contract, the Contractor shall provide financing payments to small business concerns, in conformity with the standards for customary contract financing payments stated in FAR 32.113. The Contractor shall not consider the need for such financing payments as a handicap or adverse factor in the award of subcontracts.

(k) *Limitations on undefinitized contract actions.* Notwithstanding any other progress payment provisions in this contract, progress payments may not exceed 80 percent of costs incurred on work accomplished under undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a) of this clause, and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on Contractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b) of this clause, progress payments for undefinitized contract actions shall be liquidated at 80 percent of the amount invoiced for work performed under the undefinitized contract action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions shall not exceed 80 percent of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

(End of clause)

Alternate I (Mar 2000). If the contract is with a small business concern, change each mention of the progress payment and liquidation rates excepting paragraph (k) to the customary rate of 85 percent for small business concerns (see FAR 32.501-1).

Alternate II (Aug 1987). If the contract is a letter contract, add paragraphs (l) and (m). The amount specified in paragraph (m) shall not exceed 80 percent applied to the maximum liability of the Government under the letter contract. Separate limits may be specified for separate parts of

the work.

(l) Progress payments made under this letter contract shall, unless previously liquidated under paragraph (b) of this clause, be liquidated under the following procedures:

(1) If this letter contract is superseded by a definitive contract, unliquidated progress payments made under this letter contract shall be liquidated by deducting the amount from the first progress or other payments made under the definitive contract.

(2) If this letter contract is not superseded by a definitive contract calling for the furnishing of all or part of the articles or services covered under the letter contract, unliquidated progress payments made under the letter contract shall be liquidated by deduction from the amount payable under the Termination clause.

(3) If this letter contract is partly terminated and partly superseded by a contract, the Government shall allocate the unliquidated progress payments to the terminated and unliquidated portions as the Government deems equitable, and shall liquidate each portion under the relevant procedure in subparagraphs (1)(1) and (1)(2) of this clause.

(4) If the method of liquidating progress payments provided in this clause does not result in full liquidation, the Contractor shall immediately pay the unliquidated balance to the Government on demand.

(m) The amount of unliquidated progress payments shall not exceed _____ (*specify dollar amount*).

Alternate III (Mar 2000). As prescribed in 32.502-4(d), add the following paragraph (l) to the basic clause. If Alternate II is also being used, redesignate the following paragraph as paragraph (n):

(l) The provisions of this clause will not be applicable to individual orders at or below the simplified acquisition threshold.

52.232-17 Interest.

As prescribed in 32.617(a) and (b), insert the following clause:

INTEREST (JUN 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the

Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)

52.232-18 Availability of Funds.

As prescribed in 32.705-1(a), insert the following clause in solicitations and contracts if the contract will be chargeable to funds of the new fiscal year and the contracting action is to be initiated before the funds are available:

AVAILABILITY OF FUNDS (APR 1984)

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

52.232-19 Availability of Funds for the Next Fiscal Year.

As prescribed in 32.705-1(b), insert the following clause in solicitations and contracts if a one-year indefinite-quantity or requirements contract for services is contemplated and the contract (a) is funded by annual appropriations and (b) is to extend beyond the initial fiscal year (see 32.703-2(b)):

AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR
(APR 1984)

Funds are not presently available for performance under this contract beyond _____. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond _____, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

52.232-20 Limitation of Cost.

As prescribed in 32.705-2(a), insert the following clause in solicitations and contracts if a fully funded cost-reimbursement contract is contemplated, except those for consolidated facilities, facilities acquisition, or facilities use, whether or not the contract provides for payment of a fee. The 60-day period may be varied from 30 to 90 days and the 75 percent from 75 to 85 percent. "Task Order" or other appropriate designation may be substituted for "Schedule" wherever that word appears in the clause.

LIMITATION OF COST (APR 1984)

(a) The parties estimate that performance of this contract, exclusive of any fee, will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.

(b) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that—

(1) The costs the Contractor expects to incur under this contract in the next 60 days, when added to all costs

previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or

(2) The total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this contract.

