

FEDERAL ACQUISITION CIRCULAR

March 31, 2009

Number 2005-32

Federal Acquisition Circular (FAC) 2005-32 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-32 are effective March 31, 2009.

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FAC 2005-32 SUMMARY OF ITEMS

Federal Acquisition Circular (FAC) 2005-32 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Buy American Requirements for Construction Material (Interim) (FAR Case 2009-008)

This interim rule implements the Buy American provision, section 1605, of the American Recovery and Reinvestment Act of 2009. It prohibits the use of funds appropriated for the Recovery Act for any project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. However, section 1605 requires that the Buy American requirement be applied in a manner consistent with U.S. obligations under international agreements. Moreover, because Congress intended that least developed countries be excepted from section 1605, least developed countries can continue to be treated as designated countries. Section 1605 also provides for waivers under certain limited circumstances.

Replacement pages: General Structure pp. v and vi; 1.1-5 and 1.1-6; 5.2-3 and 5.2-4; Part 25 TOC pp. 25-1 and 25-2; 25.1-1 and 25.1-2; 25.6-1 thru 25.6-4 (25.6-3 and 25.6-4 added); 25.11-1 and 25.11-2; Part 52 TOC pp. 52-5 thru 52.10; 52.2-152.1 thru 52.2-152.12 (52.2-152.7 thru 52.2-152.12 added); and Matrix pp. 52.3-17 thru 52.3-34.

Item II—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Whistleblower Protections (Interim) (FAR Case 2009-012)

Subpart 3.9 of the Federal Acquisition Regulation (FAR) is revised to add section 3.907. Section 3.907 provides procedures for whistleblower protection, when using funds appropriated or otherwise provided by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

Section 3.907 provides that non-Federal employers are prohibited from discharging, demoting, or discriminating against employees as a reprisal for disclosing certain covered information to certain categories of Government officials. This section further provides definitions relevant to the statute;

establishes time periods within which the Inspector General and the agency head must take action with regard to a complaint filed by a contractor employee; establishes procedures for access to investigative files of the Inspector General; and provides for remedies and enforcement authority.

A new clause 52.203-15 is added to require contractors to post rights and remedies for whistleblower protections under Section 1553 of the American Recovery and Reinvestment Act.

Replacement pages: Part 3 TOC pp. 3-1 and 3-2; 3.9-1 thru 3.9-4 (3.9-3 and 3.9-4 added); Part 52 TOC pp. 52-1 and 52-2; 52.2-8.1 thru 52.2-8.4; 52.2-34.1 thru 52.2-34.4; 52.2-39 thru 52.2-42.4; 52.2-263 and 52.2-264; and Matrix pp. 52.3-3 and 52.3-4.

**Item III—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Publicizing Contract Actions (Interim)
(FAR Case 2009-010)**

This interim rule implements the Office of Management and Budget's Guidance, M-09-10, "Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009," dated February 18, 2009, section 6.2. Federal Acquisition Regulation (FAR) Part 4 requires the contracting officer to enter data in the Federal Procurement Data System on any action funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), in accordance with the instructions at <https://www.fpds.gov>. Subpart 5.7 is added to direct the contracting officer to use the Governmentwide Point of Entry (<https://www.fedbizopps.gov>) to 1) identify the action as funded by the Recovery Act; 2) post pre-award notices for orders exceeding \$25,000 for "informational purposes only;" 3) describe supplies and services (including construction) in a narrative that is clear and unambiguous to the general public; and 4) provide a rationale for awarding any action, including modifications and orders, that is not both fixed-price and competitive, and include the rationale for using other than a fixed-price and/or competitive approach. Parts 8, 13, and 16 are amended to reflect the new posting requirements for orders at Subpart 5.7.

Replacement pages: General Structure pp. i and ii; 4.6-1 thru 4.6-4; Part 5 TOC pp. 5-1 and 5-2; 5.7-1 and 5.7-2 (added); 8.4-1 thru 8.4-4; 13.1-3 and 13.1-4; and 16.5-3 thru 16.5-6.

**Item IV–American Recovery and Reinvestment Act of 2009 (the Recovery Act)–Reporting Requirements (Interim)
(FAR Case 2009-009)**

This interim rule implements section 1512 of Division A of the American Recovery and Reinvestment Act of 2009, which requires contractors to report on their use of Recovery Act funds. The rule adds a new subpart 4.15, and a new clause, 52.204-11. Contracting officers must include the new clause in solicitations and contracts funded in whole or in part with Recovery Act funds, except classified solicitations and contracts. This clause applies to Commercial item contracts and Commercially-Available-Off-The-Shelf (COTS) item contracts as well as actions under the Simplified Acquisition Threshold.

Contracting officers who wish to use Recovery Act funds on existing contracts should modify those contracts to add the clause.

Reports from contractors for all work funded, in whole or in part, by the Recovery Act, and for which an invoice is submitted prior to June 30, 2009, are due no later than July 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter.

Replacement pages: General Structure pp. i and ii; Part 4 TOC pp. 4-1 and 4-2; 4.15-1 and 4.15-2 (added); Part 52 TOC pp. 52-1 and 52-2; 52.2-12.1 thru 52.2-12.4 (52.2-12.3 and 52.2-12.4 added); 52.2-39 and 52.2-40; and Matrix pp. 52.3-3 thru 52.3-6.

Item V–American Recovery and Reinvestment Act of 2009 (the Recovery Act)–GAO/IG Access (Interim) (FAR Case 2009-011)

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement Sections 902, 1514, and 1515 of the American Recovery and Reinvestment Act of 2009. Collectively, these Sections provide for the audit and review of both contracts and subcontracts, and the ability to interview such contractor and subcontractor personnel under contracts containing Recovery Act funds.

These Recovery Act provisions are implemented in new alternate clauses to 52.212-5, "Contract Terms and Conditions Required to Implement Statutes or Executive Orders–Commercial Items", 52-214-26, "Audit and Records–Sealed Bidding," and

52.215-2, "Audit and Records-Negotiation". For the Comptroller General these alternate clauses provide specific authority to audit contracts and subcontracts and to interview contractor and subcontractor employees under contracts using Recovery Act funds. Agency inspector generals receive the same authorities, with the exception of interviewing subcontractor employees.

Replacement pages: 12.3-1 and 12.3-2; 12.5-1 and 12.5-2; 13.1-3 and 13.1-4; 14.2-3 and 14.2-4; 15.2-5 and 15.2-6; 52.2-41 thru 52.2-42.4 (52.2-42.3 and 52.2-42.4 added); 52.2-49 thru 52.2-52; 52.2-55 thru 52.2-58; and Matrix pp. 52.3-5 thru 52.3-8.

**Item VI-GAO Access to Contractor Employees (Interim)
(FAR Case 2008-026)**

This interim rule amends the Federal Acquisition Regulation (FAR) Parts 12 and 52. Clauses 52.215-2, Audit and Records-Negotiation and 52.214-26, Audit and Records-Sealed Bidding are being modified to allow the Government Accountability Office to interview current contractor employees when conducting audits. The rule will not apply to the acquisition of commercial items; therefore, FAR 12.503 will be amended to add the exemption of this rule. This change implements Section 871 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (NDAA) (Pub. L. 110-417).

Replacement pages: 12.5-1 and 12.5-2; 52.2-47 thru 52.2-50; and 52.2-55 and 52.2-56.

FAC 2005-32 FILING INSTRUCTIONS

NOTE: The FAR is segmented by subparts. The FAR page numbers reflect FAR Subparts. For example, "1.1-3" is page three of Subpart 1.1.

Remove Pages

General Structure
pp. i and ii
pp. v and vi

1.1-5 and 1.1-6

Part 3 TOC
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3.9-1 and 3.9-2

Part 4 TOC
pp. 4-1 and 4-2
4.6-1 thru 4.6-4
None

Part 5 TOC
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5.2-3 and 5.2-4
None

8.4-1 thru 8.4-4

12.3-1 and 12.3-2
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Part 25 TOC
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Matrix

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FEDERAL ACQUISITION REGULATION

General Structure and Subparts

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- 8.4 Federal Supply Schedules
- 8.5 Acquisition of Helium
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SUBPART 1.1—PURPOSE, AUTHORITY, ISSUANCE

1.106

FAR segment	OMB Control Number	FAR segment	OMB Control Number
52.219-20	9000-0100	52.228-2	9000-0045
52.219-21	9000-0100	52.228-12	9000-0135
52.219-22	9000-0150	52.228-13	9000-0045
52.219-23	9000-0150	52.228-15	9000-0045
52.219-25	9000-0150	52.228-16	9000-0045
52.222-2	9000-0065	52.229-2	9000-0059
52.222-4	1215-0119	52.230-6	9000-0129
52.222-6	1215-0140	52.232-1	9000-0070
52.222-8	1215-0149 and	52.232-2	9000-0070
	1215-0017	52.232-3	9000-0070
52.222-11	9000-0014	52.232-4	9000-0070
52.222-18	9000-0127	52.232-5	9000-0070
52.222-21	1215-0072	52.232-6	9000-0070
52.222-22	1215-0072	52.232-7	9000-0070
52.222-23	1215-0072	52.232-8	9000-0070
52.222-25	1215-0072	52.232-9	9000-0070
52.222-26	1215-0072	52.232-10	9000-0070
52.222-27	1215-0072	52.232-11	9000-0070
52.222-32	9000-0154	52.232-12	9000-0073
52.222-35	1215-0072	52.232-13	9000-0010
52.222-36	1215-0072	52.232-14	9000-0010
52.222-41	1215-0017 and	52.232-15	9000-0010
	1215-0150	52.232-16	9000-0010
52.222-46	9000-0066	52.232-20	9000-0074
52.223-4	9000-0134	52.232-22	9000-0074
52.223-5	9000-0147	52.232-27	9000-0102
52.223-6(b)(5)	9000-0101	52.232-29	9000-0138
52.223-7	9000-0107	52.232-30	9000-0138
52.223-9	9000-0134	52.232-31	9000-0138
52.223-13	9000-0139	52.232-32	9000-0138
52.223-14	9000-0139	52.233-1	9000-0035
52.225-2	9000-0024	52.234-1	9000-0133
52.225-4	9000-0130	52.236-5	9000-0062
52.225-6	9000-0025	52.236-13	1220-0029 and
52.225-8	9000-0022		9000-0060
52.225-9	9000-0141	52.236-15	9000-0058
52.225-11	9000-0141	52.236-19	9000-0064
52.225-18	9000-0161	52.241-1	9000-0126
52.225-21	9000-0141	52.241-3	9000-0122
52.225-23	9000-0141	52.241-7	9000-0123
52.227-14	9000-0090	52.241-13	9000-0124
52.227-15	9000-0090	52.243-1	9000-0026
52.227-16	9000-0090	52.243-2	9000-0026
52.227-17	9000-0090	52.243-3	9000-0026
52.227-18	9000-0090	52.243-4	9000-0026
52.227-19	9000-0090	52.243-6	9000-0026
52.227-20	9000-0090	52.243-7	9000-0026
52.227-21	9000-0090	52.245-1	9000-0075
52.227-22	9000-0090	52.245-9	9000-0075
52.227-23	9000-0090	52.246-2	9000-0077
52.228-1	9000-0045	52.246-3	9000-0077

FAR segment	OMB Control Number	FAR segment	OMB Control Number
52.246-4	9000-0077	SF 1403	9000-0011
52.246-5	9000-0077	SF 1404	9000-0011
52.246-6	9000-0077	SF 1405	9000-0011
52.246-7	9000-0077	SF 1406	9000-0011
52.246-8	9000-0077	SF 1407	9000-0011
52.246-10	9000-0077	SF 1408	9000-0011
52.246-12	9000-0077	SF 1413	9000-0014
52.246-15	9000-0077	SF 1416	9000-0045
52.247-2	9000-0053	SF 1418	9000-0045
52.247-29	9000-0061	SF 1428	9000-0075
52.247-30	9000-0061	SF 1429	9000-0075
52.247-31	9000-0061	SF 1435	9000-0012
52.247-32	9000-0061	SF 1436	9000-0012
52.247-33	9000-0061	SF 1437	9000-0012
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52.247-37	9000-0061	SF 1443	9000-0010
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52.247-39	9000-0061	SF 1445	9000-0089
52.247-40	9000-0061	SF 1446	9000-0089
52.247-41	9000-0061	OF 312	9000-0150
52.247-42	9000-0061		
52.247-43	9000-0061		
52.247-44	9000-0061		
52.247-48	9000-0061		
52.247-51	9000-0057		
52.247-53	9000-0055		
52.247-57	9000-0061		
52.247-63	9000-0054		
52.247-64	9000-0061		
52.247-68	9000-0056		
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52.250-1	9000-0029		
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SF 25	9000-0045		
SF 25A	9000-0045		
SF 28	9000-0001		
SF 34	9000-0045		
SF 35	9000-0045		
SF 273	9000-0045		
SF 274	9000-0045		
SF 275	9000-0045		
SF 330	9000-0157		

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.

1.108 FAR conventions.

The following conventions provide guidance for interpreting the FAR:

(a) *Words and terms.* Definitions in [Part 2](#) apply to the entire regulation unless specifically defined in another part, subpart, section, provision, or clause. Words or terms defined in a specific part, subpart, section, provision, or clause have that meaning when used in that part, subpart, section, provision, or clause. Undefined words retain their common dictionary meaning.

(b) *Delegation of authority.* Each authority is delegable unless specifically stated otherwise (see [1.102-4\(b\)](#)).

(c) *Dollar thresholds.* Unless otherwise specified, a specific dollar threshold for the purpose of applicability is the

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

<p><i>Sec.</i> 3.000</p> <p style="padding-left: 40px;">Subpart 3.1—Safeguards</p> <p>3.101 Standards of conduct. 3.101-1 General. 3.101-2 Solicitation and acceptance of gratuities by Government personnel. 3.101-3 Agency regulations. 3.102 [Reserved] 3.103 Independent pricing. 3.103-1 Solicitation provision. 3.103-2 Evaluating the certification. 3.103-3 The need for further certifications. 3.104 Procurement integrity. 3.104-1 Definitions. 3.104-2 General. 3.104-3 Statutory and related prohibitions, restrictions, and requirements. 3.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information. 3.104-5 Disqualification. 3.104-6 Ethics advisory opinions regarding prohibitions on a former official’s acceptance of compensation from a contractor. 3.104-7 Violations or possible violations. 3.104-8 Criminal and civil penalties, and further administrative remedies. 3.104-9 Contract clauses.</p> <p style="padding-left: 40px;">Subpart 3.2—Contractor Gratuities to Government Personnel</p> <p>3.201 Applicability. 3.202 Contract clause. 3.203 Reporting suspected violations of the Gratuities clause. 3.204 Treatment of violations.</p> <p style="padding-left: 40px;">Subpart 3.3—Reports of Suspected Antitrust Violations</p> <p>3.301 General. 3.302 Definitions. 3.303 Reporting suspected antitrust violations.</p> <p style="padding-left: 40px;">Subpart 3.4—Contingent Fees</p> <p>3.400 Scope of subpart. 3.401 Definitions. 3.402 Statutory requirements. 3.403 Applicability. 3.404 Contract clause. 3.405 Misrepresentations or violations of the Covenant Against Contingent Fees. 3.406 Records.</p>	<p>Subpart 3.5—Other Improper Business Practices</p> <p>3.501 Buying-in. 3.501-1 Definition. 3.501-2 General. 3.502 Subcontractor kickbacks. 3.502-1 Definitions. 3.502-2 Subcontractor kickbacks. 3.502-3 Contract clause. 3.503 Unreasonable restrictions on subcontractor sales. 3.503-1 Policy. 3.503-2 Contract clause.</p> <p style="padding-left: 40px;">Subpart 3.6—Contracts with Government Employees or Organizations Owned or Controlled by Them</p> <p>3.601 Policy. 3.602 Exceptions. 3.603 Responsibilities of the contracting officer.</p> <p style="padding-left: 40px;">Subpart 3.7—Voiding and Rescinding Contracts</p> <p>3.700 Scope of subpart. 3.701 Purpose. 3.702 Definition. 3.703 Authority. 3.704 Policy. 3.705 Procedures.</p> <p style="padding-left: 40px;">Subpart 3.8—Limitation on the Payment of Funds to Influence Federal Transactions</p> <p>3.800 Scope of subpart. 3.801 Definitions. 3.802 Statutory prohibition and requirement. 3.803 Exceptions. 3.804 Policy. 3.805 Exemption. 3.806 Processing suspected violations. 3.807 Civil penalties. 3.808 Solicitation provision and contract clause.</p> <p style="padding-left: 40px;">Subpart 3.9—Whistleblower Protections for Contractor Employees</p> <p>3.900 Scope of subpart. 3.901 Definitions. 3.902 [Reserved] 3.903 Policy. 3.904 Procedures for filing complaints. 3.905 Procedures for investigating complaints. 3.906 Remedies. 3.907 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (the Recovery Act). 3.907-1 Definitions.</p>
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3.907-2	Policy.			Subpart 3.10—Contractor Code of Business
3.907-3	Procedures for filing complaints.			Ethics and Conduct
3.907-4	Procedures for investigating complaints.	3.1000	Scope of subpart.	
3.907-5	Access to investigative file of Inspector General.	3.1001	Definitions.	
3.907-6	Remedies and enforcement authority.	3.1002	Policy.	
3.907-7	Contract clause.	3.1003	Requirements.	
		3.1004	Contract clauses.	

Subpart 3.9—Whistleblower Protections for Contractor Employees

3.900 Scope of subpart.

(a) Sections [3.901](#) through [3.906](#) of this subpart implement [10 U.S.C. 2409](#) and [41 U.S.C. 265](#), as amended by Sections 6005 and 6006 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355).

(b) Section [3.907](#) of this subpart implements Section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), and applies to all contracts funded in whole or in part by that Act.

3.901 Definitions.

As used in this subpart—

“Authorized official of an agency” means an officer or employee responsible for contracting, program management, audit, inspection, investigation, or enforcement of any law or regulation relating to Government procurement or the subject matter of the contract.

“Authorized official of the Department of Justice” means any person responsible for the investigation, enforcement, or prosecution of any law or regulation.

“Inspector General” means an Inspector General appointed under the Inspector General Act of 1978, as amended. In the Department of Defense that is the DoD Inspector General. In the case of an executive agency that does not have an Inspector General, the duties shall be performed by an official designated by the head of the executive agency.

3.902 [Reserved]

3.903 Policy.

Government contractors shall not discharge, demote or otherwise discriminate against an employee as a reprisal for disclosing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract).

3.904 Procedures for filing complaints.

(a) Any employee of a contractor who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in [3.903](#) may file a complaint with the Inspector General of the agency that awarded the contract.

(b) The complaint shall be signed and shall contain—

- (1) The name of the contractor;
- (2) The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;
- (3) The substantial violation of law giving rise to the disclosure;

- (4) The nature of the disclosure giving rise to the discriminatory act; and
- (5) The specific nature and date of the reprisal.

3.905 Procedures for investigating complaints.

(a) Upon receipt of a complaint, the Inspector General shall conduct an initial inquiry. If the Inspector General determines that the complaint is frivolous or for other reasons does not merit further investigation, the Inspector General shall advise the complainant that no further action on the complaint will be taken.

(b) If the Inspector General determines that the complaint merits further investigation, the Inspector General shall notify the complainant, contractor, and head of the contracting activity. The Inspector General shall conduct an investigation and provide a written report of findings to the head of the agency or designee.

(c) Upon completion of the investigation, the head of the agency or designee shall ensure that the Inspector General provides the report of findings to—

- (1) The complainant and any person acting on the complainant’s behalf;
- (2) The contractor alleged to have committed the violation; and
- (3) The head of the contracting activity.

(d) The complainant and contractor shall be afforded the opportunity to submit a written response to the report of findings within 30 days to the head of the agency or designee. Extensions of time to file a written response may be granted by the head of the agency or designee.

(e) At any time, the head of the agency or designee may request additional investigative work be done on the complaint.

3.906 Remedies.

(a) If the head of the agency or designee determines that a contractor has subjected one of its employees to a reprisal for providing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, the head of the agency or designee may take one or more of the following actions:

- (1) Order the contractor to take affirmative action to abate the reprisal.
- (2) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- (3) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys’ fees and expert witnesses’ fees) that were reasonably incurred by the complainant for, or

in connection with, bringing the complaint regarding the reprisal.

(b) Whenever a contractor fails to comply with an order, the head of the agency or designee shall request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this section, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(c) Any person adversely affected or aggrieved by an order issued under this section may obtain review of the order's conformance with the law, and this subpart, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency or designee. Review shall conform to Chapter 7 of Title 5, United States Code.

3.907 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (the Recovery Act).

3.907-1 Definitions.

As used in this section—

“Board” means the Recovery Accountability and Transparency Board established by Section 1521 of the Recovery Act.

“Covered funds” means funds appropriated by or otherwise made available by the Recovery Act.

“Covered information” means information that the employee reasonably believes is evidence of gross mismanagement of the contract or subcontract related to covered funds, gross waste of covered funds, a substantial and specific danger to public health or safety related to the implementation or use of covered funds, an abuse of authority related to the implementation or use of covered funds, or a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to covered funds.

“Inspector General” means an Inspector General appointed under the Inspector General Act of 1978. In the Department of Defense that is the DoD Inspector General. In the case of an executive agency that does not have an Inspector General, the duties shall be performed by an official designated by the head of the executive agency.

“Non-Federal employer,” as used in this section, means any employer that receives Recovery Act funds, including a contractor, subcontractor, or other recipient of funds pursuant to a contract or other agreement awarded and administered in accordance with the Federal Acquisition Regulation.

3.907-2 Policy.

Non-Federal employers are prohibited from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing covered information to any of the following entities or their representatives:

- (1) The Board.
- (2) An Inspector General.
- (3) The Comptroller General.
- (4) A member of Congress.
- (5) A State or Federal regulatory or law enforcement agency.
- (6) A person with supervisory authority over the employee or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct.
- (7) A court or grand jury.
- (8) The head of a Federal agency.

3.907-3 Procedures for filing complaints.

(a) An employee who believes that he or she has been subjected to reprisal prohibited by the Recovery Act, Section 1553 as set forth in [3.907-2](#), may submit a complaint regarding the reprisal to the Inspector General of the agency that awarded the contract.

- (b) The complaint shall be signed and shall contain—
- (1) The name of the contractor;
 - (2) The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;
 - (3) The covered information giving rise to the disclosure;
 - (4) The nature of the disclosure giving rise to the discriminatory act; and
 - (5) The specific nature and date of the reprisal.

(c) A contracting officer who receives a complaint of reprisal of the type described in [3.907-2](#) shall forward it to the Office of the Inspector General, agency legal counsel or to the appropriate official in accordance with agency procedures.

3.907-4 Procedures for investigating complaints.

Investigation of complaints will be in accordance with section 1553 of the Recovery Act.

3.907-5 Access to investigative file of Inspector General.

(a) The employee alleging reprisal under this section shall have access to the investigation file of the Inspector General, in accordance with the Privacy Act, [5 U.S.C. §552a](#). The investigation of the Inspector General shall be deemed closed for the purposes of disclosure under such section when an employee files an appeal to the agency head or a court of competent jurisdiction.

(b) In the event the employee alleging reprisal brings a civil action under section 1553(c)(3) of the Recovery Act, the employee alleging the reprisal and the non-Federal employer

shall have access to the investigative file of the Inspector General in accordance with the Privacy Act.

(c) The Inspector General may exclude from disclosures made under [3.907-5](#)(a) or (b)—

(1) Information protected from disclosure by a provision of law; and

(2) Any additional information the Inspector General determines disclosure of which would impede a continuing investigation, provided that such information is disclosed once such disclosure would no longer impede such investigation, unless the Inspector General determines that the disclosure of law enforcement techniques, procedures, or information could reasonably be expected to risk circumvention of the law or disclose the identity of a confidential source.

(d) An Inspector General investigating an alleged reprisal under this section may not respond to any inquiry or disclose any information from or about any person alleging such reprisal, except in accordance with [5 U.S.C. 552a](#) or as required by any other applicable Federal law.

3.907-6 Remedies and enforcement authority.

(a) *Burden of Proof.* (1) Disclosure as contributing factor in reprisal.

(i) An employee alleging a reprisal under this section shall be deemed to have affirmatively established the occurrence of the reprisal if the employee demonstrates that a disclosure described in section [3.907-2](#) was a contributing factor in the reprisal.

(ii) A disclosure may be demonstrated as a contributing factor in a reprisal for purposes of this paragraph by circumstantial evidence, including—

(A) Evidence that the official undertaking the reprisal knew of the disclosure; or

(B) Evidence that the reprisal occurred within a period of time after the disclosure such that a reasonable person could conclude that the disclosure was a contributing factor in the reprisal.

(2) *Opportunity for rebuttal.* The head of an agency may not find the occurrence of a reprisal with respect to a reprisal that is affirmatively established under section [3.907-6](#)(a)(1) if the non-Federal employer demonstrates by clear and convincing evidence that the non-Federal employer would have taken the action constituting the reprisal in the absence of the disclosure.

(b) No later than 30 days after receiving an Inspector General report in accordance with section 1553 of the Recovery Act, the head of the agency concerned shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the complainant to a reprisal prohibited by subsection [3.907-2](#) and shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

(1) Order the employer to take affirmative action to abate the reprisal.

(2) Order the employer to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(3) Order the employer to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal.

(c)(1) The complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant may bring a de novo action at law or equity against the employer to seek compensatory damages and other relief available under this section in the appropriate district court of United States, which shall have jurisdiction over such an action without regard to the amount in controversy if—

(i) The head of an agency—

(A) Issues an order denying relief in whole or in part under paragraph (a) of this section;

(B) Has not issued an order within 210 days after the submission of a complaint in accordance with section 1553 of the Recovery Act, or in the case of an extension of time in accordance with section 1553 of the Recovery Act, within 30 days after the expiration of the extension of time; or

(C) Decides in accordance with section 1553 of the Recovery Act not to investigate or to discontinue an investigation; and

(ii) There is no showing that such delay or decision is due to the bad faith of the complainant.

(2) Such an action shall, at the request of either party to the action, be tried by the court with a jury.

(d) Whenever an employer fails to comply with an order issued under this section, the head of the agency shall request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this section, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and attorneys fees and costs.

(e) Any person adversely affected or aggrieved by an order issued under paragraph (b) of this subsection may obtain review of the order's conformance with the law, and this section, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency.

3.907-7 Contract clause.

Use the clause at [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009

in all solicitations and contracts funded in whole or in part with Recovery Act funds.

PART 4—ADMINISTRATIVE MATTERS

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

4.600 Scope of subpart.

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

4.601 Definitions.

As used in this subpart—

“*Assisted acquisition*” means a contract, delivery or task order awarded by a servicing agency on behalf of a requesting agency. The agency providing the assistance may also administer the contract action.

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

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

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

“*Direct acquisition*” means an order awarded directly by the requesting agency against the servicing agency’s contract. In a direct acquisition, the servicing agency awards and administers the contract but does not participate in the placement of an order.

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

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

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

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

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

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

4.602 General.

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

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

(2) A means of measuring and assessing the effect of Federal contracting on the Nation’s economy and the extent to which small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, women-owned small business concerns, and AbilityOne nonprofit agencies operating under the Javits-Wagner-O’Day Act, are sharing in Federal contracts; and

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

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

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

(1) A complete list of departments, agencies, and other entities that submit data to the FPDS;

(2) Technical and end-user guidance;

(3) A computer-based tutorial; and

(4) Information concerning reports not generated in FPDS.

4.603 Policy.

(a) In accordance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282), all Federal award data must be publicly accessible.

(b) Except as provided in 4.606(a)(2), executive agencies shall use FPDS to maintain publicly available information about all contract actions exceeding the micro-purchase threshold, and any modifications to those actions that change previously reported contract action report data, regardless of dollar value.

(c) Agencies awarding assisted acquisitions or direct acquisitions must report these actions and identify the Funding Agency Code from the applicable agency codes maintained by the National Institute of Standards and Technology (NIST) using NIST Special Publication 800-87, “Codes for the Identification of Federal and Federally Assisted Organizations,” at <http://csrc.nist.gov/publications/nistpubs/800-87/sp800-87-Final.pdf>.

(d) Agencies exempt from the FAR are encouraged to report contract actions in FPDS.

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

4.604 Responsibilities.

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

(b)(1) The responsibility for the submission and accuracy of the individual contract action report (CAR) resides with the contracting officer who awarded the contract action.

(2) When a contract writing system is integrated with FPDS, the CAR must be confirmed for accuracy prior to release of the contract award.

(3) When a contract writing system is not integrated with FPDS, the CAR must be submitted to FPDS within three business days after contract award.

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

(5) When the contracting office receives written notification that a contractor has changed its size status in accordance with the clause at [52.219-28](#), Post-Award Small Business Program Rerepresentation, the contracting officer must submit a modification contract action report to ensure that the updated size status is entered in FPDS-NG.

(c) The chief acquisition officer of each agency required to report its contract actions must submit to the General Services Administration (GSA), in accordance with FPDS guidance, by January 5, an annual certification of whether, and to what degree, agency CAR data for the preceding fiscal year is complete and accurate.

4.605 Procedures.

(a) *Procurement Instrument Identifier (PIID)*. Agencies must have in place a process that ensures that each PIID reported to FPDS is unique, Governmentwide, and will remain so for at least 20 years from the date of contract award. Agencies must submit their proposed identifier format to the FPDS Program Management Office, which maintains a registry of the agency unique identifiers on the FPDS website, and must validate their use in all transactions. The PIID shall consist of alpha characters in the first positions to indicate the agency, followed by alphanumeric characters identifying bureaus, offices, or other administrative subdivisions. Other pertinent PIID instructions can be found at <https://www.fpds.gov>.

(b) *Data Universal Numbering System (DUNS)*. The contracting officer must identify and report a DUNS number (Contractor Identification Number) for the successful offeror on a contract action. The DUNS number reported must identify the successful offeror's name and address as stated in the offer and resultant contract, and as registered in the Central Contractor Registration (CCR) database in accordance with the clause at [52.204-7](#), Central Contractor Registration. The

contracting officer must ask the offeror to provide its DUNS number by using either the provision at [52.204-6](#), Data Universal Numbering System (DUNS) Number, the clause at [52.204-7](#), Central Contractor Registration, or the provision at [52.212-1](#), Instructions to Offerors—Commercial Items.

(1) Notwithstanding the inclusion of the provision at [52.204-6](#) in the associated solicitation or except as provided in paragraph (b)(2) of this section, the contracting officer shall use one of the generic DUNS numbers identified in CCR to report corresponding contract actions if the contract action is—

(i) With contractors located outside the United States and its outlying areas as defined in [2.101](#) who do not have a DUNS number, and the contracting officer determines it is impractical to obtain a DUNS number;

(ii) With students who do not have DUNS numbers;

(iii) With dependents of veterans, Foreign Service Officers, and military members assigned overseas who do not have DUNS numbers; or

(iv) For classified or national security.

(2) In accordance with agency procedures, authorized generic DUNS numbers found at <https://www.fpds.gov> may be used to report contract actions when—

(i) Specific public identification of the contracted party could endanger the mission, contractor, or recipients of the acquired goods or services; or

(ii) The agency determines it is impractical to obtain a DUNS number.

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

4.606 Reporting Data.

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

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

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

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

(1) Government-wide acquisition contracts.

(2) Multi-agency contracts.

(B) GSA Federal supply schedules.

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

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

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

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

(2) Agencies participating in the Small Business Competitiveness Demonstration Program (see [Subpart 19.10](#)) shall report as a contract action each award in the designated industry groups, regardless of dollar value.

