

FEDERAL ACQUISITION CIRCULAR

September 3, 2015

Number 2005-84
Effective September 3, 2015
Loose-leaf pages

Federal Acquisition Circular (FAC) 2005-84 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 2005-84 is effective September 3, 2015 except for item I which is effective October 5, 2015.

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FAC 2005-84 List of Subject

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FAC 2005-84 SUMMARY OF ITEM

Federal Acquisition Circular (FAC) 2005-84 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Inflation Adjustment of Acquisition-Related Thresholds (FAR Case 2014-022)

This rule finalizes an interim rule that implemented changes in the Electronic Product Environmental Assessment Tool (EPEAT®)-registry requirements at FAR subpart 23.7. The FAR requirement to procure EPEAT®-registered products was revised to incorporate the revised standard applicable to personal computer products and to add the standards for imaging equipment and televisions. The final rule also amends the procedures relating to the exceptions to the requirement to procure EPEAT®-registered products. There is no significant economic impact on small businesses.

Replacement pages: THE PAGES WILL BE POSTED ON THEIR EFFECTIVE DATE OF October 5, 2015.

Item II—Technical Amendments

Editorial changes are made at FAR 4.605(e), 31.205-6(o)(2)(iii)(A), 35.017-7 Introductory text, 52.213-4(b)(1)(ix) and 52.219-1 Alternate I (c)(9).

Replacement pages: 4.6-1 and 4.6-2; 31.2-9 and 31.2-10; 35.0-7 and 35.0-8; 52.2-42.1 and 52.2-42.2; and 52.2-89 and 52.2-90.

Loose-leaf Only Corrections

1. Amend section 1.106 by removing from the table FAR segment "OF 312" and the corresponding OMB Control Number "9000-0150".
2. Amend section 2.101 by removing from the definition "Responsible prospective contractor", paragraph destination (3); and revising paragraph (3) of definition "System for Award Management".
3. Amend section 8.701 by removing from the definition "Nonprofit agency serving people who are blind" the words "under 41 U.S.C. chapter 85" and adding "under 41 U.S.C. chapter 85" in its place.
4. Amend section 29.302 by removing from paragraph (b) "listed in 28.305(a)" and adding "listed in 29.305(a)" in its place.

Replacement pages: 1.1-5 and 1.1-6; 2.1-11 thru 2.1-14; 8.7-1 and 8.7-2; and 29.3-1 and 29.3-2.

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FAC 2005-84 FILING INSTRUCTIONS

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

Remove Pages

1.1-5 and 1.1-6

2.1-11 thru 2.1-14

4.6-1 and 4.6-2

8.7-1 and 8.7-2

29.3-1 and 29.3-2

31.2-9 and 31.2-10

35.0-7 and 35.0-8

52.2-41 thru 52.2-42.2

52.2-89 and 52.2-90

Insert Pages

1.1-5 and 1.1-6

2.1-11 thru 2.1-14

4.6-1 and 4.6-2

8.7-1 and 8.7-2

29.3-1 and 29.3-2

31.2-9 and 31.2-10

35.0-7 and 35.0-8

52.2-41 thru 52.2-42.2

52.2-89 and 52.2-90

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52.215-22	9000-0173	52.225-6	9000-0025
52.215-23	9000-0173	52.225-8	9000-0022
52.216-2	9000-0068	52.225-9	9000-0141
52.216-3	9000-0068	52.225-11	9000-0141
52.216-4	9000-0068	52.225-18	9000-0161
52.216-5	9000-0071	52.225-21	9000-0141
52.216-6	9000-0071	52.225-23	9000-0141
52.216-7	9000-0069	52.227-2	9000-0096
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52.216-17	9000-0067	52.227-15	9000-0090
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52.219-10	9000-0006	52.227-17	9000-0090
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52.222-21	1250-0003	52.228-14	9000-0045
52.222-22	1250-0003	52.228-15	9000-0045
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52.222-35	1250-0004	52.232-3	9000-0070
52.222-36	1250-0005	52.232-4	9000-0070
52.222-37	1293-0005	52.232-5	9000-0070
52.222-40	1215-0209	52.232-6	9000-0070
52.222-41	1235-0018 and 1235-0007	52.232-7	9000-0070
52.222-46	9000-0066	52.232-8	9000-0070
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52.223-6(b)(5)	9000-0101	52.232-15	9000-0010
52.223-7	9000-0107	52.232-16	9000-0010
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FAC 2005–84 SEPTEMBER 3, 2015

1.107

FEDERAL ACQUISITION REGULATION

FAR segment	OMB Control Number	FAR segment	OMB Control Number
52.233-1	9000-0035	52.247-68	9000-0056
52.236-5	9000-0062	52.248-1	9000-0027
52.236-13	1220-0029 and	52.248-2	9000-0027
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52.236-15	9000-0058	52.249-2	9000-0028
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52.243-4	9000-0026	SF 28	9000-0001
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52.243-7	9000-0026	SF 35	9000-0045
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52.245-9	9000-0075	SF 274	9000-0045
52.246-2	9000-0077	SF 275	9000-0045
52.246-3	9000-0077	SF 330	9000-0157
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
52.247-34	9000-0061	SF 1438	9000-0012
52.247-35	9000-0061	SF 1439	9000-0012
52.247-36	9000-0061	SF 1440	9000-0012
52.247-37	9000-0061	SF 1443	9000-0010
52.247-38	9000-0061	SF 1444	9000-0089
52.247-39	9000-0061	SF 1445	9000-0089
52.247-40	9000-0061	SF 1446	9000-0089
52.247-41	9000-0061		
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		

1.107 Certifications.

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

- (a) The certification requirement is specifically imposed by statute; or
- (b) Written justification for such certification is provided to the Administrator for Federal Procurement Policy by the

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

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

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

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

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

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

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

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

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

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

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

“Pollution prevention” means any practice that—

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

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

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

(3) Protects natural resources by conservation.