(d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

(1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of (i) the estimated cost specified in the Schedule or, (ii) if this is a cost-sharing contract, the estimated cost to the Government specified in the Schedule; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Contracting Officer (i) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than the Contracting Officer, shall affect this contract's estimated cost to the Government. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the estimated cost or, if this is a cost-sharing contract, for any costs in excess of the estimated cost to the Government specified in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination.

(f) If the estimated cost specified in the Schedule is increased, any costs the Contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the estimated cost to the Government

specified in the Schedule, unless they contain a statement increasing the estimated cost.

(h) If this contract is terminated or the estimated cost is not increased, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(End of clause)

52.232-21 Limitation of Cost (Facilities).

As prescribed in 32.705-2(b), insert the following clause in solicitations and contracts for consolidated facilities, facilities acquisition, or facilities use (see 45.301):

LIMITATION OF COST (FACILITIES) (APR 1984)

(a) The parties estimate that performance of this contract will not cost Government more than the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule within the estimated cost.

(b) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that—

(1) The costs that the Contractor expects to incur under this contract in the next 30 days, when added to all costs previously incurred, will exceed 85 percent of the estimated cost specified in the Schedule; or

(2) The total cost to the Government for the performance of this contract will be either greater or substantially less than had previously been estimated.

(c) As part of the notification, the Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this contract.

(d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

(1) The Government is not obligated to reimburse the contractor for costs incurred in excess of the estimated cost specified in the Schedule; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Contracting Officer—

(i) Notifies the Contractor in writing that the estimated cost has been increased; and

(3) *Interest penalty not applicable.* Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) *Subcontract clause requirements.* The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) *Prompt payment for subcontractors.* A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) *Interest for subcontractors.* An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause—

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the *Federal Register*, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) *Subcontractor clause flowdown.* A clause requiring each subcontractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs (c)(1) and (c)(2) of this clause in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) *Subcontract clause interpretation.* The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that—

(1) *Retainage permitted.* Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) *Withholding permitted.* Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) *Withholding requirements.* Permit such withholding without incurring any obligation to pay a late payment penalty if—

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) A copy of any notice issued by a Contractor pursuant to subdivision (d)(3)(i) of this clause has been furnished to the Contracting Officer.

(e) *Subcontractor withholding procedures.* If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall—

(1) *Subcontractor notice.* Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) *Contracting Officer notice.* Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to subparagraph (e)(1) of this clause;

(3) *Subcontractor progress payment reduction.* Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (e)(1) of this clause;

(4) *Subsequent subcontractor payment.* Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and—

(i) Make such payment within—

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under subdivision (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the *Federal Register*, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) *Notice to Contracting Officer.* Notify the Contracting Officer upon—

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying—

(A) The amounts withheld under subparagraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) *Interest to Government.* Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until—

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under subdivision (e)(5)(i) of this clause.

(f) *Third-party deficiency reports—(1) Withholding from subcontractor.* If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under subparagraph (e)(6) of this clause—

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subdivision (f)(1)(i) of this clause.

(2) *Subsequent payment or interest charge.* As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall—

(i) Pay the amount withheld under subdivision (f)(1)(ii) of this clause to such first-tier subcontractor; or

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the *Federal Register*, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) *Written notice of subcontractor withholding.* A written notice of any withholding shall be issued to a subcontractor (with a copy to the Contracting Officer of any such notice issued by the Contractor), specifying—

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) *Subcontractor payment entitlement.* The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) *Prime-subcontractor disputes.* A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the United States is a party. The United States may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) *Preservation of prime-subcontractor rights.* Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) *Non-recourse for prime contractor interest penalty.* The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the United States for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

(End of clause)

52.232-28 Invitation to Propose Performance-Based Payments.