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

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

(b) *Reporting Other Actions.* Agencies may submit actions other than those listed at paragraph (a)(1) of this section, and must contact the FPDS Program Office at integrated.acquisition@gsa.gov if they desire to submit any of the following types of activity:

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

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

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

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

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

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

(7) Grants and entitlement actions.

(8) Interagency agreements, also known as interservice level agreements, memoranda of understanding, or memoranda of agreement.

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

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

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

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

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

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

(d) Agencies not subject to the FAR may be required by other authority (*e.g.*, statute or OMB) to report certain information to FPDS.

4.607 Solicitation Provisions.

(a) Insert the provision at [52.204-6](#), Data Universal Numbering System (DUNS) Number, in solicitations that—

(1) Are expected to result in a requirement for the generation of a CAR (see [4.606\(a\)\(1\)](#)); and

(2) Do not contain the clause at [52.204-7](#), Central Contractor Registration.

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

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

(2) Exceed the simplified acquisition threshold; and

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

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Subpart 4.15—American Recovery and Reinvestment Act—Reporting Requirements

4.1500 Scope of subpart.

This subpart implements section 1512(c) of Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), which requires, as a condition of receipt of funds, quarterly reporting on the use of funds. The subpart also implements the data elements of the Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282). Contractors that receive awards (or modifications to existing awards) funded, in whole or in part by the Recovery Act, must report information including, but not limited to—

- (a) The dollar amount of contractor invoices;
- (b) The supplies delivered and services performed;
- (c) An assessment of the completion status of the work;
- (d) An estimate of the number of jobs created and the number of jobs retained as a result of the Recovery Act funds;
- (e) Names and total compensation of each of the five most highly compensated officers for the calendar year in which the contract is awarded; and
- (f) Specific information on first-tier subcontractors.

4.1501 Procedures.

(a) In any contract action funded in whole or in part by the Recovery Act, the contracting officer shall indicate that the contract action is being made under the Recovery Act, and indicate which products or services are funded under the Recovery Act. This requirement applies whenever Recovery Act funds are used, regardless of the contract instrument.

(b) To maximize transparency of Recovery Act funds that must be reported by the contractor, the contracting officer shall structure contract awards to allow for separately tracking Recovery Act funds. For example, the contracting officer may consider awarding dedicated separate contracts when using Recovery Act funds or establishing contract line item number (CLIN) structures to mitigate commingling of Recovery funds with other funds.

(c) Contracting officers shall ensure that the contractor complies with the reporting requirements of [52.204-11](#), American Recovery and Reinvestment Act—Reporting Requirements. If the contractor fails to comply with the reporting requirements, the contracting officer shall exercise appropriate contractual remedies.

(d) The contracting officer shall make the contractor’s failure to comply with the reporting requirements a part of the contractor’s performance information under [Subpart 42.15](#).

4.1502 Contract clause.

Insert the clause at [52.204-11](#), American Recovery and Reinvestment Act—Reporting Requirements in all solicitations and contracts funded in whole or in part with Recovery Act funds, except classified solicitations and contracts. This includes, but is not limited to, Governmentwide Acquisition Contracts (GWACs), multi-agency contracts (MACs), Federal Supply Schedule (FSS) contracts, or agency indefinite-delivery/indefinite-quantity (ID/IQ) contracts that will be funded with Recovery Act funds. Contracting officers shall ensure that this clause is included in any existing contract or order that will be funded with Recovery Act funds. Contracting officers may not use Recovery Act funds on existing contracts and orders if the clause at [52.204-11](#) is not incorporated.

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PART 5—PUBLICIZING CONTRACT ACTIONS

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- 5.000 Scope of part.
- 5.001 Definition.
- 5.002 Policy.
- 5.003 Governmentwide point of entry.

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- 5.101 Methods of disseminating information.
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- 5.201 General.
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- 5.301 General.
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- 5.701 Scope.
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- 5.703 Definition.
- 5.704 Publicizing-preaward.
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must synopsise (see [5.201](#)) all subsequent solicitations for R&D contracts, including those resulting from a previously synopsized advance notice, unless one of the exceptions in [5.202](#) applies.

(b) *Federally Funded Research and Development Centers.* Before establishing a Federally Funded Research and Development Center (FFRDC) (see [Part 35](#)) or before changing its basic purpose and mission, the sponsor must transmit at least three notices over a 90-day period to the GPE and the *Federal Register*, indicating the agency’s intention to sponsor an FFRDC or change the basic purpose and mission of an FFRDC. The notice must indicate the scope and nature of the effort to be performed and request comments. Notice is not required where the action is required by law.

(c) *Special notices.* Contracting officers may transmit to the GPE special notices of procurement matters such as business fairs, long-range procurement estimates, prebid or pre-proposal conferences, meetings, and the availability of draft solicitations or draft specifications for review.

(d) *Architect-engineering services.* Contracting officers must publish notices of intent to contract for architect-engineering services as follows:

(1) Except when exempted by [5.202](#), contracting officers must transmit to the GPE a synopsis of each proposed contract action for which the total fee (including phases and options) is expected to exceed \$25,000.

(2) When the total fee is expected to exceed \$10,000 but not exceed \$25,000, the contracting officer must comply with [5.101](#)(a)(2). When the proposed contract action is not required to be synopsized under paragraph (d)(1) of this section, the contracting officer must display a notice of the solicitation or a copy of the solicitation in a public place at the contracting office. Other optional publicizing methods are authorized in accordance with [5.101](#)(b).

(e) *Public-private competitions under OMB Circular A-76.* (1) The contracting officer shall make a formal public announcement for each streamlined or standard competition. The public announcement shall include, at a minimum, the agency, agency component, location, type of competition (streamlined or standard), activity being competed, incumbent service providers, number of Government personnel performing the activity, name of the Competitive Sourcing Official, name of the contracting officer, name of the Agency Tender Official, and projected end date of the competition.

(2) The contracting officer shall announce the end of the streamlined or standard competition by making a formal public announcement of the performance decision. (See OMB Circular A-76.)

(f) *Section 8(a) competitive acquisition.* When a national buy requirement is being considered for competitive acquisition limited to eligible 8(a) concerns under [Subpart 19.8](#), the contracting officer must transmit a synopsis of the proposed contract action to the GPE. The synopsis may be transmitted

to the GPE concurrent with submission of the agency offering (see [19.804-2](#)) to the Small Business Administration (SBA). The synopsis should also include information—

(1) Advising that the acquisition is being offered for competition limited to eligible 8(a) concerns;

(2) Specifying the North American Industry Classification System (NAICS) code;

(3) Advising that eligibility to participate may be restricted to firms in either the developmental stage or the developmental and transitional stages; and

(4) Encouraging interested 8(a) firms to request a copy of the solicitation as expeditiously as possible since the solicitation will be issued without further notice upon SBA acceptance of the requirement for the section 8(a) program.

5.206 Notices of subcontracting opportunities.

(a) The following entities may transmit a notice to the GPE to seek competition for subcontracts, to increase participation by qualified HUBZone small business, small, small disadvantaged, women-owned small business, veteran-owned small business and service-disabled veteran-owned small business concerns, and to meet established subcontracting plan goals:

(1) A contractor awarded a contract exceeding \$100,000 that is likely to result in the award of any subcontracts.

(2) A subcontractor or supplier, at any tier, under a contract exceeding \$100,000, that has a subcontracting opportunity exceeding \$10,000.

(b) The notices must describe—

(1) The business opportunity;

(2) Any prequalification requirements; and

(3) Where to obtain technical data needed to respond to the requirement.

5.207 Preparation and transmittal of synopses.

(a) *Content.* Each synopsis transmitted to the GPE must address the following data elements, as applicable:

(1) Action Code.

(2) Date.

(3) Year.

(4) Contracting Office ZIP Code.

(5) Classification Code.

(6) Contracting Office Address.

(7) Subject.

(8) Proposed Solicitation Number.

(9) Closing Response Date.

(10) Contact Point or Contracting Officer.

(11) Contract Award and Solicitation Number.

(12) Contract Award Dollar Amount.

(13) Contract Line Item Number.

(14) Contract Award Date.

(15) Contractor.

(16) Description.

(17) Place of Contract Performance.

(18) Set-aside Status.

(b) *Transmittal*. Transmissions to the GPE must be in accordance with the interface description available via the Internet at <http://www.fedbizopps.gov>.

(c) *General format for “Description.”* Prepare a clear and concise description of the supplies or services that is not unnecessarily restrictive of competition and will allow a prospective offeror to make an informed business judgment as to whether a copy of the solicitation should be requested including the following, as appropriate:

(1) National Stock Number (NSN) if assigned.

(2) Specification and whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and identification of the office from which additional information about the qualification requirement may be obtained (see [Subpart 9.2](#)).

(3) Manufacturer, including part number, drawing number, etc.

(4) Size, dimensions, or other form, fit or functional description.

(5) Predominant material of manufacture.

(6) Quantity, including any options for additional quantities.

(7) Unit of issue.

(8) Destination information.

(9) Delivery schedule.

(10) Duration of the contract period.

(11) For a proposed contract action in an amount estimated to be greater than \$25,000 but not greater than the simplified acquisition threshold, enter—

(i) A description of the procedures to be used in awarding the contract (*e.g.*, request for oral or written quotation or solicitation); and

(ii) The anticipated award date.

(12) For Architect-Engineer projects and other projects for which the supply or service codes are insufficient, provide brief details with respect to: location, scope of services required, cost range and limitations, type of contract, estimated starting and completion dates, and any significant evaluation factors.

(13)(i) If the solicitation will include the FAR clause at [52.225-3](#), Buy American Act—Free Trade Agreements—Israeli Trade Act, or an equivalent agency clause, insert the following notice in the synopsis: “One or more of the items under this acquisition is subject to Free Trade Agreements.”

(ii) If the solicitation will include the FAR clause at [52.225-5](#), Trade Agreements, or an equivalent agency clause, insert the following notice in the synopsis: “One or more of

the items under this acquisition is subject to the World Trade Organization Government Procurement Agreement and Free Trade Agreements.”

(iii) If the solicitation will include the FAR clause at [52.225-11](#), Buy American Act—Construction Materials Under Trade Agreements, [52.225-23](#), Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements, or an equivalent agency clause, insert the following notice in the synopsis: “One or more of the items under this acquisition is subject to the World Trade Organization Government Procurement Agreement and Free Trade Agreements.”

(14) In the case of noncompetitive contract actions (including those that do not exceed the simplified acquisition threshold), identify the intended source and insert a statement of the reason justifying the lack of competition.

(15)(i) Except when using the sole source authority at [6.302-1](#), insert a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the agency.

(ii) When using the sole source authority at [6.302-1](#), insert a statement that all responsible sources may submit a capability statement, proposal, or quotation, which shall be considered by the agency.

(16) If solicitations synopsized through the GPE will not be made available through the GPE, provide information on how to obtain the solicitation.

(17) If the solicitation will be made available to interested parties through electronic data interchange, provide any information necessary to obtain and respond to the solicitation electronically.

(18) If the technical data required to respond to the solicitation will not be furnished as part of such solicitation, identify the source in the Government, such as FedTeDS (<https://www.fedtedds.gov>), from which the technical data may be obtained.

(d) *Set-asides*. When the proposed acquisition provides for a total or partial small business program set-aside, or when the proposed acquisition provides for a local area set-aside (see [Subpart 26.2](#)), the contracting officer shall identify the type of set-aside in the synopsis and in the solicitation.

(e) *Codes to be used in Synopses to identify services or supplies*. Contracting officers must use one of the classification codes identified at <http://www.fedbizopps.gov/> to identify services or supplies in synopses.

(f) *Notice of solicitation cancellation*. Contracting officers may publish notices of solicitation cancellations (or indefinite suspensions) of proposed contract actions in the GPE.

Subpart 5.7—Publicizing Requirements Under the American Recovery and Reinvestment Act of 2009

5.701 Scope.

This subpart prescribes posting requirements for presolicitation and award notices for actions funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act). The requirements of this subpart enhance transparency to the public.

5.702 Applicability.

This subpart applies to all actions expected to exceed \$25,000 funded in whole or in part by the Recovery Act. Unlike subparts 5.2 and 5.3, this subpart includes additional requirements for orders and for actions that are not both fixed-price and competitive.

5.703 Definition.

As used in this subpart—
 “Task or delivery order contract” means a “delivery order contract,” and a “task order contract,” as defined in 16.501-1. For example, it includes Governmentwide Acquisition Contracts (GWACs), multi-agency contracts (MACs), and other indefinite-delivery/indefinite-quantity contracts, whether single award or multiple award. It also includes Federal Supply Schedule contracts (including Blanket Purchase Agreements under Subpart 8.4).

5.704 Publicizing-preaward.

- (a) (1) Follow the publication procedures at 5.201.
- (2) In addition, notices of proposed contract actions are required for orders of \$25,000 or more, funded in whole or in part by the Recovery Act, which are issued under task or delivery order contracts. These notices are for “informational purposes only,” therefore, 5.203 does not apply. Contracting officers should concurrently use their usual solicitation practice (e.g., e-Buy).
- (b) Contracting officers shall use the instructions at the Governmentwide Point of Entry (GPE) (<https://www.fedbizopps.gov>) to identify proposed contract actions funded in whole or in part by the Recovery Act.
- (c) Ensure that the description required by 5.207(a)(16) includes a narrative of the products and services (including construction) that is clear and unambiguous to the general public.

5.705 Publicizing-post-award.

- Follow usual publication procedures at 5.301, except that the following supersede the exceptions at 5.301(b)(3) through (8):
- (a) For any contract action exceeding \$500,000, including all modifications and orders under task or delivery order con-

tracts, publicize the award notice and ensure that the description required by 5.207(a)(16) includes a narrative of the products and services (including construction) that is clear and unambiguous to the general public.

(b) Regardless of dollar value, if the contract action, including all modifications and orders under task or delivery order contracts, is not both fixed-price and competitively awarded, publicize the award notice and include in the description the rationale for using other than a fixed-priced and/or competitive approach. These notices and the rationale will be available to the public at the GPE, so do not include any proprietary information or information that would compromise national security. The following table provides examples for when a rationale is required.

Posting of Rationale - Examples

	Description of Contract Action	Posting Rationale on Special Section of Recovery.Gov
(1)	A contract is competitively awarded and is fixed-price.	Not Required.
(2)	A contract is awarded that is not fixed-price.	Required.
(3)	A contract is awarded without competition.	Required.
(4)	An order is issued under a new or existing single award IDIQ contract.	Required if order is made under a contract described in (2) or (3).
(5)	An order is issued under a new or existing multiple award IDIQ contract.	Required if one or both of the following conditions exist: (i) The order is not fixed-price. (ii) The order is awarded pursuant to an exception to the competition requirements applicable to the underlying vehicle (e.g., award is made pursuant to an exception to the fair opportunity process).
(6)	A modification is issued.	Required if modification is made: (i) To a contract described in (2) or (3) above; or (ii) To an order requiring posting as described in (4) or (5) above.

(7)	A contract or order is awarded pursuant to a small business contracting authority (<i>e.g.</i> , SBA’s section 8(a) program).	Required if one or both of the following conditions exist: (i) the contract or order is not fixed-price; (ii) the contract or order was not awarded using competition (<i>e.g.</i> , a non-competitive 8(a) award).
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(c) Contracting officers shall use the instructions at the Governmentwide Point of Entry (GPE) (<https://www.fedbizopps.gov>) to identify actions funded in whole or in part by the Recovery Act.

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Subpart 8.4—Federal Supply Schedules

8.401 Definitions.

As used in this subpart—

“Ordering activity” means an activity that is authorized to place orders, or establish blanket purchase agreements (BPA), against the General Services Administration’s (GSA) Multiple Award Schedule contracts. A list of eligible ordering activities is available at <http://www.gsa.gov/schedules> (click “For Customers Ordering from Schedules” and then “Eligibility to Use GSA Sources”).

“Multiple Award Schedule (MAS)” means contracts awarded by GSA or the Department of Veterans Affairs (VA) for similar or comparable supplies, or services, established with more than one supplier, at varying prices. The primary statutory authorities for the MAS program are Title III of the Federal Property and Administrative Services Act of 1949 ([41 U.S.C. 251](#), *et seq.*) and Title [40 U.S.C. 501](#), Services for Executive Agencies.

“Requiring agency” means the agency needing the supplies or services.

“Schedules e-Library” means the on-line source for GSA and VA Federal Supply Schedule contract award information. Schedules e-Library may be accessed at <http://www.gsa.gov/elibrary>.

“Special Item Number (SIN)” means a group of generically similar (but not identical) supplies or services that are intended to serve the same general purpose or function.

8.402 General.

(a) The Federal Supply Schedule program is also known as the GSA Schedules Program or the Multiple Award Schedule Program. The Federal Supply Schedule program is directed and managed by GSA and provides Federal agencies (see [8.002](#)) with a simplified process for obtaining commercial supplies and services at prices associated with volume buying. Indefinite delivery contracts are awarded to provide supplies and services at stated prices for given periods of time. GSA may delegate certain responsibilities to other agencies (*e.g.*, GSA has delegated authority to the VA to procure medical supplies under the VA Federal Supply Schedules program). Orders issued under the VA Federal Supply Schedule program are covered by this subpart. Additionally, the Department of Defense (DoD) manages similar systems of schedule-type contracting for military items; however, DoD systems are not covered by this subpart.

(b) GSA schedule contracts require all schedule contractors to publish an “Authorized Federal Supply Schedule Pricelist” (pricelist). The pricelist contains all supplies and services offered by a schedule contractor. In addition, each pricelist contains the pricing and the terms and conditions pertaining to each Special Item Number that is on schedule. The schedule contractor is required to provide one copy of its pricelist to any ordering activity upon request. Also, a copy of the pricelist may be obtained from the Federal Supply Service

by submitting a written e-mail request to schedules.infocenter@gsa.gov or by telephone at 1-800-488-3111. This subpart, together with the pricelists, contain necessary information for placing delivery or task orders with schedule contractors. In addition, the GSA schedule contracting office issues Federal Supply Schedules publications that contain a general overview of the Federal Supply Schedule (FSS) program and address pertinent topics. Ordering activities may request copies of schedules publications by contacting the Centralized Mailing List Service through the Internet at <http://www.gsa.gov/cmls>, submitting written e-mail requests to CMLS@gsa.gov; or by completing GSA Form 457, FSS Publications Mailing List Application, and mailing it to the GSA Centralized Mailing List Service (7SM), P.O. Box 6477, Fort Worth, TX 76115. Copies of GSA Form 457 may also be obtained from the above-referenced points of contact.

(c)(1) GSA offers an on-line shopping service called “GSA Advantage!” through which ordering activities may place orders against Schedules. (Ordering activities may also use GSA Advantage! to place orders through GSA’s Global Supply System, a GSA wholesale supply source, formerly known as “GSA Stock” or the “Customer Supply Center.” FAR [Subpart 8.4](#) is not applicable to orders placed through the GSA Global Supply System.) Ordering activities may access GSA Advantage! through the GSA Federal Supply Service Home Page (<http://www.gsa.gov/fss>) or the GSA Federal Supply Schedule Home Page at <http://www.gsa.gov/schedules>.

(2) GSA Advantage! enables ordering activities to search specific information (*i.e.*, national stock number, part number, common name), review delivery options, place orders directly with Schedule contractors (except see [8.405-6](#)) and pay for orders using the Governmentwide commercial purchase card.

(d) “e-Buy,” GSA’s electronic Request for Quotation (RFQ) system, is a part of a suite of on-line tools which complement GSA Advantage!. E-Buy allows ordering activities to post requirements, obtain quotes, and issue orders electronically. Ordering activities shall post an RFQ to e-Buy when an order contains brand name specifications (see [8.405-6](#)). Ordering activities may access e-Buy at <http://www.ebuy.gsa.gov>. For more information or assistance on either GSA Advantage! or e-Buy, contact GSA at Internet e-mail address gsa.advantage@gsa.gov.

(e) For more information or assistance regarding the Federal Supply Schedule Program, review the following website: <http://www.gsa.gov/schedules>. Additionally, for on-line training courses regarding the Schedules Program, review the following website: <http://fsstraining.gsa.gov>.

(f) For administrative convenience, an ordering activity contracting officer may add items not on the Federal Supply Schedule (also referred to as open market items) to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order only if—

(1) All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule have been followed (*e.g.*, publicizing ([Part 5](#)), competition requirements ([Part 6](#)), acquisition of commercial items ([Part 12](#)), contracting methods ([Parts 13](#), [14](#), and [15](#)), and small business programs ([Part 19](#)));

(2) The ordering activity contracting officer has determined the price for the items not on the Federal Supply Schedule is fair and reasonable;

(3) The items are clearly labeled on the order as items not on the Federal Supply Schedule; and

(4) All clauses applicable to items not on the Federal Supply Schedule are included in the order.

8.403 Applicability.

(a) Procedures in this subpart apply to—

(1) Individual orders for supplies or services placed against Federal Supply Schedules contracts; and

(2) BPAs established against Federal Supply Schedule contracts.

(b) GSA may establish special ordering procedures for a particular schedule. In this case, that schedule will specify those special ordering procedures. Unless otherwise noted, special ordering procedures established for a Federal Supply Schedule take precedence over the procedures in [8.405](#).

(c) In accordance with section 1427(b) of Public Law 108-136, for requirements that substantially or to a dominant extent specify performance of architect-engineer services (as defined in [2.101](#)), agencies—

(1) Shall use the procedures at [Subpart 36.6](#); and

(2) Shall not place orders for such requirements under a Federal Supply Schedule.

8.404 Use of Federal Supply Schedules.

(a) *General.* [Parts 13](#) (except [13.303-2\(c\)\(3\)](#)), [14](#), [15](#), and [19](#) (except for the requirement at [19.202-1\(e\)\(1\)\(iii\)](#)) do not apply to BPAs or orders placed against Federal Supply Schedules contracts (but see [8.405-5](#)). BPAs and orders placed against a MAS, using the procedures in this subpart, are considered to be issued using full and open competition (see [6.102\(d\)\(3\)](#)). Therefore, when establishing a BPA (as authorized by [13.303-2\(c\)\(3\)](#)), or placing orders under Federal Supply Schedule contracts using the procedures of [8.405](#), ordering activities shall not seek competition outside of the Federal Supply Schedules or synopses the requirement; but see paragraph (e) for orders (including orders issued under BPAs) funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

(b) The contracting officer, when placing an order or establishing a BPA, is responsible for applying the regulatory and statutory requirements applicable to the agency for which the order is placed or the BPA is established. The requiring agency shall provide the information on the applicable regulatory and statutory requirements to the contracting officer responsible for placing the order.

(c) *Acquisition planning.* Orders placed under a Federal Supply Schedule contract—

(1) Are not exempt from the development of acquisition plans (see [Subpart 7.1](#)), and an information technology acquisition strategy (see [Part 39](#));

(2) Must comply with all FAR requirements for a bundled contract when the order meets the definition of “bundled contract” (see [2.101\(b\)](#)); and

(3) Must, whether placed by the requiring agency, or on behalf of the requiring agency, be consistent with the requiring agency’s statutory and regulatory requirements applicable to the acquisition of the supply or service.

(d) *Pricing.* Supplies offered on the schedule are listed at fixed prices. Services offered on the schedule are priced either at hourly rates, or at a fixed price for performance of a specific task (*e.g.*, installation, maintenance, and repair). GSA has already determined the prices of supplies and fixed-price services, and rates for services offered at hourly rates, under schedule contracts to be fair and reasonable. Therefore, ordering activities are not required to make a separate determination of fair and reasonable pricing, except for a price evaluation as required by [8.405-2\(d\)](#). By placing an order against a schedule contract using the procedures in [8.405](#), the ordering activity has concluded that the order represents the best value (as defined in FAR [2.101](#)) and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government’s needs. Although GSA has already negotiated fair and reasonable pricing, ordering activities may seek additional discounts before placing an order (see [8.405-4](#)).

(e) Publicizing contract actions funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5):

(1) Notices of proposed MAS orders (including orders issued under BPAs) that are for “informational purposes only” exceeding \$25,000 shall follow the procedures in [5.704](#) for posting orders.

(2) Award notices for MAS orders (including orders issued under BPAs) shall follow the procedures in [5.705](#).

8.405 Ordering procedures for Federal Supply Schedules.

Ordering activities shall use the ordering procedures of this section when placing an order or establishing a BPA for supplies or services. The procedures in this section apply to all schedules.

8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.

(a) Ordering activities shall use the procedures of this subsection when ordering supplies and services that are listed in the schedules contracts at a fixed price for the performance of a specific task, where a statement of work is not required (*e.g.*, installation, maintenance, and repair).

(b) *Orders at or below the micro-purchase threshold.* Ordering activities may place orders at, or below, the micro-

purchase threshold with any Federal Supply Schedule contractor that can meet the agency's needs. Although not required to solicit from a specific number of schedule contractors, ordering activities should attempt to distribute orders among contractors.

(c) *Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.* (1) Ordering activities shall place orders with the schedule contractor that can provide the supply or service that represents the best value. Before placing an order, an ordering activity shall consider reasonably available information about the supply or service offered under MAS contracts by surveying at least three schedule contractors through the GSA Advantage! on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors (see [8.405-5](#)).

(2) When an order contains brand name specifications, the contracting officer shall post the Request for Quote (RFQ) along with the justification or documentation as required by [8.405-6](#).

(3) In addition to price, when determining best value, the ordering activity may consider, among other factors, the following:

- (i) Past performance.
- (ii) Special features of the supply or service required for effective program performance.
- (iii) Trade-in considerations.
- (iv) Probable life of the item selected as compared with that of a comparable item.
- (v) Warranty considerations.
- (vi) Maintenance availability.
- (vii) Environmental and energy efficiency considerations.
- (viii) Delivery terms.

(d) *Orders exceeding the maximum order threshold.* Each schedule contract has a maximum order threshold established on a SIN-by-SIN basis. Although a price reduction may be sought at any time, this threshold represents the point where, given the dollar value of the potential order, the ordering activity shall seek a price reduction. In addition to following the procedures in paragraph (c) of this section and before placing an order that exceeds the maximum order threshold or establishing a BPA (see [8.405-3](#)), ordering activities shall—

(1) Review (except see (c)(2) of this subsection) the pricelists of additional schedule contractors (the GSA Advantage! on-line shopping service can be used to facilitate this review);

(2) Based upon the initial evaluation, seek price reductions from the schedule contractor(s) considered to offer the best value (see [8.404\(d\)](#)); and

(3) After seeking price reductions (see [8.405-4](#)), place the order with the schedule contractor that provides the best value. If further price reductions are not offered, an order may still be placed.

(e) *Minimum documentation.* The ordering activity shall document—

- (1) The schedule contracts considered, noting the contractor from which the supply or service was purchased;
- (2) A description of the supply or service purchased; and
- (3) The amount paid.

8.405-2 Ordering procedures for services requiring a statement of work.

(a) *General.* Ordering activities shall use the procedures in this subsection when ordering services priced at hourly rates as established by the schedule contracts. The applicable services will be identified in the Federal Supply Schedule publications and the contractor's pricelists.

(b) *Statements of Work (SOWs).* All Statements of Work shall include the work to be performed; location of work; period of performance; deliverable schedule; applicable performance standards; and any special requirements (e.g., security clearances, travel, special knowledge). To the maximum extent practicable, agency requirements shall be performance-based statements (see [Subpart 37.6](#)).

(c) *Request for Quotation procedures.* The ordering activity must provide the Request for Quotation (RFQ), which includes the statement of work and evaluation criteria (e.g., experience and past performance), to schedule contractors that offer services that will meet the agency's needs. The RFQ may be posted to GSA's electronic RFQ system, e-Buy (see [8.402\(d\)](#)).

(1) *Orders at, or below, the micro-purchase threshold.* Ordering activities may place orders at, or below, the micro-purchase threshold with any Federal Supply Schedule contractor that can meet the agency's needs. The ordering activity should attempt to distribute orders among contractors.

(2) *For orders exceeding the micro-purchase threshold, but not exceeding the maximum order threshold.* (i) The ordering activity shall develop a statement of work, in accordance with [8.405-2\(b\)](#).

(ii) The ordering activity shall provide the RFQ (including the statement of work and evaluation criteria) to at least three schedule contractors that offer services that will meet the agency's needs.

(iii) The ordering activity should request that contractors submit firm-fixed prices to perform the services identified in the statement of work.

(3) *For proposed orders exceeding the maximum order threshold or when establishing a BPA.* In addition to meeting the requirements of [8.405-2\(c\)\(2\)](#), the ordering activity shall—

(i) Provide the RFQ (including the statement of work and evaluation criteria) to additional schedule contractors that offer services that will meet the needs of the ordering activity. When determining the appropriate number of additional schedule contractors, the ordering activity may consider, among other factors, the following:

- (A) The complexity, scope and estimated value of the requirement.

(B) The market search results.

(ii) Seek price reductions.

(4) The ordering activity shall provide the RFQ (including the statement of work and the evaluation criteria) to any schedule contractor who requests a copy of it.

(d) *Evaluation*. The ordering activity shall evaluate all responses received using the evaluation criteria provided to the schedule contractors. The ordering activity is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable. Place the order, or establish the BPA, with the schedule contractor that represents the best value (see [8.404\(d\)](#)). After award, ordering activities should provide timely notification to unsuccessful offerors. If an unsuccessful offeror requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the award decision shall be provided.

(e) *Minimum documentation*. The ordering activity shall document—

(1) The schedule contracts considered, noting the contractor from which the service was purchased;

(2) A description of the service purchased;

(3) The amount paid;

(4) The evaluation methodology used in selecting the contractor to receive the order;

(5) The rationale for any tradeoffs in making the selection;

(6) The price reasonableness determination required by paragraph (d) of this subsection; and

(7) The rationale for using other than—

(i) A firm-fixed price order; or

(ii) A performance-based order.

8.405-3 Blanket purchase agreements (BPAs).

(a)(1) *Establishment*. Ordering activities may establish BPAs under any schedule contract to fill repetitive needs for supplies or services. BPAs may be established with one or more schedule contractors. The number of BPAs to be established is within the discretion of the ordering activity establishing the BPAs and should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). In determining how many BPAs to establish, consider—

(i) The scope and complexity of the requirement(s);

(ii) The need to periodically compare multiple technical approaches or prices;

(iii) The administrative costs of BPAs; and

(iv) The technical qualifications of the schedule contractor(s).

(2) Establishment of a single BPA, or multiple BPAs, shall be made using the same procedures outlined in [8.405-1](#) or [8.405-2](#). BPAs shall address the frequency of ordering, invoicing, discounts, requirements (e.g. estimated quantities, work to be performed), delivery locations, and time.

(3) When establishing multiple BPAs, the ordering activity shall specify the procedures for placing orders under the BPAs.

(4) Establishment of a multi-agency BPA against a Federal Supply Schedule contract is permitted if the multi-agency BPA identifies the participating agencies and their estimated requirements at the time the BPA is established.

(b) *Ordering from BPAs*—(1) *Single BPA*. If the ordering activity establishes one BPA, authorized users may place the order directly under the established BPA when the need for the supply or service arises.

(2) *Multiple BPAs*. If the ordering activity establishes multiple BPAs, before placing an order exceeding the micro-purchase threshold, the ordering activity shall—

(i) Forward the requirement, or statement of work and the evaluation criteria, to an appropriate number of BPA holders, as established in the BPA ordering procedures; and

(ii) Evaluate the responses received, make a best value determination (see [8.404\(d\)](#)), and place the order with the BPA holder that represents the best value.

(3) *BPAs for hourly rate services*. If the BPA is for hourly rate services, the ordering activity shall develop a statement of work for requirements covered by the BPA. All orders under the BPA shall specify a price for the performance of the tasks identified in the statement of work.