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

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

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

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

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

“Procurement” (see “acquisition”).

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

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

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

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

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

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

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

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

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

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, the Contractor and Government Entity (CAGE) code, as well

as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14), into the SAM database;

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

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

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

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

“Renewable energy technology” means—

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

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

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

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

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

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

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

“Segment” means one of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service. The term includes—

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

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

(i) A majority ownership; or

(ii) Less than a majority ownership, but over which it exercises control.

“Self-insurance” means the assumption or retention of the risk of loss by the contractor, whether voluntarily or involuntarily. Self-insurance includes the deductible portion of purchased insurance.

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

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

(1) Means a small business concern—

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

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

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

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

“Shall” means the imperative.

“Shipment” means freight transported or to be transported.

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

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

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

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

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

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

“Simplified acquisition threshold” means \$150,000, except for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack ([41 U.S.C. 1903](#)), the term means—

(1) \$300,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(2) \$1 million for any contract to be awarded and performed, or purchase to be made, outside the United States.

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

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

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

(1) \$10,000 or less, does not have more than 500 employees; and

(2) More than \$10,000, does not have employees or average annual receipts exceeding the size standard in 13 CFR Part 121 (see [19.102](#)) for the product or service it is providing on the subcontract.

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

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

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

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

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

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

“Solicitation” means any request to submit offers or quotations to the Government. Solicitations under sealed bid procedures are called “invitations for bids.” Solicitations under

negotiated procedures are called “requests for proposals.” Solicitations under simplified acquisition procedures may require submission of either a quotation or an offer.

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

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

(1) Bid prices submitted in response to an agency invitation for bids, or lists of those bid prices before bid opening.

(2) Proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices.

(3) Source selection plans.

(4) Technical evaluation plans.

(5) Technical evaluations of proposals.

(6) Cost or price evaluations of proposals.

(7) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

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

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

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

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

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

“Special tooling” means jigs, dies, fixtures, molds, patterns, taps, gauges, and all components of these items including foundations and similar improvements necessary for installing special tooling, and which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular

services. Special tooling does not include material, special test equipment, real property, equipment, machine tools, or similar capital items.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Termination inventory” means any property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes Government-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are subject to a separate contract or to a special contract requirement governing their use or disposition.

Subpart 4.6—Contract Reporting

4.600 Scope of subpart.

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

4.601 Definitions.

As used in this subpart—

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

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

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

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

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

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

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

4.602 General.

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

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

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

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

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

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

(b) FPDS does not provide reports for certain acquisition information used in the award of a contract action (e.g., 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. 109-282), all unclassified Federal award data must be publicly accessible.

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

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

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

4.604 Responsibilities.

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

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

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

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

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

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

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

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

4.605 Procedures.

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

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

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

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

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

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

(A) A student;

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

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

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

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

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

(e) *Office Codes*. Agencies shall by March 1, 2016—

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

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

4.606 Reporting Data.

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

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

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

Subpart 8.7—Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled

8.700 Scope of subpart.

This subpart prescribes the policies and procedures for implementing—

(a) [41 U.S.C. chapter 85](#), Committee for Purchase from People Who Are Blind or Severely Disabled; and

(b) The rules of the Committee for Purchase from People Who Are Blind or Severely Disabled (41 CFR Chapter 51), which implements the AbilityOne program.

8.701 Definitions.

As used in this subpart—

“Allocation” means an action taken by a central nonprofit agency to designate the AbilityOne participating nonprofit agencies that will furnish definite quantities of supplies or perform specific services upon receipt of orders from ordering offices.

“Central nonprofit agency” means National Industries for the Blind (NIB), which has been designated to represent people who are blind; or NISH, which has been designated to represent AbilityOne participating nonprofit agencies serving people with severe disabilities other than blindness.

“Committee” means the Committee for Purchase from People Who Are Blind or Severely Disabled.

“Government” or “entity of the Government” means any entity of the legislative or judicial branch, any executive agency, military department, Government corporation, or independent establishment, the U.S. Postal Service, or any nonappropriated-fund instrumentality of the Armed Forces.

“Ordering office” means any activity in an entity of the Government that places orders for the purchase of supplies or services under the AbilityOne Program.

“Procurement List” means a list of supplies (including military resale commodities) and services that the Committee has determined are suitable for purchase by the Government under the [41 U.S.C. chapter 85](#).

“Nonprofit agency serving people who are blind” or “nonprofit agency serving people with other severe disabilities” (referred to jointly as AbilityOne participating nonprofit agencies) means a qualified nonprofit agency employing people who are blind or have other severe disabilities approved by the Committee to furnish a commodity or a service to the Government under [41 U.S.C. chapter 85](#).

8.702 General.

The Committee is an independent Government activity with members appointed by the President of the United States. It is responsible for—

(a) Determining those supplies and services to be purchased by all entities of the Government from AbilityOne participating nonprofit agencies;

(b) Establishing prices for the supplies and services; and
 (c) Establishing rules and regulations to implement the [41 U.S.C. chapter 85](#).

8.703 Procurement List.

The Committee maintains a Procurement List of all supplies and services required to be purchased from AbilityOne participating nonprofit agencies. The Procurement List may be accessed at: <http://www.abilityone.gov>. Questions concerning whether a supply item or service is on the Procurement List may be submitted at Internet e-mail address info@abilityone.gov or referred to the Committee offices at the following address and telephone number:

Committee for Purchase From People Who Are Blind or Severely Disabled,
 1401 S. Clark Street, Suite 10800,
 Arlington, VA 22202-3259,
 (703) 603-7740.