As prescribed in 32.1005(b)(1), insert the following provision:

INVITATION TO PROPOSE PERFORMANCE-BASED PAYMENTS
(MAR 2000)

(a) The Government invites the offeror to propose terms under which the Government will make performance-based contract financing payments during contract performance. The Government will consider performance-based payment financing terms proposed by the offeror in the evaluation of the offeror's proposal. The Contracting Officer will incorporate the financing terms of the successful offeror and the

FAR clause, Performance-Based Payments, at FAR 52.232-32, in any resulting contract.

(b) In the event of any conflict between the terms proposed by the offeror and the terms in the clause at FAR 52.232-32, Performance-Based Payments, the terms of the clause at FAR 52.232-32 shall govern.

(c) The Contracting Officer will not accept the offeror's proposed performance-based payment financing if the financing does not conform to the following limitations:

(1) The Government will make delivery payments only for supplies delivered and accepted, or services rendered and accepted in accordance with the payment terms of this contract.

(2) The terms and conditions of the performance-based payments must—

(i) Comply with FAR 32.1004;

(ii) Be reasonable and consistent with all other technical and cost information included in the offeror's proposal; and

(iii) Their total shall not exceed 90 percent of the contract price if on a whole contract basis, or 90 percent of the delivery item price if on a delivery item basis.

(3) The terms and conditions of the performance-based financing must be in the best interests of the Government.

(d) The offeror's proposal of performance-based payment financing shall include the following:

(1) The proposed contractual language describing the performance-based payments (see FAR 32.1004 for appropriate criteria for establishing performance bases and performance-based finance payment amounts).

(2) A listing of—

(i) The projected performance-based payment dates and the projected payment amounts; and

(ii) The projected delivery date and the projected payment amount.

(3) Information addressing the Contractor's investment in the contract.

(e) Evaluation of the offeror's proposed prices and financing terms will include whether the offeror's proposed performance-based payment events and payment amounts are reasonable and consistent with all other terms and conditions of the offeror's proposal.

(End of provision)

Alternate I (Mar 2000). As prescribed in FAR 32.1005(b)(2), add the following paragraph (f) to the basic provision:

(f) The Government will adjust each proposed price to reflect the cost of providing the proposed performance-based payments to determine the total cost to the Government of that particular combination of price and performance-based financing. The Government will make the adjustment using the procedure described in FAR 32.205(c).

52.232-29 Terms for Financing of Purchases of Commercial Items.

As prescribed in 32.206(b)(2), insert the following clause:

TERMS FOR FINANCING OF PURCHASES OF COMMERCIAL ITEMS (OCT 1995)

(a) *Contractor entitlement to financing payments.* The Contractor may request, and the Government shall pay, a contract financing payment as specified elsewhere in this contract when: the payment requested is properly due in accordance with this contract; the supplies deliverable or

[The next page is 52-227.]

PROVISION OR CLAUSE	PRESCRIBED IN	P or c	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.232-4 Payments under Transportation Contracts and Transportation-Related Services Contracts.	32.111(a)(4)	C	Yes	I																R	A		
52.232-5 Payments under Fixed-Price Construction Contracts.	32.111(a)(5)	C	Yes									R											
52.232-6 Payment under Communication Service Contracts with Common Carriers.	32.111(a)(6)	C	Yes	I											A							A	
52.232-7 Payments under Time-and-Materials and Labor-Hour Contracts.	32.111(b)	C	Yes	I										A									
Alternate I	32.111(b)	C	Yes	I										A									
Alternate II	32.111(b)	C	Yes	I										A									
52.232-8 Discounts for Prompt Payment.	32.111(c)(1)	C	Yes	I	A				A					A	A							A	
52.232-9 Limitation on Withholding of Payments.	32.111(c)(2)	C	Yes	I	A	A	A	A	A	A				A	A								
52.232-10 Payments under Fixed-Price Architect-Engineer Contracts.	32.111(d)(1)	C	Yes															A					
52.232-11 Extras.	32.111(d)(2)	C	Yes	I	A				A					A						A	A	A	
52.232-12 Advance Payments.	32.412(a)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	32.412(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

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PROVISION OR CLAUSE	PRESCRIBD IN	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																					
		P or c	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
Alternate II	32.412(c)	C	No	I		A		A		A		A		A	A		A	A	A	A		A	
Alternate III	32.412(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate IV	32.412(e)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate V	32.412(f)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-13 Notice of Progress Payments.	32.502-3(a)	P	Yes	L	A		A		A					A	A		A	A	A	A			
52.232-14 Notice of Availability of Progress Payments Exclusively for Small Business Concerns.	32.502-3(b)(2)	P	Yes	L	A		A		A		A			A	A		A	A	A	A			
52.232-15 Progress Payments Not Included.	32.502-3(c)	P	Yes	M	A		A		A					A	A		A	A	A	A			
52.232-16 Progress Payments.	32.502-4(a)	C	Yes	I	A		A		A		A	A		A	A		A	A	A	A			
Alternate I	32.502-4(b)	C	Yes	I	A		A		A		A	A		A	A		A	A	A	A			
Alternate II (See Note 1.)	32.502-4(c)	C	Yes	I																			
Alternate III	32.502-4(d)	C	Yes	I																A			
52.232-17 Interest.	32.617(a) and (b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-18 Availability of Funds.	32.705-1(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-19 Availability of Funds for the Next Fiscal Year.	32.705-1(b)	C	Yes	I					A	A										A			A
52.232-20 Limitation of Cost.	32.705-2(a)	C	Yes	I		A		A		A				A	A	A		A	A	A			A
52.232-21 Limitation of Cost (Facilities).	32.705-2(b)	C	Yes	I																			R

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PROVISION OR CLAUSE	PRESCRIBD IN	P or c	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.232-22 Limitation of Funds.	32.705-2(c)	C	Yes	I		A		A		A				A	A	A		A	A	A			
52.232-23 Assignment of Claims.	32.806(a)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	32.806(a)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-24 Prohibition of Assignment of Claims.	32.806(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-25 Prompt Payment.	32.908(c)	C	Yes	I	A	A	A	A	A	A			A	A	A	A	A	A	A	A	A	A	A
52.232-26 Prompt Payment for Fixed-Price Architect-Engineer Contracts.	32.908(a)	C	Yes	I														A					
52.232-27 Prompt Payment for Construction Contracts.	32.908(b)	C	Yes	I							R	R											
52.232-28 Invitation to Propose Performance-Based Payments.	32.1005 (b)(1)	P	No	L	A		A		A		A						A	A	A	A	A		A
Alternate I	32.1005 (b)(2)	P	No	L	A		A		A		A						A	A	A	A	A		A
52.232-29 Terms for Financing of Purchases of Commercial Items.	32.206(b)(2)	C	No	I	A				A														A
52.232-30 Installment Payments for Commercial Items.	32.206(g)	C	Yes	I	A				A														A
52.232-31 Invitation to Propose Financing Terms.	32.205(b) 32.206	P	No	L	A				A														
52.232-32 Performance-Based Payments.	32.1005	C	No	I	A				A														

PROVISION OR CLAUSE	PRESCRIBED IN	P or c	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC
52.232-33 Payment by Electronic Funds Transfer—Central Contractor Registration.	32.1110 (a), (a)(1), (b), and (e)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-34 Payment by Electronic Funds Transfer—Other than Central Contractor Registration.	32.1110 (a), (a)(2), (b), and (e)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-35 Designation of Office for Government Receipt of Electronic Funds Transfer Information.	32.1110(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-36 Payment by Third Party.	32.1110(d) and (e)(3)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-37 Multiple Payment Arrangements.	32.1110(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-38 Submission of Electronic Funds Transfer Information with Offer.	32.1110(g)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.233-1 Disputes.	33.215	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	33.215	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.233-2 Service of Protest.	33.106(a)	P	No	L	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.233-3 Protest after Award.	33.106(b)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
Alternate I	33.106(b)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.234-1 Industrial Resources Developed Under Defense Production Act Title III.	34.104	C	N	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.236-1 Performance of Work by the Contractor.	36.501(b)	C	Yes																			