(c) *Duration of BPAs*. BPAs generally should not exceed five years in length, but may do so to meet program requirements. Contractors may be awarded BPAs that extend beyond the current term of their GSA Schedule contract, so long as there are option periods in their GSA Schedule contract that, if exercised, will cover the BPA's period of performance.

(d) *Review of BPAs*. (1) The ordering activity that established the BPA shall review it at least once a year to determine whether—

(i) The schedule contract, upon which the BPA was established, is still in effect;

(ii) The BPA still represents the best value (see [8.404\(d\)](#)); and

(iii) Estimated quantities/amounts have been exceeded and additional price reductions can be obtained.

(2) The ordering activity shall document the results of its review.

8.405-4 Price reductions.

In addition to seeking price reductions before placing an order exceeding the maximum order threshold (see [8.405-1\(d\)](#)), or in conjunction with the annual BPA review, there may be other reasons to request a price reduction. For example, ordering activities should seek a price reduction when the supply or service is available elsewhere at a lower price, or when establishing a BPA to fill recurring requirements. The potential volume of orders under BPAs, regardless of the size of individual orders, offers the opportunity to

Subpart 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

12.300 Scope of subpart.

This subpart establishes provisions and clauses to be used when acquiring commercial items.

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) In accordance with Section 8002 of Public Law 103-355 ([41 U.S.C. 264](#), note), contracts for the acquisition of commercial items shall, to the maximum extent practicable, include only those clauses—

(1) Required to implement provisions of law or executive orders applicable to the acquisition of commercial items; or

(2) Determined to be consistent with customary commercial practice.

(b) Insert the following provisions in solicitations for the acquisition of commercial items, and clauses in solicitations and contracts for the acquisition of commercial items:

(1) *The provision at [52.212-1](#), Instructions to Offerors—Commercial Items.* This provision provides a single, streamlined set of instructions to be used when soliciting offers for commercial items and is incorporated in the solicitation by reference (see Block 27a, [SF 1449](#)). The contracting officer may tailor these instructions or provide additional instructions tailored to the specific acquisition in accordance with [12.302](#).

(2) *The provision at [52.212-3](#), Offeror Representations and Certifications—Commercial Items.* This provision provides a single, consolidated list of representations and certifications for the acquisition of commercial items and is attached to the solicitation for offerors to complete. This provision may not be tailored except in accordance with [Subpart 1.4](#). Use the provision with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard. Use the provision with its Alternate II in solicitations for acquisitions for which small disadvantaged business procurement mechanisms are authorized on a regional basis.

(3) *The clause at [52.212-4](#), Contract Terms and Conditions—Commercial Items.* This clause includes terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practices and is incorporated in the solicitation and contract by reference (see Block 27, [SF 1449](#)). Use this clause with its Alternate I when a time-and-materials or labor-hour contract will be awarded. The contracting officer may tailor this clause in accordance with [12.302](#).

(4) *The clause at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.* This clause incorporates by reference only

those clauses required to implement provisions of law or Executive orders applicable to the acquisition of commercial items. The contracting officer shall attach this clause to the solicitation and contract and, using the appropriate clause prescriptions, indicate which, if any, of the additional clauses cited in [52.212-5](#)(b) or (c) are applicable to the specific acquisition. Some of the clauses require fill-in; the fill-in language should be inserted as directed by [52.104](#)(d). When cost information is obtained pursuant to [Part 15](#) to establish the reasonableness of prices for commercial items, the contracting officer shall insert the clauses prescribed for this purpose in an addendum to the solicitation and contract. This clause may not be tailored.

(i) Use the clause with its Alternate I when the head of the agency has waived the examination of records by the Comptroller General in accordance with [25.1001](#).

(ii) If the acquisition will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), the contracting officer shall use the clause with its Alternate II, and may not use Alternate I.

(c) When the use of evaluation factors is appropriate, the contracting officer may—

(1) Insert the provision at [52.212-2](#), Evaluation—Commercial Items, in solicitations for commercial items (see [12.602](#)); or

(2) Include a similar provision containing all evaluation factors required by [13.106](#), [Subpart 14.2](#) or [Subpart 15.3](#), as an addendum (see [12.302](#)(d)).

(d) *Other required provisions and clauses.* (1) Notwithstanding prescriptions contained elsewhere in the FAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part shall be revised, as necessary, to reflect the applicability of statutes and executive orders to the acquisition of commercial items.

(2) Insert the clause at [52.225-19](#), Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, as prescribed in [25.301-4](#).

(e) *Discretionary use of FAR provisions and clauses.* The contracting officer may include in solicitations and contracts by addendum other FAR provisions and clauses when their use is consistent with the limitations contained in [12.302](#). For example:

(1) The contracting officer may include appropriate clauses when an indefinite-delivery type of contract will be used. The clauses prescribed at [16.506](#) may be used for this purpose.

(2) The contracting officer may include appropriate provisions and clauses when the use of options is in the Government's interest. The provisions and clauses prescribed in

[17.208](#) may be used for this purpose. If the provision at [52.212-2](#) is used, paragraph (b) provides for the evaluation of options.

(3) The contracting officer may use the provisions and clauses contained in [Part 23](#) regarding the use of products containing recovered materials and biobased products when appropriate for the item being acquired.

(4) When setting aside under the Stafford Act ([Subpart 26.2](#)), include the provision at [52.226-3](#), Disaster or Emergency Area Representation, in the solicitation. The representation in this provision is not in the Online Representations and Certifications Application (ORCA) Database.

(f) Agencies may supplement the provisions and clauses prescribed in this part (to require use of additional provisions and clauses) only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items or as may be approved by the agency senior procurement executive, or the individual responsible for representing the agency on the FAR Council, without power of delegation.

12.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(a) *General.* The provisions and clauses established in this subpart are intended to address, to the maximum extent practicable, commercial market practices for a wide range of potential Government acquisitions of commercial items. However, because of the broad range of commercial items acquired by the Government, variations in commercial practices, and the relative volume of the Government's acquisitions in the specific market, contracting officers may, within the limitations of this subpart, and after conducting appropriate market research, tailor the provision at [52.212-1](#), Instructions to Offerors—Commercial Items, and the clause at [52.212-4](#), Contract Terms and Conditions—Commercial Items, to adapt to the market conditions for each acquisition.

(b) *Tailoring [52.212-4](#), Contract Terms and Conditions—Commercial Items.* The following paragraphs of the clause at [52.212-4](#), Contract Terms and Conditions—Commercial Items, implement statutory requirements and shall not be tailored—

- (1) Assignments;
- (2) Disputes;
- (3) Payment (except as provided in [Subpart 32.11](#));
- (4) Invoice;
- (5) Other compliances; and
- (6) Compliance with laws unique to Government contracts.

(c) *Tailoring inconsistent with customary commercial practice.* The contracting officer shall not tailor any clause or otherwise include any additional terms or conditions in a solicitation or contract for commercial items in a manner that is inconsistent with customary commercial practice for the

item being acquired unless a waiver is approved in accordance with agency procedures. The request for waiver must describe the customary commercial practice found in the marketplace, support the need to include a term or condition that is inconsistent with that practice and include a determination that use of the customary commercial practice is inconsistent with the needs of the Government. A waiver may be requested for an individual or class of contracts for that specific item.

(d) Tailoring shall be by addenda to the solicitation and contract. The contracting officer shall indicate in Block 27a of the [SF 1449](#) if addenda are attached. These addenda may include, for example, a continuation of the schedule of supplies/services to be acquired from blocks 18 through 21 of the [SF 1449](#); a continuation of the description of the supplies/services being acquired; further elaboration of any other item(s) on the [SF 1449](#); any other terms or conditions necessary for the performance of the proposed contract (such as options, ordering procedures for indefinite-delivery type contracts, warranties, contract financing arrangements, etc.).

12.303 Contract format.

Solicitations and contracts for the acquisition of commercial items prepared using this [Part 12](#) shall be assembled, to the maximum extent practicable, using the following format:

- (a) [Standard Form \(SF\) 1449](#);
- (b) Continuation of any block from [SF 1449](#), such as—
 - (1) Block 10 if a price evaluation adjustment for small disadvantaged business concerns is applicable (the contracting officer shall indicate the percentage(s) and applicable line item(s)), if an incentive subcontracting clause is used (the contracting officer shall indicate the applicable percentage), or if set aside for emerging small businesses;
 - (2) Block 18B for remittance address;
 - (3) Block 19 for contract line item numbers;
 - (4) Block 20 for schedule of supplies/services; or
 - (5) Block 25 for accounting data;
- (c) Contract clauses—
 - (1) [52.212-4](#), Contract Terms and Conditions—Commercial Items, by reference (see [SF 1449](#) block 27a);
 - (2) Any addendum to [52.212-4](#); and
 - (3) [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes and Executive orders;
- (d) Any contract documents, exhibits or attachments; and
- (e) Solicitation provisions—
 - (1) [52.212-1](#), Instructions to Offerors—Commercial Items, by reference (see [SF 1449](#), Block 27a);
 - (2) Any addendum to [52.212-1](#);
 - (3) [52.212-2](#), Evaluation—Commercial Items, or other description of evaluation factors for award, if used; and
 - (4) [52.212-3](#), Offeror Representations and Certifications—Commercial Items.

Subpart 12.5—Applicability of Certain Laws to the Acquisition of Commercial Items and Commercially Available Off-The-Shelf Items

12.500 Scope of subpart.

(a) As required by sections 34 and 35 of the Office of Federal Procurement Policy Act ([41 U.S.C. 430](#) and [431](#)), this subpart lists provisions of law that are not applicable to—

- (1) Contracts for the acquisition of commercial items;
- (2) Subcontracts, at any tier, for the acquisition of commercial items; and
- (3) Contracts and subcontracts, at any tier, for the acquisition of COTS items.

(b) This subpart also lists provisions of law that have been amended to eliminate or modify their applicability to either contracts or subcontracts for the acquisition of commercial items.

12.501 Applicability.

(a) This subpart applies to any contract or subcontract at any tier for the acquisition of commercial items.

(b) Nothing in this subpart shall be construed to authorize the waiver of any provision of law with respect to any subcontract if the prime contractor is reselling or distributing commercial items of another contractor without adding value. This limitation is intended to preclude establishment of unusual contractual arrangements solely for the purpose of Government sales.

(c) For purposes of this subpart, contractors awarded subcontracts under [Subpart 19.8](#), Contracting with the Small Business Administration (the 8(a) Program), shall be considered prime contractors.

12.502 Procedures.

(a) The FAR prescription for the provision or clause for each of the laws listed in [12.503](#) has been revised in the appropriate part to reflect its proper application to prime contracts for the acquisition of commercial items.

(b) For subcontracts for the acquisition of commercial items or commercial components, the clauses at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and [52.244-6](#), Subcontracts for Commercial Items and Commercial Components, reflect the applicability of the laws listed in [12.504](#) by identifying the only provisions and clauses that are required to be included in a subcontract at any tier for the acquisition of commercial items or commercial components.

(c) The FAR prescription for the provision or clause for each of the laws listed in [12.505](#) has been revised in the appropriate part to reflect its proper application to contracts and subcontracts for the acquisition of COTS items.

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

(a) The following laws are not applicable to Executive agency contracts for the acquisition of commercial items:

- (1) [41 U.S.C. 43](#), Walsh-Healey Act (see [Subpart 22.6](#)).
- (2) [41 U.S.C. 254\(a\)](#) and [10 U.S.C. 2306\(b\)](#), Contingent Fees (see [3.404](#)).
- (3) [41 U.S.C. 416\(a\)\(6\)](#), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see [5.203](#)).
- (4) [41 U.S.C. 701](#), *et seq.*, Drug-Free Workplace Act of 1988 (see [23.501](#)).
- (5) [31 U.S.C. 1354\(a\)](#), Limitation on use of appropriated funds for contracts with entities not meeting veterans' employment reporting requirements (see [22.1302](#)).
- (6) [31 U.S.C. 6101](#) note, Pub. L. 109-282, Federal Funding Accountability and Transparency Act of 2006, requirement to report subcontract data.

(7) Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, Payment Protections for Subcontractors and Suppliers (see [28.106-6](#)).

(8) [41 U.S.C. 254d\(c\)\(1\)](#) and [10 U.S.C. 2313\(c\)\(1\)](#), GAO Access to Contractor Employees, Section 871 of Pub. L. 110-417 (see [52.214-26](#) and [52.215-2](#)).

(b) Certain requirements of the following laws are not applicable to executive agency contracts for the acquisition of commercial items:

- (1) [40 U.S.C. 3701](#) *et seq.*, Requirement for a certificate and clause under the Contract Work Hours and Safety Standards Act (see [22.305](#)).
- (2) [41 U.S.C. 57\(a\)](#) and (b), and 58, Requirement for a clause and certain other requirements related to the Anti-Kickback Act of 1986 (see [3.502](#)).
- (3) [49 U.S.C. 40118](#), Requirement for a clause under the Fly American provisions (see [47.405](#)).

(c) The applicability of the following laws have been modified in regards to Executive agency contracts for the acquisition of commercial items:

- (1) [41 U.S.C. 253g](#) and [10 U.S.C. 2402](#), Prohibition on Limiting Subcontractor Direct Sales to the United States (see [3.503](#)).
- (2) [41 U.S.C. 254\(d\)](#) and [10 U.S.C. 2306a](#), Truth in Negotiations Act (see [15.403](#)).
- (3) [41 U.S.C. 422](#), Cost Accounting Standards (48 CFR Chapter 99) (see [12.214](#)).

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components at any tier:

- (1) [10 U.S.C. 2631](#), Transportation of Supplies by Sea (except for the types of subcontracts listed at [47.504\(d\)](#)).

(2) [15 U.S.C. 644\(d\)](#), Requirements relative to labor surplus areas under the Small Business Act (see [Subpart 19.2](#)).

(3) [Reserved]

(4) [41 U.S.C. 43](#), Walsh-Healey Act (see [Subpart 22.6](#)).

(5) [41 U.S.C. 253d](#), Validation of Proprietary Data Restrictions (see [Subpart 27.4](#)).

(6) [41 U.S.C. 254\(a\)](#) and [10 U.S.C. 2306\(b\)](#), Contingent Fees (see [Subpart 3.4](#)).

(7) [41 U.S.C. 254d\(c\)](#) and [10 U.S.C. 2313\(c\)](#), Examination of Records of Contractor, when a subcontractor is not required to provide cost or pricing data (see [15.209\(b\)](#)), unless using funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

(8) [41 U.S.C. 416\(a\)\(6\)](#), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see [Subpart 5.2](#)).

(9) [41 U.S.C. 418a](#), Rights in Technical Data (see [Subpart 27.4](#)).

(10) [41 U.S.C. 701](#), *et seq.*, Drug-Free Workplace Act of 1988 (see [Subpart 23.5](#)).

(11) [46 U.S.C. App. 1241\(b\)](#), Transportation in American Vessels of Government Personnel and Certain Cargo (see [Subpart 47.5](#)) (except for the types of subcontracts listed at [47.504\(d\)](#)).

(12) [49 U.S.C. 40118](#), Fly American provisions (see [Subpart 47.4](#)).

(13) Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, Payment Protections for Subcontractors and Suppliers (see [28.106-6](#)).

(b) The requirements for a certificate and clause under the Contract Work Hours and Safety Standards Act, [40 U.S.C. 3701](#) *et seq.*, (see [Subpart 22.3](#)) are not applicable

to subcontracts at any tier for the acquisition of commercial items or commercial components.

(c) The applicability of the following laws has been modified in regards to subcontracts at any tier for the acquisition of commercial items or commercial components:

(1) [41 U.S.C. 253g](#) and [10 U.S.C. 2402](#), Prohibition on Limiting Subcontractor Direct Sales to the United States (see [Subpart 3.5](#)).

(2) [41 U.S.C. 254\(d\)](#) and [10 U.S.C. 2306a](#), Truth in Negotiations Act (see [Subpart 15.4](#)).

(3) [41 U.S.C. 422](#), Cost Accounting Standards (48 CFR Chapter 99) (see [12.214](#)).

12.505 Applicability of certain laws to contracts for the acquisition of COTS items.

COTS items are a subset of commercial items. Therefore, any laws listed in sections [12.503](#) and [12.504](#) are also inapplicable or modified in their applicability to contracts or subcontracts for the acquisition of COTS items. In addition, the following laws are not applicable to contracts for the acquisition of COTS items:

(a)(1) [41 U.S.C. 10a](#), portion of first sentence that reads “substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States,” Buy American Act-Supplies, component test (see [52.225-1](#) and [52.225-3](#)).

(2) [41 U.S.C. 10b](#), portion of first sentence that reads “substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States,” Buy American Act-Construction Materials, component test (see [52.225-9](#) and [52.225-11](#)).

(b) [42 U.S.C. 6962\(c\)\(3\)\(A\)](#), Certification and Estimate of Percentage of Recovered Material.

cable provision of law not included on the list set forth in paragraph (a) of this section unless the FAR Council has already determined in writing that the law is applicable. The Administrator, OFPP, will include the law on the list in paragraph (a) of this section unless the FAR Council makes a determination that it is applicable within 60 days of receiving the petition.

13.006 Inapplicable provisions and clauses.

While certain statutes still apply, pursuant to Public Law 103-355, the following provisions and clauses are inapplicable to contracts and subcontracts at or below the simplified acquisition threshold:

- (a) [52.203-5](#), Covenant Against Contingent Fees.
- (b) [52.203-6](#), Restrictions on Subcontractor Sales to the Government.
- (c) [52.203-7](#), Anti-Kickback Procedures.
- (d) [52.215-2](#), Audits and Records—Negotiation, except as used with its Alternate I, when using funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).
- (e) [52.222-4](#), Contract Work Hours and Safety Standards Act—Overtime Compensation.
- (f) [52.223-6](#), Drug-Free Workplace, except for individuals.
- (g) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Items.

Subpart 13.1—Procedures

13.101 General.

- (a) In making purchases, contracting officers shall—
 - (1) Comply with the policy in [7.202](#) relating to economic purchase quantities, when practicable;
 - (2) Satisfy the procedures described in [Subpart 19.6](#) with respect to Certificates of Competency before rejecting a quotation, oral or written, from a small business concern determined to be nonresponsible (see [Subpart 9.1](#)); and
 - (3) Provide for the inspection of supplies or services as prescribed in [46.404](#).
- (b) In making purchases, contracting officers should—
 - (1) Include related items (such as small hardware items or spare parts for vehicles) in one solicitation and make award on an “all-or-none” or “multiple award” basis provided suppliers are so advised when quotations or offers are requested;
 - (2) Incorporate provisions and clauses by reference in solicitations and in awards under requests for quotations, provided the requirements in [52.102](#) are satisfied;
 - (3) Make maximum effort to obtain trade and prompt payment discounts (see [14.408-3](#)). Prompt payment discounts shall not be considered in the evaluation of quotations; and
 - (4) Use bulk funding to the maximum extent practicable. Bulk funding is a system whereby the contracting officer receives authorization from a fiscal and accounting officer to

obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligational authority on each purchase document. Bulk funding is particularly appropriate if numerous purchases using the same type of funds are to be made during a given period.

13.102 Source list.

(a) Contracting officers should use the Central Contractor Registration database (see [Subpart 4.11](#)) at <http://www.ccr.gov> as their primary sources of vendor information. Offices maintaining additional vendor source files or listings should identify the status of each source (when the status is made known to the contracting office) in the following categories:

- (1) Small business.
- (2) Small disadvantaged business.
- (3) Women-owned small business.
- (4) HUBZone small business.
- (5) Service-disabled veteran-owned small business.
- (6) Veteran-owned small business.

(b) The status information may be used as the basis to ensure that small business concerns are provided the maximum practicable opportunities to respond to solicitations issued using simplified acquisition procedures.

13.103 Use of standing price quotations.

Authorized individuals do not have to obtain individual quotations for each purchase. Standing price quotations may be used if—

- (a) The pricing information is current; and
- (b) The Government obtains the benefit of maximum discounts before award.

13.104 Promoting competition.

The contracting officer must promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most advantageous to the Government, considering the administrative cost of the purchase.

- (a) The contracting officer must not—
 - (1) Solicit quotations based on personal preference; or
 - (2) Restrict solicitation to suppliers of well-known and widely distributed makes or brands.
- (b) If using simplified acquisition procedures and not providing access to the notice of proposed contract action and solicitation information through the Governmentwide point of entry (GPE), maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources within the local trade area. Unless the contract action requires synopsis pursuant to [5.101](#) and an exception under [5.202](#) is not applicable, consider solicitation of at least three sources to promote competition to the maximum extent practicable.

13.105

Whenever practicable, request quotations or offers from two sources not included in the previous solicitation.

13.105 Synopsis and posting requirements.

(a) The contracting officer must comply with the public display and synopsis requirements of [5.101](#) and [5.203](#) unless an exception in [5.202](#) applies.

(b) When acquiring commercial items or supplies or services procured in accordance with 12.102(f)(1), the contracting officer may use a combined synopsis and solicitation. In these cases, a separate solicitation is not required. The contracting officer must include enough information to permit suppliers to develop quotations or offers.

(c) See [5.102\(a\)\(6\)](#) for the requirement to post a brand name justification or documentation required by [13.106-1\(b\)](#) or [13.501](#).

(d) When publicizing contract actions funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5):

(1) Notices of proposed contract actions shall follow the procedures in [5.704](#) for posting orders.

(2) Award notices shall follow the procedures in [5.705](#).

13.106 Soliciting competition, evaluation of quotations or offers, award and documentation.**13.106-1 Soliciting competition.**

(a) *Considerations.* In soliciting competition, the contracting officer shall consider the guidance in [13.104](#) and the following before requesting quotations or offers:

(1)(i) The nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive.

(ii) An electronic commerce method that employs widespread electronic public notice is not available; and

(iii) The urgency of the proposed purchase.

(iv) The dollar value of the proposed purchase.

(v) Past experience concerning specific dealers' prices.

(2) When soliciting quotations or offers, the contracting officer shall notify potential quoters or offerors of the basis on which award will be made (price alone or price and other factors, *e.g.*, past performance and quality). Contracting officers are encouraged to use best value. Solicitations are not required to state the relative importance assigned to each evaluation factor and subfactor, nor are they required to include subfactors.

(b) *Soliciting from a single source.* (1) For purchases not exceeding the simplified acquisition threshold, contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available (*e.g.*, urgency, exclusive licensing agreements, brand name or industrial mobilization).

(2) For sole source (including brand name) acquisitions of commercial items in excess of the simplified acquisition threshold conducted pursuant to [Subpart 13.5](#) the requirements at 13.501(a) apply.

(3) See [5.102\(a\)\(6\)](#) for the requirement to post the brand name justification or documentation.

(c) *Soliciting orally.* (1) The contracting officer shall solicit quotations orally to the maximum extent practicable, if—

(i) The acquisition does not exceed the simplified acquisition threshold;

(ii) Oral solicitation is more efficient than soliciting through available electronic commerce alternatives; and

(iii) Notice is not required under [5.101](#).

(2) However, an oral solicitation may not be practicable for contract actions exceeding \$30,000 unless covered by an exception in [5.202](#).

(d) *Written solicitations.* If obtaining electronic or oral quotations is uneconomical or impracticable, the contracting officer should issue paper solicitations for contract actions likely to exceed \$30,000. The contracting officer shall issue a written solicitation for construction requirements exceeding \$2,000.

(e) *Use of options.* Options may be included in solicitations, provided the requirements of [Subpart 17.2](#) are met and the aggregate value of the acquisition and all options does not exceed the dollar threshold for use of simplified acquisition procedures.

(f) *Inquiries.* An agency should respond to inquiries received through any medium (including electronic commerce) if doing so would not interfere with the efficient conduct of the acquisition.

13.106-2 Evaluation of quotations or offers.

(a) *General.* (1) The contracting officer shall evaluate quotations or offers—

(i) In an impartial manner; and

(ii) Inclusive of transportation charges from the shipping point of the supplier to the delivery destination.

(2) Quotations or offers shall be evaluated on the basis established in the solicitation.

(3) All quotations or offers shall be considered (see paragraph (b) of this subsection).

(b) *Evaluation procedures.* (1) The contracting officer has broad discretion in fashioning suitable evaluation procedures. The procedures prescribed in [Parts 14](#) and [15](#) are not mandatory. At the contracting officer's discretion, one or more, but not necessarily all, of the evaluation procedures in [Part 14](#) or [15](#) may be used.

(2) If telecommuting is not prohibited, agencies shall not unfavorably evaluate an offer because it includes telecommuting unless the contracting officer executes a written determination in accordance with FAR [7.108\(b\)](#).

(3) If using price and other factors, ensure that quotations or offers can be evaluated in an efficient and minimally

same plant in which the product previously acquired or tested was produced, use the provision with its alternate ii.

(3) see [14.202-4\(e\)\(2\)](#) regarding waiving the requirement for all bidders.

(p)(1) insert the provision at [52.214-21](#), descriptive literature, in invitations for bids if—

(i) descriptive literature is required to evaluate the technical acceptability of an offered product; and

(ii) the required information will not be readily available unless it is submitted by bidders.

(2) use the basic clause with its alternate i if the possibility exists that the contracting officer may waive the requirement for furnishing descriptive literature for a bidder offering a previously supplied product that meets specification requirements of the current solicitation.

(3) see [14.202-5\(d\)\(2\)](#) regarding waiving the requirement for all bidders.

(q) insert the provision at [52.214-22](#), evaluation of bids for multiple awards, in invitations for bids if the contracting officer determines that multiple awards might be made if doing so is economically advantageous to the government.

(r) insert the provision at [52.214-23](#), late submissions, modifications, revisions, and withdrawals of technical proposals under two-step sealed bidding, in solicitations for technical proposals in step one of two-step sealed bidding.

(s) insert the provision at [52.214-24](#), multiple technical proposals, in solicitations for technical proposals in step one of two-step sealed bidding if the contracting officer permits the submission of multiple technical proposals.

(t) insert the provision at [52.214-25](#), step two of two-step sealed bidding, in invitations for bids issued under step two of two-step sealed bidding.

(u) [reserved]

(v) insert the provision at [52.214-31](#), facsimile bids, in solicitations if facsimile bids are authorized (see [14.202-7](#)).

(w) insert the provision at [52.214-34](#), submission of offers in the english language, in solicitations that include any of the clauses prescribed in [25.1101](#) or [25.1102](#). it may be included in other solicitations when the contracting officer decides that it is necessary.

(x) insert the provision at [52.214-35](#), submission of offers in u.s. currency, in solicitations that include any of the clauses prescribed in [25.1101](#) or [25.1102](#), unless the contracting officer includes the clause at [52.225-17](#), Evaluation of Foreign Currency Offers, as prescribed in [25.1103\(d\)](#). It may be included in other solicitations when the contracting officer decides that it is necessary.

14.201-7 Contract clauses.

(a) When contracting by sealed bidding, the contracting officer shall insert the clause at [52.214-26](#), Audit and Records—Sealed Bidding, in solicitations and contracts as follows:

(1) *Use the basic clause if—*(i) The acquisition will not use funds appropriated or otherwise made available by the

American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5); and

(ii) The contract amount is expected to exceed the threshold at [15.403-4\(a\)\(1\)](#) for submission of cost or pricing data.

(2) If the acquisition will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, use the clause with its Alternate I in all solicitations and contracts.

(b)(1) When contracting by sealed bidding, the contracting officer shall insert the clause at [52.214-27](#), Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold for submission of cost or pricing data at [15.403-4\(a\)\(1\)](#).

(2) In exceptional cases, the head of the contracting activity may waive the requirement for inclusion of the clause in a contract with a foreign government or agency of that government. The authorizations for the waiver and the reasons for granting it shall be in writing.

(c)(1) When contracting by sealed bidding, the contracting officer shall insert the clause at [52.214-28](#), Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold for submission of cost or pricing data at [15.403-4\(a\)\(1\)](#).

(2) In exceptional cases, the head of the contracting activity may waive the requirement for inclusion of the clause in a contract with a foreign government or agency of that government. The authorizations for the waiver and the reasons for granting it shall be in writing.

(d) When contracting by sealed bidding the contracting officer shall insert the clause at [52.214-29](#), Order of Precedence—Sealed Bidding, in solicitations and contracts to which the uniform contract format applies.

14.201-8 Price related factors.

The factors set forth in paragraphs (a) through (e) of this subsection may be applicable in evaluation of bids for award and shall be included in the solicitation when applicable. (See [14.201-5\(c\)](#).)

(a) Foreseeable costs or delays to the Government resulting from such factors as differences in inspection, locations of supplies, and transportation. If bids are on an f.o.b. origin basis (see [47.303](#) and [47.305](#)), transportation costs to the designated points shall be considered in determining the lowest cost to the Government.

(b) Changes made, or requested by the bidder, in any of the provisions of the invitation for bids, if the change does not constitute a ground for rejection under [14.404](#).

(c) Advantages or disadvantages to the Government that might result from making more than one award (see [14.201-6\(q\)](#)). The contracting officer shall assume, for the purpose of making multiple awards, that \$500 would be the administrative cost to the Government for issuing and admin-

istering each contract awarded under a solicitation. Individual awards shall be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(d) Federal, state, and local taxes (see [Part 29](#)).

(e) Origin of supplies, and, if foreign, the application of the Buy American Act or any other prohibition on foreign purchases (see [Part 25](#)).

14.201-9 Simplified contract format.

Policy. For firm-fixed-price or fixed-price with economic price adjustment acquisitions of supplies and services, the contracting officer may use the simplified contract format in lieu of the uniform contract format (see [14.201-1](#)). The contracting officer has flexibility in preparation and organization of the simplified contract format. However, the following format should be used to the maximum practical extent:

(a) *Solicitation/contract form.* [Standard Form \(SF\) 1447](#), Solicitation/Contract, shall be used as the first page of the solicitation.

(b) *Contract schedule.* Include the following for each contract line item:

(1) Contract line item number.

(2) Description of supplies or services, or data sufficient to identify the requirement.

(3) Quantity and unit of issue.

(4) Unit price and amount.

(5) Packaging and marking requirements.

(6) Inspection and acceptance, quality assurance, and reliability requirements.

(7) Place of delivery, performance and delivery dates, period of performance, and f.o.b. point.

(8) Other item-peculiar information as necessary (e.g., individual fund citations).

(c) *Clauses.* Include the clauses required by this regulation. Additional clauses shall be incorporated only when considered absolutely necessary to the particular acquisition.

(d) *List of documents and attachments.* Include if necessary.

(e) *Representations and instructions—(1) Representations and certifications.* Insert those solicitation provisions that require representations, certifications, or the submission of other information by offerors.

(2) *Instructions, conditions, and notices.* Include the solicitation provisions required by [14.201-6](#). Include any other information/instructions necessary to guide offerors.

(3) *Evaluation factors for award.* Insert all evaluation factors and any significant subfactors for award.

(4) Upon award, the contracting officer need not physically include the provisions in paragraphs (e)(1), (2), and (3) of this subsection in the resulting contract, but shall retain them in the contract file. Award by acceptance of a bid on the award portion of [SF 1447](#) incorporates the representations, certifications, and other statements of bidders in the resultant contract even though not physically attached.

14.202 General rules for solicitation of bids.

14.202-1 Bidding time.

(a) *Policy.* A reasonable time for prospective bidders to prepare and submit bids shall be allowed in all invitations, consistent with the needs of the Government. (For construction contracts, see [36.213-3](#)(a).) A bidding time (*i.e.*, the time between issuance of the solicitation and opening of bids) of at least 30 calendar days shall be provided, when synopsis is required by [Subpart 5.2](#).