Many items on the Procurement List are identified in the General Services Administration (GSA) Supply Catalog and GSA’s Customer Service Center Catalogs with a black square and the words “NIB/NISH Mandatory Source,” and in similar catalogs issued by the Defense Logistics Agency (DLA) and the Department of Veterans Affairs (VA). GSA, DLA, and VA are central supply agencies from which other Federal agencies are required to purchase certain supply items on the Procurement List.

8.704 Purchase priorities.

(a) The [41 U.S.C. chapter 85](#) requires the Government to purchase supplies or services on the Procurement List, at prices established by the Committee, from AbilityOne participating nonprofit agencies if they are available within the period required. When identical supplies or services are on the Procurement List and the Schedule of Products issued by Federal Prison Industries, Inc., ordering offices shall purchase supplies and services in the following priorities:

- (1) Supplies:
 - (i) Federal Prison Industries, Inc. ([41 U.S.C. chapter 8504](#)).
 - (ii) AbilityOne participating nonprofit agencies.
 - (iii) Commercial sources.
- (2) Services:
 - (i) AbilityOne participating nonprofit agencies.
 - (ii) Federal Prison Industries, Inc., or commercial sources.

(b) No other provision of the FAR shall be construed as permitting an exception to the mandatory purchase of items on the Procurement List.

(c) The Procurement List identifies those supplies for which the ordering office must obtain a formal waiver ([8.604](#)) from Federal Prison Industries, Inc., before making any purchases from AbilityOne participating nonprofit agencies.

8.705 Procedures.**8.705-1 General.**

(a) Ordering offices shall obtain supplies and services on the Procurement List from the central nonprofit agency or its designated AbilityOne participating nonprofit agencies, except that supplies identified on the Procurement List as available from DLA, GSA, or VA supply distribution facilities shall be obtained through DLA, GSA, or VA procedures. If a distribution facility cannot provide the supplies, it shall inform the ordering office, which shall then order from the AbilityOne participating nonprofit agency designated by the Committee.

(b) Supply distribution facilities in DLA and GSA shall obtain supplies on the Procurement List from the central nonprofit agency identified or its designated AbilityOne participating nonprofit agency.

8.705-2 Direct-order process.

Central nonprofit agencies may authorize ordering offices to transmit orders for specific supplies or services directly to an AbilityOne participating nonprofit agency. The written authorization remains valid until it is revoked by the central nonprofit agency or the Committee. The central nonprofit agency shall specify the normal delivery or performance lead time required by the nonprofit agency. The ordering office shall reflect this lead time in its orders.

8.705-3 Allocation process.

(a) When the direct order process has not been authorized, the ordering office shall submit a letter request for allocation (requesting the designation of the AbilityOne participating nonprofit agency to produce the supplies or perform the service) to the central nonprofit agency designated in the Procurement List. Ordering offices shall request allocations in sufficient time for a reply, for orders to be placed, and for the nonprofit agency to produce the supplies or provide the service within the required delivery or performance schedule.

(b) The ordering office's request to the central nonprofit agency for allocation shall include the following information:

(1) For supplies—Item name, stock number, latest specification, quantity, unit price, date delivery is required, and destination to which delivery is to be made.

(2) For services—Type and location of service required, latest specification, work to be performed, estimated volume, and required date or dates for completion.

(3) Other requirements; *e.g.*, packing, marking, as necessary.

(c) When an allocation is received, the ordering office shall promptly issue an order to the specified AbilityOne participating nonprofit agency or to the central nonprofit agency, as instructed by the allocation. If the issuance of an order is to be delayed for more than 15 days beyond receipt of the allocation,

or canceled, the ordering office shall advise the central nonprofit agency immediately.

(d) Ordering offices may issue orders without limitation as to dollar amount and shall record them upon issuance as obligations. Each order shall include, as a minimum, the information contained in the request for allocation. Ordering offices shall also include additional instructions necessary for performance under the order; *e.g.*, on the handling of Government-furnished property, reports required, and notification of shipment.

8.705-4 Compliance with orders.

(a) The central nonprofit agency shall inform the ordering office of changes in lead time experienced by its AbilityOne participating nonprofit agencies to minimize requests for extension once the ordering office places an order.

(b) The ordering office shall grant a request by a central nonprofit agency or AbilityOne participating nonprofit agency for revision in the delivery or completion schedule, if feasible. If extension of the delivery or completion date is not feasible, the ordering office shall notify the appropriate central nonprofit agency and request that it reallocate the order, or grant a purchase exception authorizing acquisition from commercial sources.

(c) When an AbilityOne participating nonprofit agency fails to perform under the terms of an order, the ordering office shall make every effort to resolve the noncompliance with the nonprofit agency involved and to negotiate an adjustment before taking action to cancel the order. If the problem cannot be resolved with the nonprofit agency, the ordering office shall refer the matter for resolution first to the central nonprofit agency and then, if necessary, to the Committee.

(d) When, after complying with [8.705-4\(c\)](#), the ordering office determines that it must cancel an order, it shall notify the central nonprofit agency and, if practical, request a reallocation of the order. When the central nonprofit agency cannot reallocate the order, it shall grant a purchase exception permitting use of commercial sources, subject to approval by the Committee when the value of the purchase exception is \$25,000 or more.

8.706 Purchase exceptions.

(a) Ordering offices may acquire supplies or services on the Procurement List from commercial sources only if the acquisition is specifically authorized in a purchase exception granted by the designated central nonprofit agency.