(b) *Factors to be considered.* Because of unduly limited bidding time, some potential sources may be precluded from bidding and others may be forced to include amounts for contingencies that, with additional time, could be eliminated. To avoid unduly restricting competition or paying higher-than-necessary prices, consideration shall be given to such factors as the following in establishing a reasonable bidding time:

(1) Degree of urgency;

(2) Complexity of requirement;

(3) Anticipated extent of subcontracting;

(4) Whether use was made of presolicitation notices;

(5) Geographic distribution of bidders; and

(6) Normal transmittal time for both invitations and bids.

14.202-2 Telegraphic bids.

(a) Telegraphic bids and mailgrams shall be authorized only when—

(1) The date for the opening of bids will not allow bidders sufficient time to submit bids in the prescribed format; or

(2) Prices are subject to frequent changes.

(b) If telegraphic bids are to be authorized, see [14.201-6](#)(g). Unauthorized telegraphic bids shall not be considered (see [14.301](#)(b)).

14.202-3 Bid envelopes.

(a) Postage or envelopes bearing “Postage and Fees Paid” indicia shall not be distributed with the invitation for bids or otherwise supplied to prospective bidders.

(b) To provide for ready identification and proper handling of bids, [Optional Form 17](#), Offer Label, may be furnished with each bid set. The form may be obtained from the General Services Administration (see [53.107](#)).

14.202-4 Bid samples.

(a) *Policy.*(1) Bidders shall not be required to furnish bid samples unless there are characteristics of the product that cannot be described adequately in the specification or purchase description.

(2) Bid samples will be used only to determine the responsiveness of the bid and will not be used to determine a bidder’s ability to produce the required items.

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

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

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

(iii) It was the only proposal received.

(2) However, a late modification of an otherwise successful proposal, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

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

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

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

(f) The contracting officer must promptly notify any offeror if its proposal, modification, or revision was received late, and must inform the offeror whether its proposal will be considered, unless contract award is imminent and the notice prescribed in [15.503\(b\)](#) would suffice.

(g) Late proposals and modifications that are not considered must be held unopened, unless opened for identification,

until after award and then retained with other unsuccessful proposals.

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

(1) The date and hour of receipt.

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

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

15.209 Solicitation provisions and contract clauses.

When contracting by negotiation—

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

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

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

(b)(1) Except as provided in paragraph (b)(2) of this section, the contracting officer shall insert the clause at [52.215-2](#), Audit and Records—Negotiation ([10 U.S.C. 2313](#), [41 U.S.C. 254d](#), and OMB Circular No. A-133), in solicitations and contracts except those for—

(i) Acquisitions not exceeding the simplified acquisition threshold;

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

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

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

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

(ii) Use the clause with its Alternate I.

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

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

(c) When issuing a solicitation for information or planning purposes, the contracting officer shall insert the provision at [52.215-3](#), Request for Information or Solicitation for Planning

Purposes, and clearly mark on the face of the solicitation that it is for information or planning purposes.

(d) [Reserved]

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

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

(g) [Reserved]

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

15.210 Forms.

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

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

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

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

orders in those areas will be awarded on a sole-source basis; however, each awardee need not be capable of performing every requirement as well as any other awardee under the contracts. The contracting officer should consider the following when determining the number of contracts to be awarded:

(1) The scope and complexity of the contract requirement.

(2) The expected duration and frequency of task or delivery orders.

(3) The mix of resources a contractor must have to perform expected task or delivery order requirements.

(4) The ability to maintain competition among the awardees throughout the contracts' period of performance.

(B) The contracting officer must not use the multiple award approach if—

(1) Only one contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized;

(2) Based on the contracting officer's knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made;

(3) The expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;

(4) The projected task orders are so integrally related that only a single contractor can reasonably perform the work;

(5) The total estimated value of the contract is less than the simplified acquisition threshold; or

(6) Multiple awards would not be in the best interests of the Government.

(C) The contracting officer must document the decision whether or not to use multiple awards in the acquisition plan or contract file. The contracting officer may determine that a class of acquisitions is not appropriate for multiple awards (see [Subpart 1.7](#)).

(D) (1) No task or delivery order contract in an amount estimated to exceed \$100 million (including all options) may be awarded to a single source unless the head of the agency determines in writing that—

(i) The task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work;

(ii) The contract provides only for firm-fixed price (see [16.202](#)) task or delivery orders for—

(A) Products for which unit prices are established in the contract; or

(B) Services for which prices are established in the contract for the specific tasks to be performed;

(iii) Only one source is qualified and capable of performing the work at a reasonable price to the Government; or

(iv) It is necessary in the public interest to award the contract to a single source due to exceptional circumstances.

(2) The head of the agency must notify Congress within 30 days after any determination under paragraph (c)(1)(ii)(D)(1)(iv) of this section.

(3) The requirement for a determination for a single award contract greater than \$100 million applies in addition to the requirements of [Subpart 6.3](#).

(2) *Contracts for advisory and assistance services.*

(i) Except as provided in paragraph (c)(2)(ii) of this section, if an indefinite-quantity contract for advisory and assistance services exceeds 3 years and \$11.5 million, including all options, the contracting officer must make multiple awards unless—

(A) The contracting officer or other official designated by the head of the agency determines in writing, as part of acquisition planning, that multiple awards are not practicable. The contracting officer or other official must determine that only one contractor can reasonably perform the work because either the scope of work is unique or highly specialized or the tasks so integrally related;

(B) The contracting officer or other official designated by the head of the agency determines in writing, after the evaluation of offers, that only one offeror is capable of providing the services required at the level of quality required; or

(C) Only one offer is received.

(ii) The requirements of paragraph (c)(2)(i) of this section do not apply if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are incidental and not a significant component of the contract.

16.505 Ordering.

(a) *General.* (1) In general, the contracting officer does not synopsise orders under indefinite-delivery contracts; but see [16.505\(a\)\(10\)](#) for orders funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub L. 111-5).

(2) Individual orders shall clearly describe all services to be performed or supplies to be delivered so the full cost or price for the performance of the work can be established when the order is placed. Orders shall be within the scope, issued within the period of performance, and be within the maximum value of the contract.

(3) Performance-based acquisition methods must be used to the maximum extent practicable, if the contract or order is for services (see [37.102\(a\)](#) and [Subpart 37.6](#)).

(4) When acquiring information technology and related services, consider the use of modular contracting to reduce program risk (see [39.103\(a\)](#)).

(5) Orders may be placed by using any medium specified in the contract.

(6) Orders placed under indefinite-delivery contracts must contain the following information:

- (i) Date of order.
- (ii) Contract number and order number.
- (iii) For supplies and services, contract item number and description, quantity, and unit price or estimated cost or fee.
- (iv) Delivery or performance schedule.
- (v) Place of delivery or performance (including consignee).
- (vi) Any packaging, packing, and shipping instructions.
- (vii) Accounting and appropriation data.
- (viii) Method of payment and payment office, if not specified in the contract (see [32.1110\(e\)](#)).

(7) Orders placed under a task-order contract or delivery-order contract awarded by another agency (*i.e.*, a Governmentwide acquisition contract, or multi-agency contract)—

- (i) Are not exempt from the development of acquisition plans (see [Subpart 7.1](#)), and an information technology acquisition strategy (see [Part 39](#));
- (ii) May not be used to circumvent conditions and limitations imposed on the use of funds (*e.g.*, [31 U.S.C. 1501\(a\)\(1\)](#)); and
- (iii) Must comply with all FAR requirements for a bundled contract when the order meets the definition of “bundled contract” (see [2.101\(b\)](#)).

(8) In accordance with section 1427(b) of Public Law 108-136, orders placed under multi-agency contracts for services that substantially or to a dominant extent specify performance of architect-engineer services, as defined in [2.101](#), shall—

- (i) Be awarded using the procedures at [Subpart 36.6](#); and
- (ii) Require the direct supervision of a professional architect or engineer licensed, registered or certified in the State, Federal District, or outlying area, in which the services are to be performed.

(9) (i) No protest under [Subpart 33.1](#) is authorized in connection with the issuance or proposed issuance of an order under a task-order contract or delivery-order contract, except for—

(A) A protest on the grounds that the order increases the scope, period, or maximum value of the contract; or

(B) *A protest of an order valued in excess of \$10 million.* Protests of orders in excess of \$10 million may only be filed with the Government Accountability Office, in accordance with the procedures at [33.104](#).

(ii) The authority to protest the placement of an order under this subpart expires on May 27, 2011. ([10 U.S.C. 2304a\(d\)](#) and [2304c\(d\)](#), and [41 U.S.C. 253h\(d\)](#) and [253j\(d\)](#)).

(10) Publicize orders funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) as follows:

(i) Notices of proposed orders shall follow the procedures in [5.704](#) for posting orders.

(ii) Award notices for orders shall follow the procedures in [5.705](#).

(b) *Orders under multiple award contracts—* (1) *Fair opportunity.* (i) The contracting officer must provide each awardee a fair opportunity to be considered for each order exceeding \$3,000 issued under multiple delivery-order contracts or multiple task-order contracts, except as provided for in paragraph (b)(2) of this section.

(ii) The contracting officer may exercise broad discretion in developing appropriate order placement procedures. The contracting officer should keep submission requirements to a minimum. Contracting officers may use streamlined procedures, including oral presentations. In addition, the contracting officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order and the order does not exceed \$5 million. The competition requirements in [Part 6](#) and the policies in [Subpart 15.3](#) do not apply to the ordering process. However, the contracting officer must—

(A) Develop placement procedures that will provide each awardee a fair opportunity to be considered for each order and that reflect the requirement and other aspects of the contracting environment;

(B) Not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order;

(C) Tailor the procedures to each acquisition;

(D) Include the procedures in the solicitation and the contract; and

(E) Consider price or cost under each order as one of the factors in the selection decision.

(iii) *Orders exceeding \$5 million.* For task or delivery orders in excess of \$5 million, the requirement to provide all awardees a fair opportunity to be considered for each order shall include, at a minimum—

(A) A notice of the task or delivery order that includes a clear statement of the agency’s requirements;

(B) A reasonable response period;

(C) Disclosure of the significant factors and sub-factors, including cost or price, that the agency expects to consider in evaluating proposals, and their relative importance;

(D) Where award is made on a best value basis, a written statement documenting the basis for award and the relative importance of quality and price or cost factors; and

(E) An opportunity for a postaward debriefing in accordance with paragraph (b)(4) of this section.

(iv) The contracting officer should consider the following when developing the procedures:

(A) (1) Past performance on earlier orders under the contract, including quality, timeliness and cost control.

(2) Potential impact on other orders placed with the contractor.

(3) Minimum order requirements.

(4) The amount of time contractors need to make informed business decisions on whether to respond to potential orders.

(5) Whether contractors could be encouraged to respond to potential orders by outreach efforts to promote exchanges of information, such as—

(i) Seeking comments from two or more contractors on draft statements of work;

(ii) Using a multiphased approach when effort required to respond to a potential order may be resource intensive (*e.g.*, requirements are complex or need continued development), where all contractors are initially considered on price considerations (*e.g.*, rough estimates), and other considerations as appropriate (*e.g.*, proposed conceptual approach, past performance). The contractors most likely to submit the highest value solutions are then selected for one-on-one sessions with the Government to increase their understanding of the requirements, provide suggestions for refining requirements, and discuss risk reduction measures.

(B) Formal evaluation plans or scoring of quotes or offers are not required.

(2) *Exceptions to the fair opportunity process.* The contracting officer shall give every awardee a fair opportunity to be considered for a delivery-order or task-order exceeding \$3,000 unless one of the following statutory exceptions applies:

(i) The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.

(ii) Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized.

(iii) The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.

(iv) It is necessary to place an order to satisfy a minimum guarantee.

(3) *Pricing orders.* If the contract did not establish the price for the supply or service, the contracting officer must establish prices for each order using the policies and methods in [Subpart 15.4](#).

(4) *Postaward Notices and Debriefing of Awardees for Orders Exceeding \$5 million.* The contracting officer shall notify unsuccessful awardees when the total price of a task or delivery order exceeds \$5 million.

(i) The procedures at [15.503\(b\)\(1\)](#) shall be followed when providing postaward notification to unsuccessful awardees.

(ii) The procedures at [15.506](#) shall be followed when providing postaward debriefing to unsuccessful awardees.

(iii) A summary of the debriefing shall be included in the task or delivery order file.

(5) *Decision documentation for orders.* The contracting officer shall document in the contract file the rationale for placement and price of each order, including the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. This documentation need not quantify the tradeoffs that led to the decision. The contract file shall also identify the basis for using an exception to the fair opportunity process. If the agency uses the logical follow-on exception, the rationale shall describe why the relationship between the initial order and the follow-on is logical (*e.g.*, in terms of scope, period of performance, or value).

(6) *Task-order and delivery-order ombudsman.* The head of the agency shall designate a task-order and delivery-order ombudsman. The ombudsman must review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman must be a senior agency official who is independent of the contracting officer and may be the agency's competition advocate.

(c) *Limitation on ordering period for task-order contracts for advisory and assistance services.* (1) Except as provided for in paragraphs (c)(2) and (c)(3), the ordering period of a task-order contract for advisory and assistance services, including all options or modifications, normally may not exceed 5 years.

(2) The 5-year limitation does not apply when—

(i) A longer ordering period is specifically authorized by a statute; or

(ii) The contract is for an acquisition of supplies or services that includes the acquisition of advisory and assistance services and the contracting officer, or other official designated by the head of the agency, determines that the advisory and assistance services are incidental and not a significant component of the contract.

(3) The contracting officer may extend the contract on a sole-source basis only once for a period not to exceed 6 months if the contracting officer, or other official designated by the head of the agency, determines that—

(i) The award of a follow-on contract is delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(ii) The extension is necessary to ensure continuity of services, pending the award of the follow-on contract.

16.506 Solicitation provisions and contract clauses.

(a) Insert the clause at [52.216-18](#), Ordering, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(b) Insert a clause substantially the same as the clause at [52.216-19](#), Order Limitations, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(c) Insert the clause at [52.216-20](#), Definite Quantity, in solicitations and contracts when a definite-quantity contract is contemplated.

(d)(1) Insert the clause at [52.216-21](#), Requirements, in solicitations and contracts when a requirements contract is contemplated.

(2) If the contract is for nonpersonal services and related supplies and covers estimated requirements that exceed a specific Government activity's internal capability to produce or perform, use the clause with its Alternate I.

(3) If the contract includes subsistence for both Government use and resale in the same Schedule, and similar products may be acquired on a brand-name basis, use the clause with its Alternate II (but see paragraph (d)(5) of this section).

(4) If the contract involves a partial small business set-aside, use the clause with its Alternate III (but see paragraph (d)(5) of this section).

(5) If the contract—

(i) Includes subsistence for Government use and resale in the same schedule and similar products may be acquired on a brand-name basis; and

(ii) Involves a partial small business set-aside, use the clause with its Alternate IV.

(e) Insert the clause at [52.216-22](#), Indefinite Quantity, in solicitations and contracts when an indefinite-quantity contract is contemplated.

(f) Insert the provision at [52.216-27](#), Single or Multiple Awards, in solicitations for indefinite-quantity contracts that may result in multiple contract awards. Modify the provision to specify the estimated number of awards. Do not use this provision for advisory and assistance services contracts that exceed 3 years and \$11.5 million (including all options).

(g) Insert the provision at [52.216-28](#), Multiple Awards for Advisory and Assistance Services, in solicitations for task-order contracts for advisory and assistance services that exceed 3 years and \$11.5 million (including all options), unless a determination has been made under [16.504\(c\)\(2\)\(i\)\(A\)](#). Modify the provision to specify the estimated number of awards.

PART 25—FOREIGN ACQUISITION

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| <p>25.000 Scope of part.</p> <p>25.001 General.</p> <p>25.002 Applicability of subparts.</p> <p>25.003 Definitions.</p> <p>25.004 Reporting of acquisition of end products manufactured outside the United States.</p> <p style="text-align: center;">Subpart 25.1—Buy American Act—Supplies</p> <p>25.100 Scope of subpart.</p> <p>25.101 General.</p> <p>25.102 Policy.</p> <p>25.103 Exceptions.</p> <p>25.104 Nonavailable articles.</p> <p>25.105 Determining reasonableness of cost.</p> <p style="text-align: center;">Subpart 25.2—Buy American Act—Construction Materials</p> <p>25.200 Scope of Subpart.</p> <p>25.201 Policy.</p> <p>25.202 Exceptions.</p> <p>25.203 Preaward determinations.</p> <p>25.204 Evaluating offers of foreign construction material.</p> <p>25.205 Postaward determinations.</p> <p>25.206 Noncompliance.</p> <p style="text-align: center;">Subpart 25.3—Contracts Performed Outside the United States</p> <p>25.301 Contractor personnel in a designated operational area or supporting a diplomatic or consular mission outside the United States.</p> <p>25.301-1 Scope.</p> <p>25.301-2 Government support.</p> <p>25.301-3 Weapons.</p> <p>25.301-4 Contract clause.</p> <p style="text-align: center;">Subpart 25.4—Trade Agreements</p> <p>25.400 Scope of subpart.</p> <p>25.401 Exceptions.</p> <p>25.402 General.</p> <p>25.403 World Trade Organization Government Procurement Agreement and Free Trade Agreements.</p> <p>25.404 Least developed countries.</p> <p>25.405 Caribbean Basin Trade Initiative.</p> <p>25.406 Israeli Trade Act.</p> <p>25.407 Agreement on Trade in Civil Aircraft.</p> <p>25.408 Procedures.</p> <p style="text-align: center;">Subpart 25.5—Evaluating Foreign Offers—Supply Contracts</p> <p>25.501 General.</p> <p>25.502 Application.</p> <p>25.503 Group offers.</p> | <p>25.504 Evaluation examples.</p> <p>25.504-1 Buy American Act.</p> <p>25.504-2 WTO GPA/Caribbean Basin Trade Initiative/ FTAs.</p> <p>25.504-3 FTA/Israeli Trade Act.</p> <p>25.504-4 Group award basis.</p> <p style="text-align: center;">Subpart 25.6—Subpart 25.6—American Recovery and Reinvestment Act—Buy American Act—Construction Materials</p> <p>25.600 Scope of subpart.</p> <p>25.601 Definitions.</p> <p>25.602 Policy.</p> <p>25.603 Exceptions.</p> <p>25.604 Preaward determination concerning the inapplicability of section 1605 of the Recovery Act or the Buy American Act.</p> <p>25.605 Evaluating offers of foreign construction material.</p> <p>25.606 Postaward determinations.</p> <p>25.607 Noncompliance.</p> <p style="text-align: center;">Subpart 25.7—Prohibited Sources</p> <p>25.700 Scope of subpart.</p> <p>25.701 Restrictions on acquisitions of supplies or services from prohibited sources.</p> <p>25.702 Prohibition on contracting with entities that conduct restricted business operations in Sudan.</p> <p>25.702-1 Definitions.</p> <p>25.702-2 Certification.</p> <p>25.702-3 Remedies.</p> <p>25.702-4 Waiver.</p> <p style="text-align: center;">Subpart 25.8—Other International Agreements and Coordination</p> <p>25.801 General.</p> <p>25.802 Procedures.</p> <p style="text-align: center;">Subpart 25.9—Customs and Duties</p> <p>25.900 Scope of subpart.</p> <p>25.901 Policy.</p> <p>25.902 Procedures.</p> <p>25.903 Exempted supplies.</p> <p style="text-align: center;">Subpart 25.10—Additional Foreign Acquisition Regulations</p> <p>25.1001 Waiver of right to examination of records.</p> <p>25.1002 Use of foreign currency.</p> <p style="text-align: center;">Subpart 25.11—Solicitation Provisions and Contract Clauses</p> <p>25.1101 Acquisition of supplies.</p> <p>25.1102 Acquisition of construction.</p> <p>25.1103 Other provisions and clauses.</p> |
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25.000 Scope of part.

- (a) This part provides policies and procedures for—
 - (1) Acquisition of foreign supplies, services, and construction materials; and
 - (2) Contracts performed outside the United States.
- (b) It implements the Buy American Act, trade agreements, and other laws and regulations.

25.001 General.

- (a) The Buy American Act—
 - (1) Restricts the purchase of supplies, that are not domestic end products, for use within the United States. A foreign end product may be purchased if the contracting officer determines that the price of the lowest domestic offer is unreasonable or if another exception applies (see [Subpart 25.1](#)); and
 - (2) Requires, with some exceptions, the use of only domestic construction materials in contracts for construction in the United States (see [Subpart 25.2](#)).
- (b) The restrictions in the Buy American Act are not applicable in acquisitions subject to certain trade agreements (see [Subpart 25.4](#)). In these acquisitions, end products and construction materials from certain countries receive nondiscriminatory treatment in evaluation with domestic offers. Generally, the dollar value of the acquisition determines which of the trade agreements applies. Exceptions to the applicability of the trade agreements are described in [Subpart 25.4](#).
- (c) The test to determine the country of origin for an end product under the Buy American Act (see the various country

“end product” definitions in [25.003](#)) is different from the test to determine the country of origin for an end product under the trade agreements, or the criteria for the report on end products manufactured outside the United States (see [25.004](#)).

(1) The Buy American Act uses a two-part test to define a “domestic end product” or “domestic construction material” (manufactured in the United States and a formula based on cost of domestic components). The component test has been waived for acquisition of commercially available off-the-shelf items.

(2) Under the trade agreements, the test to determine country of origin is “substantial transformation” (*i.e.*, transforming an article into a new and different article of commerce, with a name, character, or use distinct from the original article).

(3) For the reporting requirement at [25.004](#), the only criterion is whether the place of manufacture of an end product is in the United States or outside the United States, without regard to the origin of the components.

(4) When using funds appropriated under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), the definition of “domestic manufactured construction material” requires manufacture in the United States but does not include a requirement with regard to the origin of the components.

25.002 Applicability of subparts.

The following table shows the applicability of the subparts. [Subpart 25.5](#) provides comprehensive procedures for offer evaluation and examples.

SUBPART	SUPPLIES FOR USE		CONSTRUCTION		SERVICES PERFORMED	
	INSIDE U.S.	OUTSIDE U.S.	INSIDE U.S.	OUTSIDE U.S.	INSIDE U.S.	OUTSIDE U.S.
25.1 Buy American Act—Supplies	X	—	—	—	—	—
25.2 Buy American Act—Construction Materials	—	—	X	—	—	—
25.3 Contracts Performed Outside the United States	—	X	—	X	—	X
25.4 Trade Agreements	X	X	X	X	X	X
25.5 Evaluating Foreign Offers—Supply Contracts	X	X	—	—	—	—
25.6 American Recovery and Reinvestment Act—Buy American Act—Construction Materials			X			
25.7 Prohibited Sources	X	X	X	X	X	X
25.8 Other International Agreements and Coordination	X	X	—	X	—	X
25.9 Customs and Duties	X	—	—	—	—	—
25.10 Additional Foreign Acquisition Regulations	X	X	X	X	X	X
25.11 Solicitation Provisions and Contract Clauses	X	X	X	X	X	X

25.003 Definitions.

As used in this part—

“Canadian end product” means an article that—

(1) Is wholly the growth, product, or manufacture of Canada; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Caribbean Basin country” means any of the following countries: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago.

“Caribbean Basin country end product”—

(1) Means an article that—

(i)(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and

(ii) Is not excluded from duty-free treatment for Caribbean countries under [19 U.S.C. 2703\(b\)](#).

(A) For this reason, the following articles are not Caribbean Basin country end products:

(1) Tuna, prepared or preserved in any manner in airtight containers.

(2) Petroleum, or any product derived from petroleum.

(3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (*i.e.*, Afghanistan, Cuba, Laos, North Korea, and Vietnam).

(4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles.

(B) Access to the HTSUS to determine duty-free status of articles of the types listed in paragraph (1)(ii)(A)(4) of this definition is available via the Internet at <http://www.usitc.gov/tata/hts/>. In particular, see the following:

(1) General Note 3(c), Products Eligible for Special Tariff treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States-Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States-Caribbean Basin Trade Partnership Act; and

(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Civil aircraft and related articles” means—

(1) All aircraft other than aircraft to be purchased for use by the Department of Defense or the U.S. Coast Guard;

(2) The engines (and parts and components for incorporation into the engines) of these aircraft;

(3) Any other parts, components, and subassemblies for incorporation into the aircraft; and

(4) Any ground flight simulators, and parts and components of these simulators, for use with respect to the aircraft, whether to be used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of the aircraft and without regard to whether the aircraft or articles receive duty-free treatment under section 601(a)(2) of the Trade Agreements Act.

“Component” means an article, material, or supply incorporated directly into an end product or construction material.

“Construction material” means an article, material, or supply brought to the construction site by a contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

(1) For components purchased by the contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product or construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

Subpart 25.6—American Recovery and Reinvestment Act—Buy American Act—Construction Materials

25.600 Scope of subpart.

This subpart implements section 1605 in Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) and the Buy American Act. It applies to construction projects that use funds appropriated or otherwise provided by the Recovery Act.

25.601 Definitions.

As used in this subpart—

“Domestic construction material” means— (1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States.

“Foreign construction material” means a construction material other than a domestic construction material.

“Manufactured construction material” means any construction material that is not unmanufactured construction material.

“Recovery Act designated country” means a World Trade Organization Government Procurement Agreement country, a Free Trade Agreement country, or a least developed country.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

“Unmanufactured construction material” means raw material brought to the construction site for incorporation into the building or work that has not been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

25.602 Policy.

Except as provided in [25.603](#)—

(a) None of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work (as defined at [22.401](#)) unless—

(1) The public building or public work is located in the United States; and

(2) All of the iron, steel, and other manufactured goods used as construction material in the project are produced or manufactured in the United States.

(i) Production in the United States of the iron or steel used as construction material requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to steel or iron used as com-

ponents or subcomponents of other manufactured construction material.

(ii) There is no requirement with regard to the origin of components or subcomponents in other manufactured construction material, as long as the manufacture of the construction material occurs in the United States.

(b) Use only domestic unmanufactured construction material, as required by the Buy American Act.

25.603 Exceptions.

(a) When one of the following exceptions applies, the contracting officer may allow the contractor to incorporate foreign construction materials without regard to the restrictions of section 1605 of the Recovery Act or the Buy American Act:

(1) *Nonavailability.* The head of the contracting activity may determine that a particular construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of nonavailability of the articles listed at [25.104](#)(a) and the procedures at [25.103](#)(b)(1) also apply if any of those articles are acquired as construction materials.

(2) *Unreasonable cost.* The contracting officer concludes that the cost of domestic construction material is unreasonable in accordance with [25.605](#).

(3) *Inconsistent with public interest.* The head of the agency may determine that application of the restrictions of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

(b) *Determinations.* When a determination is made, for any of the reasons stated in this section, that certain foreign construction materials may be used—

(1) The contracting officer shall list the excepted materials in the contract; and

(2) The head of the agency shall publish a notice in the Federal Register within two weeks after the determination is made, unless the construction material has already been determined in the FAR to be domestically nonavailable (see list at [25.104](#)). The notice shall include—

(i) The title “Buy American Exception under the American Recovery and Reinvestment Act of 2009”;

(ii) The dollar value and brief description of the project; and

(iii) A detailed justification as to why the restriction is being waived.

(c) *Acquisitions under trade agreements.* (1) For construction contracts with an estimated acquisition value of \$7,443,000 or more, also see [Subpart 25.4](#). Offers of products determined to be eligible products per [Subpart 25.4](#) shall receive equal consideration with domestic offers per [Subpart 25.4](#).

(2) For purposes of the Recovery Act, designated countries do not include the Caribbean Basin Countries.

25.604 Preaward determination concerning the inapplicability of section 1605 of the Recovery Act or the Buy American Act.

(a) For any acquisition, an offeror may request from the contracting officer a determination concerning the inapplicability of section 1605 of the Recovery Act or the Buy American Act for specifically identified construction materials. The time for submitting the request is specified in the solicitation in paragraph (b) of either [52.225-22](#) or [52.225-24](#), whichever applies. The information and supporting data that must be included in the request are also specified in the solicitation in paragraphs (c) and (d) of either [52.225-21](#) or [52.225-23](#), whichever applies.

(b) Before award, the contracting officer must evaluate all requests based on the information provided and may supplement this information with other readily available information.

(c) Determination based on unreasonable cost of domestic construction material.

(1) *Iron, steel, and other manufactured construction material.* The contracting officer must compare the offered price of the contract using foreign manufactured construction material to the estimated price if all domestic manufactured construction material were used. If use of domestic manufactured construction material would increase the overall offered price of the contract by more than 25 percent, then the contracting officer shall determine that the cost of the domestic manufactured construction material is unreasonable.

(2) *Unmanufactured construction material.* The contracting officer must compare the cost of each foreign unmanufactured construction material to the cost of domestic unmanufactured construction material. If the cost of the domestic unmanufactured construction material exceeds the cost of the foreign unmanufactured construction material by more than 6 percent, then the contracting officer shall determine that the cost of the unmanufactured construction material is unreasonable.

25.605 Evaluating offers of foreign construction material.

(a) If the contracting officer has determined that an exception applies because the cost of certain domestic construction material is unreasonable, in accordance with section [25.604](#), then the contracting officer shall apply evaluation factors to the offer incorporating the use of such foreign construction material as follows:

(1) Use an evaluation factor of 25 percent, applied to the total offered price of the contract, if foreign iron, steel, or other manufactured goods are incorporated in the offer as construction material based on an exception for unreasonable cost requested by the offeror.

(2) In addition, use an evaluation factor of 6 percent applied to the cost of foreign unmanufactured construction material incorporated in the offer based on an exception for unreasonable cost requested by the offeror.

(3) Total evaluated price = offered price + (.25 x offered price, if (a)(1) applies) + (.06 x cost of foreign unmanufactured construction material, if (a)(2) applies).

(b) If two or more offers are equal in price, the contracting officer must give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(c) Offerors also may submit alternate offers based on use of equivalent domestic construction material to avoid possible rejection of the entire offer if the Government determines that an exception permitting use of a particular foreign construction material does not apply.

(d) If the contracting officer awards a contract to an offeror that proposed foreign construction material not listed in the applicable clause in the solicitation (paragraph (b)(3) of [52.225-21](#), or paragraph (b)(3) of [52.225-23](#)), the contracting officer must add the excepted materials to the list in the contract clause.

25.606 Postaward determinations.

(a) If a contractor requests a determination regarding the inapplicability of section 1605 of the Recovery Act or the Buy American Act after contract award, the contractor must explain why it could not request the determination before contract award or why the need for such determination otherwise was not reasonably foreseeable. If the contracting officer concludes that the contractor should have made the request before contract award, the contracting officer may deny the request.

(b) The contracting officer must base evaluation of any request for a determination regarding the inapplicability of section 1605 of the Recovery Act or the Buy American Act made after contract award on information required by paragraphs (c) and (d) of the applicable clause at [52.225-21](#) or [52.225-23](#) and/or other readily available information.

(c) If a determination, under [25.603\(a\)](#), is made after contract award that an exception to section 1605 of the Recovery Act or to the Buy American Act applies, the contracting officer must negotiate adequate consideration and modify the contract to allow use of the foreign construction material. When the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is at least the differential established in [25.605\(a\)](#).

25.607 Noncompliance.

The contracting officer must—

(a) Review allegations of violations of section 1605 of the Recovery Act or Buy American Act;

(b) Unless fraud is suspected, notify the contractor of the apparent unauthorized use of foreign construction material and request a reply, to include proposed corrective action; and

(c) If the review reveals that a contractor or subcontractor has used foreign construction material without authorization, take appropriate action, including one or more of the following:

(1) Process a determination concerning the inapplicability of section 1605 of the Recovery Act or the Buy American Act in accordance with [25.606](#).

(2) Consider requiring the removal and replacement of the unauthorized foreign construction material.