(b) The central nonprofit agency shall promptly grant purchase exceptions when—

(1) The AbilityOne participating nonprofit agencies cannot provide the supplies or services within the time required, and commercial sources can provide them significantly sooner in the quantities required; or

Subpart 29.3—State and Local Taxes

29.300 Scope of subpart.

This subpart prescribes the policies and procedures regarding the exemption or immunity of Federal Government purchases and property from State and local taxation.

29.301 [Reserved]

29.302 Application of State and local taxes to the Government.

(a) Generally, purchases and leases made by the Federal Government are immune from State and local taxation. Whether any specific purchase or lease is immune, however, is a legal question requiring advice and assistance of the agency-designated counsel.

(b) When it is economically feasible to do so, executive agencies shall take maximum advantage of all exemptions from State and local taxation that may be available. If appropriate, the contracting officer shall provide a [Standard Form 1094](#), U.S. Tax Exemption Form (see [Part 53](#)), or other evidence listed in [29.305\(a\)](#) to establish that the purchase is being made by the Government.

29.303 Application of State and local taxes to Government contractors and subcontractors.

(a) Prime contractors and subcontractors shall not normally be designated as agents of the Government for the purpose of claiming immunity from State or local sales or use taxes. Before any activity contends that a contractor is an agent of the Government, the matter shall be referred to the agency head for review. The referral shall include all pertinent data on which the contention is based, together with a thorough analysis of all relevant legal precedents.

(b) When purchases are not made by the Government itself, but by a prime contractor or by a subcontractor under a prime contract, the right to an exemption of the transaction from a sales or use tax may not rest on the Government's immunity from direct taxation by States and localities. It may rest instead on provisions of the particular State or local law involved, or, in some cases, the transaction may not in fact be expressly exempt from the tax. The Government's interest shall be protected by using the procedures in [29.101](#).

(c) Frequently, property (including property acquired under the progress payments clause of fixed-price contracts or the Government property clause of cost-reimbursement contracts) owned by the Government is in the possession of a contractor or subcontractor. Situations may arise in which States or localities assert the right to tax Government property directly or to tax the contractor's or subcontractor's possession of, interest in, or use of that property. In such cases, the contracting officer shall seek review and advice from the

agency-designated counsel on the appropriate course of action.

29.304 Matters requiring special consideration.

The imposition of State and local taxes may result in special contract considerations including the following:

(a) With coordination of the agency-designated counsel, a contract may (1) state that the contract price includes or excludes a specified tax or (2) require that the contractor take certain actions with regard to payment, nonpayment, refund, protest, or other treatment of a specified tax. Such special treatment may be appropriate when there is doubt as to the applicability or allocability of the tax, or when the applicability of the tax is being litigated.

(b) The applicability of State and local taxes to purchases by the Federal Government may depend on the place and terms of delivery. When the contract price will be substantial, alternative places and terms of delivery should be considered in light of possible tax consequences.

(c) Indefinite-delivery contracts for equipment rental may require the contractor to furnish equipment in any of the States. Since leased equipment remains the contractor's property, States and local governments impose a wide variety of property, use, or other taxes on equipment leased to the Government. The amount of these taxes can vary considerably from jurisdiction to jurisdiction. See [29.401-1](#) for the prescription of the contract clause to be included in contracts when delivery points are not known at time of contracting.

(d) *The North Carolina State and local sales and use tax.*

(1) The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure erected, altered, or repaired for such counties and incorporated cities and towns in North Carolina. In *United States v. Clayton*, 250 F. Supp. 827 (1965), it was held that the United States is entitled to the benefit of the refund, but must follow the refund procedure of the Act and the regulations to recover what it is due.

(2) The Act provides that, to receive the refund, claimants must file, within 6 months after the claimant's fiscal year closes, a written request substantiated by such records, receipts, and information as the Commissioner of Revenue may require. No refund will be made on an application not filed within the time allowed and in such manner as the Commissioner may require. The requirements of the Commissioner are set forth in regulations that provide that, to substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must secure from the contractor certified statements setting forth the cost of the prop-

erty purchased from each vendor and the amount of sales or use taxes paid. In the event the contractor makes several purchases from the same vendor, the certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the sales and use taxes paid. The statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of sales or use tax paid by the contractor. Similar certified statements by subcontractors must be obtained by the general contractor and furnished to the claimant. Any local sales or use taxes included in the contractor's statement must be shown separately from the State sales or use taxes.

(3) The clause prescribed at [29.401-2](#) requires contractors to submit to contracting officers by November 30 of each year a certified statement disclosing North Carolina State and local sales and use taxes paid during the 12-month period that ended the preceding September 30. The contracting officer shall ensure that contractors comply with this requirement and shall obtain the annual refund to which the Government may be entitled. The application for refund must be filed each year before March 31 and in the manner and form required by the Commissioner of Revenue. Copies of the form may be obtained from the—

State of North Carolina Department of Revenue
PO Box 25000
Raleigh, North Carolina 27640.

29.305 State and local tax exemptions.

(a) *Evidence of exemption.* Evidence needed to establish exemption from State or local taxes depends on the grounds for the exemption claimed, the parties to the transaction, and

the requirements of the taxing jurisdiction. Such evidence may include the following:

- (1) A copy of the contract or relevant portion.
- (2) Copies of purchase orders, shipping documents, credit-card-imprinted sales slips, paid or acknowledged invoices, or similar documents that identify an agency or instrumentality of the United States as the buyer.
- (3) A U.S. Tax Exemption Form ([SF 1094](#)).
- (4) A State or local form indicating that the supplies or services are for the exclusive use of the United States.
- (5) Any other State or locally required document for establishing general or specific exemption.
- (6) Shipping documents indicating that shipments are in interstate or foreign commerce.

(b) *Furnishing proof of exemption.* If a reasonable basis to sustain a claimed exemption exists, the seller will be furnished evidence of exemption, as follows:

(1) Under a contract containing the clause at [52.229-3](#), Federal, State, and Local Taxes, or at [52.229-4](#), Federal, State, and Local Taxes (State and Local Adjustments), in accordance with the terms of those clauses.

(2) Under a cost-reimbursement contract, if requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer.

(3) Under a contract or purchase order that contains no tax provision, if—

(i) Requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer; and

(ii) Either the contract price does not include the tax or, if the transaction or property is tax exempt, the contractor consents to a reduction in the contract price.

are required by law, employer-employee agreement, or an established policy of the contractor.

(2) That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees (see [31.205-46\(d\)](#)).

(n) *Employee rebate and purchase discount plans.* Rebates and purchase discounts, in whatever form, granted to employees on products or services produced by the contractor or affiliates are unallowable.

(o) *Postretirement benefits other than pensions (PRB).* (1) PRB covers all benefits, other than cash benefits and life insurance benefits paid by pension plans, provided to employees, their beneficiaries, and covered dependents during the period following the employees' retirement. Benefits encompassed include, but are not limited to, postretirement health care; life insurance provided outside a pension plan; and other welfare benefits such as tuition assistance, day care, legal services, and housing subsidies provided after retirement.

(2) To be allowable, PRB costs shall be incurred pursuant to law, employer-employee agreement, or an established policy of the contractor, and shall comply with paragraphs (o)(2)(i), (ii), or (iii) of this subsection.

(i) *Pay-as-you-go.* PRB costs are not accrued during the working lives of employees. Costs are assigned to the period in which—

(A) Benefits are actually provided; or

(B) The costs are paid to an insurer, provider, or other recipient for current year benefits or premiums.

(ii) *Terminal funding.* PRB costs are not accrued during the working lives of the employees.

(A) Terminal funding occurs when the entire PRB liability is paid in a lump sum upon the termination of employees (or upon conversion to such a terminal-funded plan) to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees.

(B) Terminal funded costs shall be amortized over a period of 15 years.

(iii) *Accrual basis.* PRB costs are accrued during the working lives of employees. Accrued PRB costs shall comply with the following:

(A) Be measured and assigned in accordance with one of the following two methods described under paragraphs (o)(2)(iii)(A)(1) or (o)(2)(iii)(A)(2) of this subsection:

(1) Generally accepted accounting principles. However, transitions from the pay-as-you-go method to the accrual accounting method must be handled according to paragraphs (o)(2)(iii)(A)(1)(i) through (iii) of this subsection.

(i) In the year of transition from the pay-as-you-go method to accrual accounting for purposes of Government contract cost accounting, the transition obligation shall be the excess of the accumulated PRB obligation over the fair value of plan assets determined in accordance with subparagraph (E) of this section; the fair value must be reduced by the prepayment credit as determined in accordance with subparagraph (o)(2)(iii)(F) of this subsection.

(ii) PRB cost attributable to the transition obligation assigned to the current year that is in excess of the amount assignable to accounting periods on the basis of a straight line amortization of the transition obligation over the average remaining working lives of active employees covered by the PRB plan or a 20-year period, whichever period is longer, is unallowable. However, if the plan is comprised of inactive participants only, the PRB cost attributable to the transition obligation assigned to the current year that is in excess of the amount assignable to accounting periods on a straight line amortization of the transition obligation over the average future life expectancy of the participants is unallowable.

(iii) For a plan that transitioned from pay-as-you-go to accrual accounting for Government contract cost accounting prior to July 22, 2013, the unallowable amount of PRB cost attributable to the transition obligation amortization shall continue to be based on the cost principle in effect at the time of the transition until the original transition obligation schedule is fully amortized.

(2) Contributions to a welfare benefit fund determined in accordance with applicable Internal Revenue Code. Allowable PRB costs based on such contributions shall—

(i) Be measured using reasonable actuarial assumptions, which shall include a health care inflation assumption unless prohibited by the Internal Revenue Code provisions governing welfare benefit funds;

(ii) Be assigned to accounting periods on the basis of the average working lives of active employees covered by the PRB plan or a 15 year period, whichever period is longer. However, if the plan is comprised of inactive participants only, the cost shall be spread over the average future life expectancy of the participants; and

(iii) Exclude Federal income taxes, whether incurred by the fund or the contractor (including any increase in PRB costs associated with such taxes), unless the fund holding the plan assets is tax-exempt under the provisions of [26 USC 501\(c\)](#).

(B) Be paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The assets shall be segregated in the trust, or otherwise effectively restricted, so that they cannot be used by the employer for other purposes.

(C) Be calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board.

(D) Eliminate from costs of current and future periods the accumulated value of any prior period costs that were unallowable in accordance with paragraph (o)(3) of this section, adjusted for interest under paragraph (o)(4) of this section.

(E) Calculate the unfunded actuarial liability (unfunded accumulated postretirement benefit obligation) using the market (fair) value of assets that have been accumulated by funding costs assigned to prior periods for contract accounting purposes.

(F) Recognize as a prepayment credit the market (fair) value of assets that were accumulated by deposits or contributions that were not used to fund costs assigned to previous periods for contract accounting purposes.