(3) If removal and replacement of foreign construction material incorporated in a building or work would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Government, the contracting officer may determine in writing that the foreign construction material need not be removed and replaced. A determination to retain

foreign construction material does not constitute a determination that an exception to section 1605 of the Recovery Act or the Buy American Act applies, and this should be stated in the determination. Further, a determination to retain foreign construction material does not affect the Government's right to suspend or debar a contractor, subcontractor, or supplier for violation of section 1605 of the Recovery Act or the Buy American Act, or to exercise other contractual rights and remedies, such as reducing the contract price or terminating the contract for default.

(4) If the noncompliance is sufficiently serious, consider exercising appropriate contractual remedies, such as terminating the contract for default. Also consider preparing and forwarding a report to the agency suspension or debarment official in accordance with [Subpart 9.4](#). If the noncompliance appears to be fraudulent, refer the matter to other appropriate agency officials, such as the officer responsible for criminal investigation.

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Subpart 25.11—Solicitation Provisions and Contract Clauses

25.1101 Acquisition of supplies.

The following provisions and clauses apply to the acquisition of supplies and the acquisition of services involving the furnishing of supplies.

(a)(1) Insert the clause at [52.225-1](#), Buy American Act—Supplies, in solicitations and contracts with a value exceeding the micro-purchase threshold but not exceeding \$25,000; and in solicitations and contracts with a value exceeding \$25,000, if none of the clauses prescribed in paragraphs (b) and (c) of this section apply, except if—

(i) The solicitation is restricted to domestic end products in accordance with [Subpart 6.3](#);

(ii) The acquisition is for supplies for use within the United States and an exception to the Buy American Act applies (e.g., nonavailability, public interest, or information technology that is a commercial item); or

(iii) The acquisition is for supplies for use outside the United States.

(2) Insert the provision at [52.225-2](#), Buy American Act Certificate, in solicitations containing the clause at [52.225-1](#).

(b) (1) (i) Insert the clause at [52.225-3](#), Buy American Act—Free Trade Agreements—Israeli Trade Act, in solicitations and contracts if—

(A) The acquisition is for supplies, or for services involving the furnishing of supplies, for use within the United States, and the acquisition value is \$25,000 or more, but is less than \$194,000;

(B) The acquisition is not for information technology that is a commercial item, using fiscal year 2004 or subsequent fiscal year funds; and

(C) No exception in [25.401](#) applies. For acquisitions of agencies not subject to the Israeli Trade Act (see [25.406](#)), see agency regulations.

(ii) If the acquisition value is \$25,000 or more but is less than \$50,000, use the clause with its Alternate I.

(iii) If the acquisition value is \$50,000 or more but is less than \$67,826, use the clause with its Alternate II.

(2)(i) Insert the provision at [52.225-4](#), Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, in solicitations containing the clause at [52.225-3](#).

(ii) If the acquisition value is \$25,000 or more but is less than \$50,000, use the provision with its Alternate I.

(iii) If the acquisition value is \$50,000 or more but is less than \$67,826, use the provision with its Alternate II.

(c)(1) Insert the clause at [52.225-5](#), Trade Agreements, in solicitations and contracts valued at \$194,000 or more, if the acquisition is covered by the WTO GPA (see [Subpart 25.4](#)) and the agency has determined that the restrictions of the Buy American Act are not applicable to U.S.-made end products.

If the agency has not made such a determination, the contracting officer must follow agency procedures.

(2) Insert the provision at [52.225-6](#), Trade Agreements Certificate, in solicitations containing the clause at [52.225-5](#).

(d) Insert the provision at [52.225-7](#), Waiver of Buy American Act for Civil Aircraft and Related Articles, in solicitations for civil aircraft and related articles (see [25.407](#)), if the acquisition value is less than \$194,000.

(e) Insert the clause at [52.225-8](#), Duty-Free Entry, in solicitations and contracts for supplies that may be imported into the United States and for which duty-free entry may be obtained in accordance with [25.903](#)(a), if the value of the acquisition—

(1) Exceeds the simplified acquisition threshold; or

(2) Does not exceed the simplified acquisition threshold, but the savings from waiving the duty is anticipated to be more than the administrative cost of waiving the duty. When used for acquisitions that do not exceed the simplified acquisition threshold, the contracting officer may modify paragraphs (c)(1) and (j)(2) of the clause to reduce the dollar figure.

(f) Insert the provision at [52.225-18](#), Place of Manufacture, in solicitations that are predominantly for the acquisition of manufactured end products, as defined in the provision at [52.225-18](#) (i.e., the estimated value of the manufactured end products exceeds the estimated value of other items to be acquired as a result of the solicitation).

25.1102 Acquisition of construction.

When using funds other than those appropriated under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), follow the prescriptions in paragraphs (a) through (d) of this section. Otherwise, follow the prescription in paragraph (e).

(a) Insert the clause at [52.225-9](#), Buy American Act—Construction Materials, in solicitations and contracts for construction that is performed in the United States valued at less than \$7,443,000.

(1) List in paragraph (b)(2) of the clause all foreign construction material excepted from the requirements of the Buy American Act.

(2) If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (b)(3)(i) of the clause.

(b)(1) Insert the provision at [52.225-10](#), Notice of Buy American Act Requirement—Construction Materials, in solicitations containing the clause at [52.225-9](#).

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American Act before receipt of offers, use the provision with its Alternate I.

(c) Insert the clause at [52.225-11](#), Buy American Act—Construction Materials under Trade Agreements, in solicita-

tions and contracts for construction that is performed in the United States valued at \$7,443,000 or more.

(1) List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American Act, other than designated country construction material.

(2) If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (b)(4)(i) of the clause.

(3) For acquisitions valued at \$7,443,000 or more, but less than \$8,817,449, use the clause with its Alternate I. List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American Act, unless the excepted foreign construction material is from a designated country other than Mexico.

(d)(1) Insert the provision at [52.225-12](#), Notice of Buy American Act Requirement—Construction Materials under Trade Agreements, in solicitations containing the clause at [52.225-11](#).

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American Act before receipt of offers, use the provision with its Alternate I.

(3) For acquisitions valued at \$7,443,000 or more, but less than \$8,817,449, use the clause with its Alternate II.

(e)(1) When using funds appropriated under the Recovery Act for construction, use provisions and clauses [52.225-21](#), [52.225-22](#), [52.225-23](#), or [52.225-24](#) (with appropriate Alternates) in lieu of the provisions and clauses [52.225-9](#), [52.225-10](#), [52.225-11](#), or [52.225-12](#) (with appropriate Alternates), respectively, that would be applicable as prescribed in paragraphs (a) through (d) of this section if Recovery Act funds were not used.

(2) When using clause [52.225-23](#), list foreign construction material in paragraph (b)(3) of the clause as follows:

(i) *Basic clause.* List all foreign construction material excepted from the requirements of the Buy American Act, other than Recovery Act designated country construction material.

(ii) *Alternate I -* List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American Act, unless the excepted foreign construction material is from a Recovery Act designated country other than Bahrain, Mexico, or Oman.

25.1103 Other provisions and clauses.

(a) *Restrictions on certain foreign purchases.* Insert the clause at [52.225-13](#), Restrictions on Certain Foreign Purchases, in solicitations and contracts, unless an exception applies.

(b) *Translations.* Insert the clause at [52.225-14](#), Inconsistency Between English Version and Translation of Contract, in solicitations and contracts if anticipating translation into another language.

(c) *Foreign currency offers.* Insert the provision at [52.225-17](#), Evaluation of Foreign Currency Offers, in solicitations that permit the use of other than a specified currency. Insert in the provision the source of the rate to be used in the evaluation of offers.

(d) The contracting officer shall include in each solicitation for the acquisition of products or services (other than commercial items procured under [Part 12](#)) the provision at [52.225-20](#), Prohibition on Conducting Restricted Business Operations in Sudan—Certification.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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52.203-14 Display of Hotline Poster(s).

As prescribed in [3.1004](#)(b), insert the following clause:

DISPLAY OF HOTLINE POSTER(S) (DEC 2007)

(a) *Definition.*

“United States,” as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Display of fraud hotline poster(s).* Except as provided in paragraph (c)—

(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites—

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

<i>Poster(s)</i>	<i>Obtain from</i>
_____	_____
_____	_____

(Contracting Officer shall insert— (i) Appropriate agency name(s) and/or title of applicable Department of Homeland Security fraud hotline poster; and

(ii) The website(s) or other contact information for obtaining the poster(s).)

(c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5,000,000, except when the subcontract—

- (1) Is for the acquisition of a commercial item; or
- (2) Is performed entirely outside the United States.

(End of clause)

52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009.

As prescribed in [3.907-7](#), use the following clause:

WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAR 2009)

(a) The Contractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

(b) The Contractor shall include the substance of this clause including this paragraph (b) in all subcontracts.

(End of clause)

52.204-1 Approval of Contract.

As prescribed in [4.103](#), insert the following clause:

APPROVAL OF CONTRACT (DEC 1989)

This contract is subject to the written approval of [*identify title of designated agency official here*] and shall not be binding until so approved.

(End of clause)

52.204-2 Security Requirements.

As prescribed in [4.404](#)(a), insert the following clause:

SECURITY REQUIREMENTS (AUG 1996)

(a) This clause applies to the extent that this contract involves access to information classified “Confidential,” “Secret,” or “Top Secret.”

(b) The Contractor shall comply with—

(1) The Security Agreement ([DD Form 441](#)), including the *National Industrial Security Program Operating Manual* (DoD 5220.22-M); and

(2) Any revisions to that manual, notice of which has been furnished to the Contractor.

(c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government and if the changes cause an increase or decrease in security costs or otherwise affect any other term or condition of this contract, the contract shall be subject to an equitable adjustment as if the changes were directed under the Changes clause of this contract.

(d) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (d) but excluding any reference to the Changes clause of this contract, in all subcontracts under this contract that involve access to classified information.

(End of clause)

Alternate I (Apr 1984). If a cost contract for research and development with an educational institution is contemplated, add the following paragraphs (e), (f), and (g) to the basic clause:

(e) If a change in security requirements, as provided in paragraphs (b) and (c), results (1) in a change in the security classification of this contract or any of its elements from an unclassified status or a lower classification to a higher classifi-

cation, or (2) in more restrictive area controls than previously required, the Contractor shall exert every reasonable effort compatible with the Contractor's established policies to continue the performance of work under the contract in compliance with the change in security classification or requirements. If, despite reasonable efforts, the Contractor determines that the continuation of work under this contract is not practicable because of the change in security classification or requirements, the Contractor shall notify the Contracting Officer in writing. Until resolution of the problem is made by the Contracting Officer, the Contractor shall continue safeguarding all classified material as required by this contract.

(f) After receiving the written notification, the Contracting Officer shall explore the circumstances surrounding the proposed change in security classification or requirements, and shall endeavor to work out a mutually satisfactory method whereby the Contractor can continue performance of the work under this contract.

(g) If, 15 days after receipt by the Contracting Officer of the notification of the Contractor's stated inability to proceed, (1) the application to this contract of the change in security classification or requirements has not been withdrawn, or (2) a mutually satisfactory method for continuing performance of work under this contract has not been agreed upon, the Contractor may request the Contracting Officer to terminate the contract in whole or in part. The Contracting Officer shall terminate the contract in whole or in part, as may be appropriate, and the termination shall be deemed a termination under the terms of the Termination for the Convenience of the Government clause.

Alternate II (Apr 1984). If employee identification is required for security or other reasons in a construction contract or architect-engineer contract, add the following paragraph (e) to the basic clause:

(e) The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Contracting Officer. All prescribed identification shall immediately be delivered to the Contracting Officer, for cancellation upon the release of any employee. When required by the Contracting Officer, the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project.

52.204-3 Taxpayer Identification.

As prescribed in [4.905](#), insert the following provision:

TAXPAYER IDENTIFICATION (OCT 1998)

(a) Definitions.

“Common parent,” as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

“Taxpayer Identification Number (TIN),” as used in this provision, means the number required by the Internal Revenue

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

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of [31 U.S.C. 7701\(c\)](#) and [3325\(d\)](#), reporting requirements of [26 U.S.C. 6041](#), 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) [4.904](#), the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government ([31 U.S.C. 7701\(c\)\(3\)](#)). If the resulting contract is subject to the payment reporting requirements described in FAR [4.904](#), the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) Taxpayer Identification Number (TIN).

- TIN: _____.
- TIN has been applied for.
- TIN is not required because:
- Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
- Offeror is an agency or instrumentality of a foreign government;
- Offeror is an agency or instrumentality of the Federal Government.

(e) Type of organization.

- Sole proprietorship;
- Partnership;
- Corporate entity (not tax-exempt);
- Corporate entity (tax-exempt);
- Government entity (Federal, State, or local);
- Foreign government;
- International organization per 26 CFR 1.6049-4;
- Other _____.

(f) Common parent.

- Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.
- Name and TIN of common parent:
Name _____
TIN _____

(End of provision)

52.204-4 Printed or Copied Double-Sided on Recycled Paper.

As prescribed in [4.303](#), insert the following clause:

PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED
PAPER (AUG 2000)

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

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.” For paper and paper products, postconsumer material means “postconsumer fiber” defined by the U.S. Environmental Protection Agency (EPA) as—

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers’ over-runs, converters’ scrap, and over-issue publications.

“Printed or copied double-sided” means printing or reproducing a document so that information is on both sides of a sheet of paper.

“Recovered material,” for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as “recovered fiber” and means the following materials:

(1) Postconsumer fiber; and

(2) Manufacturing wastes such as—

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

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Contractor to furnish supplies or services for performance of this contract. It includes, but is not limited to, purchase orders and changes and modifications to purchase orders, but does not include contracts that provide supplies or services benefiting two or more contracts.

(b) Section 2(d) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282) requires establishment of a pilot program for a single searchable website, available to the public at no charge that includes information on Federal subcontracts.

(c) Within thirty days after the end of March, June, September, and December of each year through 2008, the Contractor shall report the following information at *www.esrs.gov* for each subcontract award with a value greater than \$1 million made during that quarter. (The Contractor shall follow the instructions at *www.esrs.gov* to report the data.)

- (1) Name of the subcontractor.
- (2) Amount of the award.
- (3) Date of award.
- (4) The applicable North American Industry Classification System code.
- (5) Funding agency or agencies.
- (6) Award title descriptive of the purpose of the action.
- (7) Contract number.
- (8) Subcontractor location including address.
- (9) Subcontract primary performance location including address.
- (10) Unique identifier for the subcontractor.

(End of clause)

52.204-11 American Recovery and Reinvestment Act—Reporting Requirements.

As prescribed in [4.1502](#), insert the following clause:

AMERICAN RECOVERY AND REINVESTMENT ACT—
REPORTING REQUIREMENTS (MAR 2009)

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

“Contract”, as defined in FAR [2.101](#), means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by [31 U.S.C. 6301](#), *et seq.* For discussion of various types of contracts, see FAR [Part 16](#).

“First-tier subcontract” means a subcontract awarded directly by a Federal Government prime contractor whose contract is funded by the Recovery Act.

“Jobs created” means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR [2.101](#)). The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

“Jobs retained” means an estimate of those previously existing filled positions that are retained as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR [2.101](#)). The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

“Total compensation” means the cash and noncash dollar value earned by the executive during the contractor’s past fiscal year of the following (for more information see 17 CFR 229.402(c)(2)):

(1) *Salary and bonus.*

(2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

(3) *Earnings for services under non-equity incentive plans.* Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.

(5) *Above-market earnings on deferred compensation which is not tax-qualified.*

(6) *Other compensation.* For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

(b) This contract requires the contractor to provide products and/or services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act).

Section 1512(c) of the Recovery Act requires each contractor to report on its use of Recovery Act funds under this contract. These reports will be made available to the public.

(c) Reports from contractors for all work funded, in whole or in part, by the Recovery Act, and for which an invoice is submitted prior to June 30, 2009, are due no later than July 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter.

(d) The Contractor shall report the following information, using the online reporting tool available at www.FederalReporting.gov.

(1) The Government contract and order number, as applicable.

(2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the government's on-line reporting tool.

(3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar quarter.

(4) Program or project title, if any.

(5) A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure.

(6) An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of the contract (*i.e.*, not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.

(7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and only address the impact on the contractor's workforce. At a minimum, the contractor shall provide—

(i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR [2.101](#)). This description may rely on job titles, broader labor categories, or the contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and

(ii) An estimate of the number of jobs created and jobs retained by the prime contractor, in the United States and outlying areas. A job cannot be reported as both created and retained.

(8) Names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract is awarded if—

(i) In the Contractor's preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986.

(9) For subcontracts valued at less than \$25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under \$300,000, the Contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.

(10) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is over \$25,000 and not subject to reporting under paragraph 9, the contractor shall require the subcontractor to provide the information described in (i), (ix), (x), and (xi) below to the contractor for the purposes of the quarterly report. The contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The contractor shall provide detailed information on these first-tier subcontracts as follows:

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) The applicable North American Industry Classification System (NAICS) code.

(vi) Funding agency.

(vii) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(viii) Subcontract number (the contract number assigned by the prime contractor).

(ix) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

(x) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

(xi) Names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded if—

(A) In the subcontractor's preceding fiscal year, the subcontractor received—

(1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

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(2) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(B) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Secu-

rities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986.

(End of clause)

52.205 [Reserved]

52.206 [Reserved]

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(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR [22.1003-4\(d\)\(2\)\(iii\)](#));

(iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies—

(i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Act wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and

(ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

(1) *Taxpayer Identification Number (TIN)* ([26 U.S.C. 6109](#), [31 U.S.C. 7701](#)). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (1)(3) through (1)(5) of this provision to comply with debt collection requirements of [31 U.S.C. 7701\(c\)](#) and [3325\(d\)](#), reporting requirements of [26 U.S.C. 6041](#), [6041A](#), and [6050M](#), and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government ([31 U.S.C. 7701\(c\)\(3\)](#)). If the resulting contract is subject to the payment reporting requirements described in FAR [4.904](#), the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) *Taxpayer Identification Number (TIN)*.

- TIN: _____.
- TIN has been applied for.
- TIN is not required because:
- Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and

does not have an office or place of business or a fiscal paying agent in the United States;

- Offeror is an agency or instrumentality of a foreign government;
- Offeror is an agency or instrumentality of the Federal Government.

(4) *Type of organization*.

- Sole proprietorship;
- Partnership;
- Corporate entity (not tax-exempt);
- Corporate entity (tax-exempt);
- Government entity (Federal, State, or local);
- Foreign government;
- International organization per 26 CFR 1.6049-4;
- Other _____.

(5) *Common parent*.

- Offeror is not owned or controlled by a common parent;
- Name and TIN of common parent:
Name _____
TIN _____.

(m) *Restricted business operations in Sudan*. By submission of its offer, the offeror certifies that it does not conduct any restricted business operations in Sudan.

(End of provision)

Alternate I (Apr 2002). As prescribed in [12.301\(b\)\(2\)](#), add the following paragraph (c)(11) to the basic provision:

(11) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(4) or (c)(9) 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.

Alternate II (Oct 2000). As prescribed in [12.301\(b\)\(2\)](#), add the following paragraph (c)(9)(iii) to the basic provision:

(iii) *Address.* The offeror represents that its address is, is not in a region for which a small disadvantaged business procurement mechanism is authorized and its address has not changed since its certification as a small disadvantaged business concern or submission of its application for certification. The list of authorized small disadvantaged business procurement mechanisms and regions is posted at <http://www.arnet.gov/References/sdbadjustments.htm>. The offeror shall use the list in effect on the date of this solicitation. “Address,” as used in this provision, means the address of the offeror as listed on the Small Business Administration’s register of small disadvantaged business concerns or the address on the completed application that the concern has submitted to the Small Business Administration or a Private Certifier in accordance with 13 CFR Part 124, subpart B. For joint ventures, “address” refers to the address of the small disadvantaged business concern that is participating in the joint venture.

52.212-4 Contract Terms and Conditions—Commercial Items.

As prescribed in [12.301\(b\)\(3\)](#), insert the following clause:

CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (MAR 2009)

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights—

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act ([31 U.S.C. 3727](#)). However, when a third party makes payment (*e.g.*, use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended ([41 U.S.C. 601-613](#)). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR [52.233-1](#), Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.* (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, contract line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration, or [52.232-34](#), Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.*— (1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and prompt payment regulations at 5 CFR Part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.* (i) All amounts that become payable by the Contractor to the Government under this contract 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 611 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 (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by [33.211](#) if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see [32.607-2](#)).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in [32.608-2](#) of the Federal Acquisition Regulation in effect on the date of this contract.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders,

rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with [31 U.S.C. 1352](#) relating to limitations on the use of appropriated funds to influence certain Federal contracts; [18 U.S.C. 431](#) relating to officials not to benefit; [40 U.S.C. 3701](#), *et seq.*, Contract Work Hours and Safety Standards Act; [41 U.S.C. 51-58](#), Anti-Kickback Act of 1986; [41 U.S.C. 265](#) and [10 U.S.C. 2409](#) relating to whistleblower protections; Section 1553 of the American Recovery and Reinvestment Act of 2009 relating to whistleblower protections for contracts funded under that Act; [49 U.S.C. 40118](#), Fly American; and [41 U.S.C. 423](#) relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.

(3) The clause at [52.212-5](#).

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The [Standard Form 1449](#).

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) *Central Contractor Registration (CCR).* (1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR [Subpart 42.12](#), the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of [Subpart 42.12](#); and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer.

pose. This paragraph does not give the Government any right to audit the Contractor’s records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders— Commercial Items.

As prescribed in [12.301\(b\)\(4\)](#), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS— COMMERCIAL ITEMS (MAR 2009)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

- (1) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).
 ___ Alternate I (AUG 2007) of [52.222-50](#) ([22 U.S.C. 7104\(g\)](#)).
- (2) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).
- (3) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

- ___ (1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) ([41 U.S.C. 253g](#) and [10 U.S.C. 2402](#)).
- ___ (2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (DEC 2008) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).
- ___ (3) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Section 1553 of Pub. L. 111-5).
- ___ (4) [52.204-11](#), American Recovery and Reinvestment Act—Reporting Requirements (MAR 2009) (Pub. L. 111-5).
- ___ (5) [52.219-3](#), Notice of Total HUBZone Set-Aside (JAN 1999) ([15 U.S.C. 657a](#)).
- ___ (6) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JULY 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).
- ___ (7) [Reserved]
- ___ (8)(i) [52.219-6](#), Notice of Total Small Business Set-Aside (JUNE 2003) ([15 U.S.C. 644](#)).

- ___ (ii) Alternate I (OCT 1995) of [52.219-6](#).
- ___ (iii) Alternate II (MAR 2004) of [52.219-6](#).
- ___ (9)(i) [52.219-7](#), Notice of Partial Small Business Set-Aside (JUNE 2003) ([15 U.S.C. 644](#)).
- ___ (ii) Alternate I (OCT 1995) of [52.219-7](#).
- ___ (iii) Alternate II (MAR 2004) of [52.219-7](#).
- ___ (10) [52.219-8](#), Utilization of Small Business Concerns (MAY 2004) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).
- ___ (11)(i) [52.219-9](#), Small Business Subcontracting Plan (APR 2008) ([15 U.S.C. 637\(d\)\(4\)](#)).
- ___ (ii) Alternate I (OCT 2001) of [52.219-9](#).
- ___ (iii) Alternate II (OCT 2001) of [52.219-9](#).
- ___ (12) [52.219-14](#), Limitations on Subcontracting (DEC 1996) ([15 U.S.C. 637\(a\)\(14\)](#)).
- ___ (13) [52.219-16](#), Liquidated Damages—Subcontracting Plan (JAN 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).
- ___ (14)(i) [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (OCT 2008) ([10 U.S.C. 2323](#)) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
- ___ (ii) Alternate I (JUNE 2003) of [52.219-23](#).
- ___ (15) [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (APR 2008) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).
- ___ (16) [52.219-26](#), Small Disadvantaged Business Participation Program—Incentive Subcontracting (OCT 2000) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).
- ___ (17) [52.219-27](#), Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (MAY 2004) ([15 U.S.C. 657 f](#)).
- ___ (18) [52.219-28](#), Post Award Small Business Program Rerepresentation (JUNE 2007) ([15 U.S.C. 632\(a\)\(2\)](#)).
- ___ (19) [52.222-3](#), Convict Labor (JUNE 2003) (E.O. 11755).
- ___ (20) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (FEB 2008) (E.O. 13126).
- ___ (21) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999).
- ___ (22) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).
- ___ (23) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)).
- ___ (24) [52.222-36](#), Affirmative Action for Workers with Disabilities (JUN 1998) ([29 U.S.C. 793](#)).
- ___ (25) [52.222-37](#), Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)).
- ___ (26) [52.222-39](#), Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).

___ (27) [52.222-54](#), Employment Eligibility Verification (JAN 2009). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](#).)

___ (28)(i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA–Designated Items (MAY 2008) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

___ (ii) Alternate I (MAY 2008) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

___ (29) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)).

___ (30)(i) [52.223-16](#), IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007) (E.O. 13423).

___ (ii) Alternate I (DEC 2007) of [52.223-16](#).

___ (31) [52.225-1](#), Buy American Act—Supplies (FEB 2009) ([41 U.S.C. 10a-10d](#)).

___ (32)(i) [52.225-3](#), Buy American Act—Free Trade Agreements—Israeli Trade Act (FEB 2009) ([41 U.S.C. 10a-10d](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, Pub. L. 108-77, 108-78, 108-286, 109-53 and 109-169).

___ (ii) Alternate I (JAN 2004) of [52.225-3](#).

___ (iii) Alternate II (JAN 2004) of [52.225-3](#).

___ (33) [52.225-5](#), Trade Agreements (MAR 2009) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).

___ (34) [52.225-13](#), Restrictions on Certain Foreign Purchases (JUNE 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

___ (35) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (NOV 2007) ([42 U.S.C. 5150](#)).

___ (36) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) ([42 U.S.C. 5150](#)).

___ (37) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (FEB 2002) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

___ (38) [52.232-30](#), Installment Payments for Commercial Items (OCT 1995) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

___ (39) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003) ([31 U.S.C. 3332](#)).

___ (40) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999) ([31 U.S.C. 3332](#)).

___ (41) [52.232-36](#), Payment by Third Party (MAY 1999) ([31 U.S.C. 3332](#)).

___ (42) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ([5 U.S.C. 552a](#)).

___ (43)(i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).

___ (ii) Alternate I (Apr 2003) of [52.247-64](#).

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [*Contracting Officer check as appropriate.*]

___ (1) [52.222-41](#), Service Contract Act of 1965 (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

___ (2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (MAY 1989) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

___ (3) [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (NOV 2006) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

___ (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (FEB 2002) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

___ (5) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

___ (6) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (FEB 2009) ([41 U.S.C. 351](#), *et seq.*).

___ (7) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Pub. L. 110-247).

___ (8) [52.237-11](#), Accepting and Dispensing of \$1 Coin (SEPT 2008) ([31 U.S.C. 5112\(p\)\(1\)](#)).

(d) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at [52.215-2](#), Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR [Subpart 4.7](#), Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to

appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (DEC 2008) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).

(ii) [52.219-8](#), Utilization of Small Business Concerns (MAY 2004) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(iii) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Section 1553 of Pub. L. 111-5). Applies to subcontracts funded under the Act.

(iv) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

(v) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)).

(vi) [52.222-36](#), Affirmative Action for Workers with Disabilities (JUNE 1998) ([29 U.S.C. 793](#)).

(vii) [52.222-39](#), Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).

(viii) [52.222-41](#), Service Contract Act of 1965 (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

(ix) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).

____ Alternate I (AUG 2007) of [52.222-50](#) ([22 U.S.C. 7104\(g\)](#)).

(x) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (NOV 2007) ([41 U.S.C. 351](#), *et seq.*).

(xi) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (FEB 2009) ([41 U.S.C. 351](#), *et seq.*).

(xii) [52.222-54](#), Employment Eligibility Verification (JAN 2009).

(xiii) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(xiv) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

Alternate I (Feb 2000). As prescribed in [12.301\(b\)\(4\)](#), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to “paragraphs (a), (b), (c), or (d) of this clause” in the redesignated paragraph (d) to read “paragraphs (a), (b), and (c) of this clause.”

Alternate II (Mar 2009). As prescribed in [12.301\(b\)\(4\)\(ii\)](#), substitute the following paragraphs (d)(1) and (e)(1) for paragraphs (d)(1) and (e)(1) of the basic clause as follows:

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

(i) Examine any of the Contractor’s or any subcontractors’ records that pertain to, and involve transactions relating to, this contract; and

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

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), and (c), of this clause, the Contractor is not required to flow down any FAR clause in a subcontract for commercial items, other than—

(i) *Paragraph (d) of this clause*. This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (d)(1)(ii) does not flow down; and

(ii) *Those clauses listed in this paragraph (e)(1)*. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(A) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Dec 2008) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).

(B) [52.219-8](#), Utilization of Small Business Concerns (May 2004) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(C) [52.222-26](#), Equal Opportunity (Mar 2007) (E.O. 11246).

(D) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) ([38 U.S.C. 4212](#)).

(E) [52.222-36](#), Affirmative Action for Workers with Disabilities (June 1998) ([29 U.S.C. 793](#)).

(F) [52.222-39](#), Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).

(G) [52.222-41](#), Service Contract Act of 1965 (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

(H) [52.222-50](#), Combating Trafficking in Persons (Feb 2009) ([22 U.S.C. 7104\(g\)](#)).

(I) [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (Nov 2007) ([41 U.S.C. 351](#), *et seq.*).

(J) [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements (Feb 2009) ([41 U.S.C. 351](#), *et seq.*).

(K) [52.222-54](#), Employment Eligibility Verification (Jan 2009).

(L) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations. (Mar 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(M) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

52.213-1 Fast Payment Procedure.

As prescribed in [13.404](#), insert the following clause:

FAST PAYMENT PROCEDURE (MAY 2006)

(a) *General.* The Government will pay invoices based on the Contractor's delivery to a post office or common carrier (or, if shipped by other means, to the point of first receipt by the Government).

(b) *Responsibility for supplies.*(1) Title to the supplies passes to the Government upon delivery to—

(i) A post office or common carrier for shipment to the specific destination; or

(ii) The point of first receipt by the Government, if shipment is by means other than Postal Service or common carrier.

(2) Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall—

(i) Assume all responsibility and risk of loss for supplies not received at destination, damaged in transit, or not conforming to purchase requirements; and

(ii) Replace, repair, or correct those supplies promptly at the Contractor's expense, if instructed to do so by

the Contracting Officer within 180 days from the date title to the supplies vests in the Government.

(c) *Preparation of invoice.* (1) Upon delivery to a post office or common carrier (or, if shipped by other means, the point of first receipt by the Government), the Contractor shall—

(i) Prepare an invoice as provided in this contract, order, or blanket purchase agreement; and

(ii) Display prominently on the invoice "FAST PAY." Invoices not prominently marked "FAST PAY" via manual or electronic means may be accepted by the payment office for fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The Contractor shall not include the cost of parcel post insurance. If transportation charges are stated separately on the invoice, the Contractor shall retain related paid freight bills or other transportation billings paid separately for a period of 3 years and shall furnish the bills to the Government upon request.

(3) If this contract, order, or blanket purchase agreement requires the preparation of a receiving report, the Contractor shall either—

(i) Submit the receiving report on the prescribed form with the invoice; or

(ii) Include the following information on the invoice:

(A) Shipment number.

(B) Mode of shipment.

(C) At line item level—

(1) National stock number and/or manufacturer's part number;

(2) Unit of measure;

(3) Ship-To Point;

(4) Mark-For Point, if in the contract; and

(5) FEDSTRIP/MILSTRIP document number, if in the contract.

(4) If this contract, order, or blanket purchase agreement does not require preparation of a receiving report on a prescribed form, the Contractor shall include on the invoice the following information at the line item level, in addition to that required in paragraph (c)(1) of this clause:

(i) Ship-To Point.