(G) Comply with the following when changing from one accrual accounting method to another: the contractor shall—

(1) Treat the change in the unfunded actuarial liability (unfunded accumulated postretirement benefit obligation) as a gain or loss; and

(2) Present an analysis demonstrating that all costs assigned to prior periods have been accounted for in accordance with paragraphs (o)(2)(iii)(D), (E), and (F) of this section to ensure that no duplicate recovery of costs exists. Any duplicate recovery of costs due to the change from one method to another is unallowable. The analysis and new accrual accounting method may be a subject appropriate for an advance agreement in accordance with [31.109](#).

(3) To be allowable, PRB costs must be funded by the time set for filing the Federal income tax return or any extension thereof, or paid to an insurer, provider, or other recipient by the time set for filing the Federal income tax return or extension thereof. PRB costs assigned to the current year, but not funded, paid or otherwise liquidated by the tax return due date as extended are not allowable in any subsequent year.

(4) Increased PRB costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable.

(5) The Government shall receive an equitable share of any amount of previously funded PRB costs which revert or inure to the contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which certified cost or pricing data were required or which were subject to [subpart 31.2](#).

(p) *Limitation on allowability of compensation.* (1) Senior executive compensation limit for contracts awarded before June 24, 2014.

(i) *Applicability.* This paragraph (p)(1) applies to the following:

(A) To all executive agencies, other than DoD, NASA and the Coast Guard, for contracts awarded before June 24, 2014;

(B) To DoD, NASA, and the Coast Guard for contracts awarded before December 31, 2011;

(ii) *Costs incurred after January 1, 1998.* Costs incurred after January 1, 1998 for the compensation of a senior executive in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy (OFPP), under [41 U.S.C 1127](#) as in effect prior to June 24, 2014, are unallowable ([10 U.S.C. 2324\(e\)\(1\)\(P\)](#) and [41 U.S.C 4304\(a\)\(16\)](#)), as in effect prior to June 24, 2014). This limitation is the sole statutory limitation on allowable senior executive compensation costs incurred after January 1, 1998, under contracts awarded before June 24, 2014, and applies whether or not the affected contracts were previously subject to a statutory limitation on such costs. (Note that pursuant to section 804 of Pub. L. 105-261, the definition of "senior executive"

in paragraph (p)(4) has been changed for compensation costs incurred after January 1, 1999.)

(2) All employee compensation limit for contracts awarded before June 24, 2014.

(i) *Applicability.* This paragraph (p)(2) applies to DOD, NASA, and the Coast Guard for contracts awarded on or after December 31, 2011 and before June 24, 2014;

(ii) *Costs incurred after January 1, 2012.* Costs incurred after January 1, 2012, for the compensation of any contractor employee in excess of the benchmark compensation amount, determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy (OFPP) under [41 U.S.C 1127](#) are unallowable ([10 U.S.C. 2324\(e\)\(1\)\(P\)](#)).

(3) All employee compensation limit for contracts awarded on or after June 24, 2014.

(i) *Applicability.* This paragraph (p)(3) applies to all executive agency contracts awarded on or after June 24, 2014, and any subcontracts thereunder;

(ii) *Costs incurred on or after June 24, 2014.* Costs incurred on or after June 24, 2014, for the compensation of all employees in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator of the Office of Federal Procurement Policy are unallowable. See <http://www.whitehouse.gov/omb/procurement/cecp>.

(iii) *Exceptions.* An agency head may establish one or more narrowly targeted exceptions for scientists, engineers, or other specialists upon a determination that such exceptions are needed to ensure that the executive agency has continued access to needed skills and capabilities. In making such a determination, the agency shall consider, at a minimum, for each contractor employee in a narrowly targeted excepted position—

(A) The amount of taxpayer funded compensation to be received by each employee; and

(B) The duties and services performed by each employee.

(4) *Definitions.* As used in this paragraph (p)—

(i) "Compensation" means the total amount of wages, salary, bonuses, deferred compensation (see paragraph (k) of this subsection), and employer contributions to defined contribution pension plans (see paragraphs (j)(4) and (q) of this subsection), for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in the contractor's cost accounting records for the fiscal year.

(ii) "Senior executive" means—

(A) Prior to January 2, 1999—

(1) The Chief Executive Officer (CEO) or any individual acting in a similar capacity at the contractor's headquarters;

(2) The four most highly compensated employees in management positions at the contractor's headquarters, other than the CEO; and

(3) If the contractor has intermediate home offices or segments that report directly to the contractor's headquarters, the five most highly compensated employees in

(a) Existing alternative sources for satisfying agency requirements cannot effectively meet the special research or development needs.

(b) The notices required for publication (see [5.205\(b\)](#)) are placed as required.

(c) There is sufficient Government expertise available to adequately and objectively evaluate the work to be performed by the FFRDC.

(d) The Executive Office of the President, Office of Science and Technology Policy, Washington, DC 20506, is notified.

(e) Controls are established to ensure that the costs of the services being provided to the Government are reasonable.

(f) The basic purpose and mission of the FFRDC is stated clearly enough to enable differentiation between work which should be performed by the FFRDC and that which should be performed by non-FFRDC's.

(g) A reasonable continuity in the level of support to the FFRDC is maintained, consistent with the agency's need for the FFRDC and the terms of the sponsoring agreement.

(h) The FFRDC is operated, managed, or administered by an autonomous organization or as an identifiably separate operating unit of a parent organization, and is required to operate in the public interest, free from organizational conflict of interest, and to disclose its affairs (as an FFRDC) to the primary sponsor.

(i) Quantity production or manufacturing is not performed unless authorized by legislation.

(j) Approval is received from the head of the sponsoring agency.

35.017-3 Using an FFRDC.

(a) All work placed with the FFRDC must be within the purpose, mission, general scope of effort, or special competency of the FFRDC.

(b) Where the use of the FFRDC by a nonsponsor is permitted by the sponsor, the sponsor shall be responsible for compliance with paragraph (a) of this subsection.

(1) The nonsponsoring agency shall prepare a determination in accordance with [17.502-1\(a\)](#) and provide the documentation required by [17.503\(e\)](#) to the sponsoring agency.

(2) When a D&F is required pursuant to [17.502-2\(c\)](#), the nonsponsoring agency may incorporate the determination required by [17.502-1\(a\)](#) into the D&F and provide the documentation required by [17.503\(e\)](#) to the sponsoring agency.

(3) When permitted by the sponsor, a Federal agency may contract directly with the FFRDC, in which case that Federal agency is responsible for compliance with part [6](#).

35.017-4 Reviewing FFRDC's.

(a) The sponsor, prior to extending the contract or agreement with an FFRDC, shall conduct a comprehensive review of the use and need for the FFRDC. The review will be coordinated with any co-sponsors and may be performed in conjunction with the budget process. If the sponsor determines that its sponsorship is no longer appropriate, it shall apprise other agencies which use the FFRDC of the determination and afford them an opportunity to assume sponsorship.

(b) Approval to continue or terminate the sponsorship shall rest with the head of the sponsoring agency. This determination shall be based upon the results of the review conducted in accordance with paragraph (c) of this subsection.

(c) An FFRDC review should include the following:

(1) An examination of the sponsor's special technical needs and mission requirements that are performed by the FFRDC to determine if and at what level they continue to exist.

(2) Consideration of alternative sources to meet the sponsor's needs.

(3) An assessment of the efficiency and effectiveness of the FFRDC in meeting the sponsor's needs, including the FFRDC's ability to maintain its objectivity, independence, quick response capability, currency in its field(s) of expertise, and familiarity with the needs of its sponsor.

(4) An assessment of the adequacy of the FFRDC management in ensuring a cost-effective operation.

(5) A determination that the criteria for establishing the FFRDC continue to be satisfied and that the sponsoring agreement is in compliance with [35.017-1](#).

35.017-5 Terminating an FFRDC.

When a sponsor's need for the FFRDC no longer exists, the sponsorship may be transferred to one or more Government agencies, if appropriately justified. If the FFRDC is not transferred to another Government agency, it shall be phased out.

35.017-6 Master list of FFRDC's.

The National Science Foundation (NSF) maintains a master Government list of FFRDC's. Primary sponsors will provide information on each FFRDC, including sponsoring agreements, mission statements, funding data, and type of R&D being performed, to the NSF upon its request for such information.

35.017-7 Limitation on the creation of new FFRDC's.

Pursuant to [10 U.S.C. 2367](#), the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration may not obligate or expend amounts appropriated to the Department of Defense for purposes of operating an FFRDC that was not in existence before June 2, 1986, until—

(a) The head of the agency submits to Congress a report with respect to such center that describes the purpose, mission, and general scope of effort of the center; and

(b) A period of 60 days, beginning on the date such report is received by Congress, has elapsed.

* * * * *

[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\(b\)\(4\)\(i\)](#), 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 (Jul 2015). 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 (Apr 2010) ([41 U.S.C. 3509](#)).

(B) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5).

(C) [52.219-8](#), Utilization of Small Business Concerns (Oct 2014) ([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 \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(D) [52.222-21](#), Prohibition of Segregated Facilities (Apr 2015).

(E) [52.222-26](#), Equal Opportunity (Apr 2015) (E.O. 11246).

(F) [52.222-35](#), Equal Opportunity for Veterans (Jul 2014) ([38 U.S.C. 4212](#)).

(G) [52.222-36](#), Equal Opportunity for Workers with Disabilities (Jul 2014) ([29 U.S.C. 793](#)).

(H) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).

(I) [52.222-41](#), Service Contract Labor Standards (May 2014) ([41 U.S.C. chapter 67](#)).

(J) *(1)* [52.222-50](#), Combating Trafficking in Persons (Mar 2015) ([22 U.S.C. chapter 78](#) and E.O. 13627).

(2) Alternate I (Mar 2015) of [52.222-50](#) ([22 U.S.C. chapter 78](#) and E.O. 13627).

(K) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (May 2014) ([41 U.S.C. chapter 67](#)).

(L) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements (May 2014) ([41 U.S.C. chapter 67](#)).

(M) [52.222-54](#), Employment Eligibility Verification (Aug 2013).

(N) [52.222-55](#), Minimum Wages Under Executive Order 13658 (Dec 2014) Executive Order 13658).

(O) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations. (May 2014) ([42 U.S.C. 1792](#)). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(P) [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) (SEPT 2015)

(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* (JUN 2003) (E.O. 11755).

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(ii) [52.222-21](#), Prohibition of Segregated Facilities (APR 2015).

(iii) [52.222-26](#), Equal Opportunity (APR 2015) (E.O. 11246).

(iv) [52.225-13](#), Restrictions on Certain Foreign Purchases (JUN 2008) (E.O.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(v) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(vi) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78 ([19 U.S.C. 3805 note](#))).

(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 (JUL 2013).

(v) [52.232-39](#), Unenforceability of Unauthorized Obligations (JUN 2013).

(vi) [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors (DEC 2013)

(vii) [52.233-1](#), Disputes (MAY 2014).

(viii) [52.244-6](#), Subcontracts for Commercial Items (APR 2015).

(ix) [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) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2013) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)) (Applies to contracts valued at \$25,000 or more).

(ii) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (JAN 2014) (E.O. 13126) (Applies to contracts for supplies exceeding the micro-purchase threshold.)

(iii) [52.222-20](#), Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 (MAY 2014) ([41 U.S.C. chapter 65](#)) (Applies to supply contracts over \$15,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).