(ii) Mark-For Point.

(iii) FEDSTRIP/MILSTRIP document number, if in the contract.

(5) Where a receiving report is not required, the Contractor shall include a copy of the invoice in each shipment.

(d) *Certification of invoice.* The Contractor certifies by submitting an invoice to the Government that the supplies being billed to the Government have been shipped or deliv-

ered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated by the contract, order, or blanket purchase agreement.

(e) *FAST PAY container identification*. The Contractor shall mark all outer shipping containers “FAST PAY” When outer shipping containers are not marked “FAST PAY,” the payment office may make fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

(End of clause)

52.213-2 Invoices.

As prescribed in [13.302-5\(b\)](#), insert the following clause:

INVOICES (APR 1984)

The Contractor’s invoices must be submitted before payment can be made. The Contractor will be paid on the basis of the invoice, which must state—

(a) The starting and ending dates of the subscription delivery; and

(b) Either that orders have been placed in effect for the addressees required, or that the orders will be placed in effect upon receipt of payment.

(End of clause)

52.213-3 Notice to Supplier.

As prescribed in [13.302-5\(c\)](#), insert the following clause:

NOTICE TO SUPPLIER (APR 1984)

This is a firm order ONLY if your price does not exceed the maximum line item or total price in the Schedule. Submit invoices to the Contracting Officer. If you cannot perform in exact accordance with this order, WITHHOLD PERFORMANCE, and notify the Contracting Officer immediately, giving your quotation.

(End of clause)

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

As prescribed in [13.302-5\(d\)](#), insert the following clause:

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS
(OTHER THAN COMMERCIAL ITEMS) (MAR 2009)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

(i) [52.222-3](#), Convict Labor (JUNE 2003) (E.O. 11755).

(ii) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999) (E.O. 11246).

(iii) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

(iv) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).

(v) [52.225-13](#), Restrictions on Certain Foreign Purchases (FEB 2006) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(vi) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(vii) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

(2) Listed below are additional clauses that apply:

(i) [52.232-1](#), Payments (APR 1984).

(ii) [52.232-8](#), Discounts for Prompt Payment (FEB 2002).

(iii) [52.232-11](#), Extras (APR 1984).

(iv) [52.232-25](#), Prompt Payment (OCT 2008).

(v) [52.233-1](#), Disputes (JULY 2002).

(vi) [52.244-6](#), Subcontracts for Commercial Items (MAR 2009).

(vii) [52.253-1](#), Computer Generated Forms (JAN 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

(i) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (FEB 2008) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

(ii) [52.222-20](#), Walsh-Healey Public Contracts Act (DEC 1996) ([41 U.S.C. 35-45](#)) (Applies to supply contracts over \$10,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).

(iii) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212](#)) (Applies to contracts of \$100,000 or more).

(iv) [52.222-36](#), Affirmative Action for Workers with Disabilities (JUNE 1998) ([29 U.S.C. 793](#)). (Applies to contracts over \$10,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, *United States* includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

(v) [52.222-37](#), Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible

ble Veterans (SEPT 2006) ([38 U.S.C. 4212](#)) (Applies to contracts of \$100,000 or more).

(vi) [52.222-41](#), Service Contract Act of 1965 (NOV 2007) ([41 U.S.C. 351](#), *et seq.*) (Applies to service contracts over \$2,500 that are subject to the Service Contract Act and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer continental shelf lands.)

(vii) [52.223-5](#), Pollution Prevention and Right-to-Know Information (AUG 2003) (E.O. 13148) (Applies to services performed on Federal facilities).

(viii) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)) (Unless exempt pursuant to [23.204](#), applies to contracts when energy-consuming products listed in the ENERGY STAR® Program or Federal Energy Management Program (FEMP) will be—

(A) Delivered;

(B) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(C) Furnished by the Contractor for use by the Government; or

(D) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.)

(ix) [52.225-1](#), Buy American Act—Supplies (FEB 2009) ([41 U.S.C. 10a-10d](#)) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition—

(A) Is set aside for small business concerns; or

(B) Cannot be set aside for small business concerns (see [19.502-2](#)), and does not exceed \$25,000).

(x) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information.)

(xi) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999). (Applies when the payment will be made by EFT and the payment office does not use the CCR database as its source of EFT information.)

(xii) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. App. 1241](#)). (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at [47.504\(d\)](#).)

(2) Listed below are additional clauses that may apply:

(i) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (SEPT 2006) (Applies to contracts over \$30,000).

(ii) [52.211-17](#), Delivery of Excess Quantities (SEPT 1989) (Applies to fixed-price supplies).

(iii) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAR 2009) (Pub. L. 110-247) (Applies to contracts greater than \$25,000 that provide for the provision, the service, or the sale of food in the United States.)

(iv) [52.247-29](#), F.o.b. Origin (FEB 2006) (Applies to supplies if delivery is f.o.b. origin).

(v) [52.247-34](#), F.o.b. Destination (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) *FAR 52.252-2, Clauses Incorporated by Reference (FEB 1998)*. This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]

(d) *Inspection/Acceptance*. The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights—

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) *Excusable delays*. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) *Termination for the Government's convenience*. The Government reserves the right to terminate this contract, or

any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(End of clause)

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appropriate, the Contracting Officer shall designate the contracting office or an alternate activity or office]; and

(2) The Contracting Officer determines that the previously offered product was accepted or tested and found to comply with specification and other requirements for technical acceptability conforming in every material respect with those in this solicitation.

Alternate II (May 2002). As prescribed in [14.201-6\(o\)\(2\)\(ii\)](#), insert the following Alternate II:

(e) At the discretion of the Contracting Officer, the requirements for furnishing bid samples may be waived for a bidder if—

(1) The bid states that the offered product is the same as a product offered by the bidder to the _____ [*as appropriate, the Contracting Officer shall designate the contracting office or an alternate activity or office*] on a previous acquisition;

(2) The Contracting Officer determines that the previously offered product was accepted or tested and found to comply with specification and other requirements for technical acceptability conforming in every material respect with those of this solicitation; and

(3) The product offered under this solicitation will be produced under a resulting contract at the same plant in which the previously acquired or tested product was produced.

52.214-21 Descriptive Literature.

As prescribed in [14.201-6\(p\)\(1\)](#), insert the following provision:

DESCRIPTIVE LITERATURE (APR 2002)

(a) “Descriptive literature,” as used in this provision, means information furnished by a bidder, such as cuts, illustrations, drawings, and brochures, that shows a product’s characteristics or construction or explains its operation. The term includes only that information required to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

(b) Descriptive literature is required to establish, for the purpose of evaluation and award, details of the product offered that are specified elsewhere in the solicitation and pertain to significant elements such as—

- (1) Design;
- (2) Materials;
- (3) Components;
- (4) Performance characteristics; and
- (5) Methods of manufacture, assembly, construction, or operation.

(c) Descriptive literature, required elsewhere in this solicitation, shall be—

- (1) Identified to show the item(s) of the offer to which it applies; and
- (2) Received by the time specified in this solicitation.

(d) If the bidder fails to submit descriptive literature on time, the Government will reject the bid, except that late descriptive literature sent by mail may be considered under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

(e) If the descriptive literature fails to show that the product offered conforms to the requirements of the solicitation, the Government will reject the bid.

(End of provision)

Alternate I (Apr 2002). As prescribed in [14.201-6\(p\)\(2\)](#), add the following paragraphs (f) and (g) to the basic provision:

(f) The Contracting Officer may waive the requirement for furnishing descriptive literature if the offeror has supplied a product that is the same as that required by this solicitation under a prior contract. A bidder that requests a waiver of this requirement shall provide the following information:

Prior contract number _____

Date of prior contract _____

Contract line item number of product supplied _____

Name and address of Government activity to which delivery was made _____

Date of final delivery of product supplied _____

(g) Bidders shall submit bids on the basis of required descriptive literature or on the basis of a previously supplied product under paragraph (f) of this provision. A bidder submitting a bid on one of these two bases may not elect to have its bid considered on the alternative basis after the time specified for receipt of bids. The Government will disregard a bidder’s request for a waiver under paragraph (f) if that bidder has submitted the descriptive literature requested under this solicitation.

52.214-22 Evaluation of Bids for Multiple Awards.

As prescribed in [14.201-6\(q\)](#), insert the following provision:

EVALUATION OF BIDS FOR MULTIPLE AWARDS (MAR 1990)

In addition to other factors, bids will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (multiple awards). It is assumed, for the purpose of evaluating bids, that \$500 would be the administrative cost to the Government for issuing and administering each contract awarded under this solicitation, and individual awards will be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(End of provision)

52.214-23 Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.

As prescribed in [14.201-6\(r\)](#), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, REVISIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP SEALED BIDDING (NOV 1999)

(a) Bidders are responsible for submitting technical proposals, and any modifications or revisions, so as to reach the Government office designated in the request for technical proposals by the time specified in the invitation for bids (IFB). If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids or revisions are due.

(b)(1) Any technical proposal under step one of two-step sealed bidding, modification, revision, or withdrawal of such proposal received at the Government office designated in the request for technical proposals after the exact time specified for receipt will not be considered unless the Contracting Officer determines that accepting the late technical proposal would not unduly delay the acquisition; and—

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

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

(iii) It is the only proposal received and it is negotiated under [Part 15](#) of the Federal Acquisition Regulation.

(2) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

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

(d) If an emergency or unanticipated event interrupts normal Government processes so that technical proposals cannot be received at the Government office designated for receipt of technical proposals by the exact time specified in the request for technical proposals, and urgent Government requirements preclude amendment of the request for technical proposals, the time specified for receipt of technical proposals will be deemed to be extended to the same time of day specified in the

request for technical proposals on the first work day on which normal Government processes resume.

(e) Technical proposals may be withdrawn by written notice received at any time before the exact time set for receipt of technical proposals. If the request for technical proposals authorizes facsimile technical proposals, they may be withdrawn via facsimile received at any time before the exact time set for receipt of proposals, subject to the conditions specified in the provision at [52.214-31](#), Facsimile Bids. A technical proposal may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of technical proposals, the identity of the person requesting withdrawal is established and the person signs a receipt for the technical proposal.

(End of provision)

52.214-24 Multiple Technical Proposals.

As prescribed in [14.201-6\(s\)](#), insert the following provision:

MULTIPLE TECHNICAL PROPOSALS (APR 1984)

In the first step of this two-step acquisition, solicited sources are encouraged to submit multiple technical proposals presenting different basic approaches. Each technical proposal submitted will be separately evaluated and the submitter will be notified as to its acceptability.

(End of provision)

52.214-25 Step Two of Two-Step Sealed Bidding.

As prescribed in [14.201-6\(t\)](#), insert the following provision:

STEP TWO OF TWO-STEP SEALED BIDDING (APR 1985)

(a) This invitation for bids is issued to initiate step two of two-step sealed bidding under [Subpart 14.5](#) of the Federal Acquisition Regulation.

(b) The only bids that the Contracting Officer may consider for award of a contract are those received from bidders that have submitted acceptable technical proposals in step one of this acquisition under _____ [*the Contracting Officer shall insert the identification of the step-one request for technical proposals*].

(c) Any bidder that has submitted multiple technical proposals in step one of this acquisition may submit a separate bid on each technical proposal that was determined to be acceptable to the Government.

(End of provision)

52.214-26 Audit and Records—Sealed Bidding.

As prescribed in [14.201-7\(a\)](#), insert the following clause:

AUDIT AND RECORDS—SEALED BIDDING (MAR 2009)

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

(b) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor’s records, including computations and projections, related to—

- (1) The proposal for the modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the modification; or
- (4) Performance of the modification.

(c) *Comptroller General.* In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, shall have the same rights as specified in paragraph (b) of this clause and also the right to interview any current employee regarding such transactions.

(d) *Availability.* The Contractor shall make available at its office at all reasonable times the materials described in paragraph (b) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in [Subpart 4.7](#) of the Federal Acquisition Regulation (FAR). FAR [Subpart 4.7](#), Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts expected to exceed the threshold in FAR [15.403-4](#)(a)(1) for submission of cost or pricing data.

(End of clause)

Alternate I (Mar 2009). As prescribed in [14.201-7](#)(a)(2) substitute the following paragraphs (c) and (e) for paragraphs (c) and (e) of the basic clause:

(c) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 ([5 U.S.C. App.](#)), or an

authorized representative of either of the foregoing officials, shall have access to and the right to—

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

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

(e)(1) Except as provided in paragraph (e)(2), the Contractor shall insert a clause containing the provisions of this clause, including this paragraph (e), in all subcontracts.

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

52.214-27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.

As prescribed in [14.201-7](#)(b), insert the following clause:

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING (OCT 1997)

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for the submission of cost or pricing data at FAR [15.403-4](#)(a)(1), except that this clause does not apply to a modification if an exception under FAR [15.403-1](#)(b) applies.

(b) If any price, including profit, negotiated in connection with any modification under this clause, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor’s Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

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

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

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

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

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

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

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

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

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

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

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

(End of clause)

52.214-28 Subcontractor Cost or Pricing Data— Modifications—Sealed Bidding.

As prescribed in [14.201-7\(c\)](#), insert the following clause in solicitations and contracts:

SUBCONTRACTOR COST OR PRICING DATA— MODIFICATIONS—SEALED BIDDING (OCT 1997)

(a) The requirements of paragraphs (b) and (c) of this clause shall—

(1) Become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR [15.403-4\(a\)\(1\)](#); and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR [15.403-4\(a\)\(1\)](#), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR [15.403-4\(a\)\(1\)](#), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR [15.403-1\(b\)](#) applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR subsection [15.406-2](#) that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that, when entered into, exceeds the threshold for submission of cost or pricing data at FAR [15.403-4\(a\)\(1\)](#).

(End of clause)

52.214-29 Order of Precedence—Sealed Bidding.

As prescribed in [14.201-7\(d\)](#), insert the following clause:

ORDER OF PRECEDENCE—SEALED BIDDING (JAN 1986)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications);

(b) Representations and other instructions;

(c) Contract clauses;

(d) Other documents, exhibits, and attachments; and

(e) The specifications.

(End of clause)

52.214-30 [Reserved]**52.214-31 Facsimile Bids.**

As prescribed in [14.201-6\(v\)](#), insert the following provision:

FACSIMILE BIDS (DEC 1989)

(a) *Definition.* “Facsimile bid,” as used in this solicitation, means a bid, modification of a bid, or withdrawal of a bid that is transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.

(b) Bidders may submit facsimile bids as responses to this solicitation. These responses must arrive at the place and by the time, specified in the solicitation.

(c) Facsimile bids that fail to furnish required representations or information or that reject any of the terms, conditions, and provisions of the solicitation may be excluded from consideration.

(d) Facsimile bids must contain the required signatures.

(e) The Government reserves the right to make award solely on the facsimile bid. However, if requested to do so by the Contracting Officer, the apparently successful bidder agrees to promptly submit the complete original signed bid.

(f) Facsimile receiving data and compatibility characteristics are as follows:

(1) Telephone number of receiving facsimile equipment: _____

(2) Compatibility characteristics of receiving facsimile equipment (*e.g.*, make and model number, receiving speed, communications protocol): _____

(g) If the bidder chooses to transmit a facsimile bid, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile bid including, but not limited to, the following:

(1) Receipt of garbled or incomplete bid.

(2) Availability or condition of the receiving facsimile equipment.

(3) Incompatibility between the sending and receiving equipment.

(4) Delay in transmission or receipt of bid.

(5) Failure of the bidder to properly identify the bid.

(6) Illegibility of bid.

(7) Security of bid data.

(End of provision)

52.214-32 [Reserved]**52.214-33 [Reserved]****52.214-34 Submission of Offers in the English Language.**

As prescribed in [14.201-6\(w\)](#), insert the following provision:

SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE
(APR 1991)

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

(End of provision)

52.214-35 Submission of Offers in U.S. Currency.

As prescribed in [14.201-6\(x\)](#), insert the following provision:

SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

(End of provision)

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- (iii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.
- (iv) A summary of the rationale for award.
- (v) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.
- (vi) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

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

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

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

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

52.215-2 Audit and Records—Negotiation.

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

AUDIT AND RECORDS—NEGOTIATION (MAR 2009)

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

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance

of this contract. This right of examination shall include inspection at all reasonable times of the Contractor’s plants, or parts of them, engaged in performing the contract.

(c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor’s records, including computations and projections, related to—

- (1) The proposal for the contract, subcontract, or modification;
 - (2) The discussions conducted on the proposal(s), including those related to negotiating;
 - (3) Pricing of the contract, subcontract, or modification;
- or
- (4) Performance of the contract, subcontract or modification.

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

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

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

- (1) The effectiveness of the Contractor’s policies and procedures to produce data compatible with the objectives of these reports; and
- (2) The data reported.

(f) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in [Subpart 4.7](#), Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

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

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

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

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

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

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

(End of clause)

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

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

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

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

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

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

Alternate II (Apr 1998). As prescribed in [15.209\(b\)\(3\)](#), add the following paragraph (h) to the basic clause:

(h) The provisions of OMB Circular No. A-133, “Audits of States, Local Governments, and Nonprofit Organizations,” apply to this contract.

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

(e) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), and (d) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in [Subpart 4.7](#), Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period

required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

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

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

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

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

(a) The Government does not intend to award a contract on the basis of this solicitation or to otherwise pay for the information solicited except as an allowable cost under other contracts as provided in subsection [31.205-18](#), Bid and proposal costs, of the Federal Acquisition Regulation.

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

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

(End of provision)

52.215-4 [Reserved]

52.215-5 Facsimile Proposals.

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

FACSIMILE PROPOSALS (OCT 1997)

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

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

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

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

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

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

(3) The resubmission shall be considered as if it were received at the date and time of the original unreadable sub-

mission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the Contracting Officer.

(e) The Government reserves the right to make award solely on the facsimile proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror promptly shall submit the complete original signed proposal.

(End of provision)

52.215-6 Place of Performance.

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

PLACE OF PERFORMANCE (OCT 1997)

(a) The offeror or respondent, in the performance of any contract resulting from this solicitation, intends, does not intend [*check applicable block*] to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal or response to request for information.

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

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

(End of provision)

52.215-7 [Reserved]

52.215-8 Order of Precedence—Uniform Contract Format.

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

ORDER OF PRECEDENCE—UNIFORM CONTRACT FORMAT (OCT 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) The Schedule (excluding the specifications).
- (b) Representations and other instructions.
- (c) Contract clauses.
- (d) Other documents, exhibits, and attachments.
- (e) The specifications.

(End of clause)

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

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

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

(a) The Contractor shall perform in accordance with the make-or-buy program incorporated in this contract. If the Contractor proposes to change the program, the Contractor shall, reasonably in advance of the proposed change, (1) notify the Contracting Officer in writing, and (2) submit justification in sufficient detail to permit evaluation. Changes in the place of performance of any “make” items in the program are subject to this requirement.

(b) For items deferred at the time of negotiation of this contract for later addition to the program, the Contractor shall, at the earliest possible time—

(1) Notify the Contracting Officer of each proposed addition; and

(2) Provide justification in sufficient detail to permit evaluation.

(c) Modification of the make-or-buy program to incorporate proposed changes or additions shall be effective upon the Contractor’s receipt of the Contracting Officer’s written approval.

(End of clause)

Alternate I (Oct 1997). As prescribed in [15.408](#)(a)(1) add the following paragraph (d) to the basic clause:

(d) If the Contractor desires to reverse the categorization of “make” or “buy” for any item or items designated in the contract as subject to this paragraph, it shall—

(1) Support its proposal with cost or pricing data when permitted and necessary to support evaluation; and

(2) After approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract price in accordance with paragraph (k) of the Incentive Price Revision—Firm Target clause or paragraph (m) of the Incentive Price Revision—Successive Targets clause of this contract.

Alternate II (Oct 1997). As prescribed in [15.408](#)(a)(2), add the following paragraph (d) to the basic clause:

(d) If the Contractor desires to reverse the categorization of “make” or “buy” for any item or items designated in the contract as subject to this paragraph, it shall—

(1) Support its proposal with cost or pricing data to permit evaluation; and

(2) After approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract’s total estimated cost and fee in accordance with paragraph (e) of the Incentive Fee clause of this contract.

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

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

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because—

(1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

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

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

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

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

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

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

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

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

(ii) An offset shall not be allowed if—

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

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

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

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

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

(End of clause)

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

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

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS (OCT 1997)

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

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(h) *Contractor personnel.* The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor personnel who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including termination for default or cause.

(i) *Weapons.* (1) If the Contracting Officer, subject to the approval of the Combatant Commander or the Chief of Mission, authorizes the carrying of weapons—

(i) The Contracting Officer may authorize an approved Contractor to issue Contractor-owned weapons and ammunition to specified employees; or

(ii) The _____ [*Contracting Officer to specify individual, e.g., Contracting Officer Representative, Regional Security Officer, etc.*] may issue Government-furnished weapons and ammunition to the Contractor for issuance to specified Contractor employees.

(2) The Contractor shall provide to the Contracting Officer a specific list of personnel for whom authorization to carry a weapon is requested.

(3) The Contractor shall ensure that its personnel who are authorized to carry weapons—

(i) Are adequately trained to carry and use them—

(A) Safely;

(B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander or the Chief of Mission; and

(C) In compliance with applicable agency policies, agreements, rules, regulations, and other applicable law;

(ii) Are not barred from possession of a firearm by [18 U.S.C. 922](#); and

(iii) Adhere to all guidance and orders issued by the Combatant Commander or the Chief of Mission regarding possession, use, safety, and accountability of weapons and ammunition.

(4) Upon revocation by the Contracting Officer of the Contractor's authorization to possess weapons, the Contractor shall ensure that all Government-furnished weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(5) Whether or not weapons are Government-furnished, all liability for the use of any weapon by Contractor personnel rests solely with the Contractor and the Contractor employee using such weapon.

(j) *Vehicle or equipment licenses.* Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the area of performance.

(k) *Military clothing and protective equipment.* (1) Contractor personnel are prohibited from wearing military clothing unless specifically authorized by the Combatant Commander. If authorized to wear military clothing, Con-

tractor personnel must wear distinctive patches, armbands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures.

(2) Contractor personnel may wear specific items required for safety and security, such as ballistic, nuclear, biological, or chemical protective equipment.

(l) *Evacuation.* (1) If the Chief of Mission or Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide to United States and third country national Contractor personnel the level of assistance provided to private United States citizens.

(2) In the event of a non-mandatory evacuation order, the Contractor shall maintain personnel on location sufficient to meet contractual obligations unless instructed to evacuate by the Contracting Officer.

(m) *Personnel recovery.* (1) In the case of isolated, missing, detained, captured or abducted Contractor personnel, the Government will assist in personnel recovery actions.

(2) Personnel recovery may occur through military action, action by non-governmental organizations, other Government-approved action, diplomatic initiatives, or through any combination of these options.

(3) The Department of Defense has primary responsibility for recovering DoD contract service employees and, when requested, will provide personnel recovery support to other agencies in accordance with DoD Directive 2310.2, Personnel Recovery.

(n) *Notification and return of personal effects.* (1) The Contractor shall be responsible for notification of the employee-designated next of kin, and notification as soon as possible to the U.S. Consul responsible for the area in which the event occurred, if the employee—

(i) Dies;

(ii) Requires evacuation due to an injury; or

(iii) Is isolated, missing, detained, captured, or abducted.

(2) The Contractor shall also be responsible for the return of all personal effects of deceased or missing Contractor personnel, if appropriate, to next of kin.

(o) *Mortuary affairs.* Mortuary affairs for Contractor personnel who die in the area of performance will be handled as follows:

(1) If this contract was awarded by DoD, the remains of Contractor personnel will be handled in accordance with DoD Directive 1300.22, Mortuary Affairs Policy.

(2)(i) If this contract was awarded by an agency other than DoD, the Contractor is responsible for the return of the remains of Contractor personnel from the point of identification of the remains to the location specified by the employee or next of kin, as applicable, except as provided in paragraph (o)(2)(ii) of this clause.

(ii) In accordance with [10 U.S.C. 1486](#), the Department of Defense may provide, on a reimbursable basis, mor-

tuary support for the disposition of remains and personal effects of all U.S. citizens upon the request of the Department of State.

(p) *Changes*. In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in place of performance or Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph shall be subject to the provisions of the Changes clause of this contract.

(q) *Subcontracts*. The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts that require subcontractor personnel to perform outside the United States—

- (1) In a designated operational area during—
 - (i) Contingency operations;
 - (ii) Humanitarian or peacekeeping operations; or
 - (iii) Other military operations; or military exercises, when designated by the Combatant Commander; or

(2) When supporting a diplomatic or consular mission—

- (i) That has been designated by the Department of State as a danger pay post (see http://aoprals.state.gov/Web920/danger_pay_all.asp); or
- (ii) That the Contracting Officer has indicated is subject to this clause.

(End of clause)

52.225-20 Prohibition on Conducting Restricted Business Operations in Sudan—Certification.

As prescribed at [25.1103\(d\)](#), insert the following provision:

PROHIBITION ON CONDUCTING RESTRICTED BUSINESS OPERATIONS IN SUDAN—CERTIFICATION (JUNE 2008)

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

“Business operations” means engaging in commerce in any form, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

“Marginalized populations of Sudan” means—

(1) Adversely affected groups in regions authorized to receive assistance under section 8(c) of the Darfur Peace and Accountability Act (Pub. L. 109-344) ([50 U.S.C. 1701 note](#)); and

(2) Marginalized areas in Northern Sudan described in section 4(9) of such Act.

“Person” means—

(1) A natural person, corporation, company, business association, partnership, society, trust, any other nongovernmental entity, organization, or group;

(2) Any governmental entity or instrumentality of a government, including a multilateral development institution (as defined in section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. 262r(c)(3)); and

(3) Any successor, subunit, parent company or subsidiary of any entity described in paragraphs (1) or (2) of this definition.

“Restricted business operations” means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person conducting the business can demonstrate—

(1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;

(2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;

(3) Consist of providing goods or services to marginalized populations of Sudan;

(4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

(5) Consist of providing goods or services that are used only to promote health or education; or

(6) Have been voluntarily suspended.

(b) *Certification*. By submission of its offer, the offeror certifies that it does not conduct any restricted business operations in Sudan.

(End of provision)

52.225-21 Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials.

As prescribed in [25.1102\(e\)](#), insert the following clause:

REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS-BUY AMERICAN ACT-CONSTRUCTION MATERIALS (MAR 2009)

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

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct con-

struction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Domestic construction material” means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States.

“Foreign construction material” means a construction material other than a domestic construction material.

“Manufactured construction material” means any construction material that is not unmanufactured construction material.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“Unmanufactured construction material” means raw material brought to the construction site for incorporation into the building or work that has not been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(b) *Domestic preference.* (1) This clause implements—

(i) Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) The Buy American Act ([41 U.S.C. 10a - 10d](#)) by providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraph (b)(3) and (b)(4) of this clause.

(3) This requirement does not apply to the construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”]

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable.

(A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the cost of the contract by more than 25 percent;

(B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act or the Buy American Act*

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier;

and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material is noncompliant with section 1605 of the American Recovery and Reinvestment Act or the Buy American Act.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Cost Comparison

Construction Material Description	Unit of Measure	Quantity	Cost (Dollars)*
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]
 [Include other applicable supporting information.]
 [* Include all delivery costs to the construction site.]

(End of clause)

52.225-22 Notice of Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials.

As prescribed in [25.1102\(e\)](#), insert the following provision:

NOTICE OF REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS—BUY AMERICAN ACT—CONSTRUCTION MATERIALS (MAR 2009)

(a) *Definitions.* “Construction material,” “domestic construction material,” “foreign construction material,” “manufactured construction material,” “steel,” and “unmanufactured construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Required Use of Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials” (Federal Acquisition Regulation (FAR) clause [52.225-21](#)).

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American Act should submit the request to the Contracting Officer

in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR [52.225-21](#) in the request. If an offeror has not requested a determination regarding the inapplicability of 1605 of the Recovery Act or the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.* (1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies, the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American Act by adding to the offered price of the contract—

(i) 25 percent of the offered price of the contract, if foreign iron, steel, or other manufactured goods are used as construction material based on unreasonable cost of comparable manufactured domestic construction material; and

(ii) 6 percent of the cost of foreign unmanufactured construction material included in the offer based on unreasonable cost of comparable domestic unmanufactured construction material.

(2) If two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(d) *Alternate offers.* (1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR [52.225-21](#), the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR [52.225-21](#) for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR [52.225-21](#) does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

Alternate I (Mar 2009). As prescribed in [25.1102\(e\)](#), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR [52.225-21](#).

52.225-23 Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements.

As prescribed in [25.1102\(e\)](#), insert the following clause:

REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER
MANUFACTURED GOODS—BUY AMERICAN ACT—
CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS
(MAR 2009)

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

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Domestic construction material” means— (1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States.

“Foreign construction material” means a construction material other than a domestic construction material.

“Free trade agreement (FTA) country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of an FTA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different construction material distinct from the materials from which it was transformed.

“Least developed country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“Manufactured construction material” means any construction material that is not unmanufactured construction material.

“Recovery Act designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(2) A Free Trade Agreement country (FTA) (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia).

“Recovery Act designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, or a least developed country construction material.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“Unmanufactured construction material” means raw material brought to the construction site for incorporation into the building or work that has not been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

“WTO GPA country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.* (1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) and the Buy American Act (41 U.S.C. 10a–10d) do not apply to Recovery Act designated country construction material. Consistent with U.S. obligations under international agreements, this clause implements—

(i) Section 1605 of the Recovery Act by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) The Buy American Act by providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic or Recovery Act designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”.]

(4) The Contracting Officer may add other construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable.

(A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the overall cost of the contract by more than 25 percent;

(B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.*

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material other than that covered by trade agreements is noncompliant with the applicable Act.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domes

Construction Material Description	Unit of Measure	Quantity	Cost (Dollars)*
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]
 [Include other applicable supporting information.]
 [* Include all delivery costs to the construction site.]

(End of clause)

Alternate I (Mar 2009). As prescribed in [25.1102\(e\)](#), add the following definition of “Bahrainian, Mexican, or Omani construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

“Bahrainian, Mexican, or Omani construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of Bahrain, Mexico, or Oman; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Mexico, or Oman into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.* (1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) and the Buy American Act do not apply to Recovery Act designated country construction material. Consistent with U.S. obligations under international agreements, this clause implements—

- (i) Section 1605 of the Recovery Act, by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and
- (ii) The Buy American Act providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

52.225-24 Notice of Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements.

As prescribed in [25.1102\(e\)](#), insert the following provision:

NOTICE OF REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS—BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAR 2009)

(a) *Definitions.* “Construction material,” “domestic construction material,” “foreign construction material,” “manufactured construction material,” “Recovery Act designated country construction material,” “steel,” and “unmanufactured construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Required Use of Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements” (Federal Acquisition Regulation (FAR) clause [52.225-23](#)).

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause [52.225-23](#) in the request. If an offeror has not requested a determination regarding the inapplicability of section 1605 of the Recovery Act or the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.* (1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies, the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American Act by adding to the offered price of the contract—

- (i) 25 percent of the offered price of the contract, if foreign iron, steel, or other manufactured goods are used as construction material based on unreasonable cost of comparable manufactured domestic construction material; and
- (ii) 6 percent of the cost of foreign unmanufactured construction material included in the offer based on unreasonable cost of comparable domestic unmanufactured construction material.

(2) If two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(d) *Alternate offers.* (1) When an offer includes foreign construction material, other than Recovery Act designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause [52.225-23](#), the offeror also may submit an alternate offer based on use of equivalent domestic or Recovery Act designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause [52.225-23](#) for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause [52.225-23](#) does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or Recovery Act designated country construction material, and the offeror shall be required to furnish such domestic or Recovery Act designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

Alternate I (Mar 2009). As prescribed in [25.1102\(e\)](#), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause [52.225-23](#).

Alternate II (Mar 2009). As prescribed in [25.1102\(e\)](#), add the definition of “Bahrainian, Mexican, or Omani construction material” to paragraph (a) and substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) *Alternate offers.* (1) When an offer includes foreign construction material, except foreign construction material from a Recovery Act designated country other than Bahrain, Mexico, or Oman that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause [52.225-23](#), the offeror also may submit an alternate offer based on use of equivalent domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and

a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause [52.225-23](#) for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause [52.225-23](#) does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

As prescribed in [26.104](#), insert the following clause:

UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUNE 2000)

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

“Indian” means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with [25 U.S.C. 1452\(c\)](#) and any “Native” as defined in the Alaska Native Claims Settlement Act ([43 U.S.C. 1601](#)).

“Indian organization” means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of [25 U.S.C., Chapter 17](#).

“Indian-owned economic enterprise” means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with [25 U.S.C. 1452\(c\)](#).

“Interested party” means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises ([25 U.S.C. 1544](#)) the maximum practicable opportunity to

participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the—

U.S. Department of the Interior
Bureau of Indian Affairs (BIA)
Attn: Chief, Division of Contracting and Grants
Administration
1849 C Street, NW,
MS-2626-MIB
Washington, DC 20240-4000.

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

- (i) The estimated cost of a cost-type contract.
- (ii) The target cost of a cost-plus-incentive-fee prime contract.
- (iii) The target cost and ceiling price of a fixed-price incentive prime contract.
- (iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

(End of clause)

52.226-2 Historically Black College or University and Minority Institution Representation.

As prescribed in [26.304](#), insert the following provision:

HISTORICALLY BLACK COLLEGE OR UNIVERSITY AND
MINORITY INSTITUTION REPRESENTATION (OCT 2008)

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

“Historically black college or university” means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

“Minority institution” means an institution of higher education meeting the requirements of Section 365(3) of the Higher Education Act of 1965 ([20 U.S.C. 1067k](#)), including a Hispanic-serving institution of higher education, as defined in Section 502(a) of the Act ([20 U.S.C. 1101a](#)).

(b) *Representation.* The offeror represents that it—

- is is not a historically black college or university;
- is is not a minority institution.

(End of provision)

52.226-3 Disaster or Emergency Area Representation.

As prescribed in [26.205](#)(a), insert the following provision:

DISASTER OR EMERGENCY AREA REPRESENTATION
(NOV 2007)

(a) *Set-aside area.* The area covered in this contract is:

[*Contracting Officer to fill in with definite geographic boundaries.*]

(b) *Representations.* The offeror represents that it does does not reside or primarily do business in the designated set-aside area.

(c) An offeror is considered to be residing or primarily doing business in the set-aside area if, during the last twelve months—

- (1) The offeror had its main operating office in the area; and
- (2) That office generated at least half of the offeror’s gross revenues and employed at least half of the offeror’s permanent employees.

(d) If the offeror does not meet the criteria in paragraph (c) of this provision, factors to be considered in determining whether an offeror resides or primarily does business in the set-aside area include—

- (1) Physical location(s) of the offeror’s permanent office(s) and date any office in the set-aside area(s) was established;
- (2) Current state licenses;
- (3) Record of past work in the set-aside area(s) (*e.g.*, how much and for how long);
- (4) Contractual history the offeror has had with subcontractors and/or suppliers in the set-aside area;
- (5) Percentage of the offeror’s gross revenues attributable to work performed in the set-aside area;
- (6) Number of permanent employees the offeror employs in the set-aside area;

(7) Membership in local and state organizations in the set-aside area; and

(8) Other evidence that establishes the offeror resides or primarily does business in the set-aside area. For example, sole proprietorships may submit utility bills and bank statements.

(e) If the offeror represents it resides or primarily does business in the set-aside area, the offeror shall furnish documentation to support its representation if requested by the Contracting Officer. The solicitation may require the offeror to submit with its offer documentation to support the representation.

(End of provision)

52.226-4 Notice of Disaster or Emergency Area Set-Aside.

As prescribed in [26.205](#)(b), insert the following clause:

NOTICE OF DISASTER OR EMERGENCY AREA SET-ASIDE
(NOV 2007)

(a) *Set-aside area.* Offers are solicited only from businesses residing or primarily doing business in

[*Contracting Officer to fill in with definite geographic boundaries.*] Offers received from other businesses shall not be considered.

(b) This set-aside is in addition to any small business set-aside contained in this contract.

(End of clause)

52.226-5 Restrictions on Subcontracting Outside Disaster or Emergency Area.

As prescribed in [26.205](#)(c), insert the following clause:

RESTRICTIONS ON SUBCONTRACTING OUTSIDE
DISASTER OR EMERGENCY AREA (NOV 2007)

(a) *Definitions.* The definitions of the following terms used in this clause are found in the Small Business Administration regulations at 13 CFR 125.6(e): cost of the contract, cost of contract performance incurred for personnel, cost of manufacturing, cost of materials, personnel, and subcontracting.

(b) The Contractor agrees that in performance of the contract in the case of a contract for—

(1) *Services (except construction).* At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the Contractor or employees of other businesses residing or primarily doing business in the area designated in the clause at FAR [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside;

(2) *Supplies (other than procurement from a nonmanufacturer of such supplies).* The Contractor or employees of other businesses residing or primarily doing business in the set-aside area shall perform work for at least 50 percent of the

cost of manufacturing the supplies, not including the cost of materials;

(3) *General construction.* The Contractor will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees or employees of other businesses residing or primarily doing business in the set-aside area; or

(4) *Construction by special trade Contractors.* The Contractor will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees or employees of other businesses residing or primarily doing business in the set-aside area.

(End of clause)

52.226-6 Promoting Excess Food Donation to Nonprofit Organizations.

As prescribed in [26.404](#), insert the following clause:

PROMOTING EXCESS FOOD DONATION TO NONPROFIT
ORGANIZATIONS (MAR 2009)

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

“Apparently wholesome food” means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

“Excess food” means food that—

(1) Is not required to meet the needs of the executive agencies; and

(2) Would otherwise be discarded.

“Food-insecure” means inconsistent access to sufficient, safe, and nutritious food.

“Nonprofit organization” means any organization that is—

(1) Described in section 501(c) of the Internal Revenue Code of 1986; and

(2) Exempt from tax under section 501(a) of that Code.

(b) In accordance with the Federal Food Donation Act of 2008 (Pub. L. 110-247), the Contractor is encouraged, to the maximum extent practicable and safe, to donate excess, apparently wholesome food to nonprofit organizations that provide assistance to food-insecure people in the United States.

(c) *Costs.* (1) The Contractor, including any subcontractors, shall assume the responsibility for all the costs and the logistical support to collect, transport, maintain the safety of, or distribute the excess, apparently wholesome food to the nonprofit organization(s) that provides assistance to food-insecure people.

(2) The Contractor will not be reimbursed for any costs incurred or associated with the donation of excess foods. Any costs incurred for excess food donations are unallowable.

(d) *Liability.* The Government and the Contractor, including any subcontractors, shall be exempt from civil and crimi-

nal liability to the extent provided under the Bill Emerson Good Samaritan Food Donation Act ([42 U.S.C. 1791](#)). Nothing in this clause shall be construed to supersede State or local health regulations (subsection (f) of [42 U.S.C. 1791](#)).

(e) *Flowdown*. The Contractor shall insert this clause in all contracts, task orders, delivery orders, purchase orders, and

other similar instruments greater than \$25,000 with its sub-contractors or suppliers, at any tier, who will perform, under this contract, the provision, service, or sale of food in the United States.

(End of clause)

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52.244-1 [Reserved]

52.244-2 Subcontracts.

As prescribed in [44.204\(a\)\(1\)](#), insert the following clause:

SUBCONTRACTS (JUNE 2007)

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

“Approved purchasing system” means a Contractor’s purchasing system that has been reviewed and approved in accordance with [Part 44](#) of the Federal Acquisition Regulation (FAR).

“Consent to subcontract” means the Contracting Officer’s written consent for the Contractor to enter into a particular subcontract.

“Subcontract” means any contract, as defined in FAR [Subpart 2.1](#), entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that—

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds—

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer’s written consent before placing the following subcontracts:

(e)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor’s current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor’s Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting—

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor’s cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor’s cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor’s price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (b), (c), or (d) of this clause.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor’s purchasing system shall constitute a determination—

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR [15.404-4\(c\)\(4\)\(i\)](#).

(h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(i) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR [Subpart 44.3](#).

(j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

(End of clause)

Alternate I (June 2007). As prescribed in [44.204\(a\)\(2\)](#), substitute the following paragraph (e)(2) for paragraph (e)(2) of the basic clause:

(e)(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), or (d) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (e)(1)(i) through (e)(1)(iv) of this clause.

52.244-3 [Reserved]

52.244-4 Subcontractors and Outside Associates and Consultants (Architect-Engineer Services).

As prescribed in [44.204\(b\)](#), insert the following clause:

SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND
 CONSULTANTS (ARCHITECT-ENGINEER SERVICES)
 (AUG 1998)

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these subcontractors, associates, or consultants.

(End of clause)

52.244-5 Competition in Subcontracting.

As prescribed in [44.204\(c\)](#), insert the following clause:

COMPETITION IN SUBCONTRACTING (DEC 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical

extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

(End of clause)

52.244-6 Subcontracts for Commercial Items.

As prescribed in [44.403](#), insert the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS (MAR 2009)

(a) *Definitions.* As used in this clause—
 "Commercial item" has the meaning contained in Federal Acquisition Regulation [2.101](#), Definitions.

"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (DEC 2008) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).

(ii) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Section 1553 of Pub. L. 111-5). Applies to subcontracts funded under the Act.

(iii) [52.219-8](#), Utilization of Small Business Concerns (MAY 2004) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(iv) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

(v) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEPT 2006) ([38 U.S.C. 4212\(a\)](#));

(vi) [52.222-36](#), Affirmative Action for Workers with Disabilities (JUNE 1998) ([29 U.S.C. 793](#)).

(vii) [52.222-39](#), Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201). Flow down as required in accordance with paragraph (g) of FAR clause [52.222-39](#).

(viii) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).

(ix) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C.](#)

52.301 Solicitation provisions and contract clauses (Matrix).

Type of Contract:	Provision or Clause	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP R&D	CR R&D	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC
P or C	Provision or Clause																
IBR	Is Incorporation by Reference Authorized? (See FAR 52.102)																
UCF	Uniform Contract Format Section, when Applicable																
FP SUP	Fixed-Price Supply																
CR SUP	Cost-Reimbursement Supply																
FP R&D	Fixed-Price Research & Development																
CR R&D	Cost Reimbursement Research & Development																
FP SVC	Fixed-Price Service																
CR SVC	Cost Reimbursement Service																
FP CON	Fixed-Price Construction																
CR CON	Cost Reimbursement Construction																
T&M LH	Time & Material/Labor Hours																
LMV	Leasing of Motor Vehicles																
COM SVC	Communication Services																

Contract Purpose:	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
Required	=	=	=	=	=	=	=	=
Required when Applicable	=	=	=	=	=	=	=	=
Optional	=	=	=	=	=	=	=	=
Revision	=	=	=	=	=	=	=	=

PROVISION OR CLAUSE	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																						
	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	CR SVC	FP CON	CR CON	CR T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
52.202-1 Definitions.		C	Yes	I	R	R	A	R	R	A	R	R	R	R	R	R	R	R	R	R	R	R	R
52.203-2 Certificate of Independent Price Determination.		P	No	K	A		A		A						A	A	A	A	A	A	A	A	A
52.203-3 Gratuities.		C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.203-5 Covenant Against Contingent Fees.		C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.203-6 Restrictions on Subcontractor Sales to the Government.		C	Yes	I	R	R			R									R					R
Alternate 1		C	Yes																				R
52.203-7 Anti-Kickback Procedures.		C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity.		C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.203-10 Price or Fee Adjustment for Illegal or Improper Activity.		C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.		P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.203-12 Limitation on Payments to Influence Certain Federal Transactions.		C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.203-13 Contractor Code of Business Ethics and Conduct.		C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.203-14 Display of Hotline Poster(s).		C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009.	3.907-7	C	Yes	Yes	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-1 Approval of Contract.	4.103	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-2 Security Requirements.	4.404(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	4.404(b)	C	Yes	I					A														
Alternate II	4.404(c)	C	Yes	I							A							A					
52.204-3 Taxpayer Identification.	4.905		No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-4 Printed or Copied Double-Sided on Recycled Paper.	4.303	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-5 Women-Owned Business (Other Than Small Business)	4.607(b)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-6 Data Universal Numbering System (DUNS) Number.	4.607(a)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-7 Central Contractor Registration.	4.1104	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-8 Annual Representations and Certifications	4.1202	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-9 Personal Identity Verification of Contractor Personnel.	4.1303	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-10 Reporting Subcontract Awards	4.1401(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-11 American Recovery and Reinvestment Act—Reporting Requirements.	4.1502	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.207-1 Notice of Standard Competition.	7.305(a)	P	Yes	L	A				A														
52.207-2 Notice of Streamlined Competition.	7.305(b)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.207-3 Right of First Refusal of Employment.	7.305(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.207-4 Economic Purchase Quantity—Supplies.	7.203	P	No	K	A	A																	
52.207-5 Option to Purchase Equipment.	7.404	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.208-4 Vehicle Lease Payments.	8.1104(a)	C	Yes	I																			
52.208-5 Condition of Leased Vehicles.	8.1104(b)	C	Yes	I																			
52.208-6 Marking of Leased Vehicles.	8.1104(c)	C	Yes	I																			
52.208-7 Tagging of Leased Vehicles.	8.1104(d)	C	Yes	I																			
52.208-8 Required Sources for Helium and Helium Usage Data.	8.505	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.208-9 Contractor Use of Mandatory Sources of Supply or Services.	8.004	C	Yes	I	A	A																	
52.209-1 Qualification Requirements.	9.206-2	C	No	I	A	A																	

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.209-3 First Article Approval—Contractor Testing.	9.308-1(a)(1) and (b)(1)	C	Yes	I	A	O								A					A		A		
Alternate I	9.308-1(a)(2) and (b)(2)	C	Yes	I	A	O								A					A		A		
Alternate II	9.308-2(a)(3) and (b)(3)	C	Yes	I	A	O								A					A		A		
52.209-4 First Article Approval—Government Testing.	9.308-2(a)(1) and (b)(1)	C	Yes	I	A	O								A					A		A		
Alternate I	9.308-2(a)(1) and (b)(2)	C	Yes	I	A	O								A					A		A		
Alternate II	9.308-2(a)(1) and (b)(3)	C	Yes	I	A	O								A					A		A		
52.209-5 Certification Regarding Responsibility Matters.	9.104-6	P	No	K	A	A								A					A		A		A
52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.	9.409(b)	C	Yes	I	A	A								A					A		A		A
52.211-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29.	11.204(a)	P	No	L	A	A								A					A		A		
52.211-2 Availability of Specifications, Standards, and Data Item Descriptions Listed in the Acquisition Streamlining and Standardization Information System (ASSIST).	11.204(b)	P	No	L	A	A								A					A		A		
52.211-3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.	11.204(c)	P	No	L	A	A								A					A		A		
52.211-4 Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Index Descriptions.	11.204(d)	P	No	L	A	A								A					A		A		
52.211-5 Material Requirements.	11.304	C	Yes	I	R	R															A		
52.211-6 Brand Name or Equal.	11.107(a)	P	Yes	L	A	A								A							A		
52.211-7 Alternatives to Government-Unique Standards.	11.107(b)	P	Yes	L	A	A								A					A		A		A
52.211-8 Time of Delivery.	11.404(a)(2)	C	No	F	O	O								O					O		O		O
Alternate I	11.404(a)(2)	C	No	F	O	O								O					O		O		O
Alternate II	11.404(a)(2)	C	No	F	O	O								O					O		O		O
Alternate III	11.404(a)(2)	C	No	F	O	O								O					O		O		O

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.211-9 Desired and Required Time of Delivery.	11.404(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate I	11.404(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate II	11.404(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate III	11.404(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.211-10 Commencement, Prosecution, and Completion of Work.	11.404(b)	C	Yes						R														
Alternate I	11.404(b)	C	Yes						R														
52.211-11 Liquidated Damages—Supplies, Services, or Research and Development.	11.503(a)	C	Yes	F	O		O							O								O	O
52.211-12 Liquidated Damages—Construction.	11.503(b)	C	Yes						O	O													
52.211-13 Time Extensions.	11.503(c)	C	Yes								A	A											
52.211-14 Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use.	11.604(a)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.211-15 Defense Priority and Allocation Requirements.	11.604(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.211-16 Variation in Quantity.	11.703(a)	C	Yes	F	A		A							A									
52.211-17 Delivery of Excess Quantities.	11.703(b)	C	Yes	F	O									O								O	
52.211-18 Variation in Estimated Quantity.	11.703(c)	C	Yes								A												A
52.212-1 Instructions to Offerors—Commercial Items.	12.301(b)(1)	P	Yes	NA	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	R
52.212-2 Evaluation—Commercial Items.	12.301(c)(1)	P	No	NA	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.212-3 Offeror Representations and Certifications—Commercial Items.	12.301(b)(2)	P	No	NA	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	R
Alternate I	12.301(b)(2)	P	No	NA	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	12.301(b)(2)	P	No	NA	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.212-4 Contract Terms and Conditions—Commercial Items.	12.301(b)(3)	C	Yes	NA	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	R
Alternate I	12.301(b)(3)	C	Yes	NA									A										A
52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items	12.301(b)(4)	C	No	NA	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	R
Alternate I	12.301(b)(4)	C	No	NA	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	R
Alternate II	12.301(b)(4)(ii)	C	No	NA	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	R
52.213-1 Fast Payment Procedure.	13.404	C	Yes		A									A									
52.213-2 Invoices.	13.302-5(b)	C	Yes																				
52.213-3 Notice to Supplier.	13.302-5(c)	C	Yes																				

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52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).	13.302-5(d)	C	Yes																				
52.214-3 Amendments to Invitations for Bids.	14.201-6(b)(1)	P	Yes	L	A				A						A	A				A			
52.214-4 False Statements in Bids.	14.201-6(b)(2)	P	Yes	L	A				A						A	A				A			
52.214-5 Submission of Bids.	14.201-6(c)(1)	P	Yes	L	A				A						A	A				A			
52.214-6 Explanation to Prospective Bidders.	14.201-6(c)(2)	P	Yes	L	A				A						A	A				A			
52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.	14.201-6(c)(3)	P	Yes	L	A				A						A	A				A			
52.214-10 Contract Award—Sealed Bidding.	14.201-6(e)	P	Yes	L	A				A						A	A				A			
52.214-12 Preparation of Bids.	14.201-6(f)	P	Yes	L	A				A						A	A				A			
52.214-13 Telegraphic Bids.	14.201-6(g)(1)	P	Yes	L	A				A						A	A				A			
Alternate I	14.201-6(g)(2)	P	Yes	L	A				A						A	A				A			
52.214-14 Place of Performance—Sealed Bidding.	14.201-6(h)	P	No	K	A				A						A	A				A			
52.214-15 Period for Acceptance of Bids.	14.201-6(i)	P	Yes	L	A				A						A	A				A			
52.214-16 Minimum Bid Acceptance Period.	14.201-6(j)	P	No	K	A				A						A	A				A			
52.214-18 Preparation of Bids—Construction.	14.201-6(l)	P	Yes						A														
52.214-19 Contract Award—Sealed Bidding—Construction.	14.201-6(m)	P	Yes						A							A							
52.214-20 Bid Samples.	14.201-6(o)(1)	P	Yes	L	A				A						A								
Alternate I	14.201-6(o)(2)(i)	P	Yes	L	A				A						A								
Alternate II	14.201-6(o)(2)(ii)	P	Yes	L	A				A						A								
52.214-21 Descriptive Literature.	14.201-6(p)(1)	P	Yes	L	A				A						A								
Alternate I	14.201-6(p)(2)	P	No	L	A				A						A								
52.214-22 Evaluation of Bids for Multiple Awards.	14.201-6(q)	P	Yes	M	A				A						A	A				A			
52.214-23 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.	14.201-6(r)	P	Yes	L	A				A						A	A							
52.214-24 Multiple Technical Proposals.	14.201-6(s)	P	Yes	M	A				A						A								
52.214-25 Step Two of Two-Step Sealed Bidding.	14.201-6(t)	P	Yes	L	A				A						A	A							

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<u>52.214-26</u> Audit and Records—Sealed Bidding.	<u>14.201-7(a)</u>	C	Yes	I	A	A			A	A	A			A	A	A			A	A			
Alternate I	<u>14.201-7(a)(2)</u>	C	Yes	I	A	A	A		A	A	A			A	A	A			A	A			
<u>52.214-27</u> Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.	<u>14.201-7(b)(1)</u>	C	Yes	I	A	A			A	A	A			A	A	A			A	A			
<u>52.214-28</u> Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.	<u>14.201-7(c)(1)</u>	C	Yes	I	A	A			A	A	A			A	A	A			A	A			
<u>52.214-29</u> Order of Precedence—Sealed Bidding.	<u>14.201-7(d)</u>	C	Yes	I	A	A			A	A	A			A	A	A			A	A			
<u>52.214-31</u> Facsimile Bids.	<u>14.201-6(v)</u>	P	Yes	L	A	A			A	A	A			A	A	A			A	A		A	
<u>52.214-34</u> Submission of Offers in the English Language.	<u>14.201-6(w)</u>	P	Yes		A	A	A	A	A	A	A			A	A	A			A	A	A	A	
<u>52.214-35</u> Submission of Offers in U.S. Currency.	<u>14.201-6(x)</u>	P	Yes		A	A	A	A	A	A	A			A	A	A			A	A	A	A	
<u>52.215-1</u> Instructions to Offerors—Competitive.	<u>15.209(a)</u>	P	Yes	L	A	A	A	A	A	A	A			A	A	A			A	A	A	A	
Alternate I	<u>15.209(a)(1)</u>	P	Yes	L	A	A	A	A	A	A	A			A	A	A			A	A	A	A	
Alternate II	<u>15.209(a)(2)</u>	P	Yes	L	A	A	A	A	A	A	A			A	A	A			A	A	A	A	
<u>52.215-2</u> Audit and Records—Negotiation.	<u>15.209(b)(1)</u>	C	Yes	I	A	A	A	A	A	A	A			A	A	A			A	A	A	A	
Alternate I	<u>15.209(b)(2)</u>	C	Yes	I	A	A	A	A	A	A	A			A	A	A			A	A	A	A	
Alternate II	<u>15.209(b)(3)</u>	C	Yes	I	A	A	A	A	A	A	A			A	A	A			A	A	A	A	
Alternate III	<u>15.209(b)(4)</u>	C	Yes	I	A	A	A	A	A	A	A			A	A	A			A	A	A	A	
<u>52.215-3</u> Request for Information or Solicitation for Planning Purposes.	<u>15.209(c)</u>	P	Yes	L	A	A	A	A	A	A	A			A	A	A			A	A	A	A	
<u>52.215-5</u> Facsimile Proposals.	<u>15.209(e)</u>	P	Yes	L	A	A	A	A	A	A	A			A	A	A			A	A	A	A	
<u>52.215-6</u> Place of Performance.	<u>15.209(f)</u>	P	No	K	A	A	A	A	A	A	A			A	A	A			A	A	A	A	
<u>52.215-8</u> Order of Precedence—Uniform Contract Format.	<u>15.209(h)</u>	C	Yes	I	A	A	A	A	A	A	A			A	A	A			A	A	A	A	
<u>52.215-9</u> Changes or Additions to Make-or-Buy Program.	<u>15.408(a)</u>	C	Yes	I	A	A	A	A	A	A	A			A	A	A			A	A	A	A	
Alternate I	<u>15.408(a)(1)</u>	C	Yes	I	A	A	A	A	A	A	A			A	A	A			A	A	A	A	
Alternate II	<u>15.408(a)(2)</u>	C	Yes	I	A	A	A	A	A	A	A			A	A	A			A	A	A	A	
<u>52.215-10</u> Price Reduction for Defective Cost or Pricing Data.	<u>15.408(b)</u>	C	Yes	I	A	A	A	A	A	A	A			A	A	A			A	A	A	A	
<u>52.215-11</u> Price Reduction for Defective Cost or Pricing Data—Modifications.	<u>15.408(c)</u>	C	Yes	I	A	A	A	A	A	A	A			A	A	A			A	A	A	A	
<u>52.215-12</u> Subcontractor Cost or Pricing Data.	<u>15.408(d)</u>	C	Yes	I	A	A	A	A	A	A	A			A	A	A			A	A	A	A	
<u>52.215-13</u> Subcontractor Cost or Pricing Data—Modifications.	<u>15.408(e)</u>	C	Yes	I	A	A	A	A	A	A	A			A	A	A			A	A	A	A	

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52.225-9 Buy American Act—Construction Materials.	25.1102(a)	C	No								A	A											
52.225-10 Notice of Buy American Act Requirement—Construction Materials.	25.1102(b)(1)	P	No								A	A											
Alternate I	25.1102(b)(2)	P	No								A	A											
52.225-11 Buy American Act—Construction Materials under Trade Agreements.	25.1102(c)	C	No								A	A											
Alternate I	25.1102(c)(3)	C	No								A	A											
52.225-12 Notice of Buy American Act Requirement—Construction Materials under Trade Agreements.	25.1102(d)(1)	P	No								A	A											
Alternate I	25.1102(d)(2)	P	No								A	A											
Alternate II	25.1102(d)(3)	P	No								A	A											
52.225-13 Restrictions on Certain Foreign Purchases.	25.1103(a)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.225-14 Inconsistency Between English Version and Translation of Contract.	25.1103(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-17 Evaluation of Foreign Currency Offers.	25.1103(c)	P	Yes	M	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-18 Place of Manufacture.	25.1101(f)	P	No	K	R	R							A										
52.225-19 Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States.	25.301-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-20 Prohibition on Conducting Restricted Business Operations in Sudan—Certification.	25.1103(d)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-21 Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials.	25.1102(e)(1)	C	No								A	A											
52.225-22 Notice of Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials.	25.1102(e)(1)	P	No								A	A											
Alternate I	25.1102(e)(1)	P	No								A	A											
52.225-23 Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements.	25.1102(e)(1)	C	No								A	A											

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Alternate I	25.1102(e)(1)	C	No								A	A											
52.225-24 Notice of Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements.	25.1102(e)(1)	P	No								A	A											
Alternate I	25.1102(e)(1)	P	No								A	A											
Alternate II	25.1102(e)(1)	P	No								A	A											
52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.	26.104	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.226-2 Historically Black College or University and Minority Institution Representation.	26.304	P	No	K	A	A	A	A	A	A			A		A						A		
52.226-3 Disaster or Emergency Area Representation.	26.205(a)	P	No	K	A	A			A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.226-4 Notice of Disaster or Emergency Area Set-Aside.	26.205(b)	C	Yes	I	A	A			A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.226-5 Restrictions on Subcontracting Outside Disaster or Emergency Area.	26.205(c)	C	Yes	I	A	A			A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.226-6 Promoting Excess Food Donation to Nonprofit Organizations.	26.404	C	No	I					R	A											A		A
52.227-1 Authorization and Consent.	27.201-2(a)(1)	C	Yes	I	A	A			A		A	A			A	A	A	A	A	A			
Alternate I	27.201-2(a)(2)	C	Yes	I			A	A			A	A			A	A	A	A	A	A			
Alternate II	27.201-2(a)(3)	C	Yes	I			A				A												
52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.	27.201-2(b)	C	Yes	I	A	A																	
52.227-3 Patent Indemnity.	27.201-2(c)(1)	C	Yes	I	A	A			A	A													
Alternate I	27.201-2(c)(2)	C	Yes	I	A	A			A	A													
Alternate II	27.201-2(c)(2)	C	Yes	I	A	A			A	A													
Alternate III	27.201-2(c)(3)	C	Yes	I																			
52.227-4 Patent Indemnity—Construction Contracts.	27.201-2(d)(1)	C	Yes								A	A				A							
Alternate I	27.201-2(d)(2)	C	Yes								O	O				O							
52.227-5 Waiver of Indemnity.	27.201-2(e)	C	Yes	I	A	A	A	A	A	A	A	A				A							
52.227-6 Royalty Information.	27.202-5(a)(1)	P	No	K	A	A	A	A	A	A	A	A				A							
Alternate I	27.202-5(a)(2)	P	No	K												A							
52.227-7 Patents—Notice of Government License.	27.202-5(b)	P	No	K	A	A	A	A	A	A	A	A				A							
52.227-9 Refund of Royalties.	27.202-5(c)	C	Yes	I	A	A	A	A	A	A	A	A				A							

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.227-10 Filing of Patent Applications—Classified Subject Matter.	27.203-2	C	Yes	I	A	A	A	A	A	A	A	A				A		A					
52.227-11 Patent Rights—Ownership by the Contractor.	27.303(b)(1)	C	Yes	I			A	A			A						A						
Alternate I	27.303(b)(3)	C	Yes	I			A	A			A						A						
Alternate II	27.303(b)(4)	C	Yes	I			A	A			A						A						
Alternate III	27.303(b)(5)	C	Yes	I			A	A			A						A						
Alternate IV	27.303(b)(6)	C	Yes	I			A	A			A						A						
Alternate V	27.303(b)(7)	C	Yes	I			A	A			A						A						
52.227-13 Patent Rights—Ownership by the Government.	27.303(e)	C	Yes	I			A	A			A						A						
Alternate I	27.303(e)(4)	C	Yes	I			A	A			A						A						
Alternate II	27.303(e)(5)	C	Yes	I			A	A			A						A						
52.227-14 Rights in Data—General.	27.409(b)(1)	C	Yes	I	A	A	A	A			A		A	A	A	A				A	A		
Alternate I	27.409(b)(2)	C	Yes	I	A	A	A	A			A		A	A	A	A				A	A		
Alternate II	27.409(b)(3)	C	Yes	I	A	A	A	A			A		A	A	A	A				A	A		
Alternate III	27.409(b)(4)	C	Yes	I	A	A	A	A			A		A	A	A	A				A	A		
Alternate IV	27.409(b)(5)	C	Yes	I	O	O	A	A	O	O			O	O	O	O				O	O		
Alternate V	27.409(b)(6)	C	Yes	I	A	A	A	A			A		A	A	A	A				A	A		
52.227-15 Representation of Limited Rights Data and Restricted Computer Software.	27.409(c)	P	No	K	A	A	A	A			A		A	A	A	A				A	A		
52.227-16 Additional Data Requirements.	27.409(d)	C	Yes	I			A	A															
52.227-17 Rights in Data—Special Works.	27.409(e)	C	Yes	I	A	A	A	A	A	A	O	O					O						
52.227-18 Rights in Data—Existing Works.	27.409(f)	C	Yes	I	A	A	A	A			A		A	A	A	A				A	A		
52.227-19 Commercial Computer Software License.	27.409(g)	C	Yes	I	A				A														
52.227-20 Rights in Data—SBIR Program.	27.409(h)	C	Yes	I			A	A															
52.227-21 Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.	27.409(i)	C	Yes	I	A	A	A	A			A		A	A	A	A				A	A		
52.227-22 Major System—Minimum Rights.	27.409(k)	C	Yes	I	A	A	A	A			A		A	A	A	A				A	A		
52.227-23 Rights to Proposal Data (Technical).	27.409(l)	C	Yes	I	A	A	A	A			A		A	A	A	A				A	A		
52.228-1 Bid Guarantee.	28.101-2	P	Yes	I	A	A	A	A			A		A	A	A	A				A	A		
52.228-2 Additional Bond Security.	28.106-4	C	Yes	I	A	A	A	A			A		A	A	A	A				A	A		

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.228-3 Workers' Compensation Insurance (Defense Base Act).	28.309(a)	C	Yes	I			A		A	A	A	A	A					A					
52.228-4 Workers' Compensation and War-Hazard Insurance Overseas.	28.309(b)	C	Yes	I			A		A	A	A	A	A					A					
52.228-5 Insurance—Work on a Government Installation.	28.310	C	Yes	I	A		A		A		A	A		A	A	A	A		A				
52.228-7 Insurance—Liability to Third Persons.	28.311-1	C	Yes	I		A	A		A						A			A					
52.228-8 Liability and Insurance—Leased Motor Vehicles.	28.312	C	Yes	I										R							A		
52.228-9 Cargo Insurance.	28.313(a)	C	Yes	I																A	A		
52.228-10 Vehicular and General Public Liability Insurance.	28.313(b)	C	Yes	I																A			
52.228-11 Pledges of Assets.	28.203-6	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.228-12 Prospective Subcontractor Requests for Bonds.	28.106-4(b)	C	Yes	I							A	A	A			A							
52.228-13 Alternative Payment Protections.	28.102-3(b)	C	Yes	I							A	A	A			A							
52.228-14 Irrevocable Letter of Credit.	28.204-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.228-15 Performance and Payment Bonds—Construction.	28.102-3(a)	C	Yes	I							A	A				A							
52.228-16 Performance and Payment Bonds—Other Than Construction.	28.103-4	C	No	I	A	A	A	A	A	A			A	A	A			A	A	A	A	A	A
Alternate I	28.103-4	C	No	I	A	A	A	A	A	A			A	A	A			A	A	A	A	A	A
52.229-1 State and Local Taxes.	29.401-1	C	Yes	I																			
52.229-2 North Carolina State and Local Sales and Use Tax.	29.401-2	C	Yes	I							A	A											
Alternate I	29.401-2	C	Yes	I					A	A													
52.229-3 Federal, State, and Local Taxes.	29.401-3	C	Yes	I	A		A		A		A							A	A	A	A		
52.229-4 Federal, State, and Local Taxes (State and Local Adjustments).	29.401-3	C	Yes	I	A		A		A		A							A	A	A	A		
52.229-6 Taxes—Foreign Fixed-Price Contracts.	29.402-1(a)	C	Yes	I	A		A		A		A							A	A	A	A		
52.229-7 Taxes—Fixed-Price Contracts with Foreign Governments.	29.402-1(b)	C	Yes	I	A		A		A		A							A	A	A	A	A	A
52.229-8 Taxes—Foreign Cost-Reimbursement Contracts.	29.402-2(a)	C	Yes	I						A								A	A	A	A		
52.229-9 Taxes—Cost-Reimbursement Contracts with Foreign Governments.	29.402-2(b)	C	Yes	I						A								A	A	A	A		
52.229-10 State of New Mexico Gross Receipts and Compensating Tax.	29.401-4(b)	C	Yes	I						A								A	A	A	A		

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<u>52.230-1</u> Cost Accounting Standards Notices and Certification.	<u>30.201-3</u>	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	<u>30.201-3(b)</u>	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
<u>52.230-2</u> Cost Accounting Standards.	<u>30.201-4(a)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
<u>52.230-3</u> Disclosure and Consistency in Cost Accounting Practices.	<u>30.201-4(b)(1)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
<u>52.230-4</u> Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns.	<u>30.201-4(c)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
<u>52.230-5</u> Cost Accounting Standards—Educational Institution.	<u>30.201-4(e)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
<u>52.230-6</u> Administration of Cost Accounting Standards.	<u>30.201-4(d)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
<u>52.230-7</u> Proposal Disclosure—Cost Accounting Practice Changes.	<u>30.201-3(c)</u>	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
<u>52.232-1</u> Payments.	<u>32.111(a)(1)</u>	C	Yes	I	R				R													A	A
<u>52.232-2</u> Payments under Fixed-Price Research and Development Contracts.	<u>32.111(a)(2)</u>	C	Yes	I			R																
<u>52.232-3</u> Payments under Personal Service Contracts.	<u>32.111(a)(3)</u>	C	Yes	I					A	A													
<u>52.232-4</u> Payments under Transportation Contracts and Transportation-Related Services Contracts.	<u>32.111(a)(4)</u>	C	Yes	I																	R	A	
<u>52.232-5</u> Payments under Fixed-Price Construction Contracts.	<u>32.111(a)(5)</u>	C	Yes								R												
<u>52.232-6</u> Payment under Communication Service Contracts with Common Carriers.	<u>32.111(a)(6)</u>	C	Yes	I											A							A	
<u>52.232-7</u> Payments under Time-and-Materials and Labor-Hour Contracts.	<u>32.111(a)(7)</u>	C	Yes	I									A										
Alternate I	<u>32.111(b)</u>	C	Yes	I									A										
<u>52.232-8</u> Discounts for Prompt Payment.	<u>32.111(b)(1)</u>	C	Yes	I	A				A				A									A	
<u>52.232-9</u> Limitation on Withholding of Payments.	<u>32.111(b)(2)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
<u>52.232-10</u> Payments under Fixed-Price Architect-Engineer Contracts.	<u>32.111(c)(1)</u>	C	Yes																			A	
<u>52.232-11</u> Extras.	<u>32.111(c)(2)</u>	C	Yes	I	A				A					A								A	A

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<u>52.232-12</u> Advance Payments.	<u>32.412(a)</u>	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	<u>32.412(b)</u>	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate II	<u>32.412(c)</u>	C	No	I																			
Alternate III	<u>32.412(d)</u>	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate IV	<u>32.412(e)</u>	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate V	<u>32.412(f)</u>	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
<u>52.232-13</u> Notice of Progress Payments.	<u>32.502-3(a)</u>	P	Yes	L	A																		
<u>52.232-14</u> Notice of Availability of Progress Payments Exclusively for Small Business Concerns.	<u>32.502-3(b)(2)</u>	P	Yes	L	A																		
<u>52.232-15</u> Progress Payments Not Included.	<u>32.502-3(c)</u>	P	Yes	M	A																		
<u>52.232-16</u> Progress Payments.	<u>32.502-4(a)</u>	C	Yes	I	A																		
Alternate I	<u>32.502-4(b)</u>	C	Yes	I	A																		
Alternate II (See Note 1.)	<u>32.502-4(c)</u>	C	Yes	I																			
Alternate III	<u>32.502-4(d)</u>	C	Yes	I																			
<u>52.232-17</u> Interest.	<u>32.611(a)</u> and <u>(b)✓</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
<u>52.232-18</u> Availability of Funds.	<u>32.705-1(a)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
<u>52.232-19</u> Availability of Funds for the Next Fiscal Year.	<u>32.705-1(b)</u>	C	Yes	I																			
<u>52.232-20</u> Limitation of Cost.	<u>32.705-2(a)</u>	C	Yes	I																			
<u>52.232-22</u> Limitation of Funds.	<u>32.705-2(b)</u>	C	Yes	I																			
<u>52.232-23</u> Assignment of Claims.	<u>32.806(a)(1)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	<u>32.806(a)(2)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
<u>52.232-24</u> Prohibition of Assignment of Claims.	<u>32.806(b)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
<u>52.232-25</u> Prompt Payment.	<u>32.908(c)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	<u>32.908(c)(3)</u>	C	Yes	I																			
<u>52.232-26</u> Prompt Payment for Fixed-Price Architect-Engineer Contracts.	<u>32.908(a)</u>	C	Yes	I																			
<u>52.232-27</u> Prompt Payment for Construction Contracts.	<u>32.908(b)</u>	C	Yes	I																			
<u>52.232-28</u> Invitation to Propose Performance-Based Payments.	<u>32.1005(b)(1)</u>	P	No	L	A																		
Alternate I	<u>32.1005(b)(2)</u>	P	No	L	A																		
<u>52.232-29</u> Terms for Financing of Purchases of Commercial Items.	<u>32.206(b)(2)</u>	C	No	I	A																		
<u>52.232-30</u> Installment Payments for Commercial Items.	<u>32.206(e)</u>	C	Yes	I	A																		

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
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														
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	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	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	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	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	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	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	A
Alternate 1	33.215	C	Yes	I	A	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	R
52.233-3 Protest after Award.	33.106(b)	C	Yes	I	R		R		R		R		R		R		R		R		R		R
Alternate 1	33.106(b)	C	Yes	I	R		R		R		R		R		R		R		R		R		R
52.233-4 Applicable Law for Breach of Contract Claim.	33.215(b)	C	Yes	I	R	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															
52.234-2 Notice of Earned Value Management System - Pre-Award IBR.	34.203(a)	P	N	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.234-3 Notice of Earned Value Management System - Post Award IBR.	34.203(b)	P	N	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.234-4 Earned Value Management System.	34.203(c)	C	Y	H	A	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						A														
52.236-2 Differing Site Conditions.	36.502	C	Yes						A														O
52.236-3 Site Investigation and Conditions Affecting the Work.	36.503	C	Yes						A														O

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.236-4 Physical Data.	36.504	C	No								A											A	
52.236-5 Material and Workmanship.	36.505	C	Yes								R	R										A	
52.236-6 Superintendence by the Contractor.	36.506	C	Yes								A					A						O	
52.236-7 Permits and Responsibilities.	36.507	C	Yes								R	R				A						A	
52.236-8 Other Contracts.	36.508	C	Yes								A					A						O	
52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.	36.509	C	Yes								A					A						O	
52.236-10 Operations and Storage Areas.	36.510	C	Yes								A					A						O	
52.236-11 Use and Possession Prior to Completion.	36.511	C	Yes								A											O	
52.236-12 Cleaning Up.	36.512	C	Yes								A					A						O	
52.236-13 Accident Prevention.	36.513	C	Yes								A					A						O	
Alternate I	36.513	C	Yes								A					A						O	
52.236-14 Availability and Use of Utility Services.	36.514	C	Yes								A					A						A	
52.236-15 Schedules for Construction Contracts.	36.515	C	Yes								O												
52.236-16 Quantity Surveys.	36.516	C	Yes								O												
Alternate I	36.516	C	Yes								O												
52.236-17 Layout of Work.	36.517	C	Yes								A												
52.236-18 Work Oversight in Cost-Reimbursement Construction Contracts.	36.518	C	Yes																				
52.236-19 Organization and Direction of the Work.	36.519	C	Yes																				
52.236-21 Specifications and Drawings for Construction.	36.521	C	Yes								A					A						O	
Alternate I	36.521	C	Yes								A					A						O	
Alternate II	36.521	C	Yes								A					A						O	
52.236-22 Design Within Funding Limitations.	36.609-1(c)	C	Yes																			O	
52.236-23 Responsibility of the Architect-Engineer Contractor.	36.609-2(b)	C	Yes																				
52.236-24 Work Oversight in Architect-Engineer Contracts.	36.609-3	C	Yes																				
52.236-25 Requirements for Registration of Designers.	36.609-4	C	Yes																				
52.236-26 Preconstruction Conference.	36.522	C	Yes	I							A												

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.236-27 Site Visit (Construction). Alternate 1	36.523 36.523	P P	Yes Yes	L L							A A					A A							
52.236-28 Preparation of Proposals— Construction.	36.520	P	Yes	K					R														
52.237-1 Site Visit.	37.110(a)	P	Yes	L			A	A	A	A			A	A	A	A	A	A	A	A	A	A	A
52.237-2 Protection of Government Buildings, Equipment, and Vegetation.	37.110(b)	C	Yes	I			A	A	A	A			A	A	A	A	A	A	A	A	A	A	A
52.237-3 Continuity of Services.	37.110(c)	C	Yes	I					O													O	
52.237-4 Payment by Government to Contractor.	37.304(a)	C	Yes	I											A							A	
Alternate 1	37.304(a)	C	Yes	I											A							A	
52.237-5 Payment by Contractor to Government.	37.304(b)	C	Yes	I											A							A	
52.237-6 Incremental Payment by Contractor to Government.	37.304(c)	C	Yes	I											A							A	
52.237-7 Indemnification and Medical Liability Insurance.	37.403	C	Yes	I					A	A			A									O	
52.237-8 Restriction on Severance Payments to Foreign Nationals.	37.113-2(a)	P	Yes	K			A	A					A	A	A	A	A	A	A	A			
52.237-9 Waiver of Limitation on Severance Payments to Foreign Nationals.	37.113-2(b)	C	Yes	I			A	A					A	A	A	A	A	A	A	A			
52.237-10 Identification of Uncompensated Overtime.	37.115-3	P	Yes	L					A	A													
52.237-11 Accepting and Dispensing of \$1 Coin.	37.116-2	C	Yes	I			A	A					A	A							A	A	A
52.239-1 Privacy or Security Safeguards. (See Note 4.)	39.107	C	Yes	I			A	A	A	A			A								A	A	A
52.241-1 Electric Service Territory Compliance Representation.	41.501(b)	P	No	K																			
52.241-2 Order of Precedence— Utilities.	41.501(c)(1)	C	Yes	I																		O	R
52.241-3 Scope of Duration of Contract.	41.501(c)(2)	C	No	I																		O	R
52.241-4 Change in Class of Service.	41.501(c)(3)	C	Yes	I																		O	R
52.241-5 Contractor's Facilities.	41.501(c)(4)	C	Yes	I																		O	R
52.241-6 Service Provisions.	41.501(c)(5)	C	No	I																		O	R
52.241-7 Change in Rates or Terms and Conditions of Service for Regulated Services.	41.501(d)(1)	C	No	I																		O	A
52.241-8 Change in Rates or Terms and Conditions of Service for Unregulated Services.	41.501(d)(2)	C	No	I																		O	A

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.241-9 Connection Charge.	41.501(d)(3)	C	No	I																	O	A	
Alternate I	41.501(d)(3)	C	No	I																	O	A	
52.241-10 Termination Liability.	41.501(d)(4)	C	No	I																	O	A	
52.241-11 Multiple Service Locations.	41.501(d)(5)	C	Yes	I																	O	A	
52.241-12 Nonrefundable, Nonrecurring Service Charge.	41.501(d)(6)	C	No	I																	O	A	
52.241-13 Capital Credits.	41.501(d)(7)	C	No	I																	O	A	
52.242-1 Notice of Intent to Disallow Costs.	42.802	C	Yes	I	A	R	A	R	A	R	A	R	A	A	A	A	A	R	A	A			
52.242-2 Production Progress Reports.	42.1107(a)	C	Yes	I	A	A	A	A	A	A													
52.242-3 Penalties for Unallowable Costs.	42.709-6	C	Yes	I																			
52.242-4 Certification of Final Indirect Costs.	42.703-2(f)	C	Yes	I																			
52.242-13 Bankruptcy.	42.903	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	O	R	
52.242-14 Suspension of Work.	42.1305(a)	C	Yes																				
52.242-15 Stop-Work Order.	42.1305(b)(1)	C	Yes	F	O	O	O	O	O	O													
Alternate I	42.1305(b)(2)	C	Yes	F	O	O	O	O	O	O													
52.242-17 Government Delay of Work.	42.1305(c)	C	Yes	F	A																		
52.243-1 Changes—Fixed Price.	43.205(a)(1)	C	Yes	I	R																		
Alternate I	43.205(a)(2)	C	Yes	I																			
Alternate II	43.205(a)(3)	C	Yes	I																			
Alternate III	43.205(a)(4)	C	Yes	I																			
Alternate IV	43.205(a)(5)	C	Yes	I																			
Alternate V	43.205(a)(6)	C	Yes	I																			
52.243-2 Changes—Cost Reimbursement.	43.205(b)(1)	C	Yes	I		R																	
Alternate I	43.205(b)(2)	C	Yes	I																			
Alternate II	43.205(b)(3)	C	Yes	I																			
Alternate III	43.205(b)(4)	C	Yes	I																			
Alternate V	43.205(b)(6)	C	Yes	I																			
52.243-3 Changes—Time-and-Materials or Labor-Hours.	43.205(c)	C	Yes	I																			
52.243-4 Changes.	43.205(d)	C	Yes	I																			
52.243-5 Changes and Changed Conditions.	43.205(e)	C	Yes	I																			
52.243-6 Change Order Accounting.	43.205(f)	C	Yes	I	O	O	O	O															
52.243-7 Notification of Changes.	43.107	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	O
52.244-2 Subcontracts. (See Note 1.)	44.204(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 (See Note 1.)	44.204(a)(2)	C	Yes	I																			

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52.244-4 Subcontractors and Outside Associates and Consultants (Architect-Engine Services).	44.204(b)	C	Yes	I													A						
52.244-5 Competition in Subcontracting.	44.204(c)	C	Yes	I	A	A	A	A	A	A	A	A		A		A	A	A		A		A	
52.244-6 Subcontracts for Commercial Items.	44.403	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.245-1 Government Property.	45.107(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	45.107(a)(2)				A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	45.107(a)(3)				A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.245-2 Government Property Installation Operation Services.	45.107(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.245-9 Use and Charges.	45.107(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.246-1 Contractor Inspection Requirements.	46.301	C	Yes																				
52.246-2 Inspection of Supplies—Fixed-Price.	46.302	C	Yes	E	A		A							A						A			
Alternate I	46.302	C	Yes	E	A		A							A									
Alternate II	46.302	C	Yes	E	A		A							A									
52.246-3 Inspection of Supplies—Cost-Reimbursement.	46.303	C	Yes	E		A		A															
52.246-4 Inspection of Services—Fixed-Price.	46.304	C	Yes	E	A		A						A										
52.246-5 Inspection of Services—Cost-Reimbursement.	46.305	C	Yes	E		A		A															
52.246-6 Inspection—Time-and-Material and Labor-Hour.	46.306	C	Yes	E									R										
Alternate I	46.306	C	Yes	E										A									
52.246-7 Inspection of Research and Development—Fixed Price.	46.307(a)	C	Yes	E			A																
52.246-8 Inspection of Research and Development—Cost Reimbursement.	46.308	C	Yes	E				A															
Alternate I	46.308	C	Yes	E				A															
52.246-9 Inspection of Research and Development (Short Form).	46.309	C	Yes	E			A																
52.246-11 Higher-Level Contract Quality Requirement.	46.311	C	Yes	E	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.246-12 Inspection of Construction.	46.312	C	Yes																				
52.246-13 Inspection—Dismantling, Demolition, or Removal of Improvements.	46.313	C	Yes																				
52.246-14 Inspection of Transportation.	46.314	C	Yes	E																			

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52.246-15 Certificate of Conformance.	46.315	C	Yes	E	A	A	A	A	A	A				A					A		A		
52.246-16 Responsibility for Supplies.	46.316	C	Yes	E	A	A	A	A	A					A							O		
52.246-17 Warranty of Supplies of a Noncomplex Nature.	46.710(a)(1)	C	Yes	I	O									O					O				
Alternate I	46.710(a)(2)	C	Yes	I	O									O					O				
Alternate II	46.710(a)(3)	C	Yes	I	O									O					O				
Alternate III	46.710(a)(4)	C	Yes	I	O									O					O				
Alternate IV	46.710(a)(5)	C	Yes	I	O									O					O				
Alternate V	46.710(a)(6)	C	Yes	I	O									O					O				
52.246-18 Warranty of Supplies of a Complex Nature.	46.710(b)(1)	C	Yes	I	O			O						O					O				
Alternate II	46.710(b)(2)	C	Yes	I	O			O						O					O				
Alternate III	46.710(b)(3)	C	Yes	I	O			O						O					O				
Alternate IV	46.710(b)(4)	C	Yes	I	O			O						O					O				
52.246-19 Warranty of Systems and Equipment under Performance Specifications or Design Criteria.	46.710(c)(1)	C	Yes	I	O			O						O					O				
Alternate I	46.710(c)(2)	C	Yes	I	O			O						O					O				
Alternate II	46.710(c)(3)	C	Yes	I	O			O						O					O				
Alternate III	46.710(c)(4)	C	Yes	I	O			O						O					O				
52.246-20 Warranty of Services.	46.710(d)	C	Yes	I											O					O			
52.246-21 Warranty of Construction.	46.710(e)(1)	C	Yes								O										O		
Alternate I	46.710(e)(2)	C	Yes								O										O		
52.246-23 Limitation of Liability.	46.805	C	Yes	I	A	A	A	A						A					A		O		
52.246-24 Limitation of Liability—High-Value Items.	46.805(a)	C	Yes	I	A	A	A	A						A					A		O		
Alternate I	46.805(a)	C	Yes	I	A	A	A	A						A					A		O		
52.246-25 Limitation of Liability—Services.	46.805(a)(4)	C	Yes	I					A	A				A					A		O		
52.247-1 Commercial Bill of Lading Notations.	47.104-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.247-2 Permits, Authorities, or Franchises.	47.207-1(a)	C	No	I																	A		
52.247-3 Capability to Perform a Contract for the Relocation of a Federal Office.	47.207-1(b)(1)	C	Yes	I																	A		
Alternate I	47.207-1(b)(2)	C	Yes	I																	A		
52.247-4 Inspection of Shipping and Receiving Facilities.	47.207-1(c)	P	Yes	L																	A		
52.247-5 Familiarization with Conditions.	47.207-1(d)	C	Yes	I																	A		

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52.247-27 Contract Not Affected by Oral Agreement.	47.207-8(b)	C	Yes	I																A	A		
52.247-28 Contractor's Invoices.	47.207-9(c)	C	Yes	I																A	A		
52.247-29 F.o.b. Origin.	47.303-1(c)	C	Yes	F	A									A					A	A	A		
52.247-30 F.o.b. Origin, Contractor's Facility.	47.303-2(c)	C	Yes	F	A									A					A	A	A		
52.247-31 F.o.b. Origin, Freight Allowed.	47.303-3(c)	C	Yes	F	A									A					A	A	A		
52.247-32 F.o.b. Origin, Freight Prepaid.	47.303-4(c)	C	Yes	F	A									A					A	A	A		
52.247-33 F.o.b. Origin, with Differentials.	47.303-5(c)	C	No	F	A				A					A					A	A	A		
52.247-34 F.o.b. Destination.	47.303-6(c)	C	Yes	F	A									A					A	A	A		
52.247-35 F.o.b. Destination, within Consignee's Premises.	47.303-7(c)	C	Yes	F	A									A					A	A	A		
52.247-36 F.a.s. Vessel, Port of Shipment.	47.303-8(c)	C	Yes	F	A									A					A	A	A		
52.247-37 F.o.b. Vessel, Port of Shipment.	47.303-9(c)	C	Yes	F	A									A					A	A	A		
52.247-38 F.o.b. Inland Carrier, Point of Exportation.	47.303-10(c)	C	Yes	F	A									A					A	A	A		
52.247-39 F.o.b. Inland Point, Country of Importation.	47.303-11(c)	C	Yes	F	A									A					A	A	A		
52.247-40 Ex Dock, Pier, or Warehouse, Port of Importation.	47.303-12(c)	C	Yes	F	A									A					A	A	A		
52.247-41 C.&f. Destination.	47.303-13(c)	C	Yes	F	A									A					A	A	A		
52.247-42 C.i.f. Destination.	47.303-14(c)	C	Yes	F	A									A					A	A	A		
52.247-43 F.o.b. Designated Air Carrier's Terminal, Point of Exportation.	47.303-15(c)	C	Yes	F	A									A					A	A	A		
52.247-44 F.o.b. Designated Air Carrier's Terminal, Point of Importation.	47.303-16(c)	C	Yes	F	A									A					A	A	A		
52.247-45 F.o.b. Origin and/or F.o.b. Destination Evaluation.	47.305-2(b)	P	Yes	L	A									A					A	A	A		
52.247-46 Shipping Point(s) Used in Evaluation of F.o.b. Origin Offers.	47.305-3(b)(4)(ii)	P	Yes	L	A									A					A	A	A		
52.247-47 Evaluation—F.o.b. Origin.	47.305-3(f)(2)	P	Yes	M	A									A					A	A	A		

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52.247-48 F.o.b. Destination—Evidence of Shipment.	47.305-4(c)	C	Yes	F	A									A					A		A		
52.247-49 Destination Unknown.	47.305-5(b)(2)	P	Yes	M	A									A					A		A		
52.247-50 No Evaluation of Transportation Costs.	47.305-5(c)(1)	P	Yes	M	A									A					A		A		
52.247-51 Evaluation of Export Offers.	47.305-6(e)	P	No	M	A									A					A		A		
Alternate I	47.305-6(e)(1)	P	No	M	A									A					A		A		
Alternate II	47.305-6(e)(2)	P	No	M	A									A					A		A		
Alternate III	47.305-6(e)(3)	P	No	M	A									A					A		A		
52.247-52 Clearance and Documentation Requirements—Shipments to DOD Air or Water Terminal Transshipment Points.	47.305-6(f)(2)	C	Yes	F	A						A			A					A		A		
52.247-53 Freight Classification Description.	47.305-9(b)(1)	P	No	K	A									A					A		A		
52.247-55 F.o.b. Point for Delivery of Government-Furnished Property.	47.305-12(a)(2)	C	Yes	F	A									A					A		A		
52.247-56 Transit Arrangements.	47.305-13(a)(3)(ii)	P	No	M	A									A					A				
52.247-57 Transportation Transit Privilege Credits.	47.305-13(b)(4)	C	No	F	A									A					A		A		
52.247-58 Loading, Blocking, and Bracing of Freight Car Shipments.	47.305-15(a)(2)	C	Yes	F	A									A					A		A		
52.247-59 F.o.b. Origin—Carload and Truckload Shipments.	47.305-16(a)	C	Yes	F	A									A					A		A		
52.247-60 Guaranteed Shipping Characteristics.	47.305-16(b)(1)	C	No	F	A									A					A				
52.247-61 F.o.b. Origin—Minimum Size of Shipments.	47.305-16(c)	C	Yes	F	A									A					A		A		
52.247-62 Specific Quantities Unknown.	47.305-16(d)(2)	C	No	F	A									A					A		A		
52.247-63 Preference for U.S.-Flag Air Carriers.	47.405	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels.	47.507(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	47.507(a)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	47.507(a)(3)	C	Yes	I																			
52.247-65 F.o.b. Origin, Prepaid Freight—Small Package Shipments.	47.303-17(f)	C	Yes	F	A									A					A		A		
52.247-66 Returnable Cylinders.	47.305-17	C	No	I	A																		
52.247-67 Submission of Transportation Documents for Audit.	47.103-2	C	No	I		A																	
52.247-68 Report of Shipment (REPSHIP).	47.208-2	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

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52.248-1 Value Engineering.	48.201	C	Yes	I	A	A	A	A	A	A			A	A	A	A							
Alternate I	48.201(c)	C	Yes	I	A	A	A	A	A	A			A	A	A	A							
Alternate II	48.201(d)	C	Yes	I	A	A	A	A	A	A			A	A	A	A							
Alternate III	48.201(e)(1)	C	Yes	I	A	A	A	A	A	A			A	A	A	A							
52.248-2 Value Engineering Program—Architect-Engineer.	48.201(f)	C	Yes														A						
52.248-3 Value Engineering—Construction.	48.202	C	Yes																				
Alternate I	48.202	C	Yes																				
52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form).	49.502(a)(1)	C	Yes	I	A		A						A	A		A					A	A	
Alternate I	49.502(a)(2)	C	Yes	I												A							
52.249-2 Termination for Convenience of the Government (Fixed-Price).	49.502(b)(1)(i)	C	Yes	I	A		A						A	A							A	A	
Alternate I	49.502(b)(1)(ii)	C	Yes	I																			
Alternate II	49.502(b)(1)(iii)	C	Yes	I	A		A						A	A									
Alternate III	49.502(b)(1)(iii)	C	Yes	I																			
52.249-3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).	49.502(b)(2)	C	Yes	I												A							
Alternate I	49.502(b)(2)	C	Yes	I												A							
52.249-4 Termination for Convenience of the Government (Services) (Short Form).	49.502(c)	C	Yes	I					A													A	A
52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).	49.502(d)	C	Yes	I				A														A	
52.249-6 Termination (Cost-Reimbursement).	49.503(a)(1)	C	Yes	I				A								A						A	
Alternate I	49.503(a)(2)	C	Yes																				
Alternate II	49.503(a)(3)	C	Yes	I				A															
Alternate III	49.503(a)(3)	C	Yes																				
Alternate IV	49.503(a)(4)	C	Yes	I									A										
Alternate V	49.503(a)(4)	C	Yes	I										A									
52.249-7 Termination (Fixed-Price Architect-Engineer).	49.503(b)	C	Yes																				
52.249-8 Default (Fixed-Price Supply and Service).	49.504(a)(1)	C	Yes	I	A																	A	
Alternate I	49.504(a)(2)	C	Yes	I																			

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52.249-9 Default (Fixed-Price Research and Development).	49.504(b)	C	Yes	I																			
52.249-10 Default (Fixed-Price Construction).	49.504(c)(1)	C	Yes						A														
Alternate I	49.504(c)(2)	C	Yes													A							
Alternate II	49.504(c)(3)	C	Yes																				
Alternate III	49.504(c)(3)	C	Yes													A							
52.249-12 Termination (Personal Services).	49.505(a)	C	Yes	I					A	A													
52.249-14 Excusable Delays.	49.505(b)	C	Yes	I				A		A													
52.250-1 Indemnification under Public Law 85-804.	50.104-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.250-2 SAFETY Act Coverage Not Applicable.	50.206(a)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.250-3 SAFETY Act Block Designation/Certification.	50.206(b)(1)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	50.206(b)(2)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	50.206(b)(3)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.250-4 SAFETY Act Pre-qualification Designation Notice.	50.206(c)(1)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	50.206(c)(2)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	50.206(c)(3)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.250-5 SAFETY Act-Equitable Adjustment.	50.206(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.251-1 Government Supply Sources.	51.107	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.251-2 Interagency Fleet Management System Vehicles and Related Services.	51.205	C	Yes	I				A															
52.252-1 Solicitation Provisions Incorporated by Reference.	52.107(a)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-2 Clauses Incorporated by Reference.	52.107(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-3 Alterations in Solicitation.	52.107(c)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-4 Alterations in Contract.	52.107(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-5 Authorized Deviations in Provisions.	52.107(e)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	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	FP LH	CR LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC
52.252-6 Authorized Deviations in Clauses.	52.107(f)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.253-1 Computer Generated Forms.	53.111	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

NOTE 1:
 The following clauses are prescribed for use in letter contracts:
[52.216-23](#), Execution and Commencement of Work.
[52.216-24](#), Limitation of Government Liability.
[52.216-25](#), Contract Definitization.
[52.216-25](#), Contract Definitization, Alternate I.

Further instructions concerning provisions and clauses for letter contracts are set forth in [16.603-4\(a\)](#).

Note 2:
 The following clauses are prescribed for use in Small Business Administration 8(a) contracts:
[52.219-11](#), Special 8(a) Contract Conditions.
[52.219-12](#), Special 8(a) Subcontract Conditions.
[52.219-14](#), Limitations on Subcontracting.
[52.219-17](#), Section 8(a) Award.
[52.216-26](#), Payments of Allowable Costs Before Definitization.
[52.232-16](#), Progress Payments, Alternate II.
[52.244-2](#), Subcontracts.
[52.219-18](#), Notification of Competition Limited to Eligible 8(a) Concerns.
[52.219-18](#), Alternate I
[52.219-18](#), Alternate II

NOTE 3:
 FAR provisions and clauses not identified on the matrix may be used in contracts for commercial items consistent with the procedures and limitations in FAR [12.302](#)

NOTE 4:
 The following clause is prescribed for use in Information Technology Management Reform Act (ITMRA) contracts:
[52.239-1](#), Privacy or Security Safeguards. "A".