(iv) [52.222-35](#), Equal Opportunity for Veterans (JUL 2014) ([38 U.S.C. 4212](#)) (Applies to contracts of \$100,000 or more).

(v) [52.222-36](#), Equal Employment for Workers with Disabilities (JUL 2014) ([29 U.S.C. 793](#)) (Applies to contracts over \$15,000, 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.)

(vi) [52.222-37](#), Employment Reports on Veterans (JUL 2014) ([38 U.S.C. 4212](#)) (Applies to contracts of \$100,000 or more).

(vii) [52.222-41](#), Service Contract Labor Standards (MAY 2014) ([41 U.S.C. chapter 67](#)) (Applies to service contracts over \$2,500 that are subject to the Service Contract Labor Standards statute 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).

(viii)(A) [52.222-50](#), Combating Trafficking in Persons (MAR 2015) ([22 U.S.C. chapter 78](#) and E.O. 13627) (Applies to all solicitations and contracts).

(B) Alternate I (MAR 2015) (Applies if the Contracting Officer has filled in the following information with regard to applicable directives or notices: Document title(s), source for obtaining document(s), and contract performance location outside the United States to which the document applies).

(ix) [52.222-55](#), Minimum Wages Under Executive Order 13658 (DEC 2014) (Executive Order 13658) (Applies when [52.222-6](#) or [52.222-41](#) are in the contract and performance in whole or in part is in the United States (the 50 States and the District of Columbia)).

(x) [52.223-5](#), Pollution Prevention and Right-to-Know Information (MAY 2011) (E.O. 13423) (Applies to services performed on Federal facilities).

(xi) [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).

(xii) [52.225-1](#), Buy American—Supplies (MAY 2014) ([41 U.S.C. chapter 67](#)) (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).

(xiii) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAY 2014) ([42 U.S.C. 1792](#)) (Applies to contracts greater than \$25,000 that provide for the provision, the service, or the sale of food in the United States).

(xiv) [52.232-33](#), Payment by Electronic Funds Transfer—System for Award Management (JUL 2013) (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the System for Award Management (SAM) database as its source of EFT information).

(xv) [52.232-34](#), Payment by Electronic Funds Transfer—Other than System for Award Management (JUL 2013) (Applies when the payment will be made by EFT and the payment office does not use the SAM database as its source of EFT information).

(xvi) [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 (AUG 2013) (Applies to contracts over \$30,000).

(ii) [52.211-17](#), Delivery of Excess Quantities (SEPT 1989) (Applies to fixed-price supplies).

(iii) [52.247-29](#), F.o.b. Origin (FEB 2006) (Applies to supplies if delivery is f.o.b. origin).

(iv) [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.

SMALL BUSINESS PROGRAM REPRESENTATIONS (OCT 2014)

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

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

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

(1) Means a small business concern—

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

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

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

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (b) of this provision.

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

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

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

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

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

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

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

(2) The management and daily business operations of which are controlled by one or more veterans.

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

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

(2) Whose management and daily business operations are controlled by one or more women.

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

(b)(1) The North American Industry Classification System (NAICS) code for this acquisition is— _____ [*insert NAICS code*].

(2) The small business size standard is _____ [*insert size standard*].

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(c) *Representations.* (1) The offeror represents as part of its offer that it is, is not a small business concern.

(2) [*Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.*] The offeror represents that it ?is, ?is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) [*Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.*] The offeror represents as part of its offer that it ?is, ?is not a women-owned small business concern.

(4) Women-owned small business (WOSB) concern eligible under the WOSB Program. [*Complete only if the offeror represented itself as a women-owned small business concern in paragraph (c)(3) of this provision.*] The offeror represents as part of its offer that—

(i) It ?is, ?is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(4)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participat-

ing in the joint venture. [The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: _____.] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(5) Economically disadvantaged women-owned small business (EDWOSB) concern. [Complete only if the offeror represented itself as a women-owned small business concern eligible under the WOSB Program in (c)(4) of this provision.] The offeror represents as part of its offer that—

(i) It is, is not an EDWOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(5)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. [The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: _____.] Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

(6) [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it is, is not a veteran-owned small business concern.

(7) [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(6) of this provision.] The offeror represents as part of its offer that it is, is not a service-disabled veteran-owned small business concern.

(8) [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, as part of its offer, that—

(i) It is, is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR Part 126; and

(ii) It is, is not a HUBZone joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(8)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: _____.] Each HUBZone small business concern participating in the HUB-

Zone joint venture shall submit a separate signed copy of the HUBZone representation.

(d) Notice. (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under [15 U.S.C. 645\(d\)](#), any person who misrepresents a firm's status as a business concern that is small, HUBZone small, small disadvantaged, service-disabled veteran-owned small, economically disadvantaged women-owned small, or women-owned small eligible under the WOSB Program in order to obtain a contract to be awarded under the preference programs established pursuant to section 8, 9, 15, 31, and 36 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall—

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(End of provision)

Alternate I (SEPT 2015). As prescribed in [19.309\(a\)\(2\)](#), add the following paragraph (c)(9) to the basic provision:

(9) [Complete if offeror represented itself as disadvantaged in paragraph (c)(2) of this provision.] The offeror shall check the category in which its ownership falls:

_____ Black American.

_____ Hispanic American.

_____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

_____ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, Republic of Palau, Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

_____ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

_____ Individual/concern, other than one of the preceding.

52.219-2 Equal Low Bids.

As prescribed in [19.309\(b\)](#), insert the following provision:

EQUAL LOW BIDS (OCT 1995)

(a) This provision applies to small business concerns only.

(b) The bidder's status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder