Points of Contact:

This before and after FAR comparison as a result of FASA, is a product of the Federal Acquisition Institute (FAI).

PLEASE direct questions about this product content to the following:

FAI:

POC	PHONE	FAX
Mr. Michael Miller	202-501-3618	202-501-3341
Mr. John Blumenstein	202-501-2373	202-501-3341
Ms. Gayle Messick	202-501-2980	202-501-3341
Ms. Jerritta Parnell	202-501-4082	202-501-3341

OSD:

POC	PHONE	FAX
Mr. David Drabkin	703-614-3882	703-614-1690

ARCC:

POC	PHONE	FAX
COL Sharolyn Hayes	703-845-6755	703-379-4319
Ms. Betty Franklin	703-845-6723	703-379-4319
Ms. Kelley Jacobs	703-845-6634	707-379-4319

DRAFT FUNCTIONAL ANALYSIS OF FAR CHANGES

(FACs 90-26 Through 90-31)

Prepared by Michael F. Miller, Director, Federal Acquisition Institute (FAI), in concert with the Acquisition Reform Communication Center (ARCC), Defense Acquisition University (DAU).

This draft will be updated as comments are received and further Federal Acquisition Circulars are issued related to the Federal Acquisition Streamlining Act.

Comments on this draft are welcome. Please submit comments by September 1, 1995, to any of the following:

- The FAI Home Page on the World Wide Web:
  http://www.gsa.gov/staff/v/training.htm
- The DAU Home Page on the World Wide Web:
  http://www.acq.osd.mil/dau/dau.html
- Internet e-mail to Michael.Miller@gsa.gov
  or to hayessi@acq.osd.mil
- Fax to (202) 501-3341 (FAI) or (703) 379 4319 (ARCC)
- By mail or messenger to the Federal Acquisition Institute (VF), Room 4019, 18th. and F. Streets NW, Washington DC 20405 or to COL Sharolyn I. Hayes, Acquisition Reform Communications Center (ARRC), Defense Acquisition University (DAU), 2001 N. Beauregard St., Alexandria VA 22311-1772

Conventions:

Functions are described as performed by Federal contracting officers and specialists.

The *Contract Specialist Workbook* is a publication of the Federal Acquisition Institute (FAI), available from the FAI home page on the World Wide Web. This document provides detailed descriptions of the functions of Federal contracting officers and specialists. Office of Federal Procurement Policy letter 92-3 establishes the Workbook as a Governmentwide standard for training the contracting workforce.

A parenthetical reference is provided for each teaching point. Section numbers (e.g., §14.201-6) are from the Federal Acquisition Regulation (FAR). The related Federal Acquisition Circular (FAC) is identified by its number (e.g., FAC 90-29). The case number is that assigned to the particular rule.

POLICIES APPLICABLE TO ALL FUNCTIONS

Federal Acquisition System Vision, Standards, and Strategies

The Vision

Deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives. View best value from a broad perspective, balancing the many competing interests in the System. The result is a system which works better and costs less.

Standards for Performance

No function is an end in itself. All functions are intended to accomplish the larger goals of the Federal acquisition system. Hence, when performing any given function, try to meet all of the following standards, taken together.

1. Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service.

Principal customers are the users and line managers, acting on behalf of the American taxpayer. When performing any function, take into account the perspective of the user of the product or service. Be responsive and adaptive to customer needs, concerns, and feedback.

2. Minimize administrative operating costs.

To the extent that you are responsible for rules, policies, and procedures, question whether their benefits outweigh clearly exceed the costs of their development, implementation, administration, and enforcement. If not, alter or abolish them.

3. Conduct business with integrity, fairness, and openness.

An essential consideration in every aspect of the System is maintaining the public's trust. Not only must the System have integrity, but the actions of each member of the Team must reflect integrity, fairness, and openness. The foundation of integrity within the System is a competent, experienced, and well-trained, professional workforce. Accordingly, each member of the Team is responsible and accountable for the wise use of public resources as well as acting in a manner which maintains the public's trust. Fairness and openness require open communication among team members, internal and external customers, and the public.

4. Fulfill public policy objectives.

Support the attainment of public policy goals adopted by the Congress and the President.

Strategies for Meeting System Standards

- *Shift the focus from "risk avoidance" to "risk management."* The cost to the taxpayer of attempting to eliminate all risk is prohibitive.
- *Forecast requirements and develop long-range plans for accomplishing them*. Planning is a tool for the accomplishment of tasks, and application of its discipline should be commensurate with the size and nature of a given task. In carrying out such plans, however, be flexible in accommodating changing or unforeseen mission needs.
- *Team with other participants in the acquisition process*. Participants include not only representatives of the technical, supply, and procurement communities but also the customers they serve, and the contractors who provide the products and services.
- *Empower participants to make decisions within their area of responsibility*. Delegate authority to make decisions and the accountability for the decisions made to the lowest level within the System, consistent with law. In particular, the contracting officer must have the authority to the maximum extent practicable and consistent with law, to determine the application of rules, regulations, and policies, on a specific contract.
- *Encourage innovation and local adaptation where uniformity is not essential*.
- *If a specific strategy, practice, policy or procedure is in the best interests of the Government and is not addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, assume that the strategy, practice, policy or procedure is a permissible exercise of authority*.
- *Communicate with the commercial sector as early as possible in the acquisition cycle to help the Government determine the capabilities available in the commercial marketplace*.
- *Foster cooperative relationships between the Government and its contractors consistent with the Government's overriding responsibility to the taxpayers*.
- *Maximize the use of commercial products and services in meeting Government requirements*.
- *Select contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform*.
- *Promote competition*.
- *Provide training, professional development, and other resources necessary for maintaining and improving the knowledge, skills, and abilities for all Government participants on the Team, both with regard to their particular area of responsibility within the System, and their respective role as a team member*. The contractor community is encouraged to do likewise.

Electronic Contracting Policies (General)

☛ To support paperless transactions, the FAR allows the use of electronic signatures. Moreover, the words “in writing” or “written”, as used in the FAR, do not necessarily refer to paper documents — the words apply equally to electronic files transmitted and stored on magnetic or optical media. (§2.101, FAC 90-29, Case 91-104)

☛ The FAR no longer requires contracting officers to make to reproduce paper copies and stamp those copies with the words “DUPLICATE ORIGINAL” — as being the only copies of executed documents that have the same force and effect as signed originals. (§4.101 and 4.201, FAC 90-29, Case 91-104)

☛ Agencies and the public may both computer generate standard and optional forms prescribed by the FAR if:

- The form is in an electronic format that complies with Federal Information Processing Standard Number 161, or
- There is no change to the name, content, or sequence of the data elements, and the form carries the Standard or Optional Form number and edition date. (§52.105, FAC 90-29, Case 91-104).

FUNCTION: Acquisition Planning

Contract Specialist Workbook, Unit of Instruction 2

(Look for changes related to acquiring commercial items).

FUNCTION: Funding

Contract Specialist Workbook, Unit of Instruction 4

☛ Contracting officers may execute service contracts (or an order under a task order contract or an option) for a period of performance that begins in one fiscal year and ends in the following fiscal year — with the contract entirely funded out of the first year's appropriations. This new authority will simplify the acquisition and administration of service contracts by allowing single, fully funded contract actions, in lieu of multiple contracts or complex obligation arrangements. However, the period of performance for the contract, order, or option so funded may not exceed twelve months.

Using this authority, for example, a contracting officer could write a contract for performance beginning on July 1, 1999 and ending on June 31, 2000 — and fund all work under the contract out of a fiscal year 1999 appropriation.

This new authority does not apply to the Department of Defense (DoD), United States Coast Guard, and the National Aeronautics and Space Administration (but see their FAR supplements for similar authorities). [§32.703-3 and 37.106, FAC 90-30, Case 94-766]

(Look for other changes related to new rules on multi-year contracting).

FUNCTION: Market Research

Contract Specialist Workbook, Unit of Instruction 5

(Look for changes related to acquiring commercial items).

FUNCTION: Requirements Documents

Contract Specialist Workbook, Unit of Instruction 6 (formerly "Specifications")

(Look for changes related to acquiring commercial items).

FUNCTION: Commerciality Determination

New — (Look for changes related to acquiring commercial items).

FUNCTION: Sources

Contract Specialist Workbook, Unit of Instruction 9

Required Sources

☛ Contracting officers may use an "established electronic communications format" to place orders against Federal Supply Schedules. (§8.405-2, FAC 90-29, Case 91-104)

☛ Contracting officers may request supplies or services from a "JWOD participating nonprofit agency" in "writing" rather than by a "letter" request. That is, the request can be transmitted by electronic means rather than through the mails. (§8.705-3, FAC 90-29, Case 91-104)

Solicitation Mailing Lists

☛ Contracting officers do not have to maintain solicitation mailing lists when their electronic commerce software automatically transmits solicitations to all interested sources participating in electronic contracting with the contracting activity. (§14.205-1; FAC 90-29, Case 91-104)

☛ Whenever firms on a mailing list fail to submit an offer in response to a solicitation, the clauses at 52.214-9 and 52.215-15 require them to notify the contracting officer of their desire to continue receiving solicitations for such requirements. Absent such notice, the FAR allows contracting officers to strike their names from the mailing list. The FAR will now permit offerors to deliver the notice electronically rather than on paper. Moreover, contracting officers will not incorporate the clauses at 52.214-9 or 52.215-15 if they solicit offers through electronic data interchange methods that do not require the keeping of solicitation mailing lists. (§14.201-6, 15.407, 52.214-9 and 52.215-15; FAC 90-29, Case 91-104)

QBLs, QMLs and QPLs

☛ When a business concern not on the applicable QBL, QML, or QPL expresses interest in the acquisition, the contracting officer must forward the concern's name and address to the agency activity which established the qualification requirement — whether or not the concern requested an actual copy of the solicitation. (§9.206-3, FAC 90-28)

FUNCTION: Competition Requirements

Contract Specialist Workbook, Unit of Instruction 12

Duties	1. Determine whether to conduct full and open competition after exclusion of sources. 2. Determine whether to conduct other than full and open competition.
Conditions	Given Purchase Requests and market data
Overall Standard(s)	Data from the requiring activity and/or market research are sufficient to justify restrictions on competition. Correctly identify which authority permits restricted competition. Correctly identify the approval requirements in accordance with FAR/agency procedures. Upon approval of the justification, obtain competition from as many responsible offerors as possible under the circumstances.

Exceptions to Full and Open Competition

☛ If a law enacted after the Streamlining Act directs awards to a contractor (or any other non-Federal entity), **IGNORE** that direction **UNLESS** the law **specifically**:

- Identifies the contractor (or other entity) **AND**
- References 10 U.S.C. 2304(j) for armed services acquisitions or section 303(h) of the Federal Property and Administrative Services Act of 1949 for civilian agency acquisitions **AND**
- States that award to that contractor shall be made "in contravention of the merit-based selection procedures" in 10 U.S.C. 2304(j) or section 303(h) of the Federal Property and Administrative Services Act of 1949.

Exceptions:

- Comply with statutory direction to continue work being performed by the specified contractor under a contract awarded prior to the Act.
- Comply with statutory requirements to contract with the National Academy of Sciences to "investigate, examine, or experiment upon any subject of science or art of significance to an executive agency and to report on those matters to the Congress or any agency of the Federal Government."

Purpose: This is an anti-pork barrel provision. In the past, Congress often directed sole source procurements through hidden, obscure provisions of law (§6.302-5 Authorized or required by statute, FAC 90-31, Case 94-701)

☛ There is a new exception for acquiring the services of an expert for a current or "reasonably foreseeable" litigation or dispute. The Government may need their help when analyzing claims or requests for adjustments to contract terms and conditions. The Government also may need evaluators, fact finders, or witnesses for alternative dispute resolutions (ADR). Other potential users of this authority include the Internal Revenue Service (which may need this authority for such purposes as obtaining experts for

reviewing tax records) and the Equal Employment Opportunity Commission (for such purposes as obtaining state and local assistance for compliance audits).

More importantly, this exception allows the Government to essentially name request a neutral mediator or arbitrator for ADR who is agreeable to both parties.

However, this exception does not authorize contracting officers to disregard other policies and procedures applicable to contracting for such services, such as policies governing conflict of interest or restrictions on contracting for inherently governmental functions.

(§6.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services, FAC 90-31, Case 94-701) *See also "Publicizing Proposed Procurements" for a corresponding change to synopsis requirements.*

Full and Open Competition After The Exclusion Of Sources

☛ The following are additional reasons (over and above those previously in the FAR) for excluding a particular source to establish or maintain an alternative source or sources.

- Ensure the continuous availability of a reliable source of supplies or services.
- Satisfy projected needs based on a history of high demand.
- Satisfy a critical need for medical, safety, or emergency supplies.

The Government is getting out of the business of buying and warehousing large stocks of supplies for contingencies. Instead, the Government is moving to a lean logistics support capability and Just In Time delivery. For example, DoD is planning to buy tires from suppliers when needed rather than stockpiling the tires. However, this means keeping a stable of suppliers who are ready, willing, and able to quickly ramp up production to meet a surge in demand (e.g., Desert Storm). (§6.202 Establishing or maintaining alternative sources, FAC 90-31, Case 94-701)

Justifications for Other Than Full and Open Competition

☛ Those who can approve a justification over for a proposed contract over $1,000,000 can also approve a justification for a proposed contract under that dollar amount. (§6.304 Approval of the justification, FAC 90-31, Case 94-701)

(Look for other changes related to acquiring commercial items).

FUNCTION: Price-Related Evaluation Factors

Contract Specialist Workbook, Unit of Instruction 15

Duty	Select price-related factors for incorporation in the solicitation.
Conditions	Given purchase requests, acquisition histories, and market data.
Overall Standard(s)	Incorporates all price-related factors necessary to detect that offer, or that combination of offers, which would result in the lowest total cost to the Government over the life of the deliverable.

Options as a Price-Related Factor

☛ Options may be used as an evaluation factor only if the contracting officer determines that there is a reasonable likelihood that the options will be exercised. When soliciting sealed bids, put this determination in writing. This change in policy is in response to complaints from small businesses about having been asked to price options that all too often are not exercised. (§17.202 and 17.208, FAC 90-31, Case 94-701)

(Look for other changes related to acquiring commercial items).

FUNCTION: Non-Price Evaluation Factors

Contract Specialist Workbook, Unit of Instruction 16 (formerly "Technical Evaluation Factors")

Duties	1. Determine whether award will be made to the offeror: • Whose offer represents the "greatest value", or • Whose offer meets the solicitation's minimum criteria for acceptable award at the lowest cost or price. 2. Critique proposed past performance, quality, environmental, and other non-price evaluation factors (along with the corresponding proposal instructions) and, for "greatest value" competitions, critique the proposed rating/scoring methodology.
Conditions	Given acquisition histories, market data, purchase requests, requirements documents and/or the statement of work.
Overall Standard(s)	As written by the requiring activity after review by the Contract Specialist, evaluation factors and, for "greatest value" competitions, rating/scoring methodologies, are reliable (using the factors independently from one another, technically competent individuals would evaluate the same proposal consistently) and valid (factors are in fact predictive of ability to satisfy the Government's minimum needs).

Past Performance and Quality

☛ Contracting officers must evaluate "past performance" in every competitive negotiation if the estimated value of the requirement exceeds:

- $1,000,000 for solicitations issued on or after July 1, 1995.
- $500,000 for solicitations issued on or after July 1, 1997
- $100,000 for solicitations issued on or after January 1, 1999.

Exception: You do not have to evaluate past performance if the contracting officer documents the rationale for disregarding past performance in the contract file. [§15.605, FAC 90-26]

☛ Contracting officers must also consider quality in **every** source selection, through inclusion in one or more non-price factors (e.g., past performance, technical excellence, management capability, personnel qualifications, prior experience, and schedule compliance). [§15.605, FAC 90-26]

☛ Cognizant technical officials are responsible both for technical and past performance requirements related to the source selection process. (§15.604, FAC 90-26)

☛ Generally speaking, agency officials have broad discretion when determining the sources and types of past performance information to evaluate — which should be tailored to the circumstances of the acquisition. (§15.608, FAC 90-26)

☛ When you plan to evaluate past performance, the solicitation shall afford an offeror the opportunity to identify existing or past contracts awarded to the offeror that are similar in nature to the proposed terms and conditions of the solicitation. Contracting officers also may invite the offerors to provide information on problems encountered during performance of existing or past contracts and on the steps being taken by the offerors to correct the problems. (§15.608, FAC 90-26)

☛ You may instruct offerors to package and submit past performance data separate and apart from pricing information and, if needed, technical data. (§15.406-5 Part IV, FAC 90-26).

Environmental Objectives

☛ Contracting officers must consider "environmental objectives" in every source selection "where appropriate". Possible objectives: "promoting waste reduction, source reduction, energy efficiency, and maximum practicable recovered material content" [§15.605, FAC 90-27]

Award On Low Price or Cost

☛ The FAR reaffirms that contracting officers may continue to award contracts, where appropriate, on the basis of lowest [evaluated] price or cost to responsible offerors whose offers meet the solicitation's minimum criteria for acceptable award. Remember to state this basis of award in the solicitation. (§15.605, FAC 90-31, Case 94-701)

☛ When awarding on the basis of lowest evaluated price or cost with consideration limited to offers that satisfy the solicitations' minimum criteria for acceptable award, generally you may NOT use responsibility-related factors (e.g., past performance) other than for responsibility determinations. Such responsibility determinations are subject to "Certificate of Competency" review by the Small Business Administration. In best value source selections, a comparative assessment of past performance is distinct and different from the responsibility determination under FAR §9.103 and not subject to "Certificate of Competency" reviews. (§15.608, FAC 90-26).

Incorporating Evaluation Factors in RFPs

☛ Numerical weights are NOT mandated (or encouraged) by the FAR. However, the FAR reaffirms that numerical weights can be used — and do not necessarily have to be disclosed in the RFP. Contracting officers may disclose numerical weights "on a case by case basis" in the solicitation. Although the new FAR language does not discourage this practice, disclosing weights generally is NOT good practice. The Comptroller General has repeatedly ruled that Source Selection Authorities have discretion to overrule

numerical scores when weights are NOT disclosed in the solicitation. (§15.605, FAC 90-31, Case 94-701)

☛ Contracting officers must state **all significant** evaluation factors and subfactors in requests for proposals. (§15.406-5 and §15.605(d), FAC 90-31, Case 94-701)

☛ RFPs must directly, expressly state whether:

Non-Price evaluation factors (taken as a whole) are …

- Significantly more important than, **or**
- Approximately equal in importance to, **or**
- Significantly less important than …

Cost or price.

Insert this language as the prelude in Section M (when using the UCF). (§15.605, FAC 90-31, Case 94-701)

(Look for other changes related to new rules on acquiring commercial items).

FUNCTION: Method of Procurement

Contract Specialist Workbook, Unit of Instruction 17

Duty	Determine the method of procurement: • Simplified acquisition procedures • Sealed bidding • Two-step sealed bidding • Award on competitive proposals.
Conditions	Given Purchase Requests, data from market research, and source lists
Overall Standard(s)	Select sealed bidding when all of the following are true: • The requirement exceeds the small purchase limitation and cannot be met by ordering against an existing contract. • Time permits the solicitation, submission, and evaluation of sealed bids. • Award will be made on the basis of price and other price-related factors. • There is no need to conduct discussions with the responding offerors about their offers. • There is a reasonable expectation of receiving more than one sealed bid.

☛ When award will be on the basis of competitive proposals, determine whether to incorporate the award clause at FAR 52.215-16 with or without Alternate II. Generally reserve the right to award without discussions by using Alternate II. The advantage of Alternate II: Initial proposals are likely to more realistic. Use the clause without the Alternate when discussions are clearly inevitable (e.g., when the contemplated contract type is cost reimbursable). (§15.407 Solicitation provisions and §52.215-16 Contract Award , FAC 90-31, Case 94-701)

(Look for other changes related to acquiring commercial items).

FUNCTION: Selecting the Type of Contract to Solicit

Contract Specialist Workbook, Unit of Instruction 19.1

Duty	Select the contract type or types to solicit.
Conditions	Given acquisition histories, market data, and the purchase request.
Overall Standard(s)	Correctly identify the factors in pricing a procurement that are the most uncertain, determine the potential risks entailed by the uncertainties, and select the type of contract that will: 1. Minimize the potential risks (in terms of cost and performance) inherent in the requirement and the expected cost of contract administration (both to the Government and industry), taken together. 2. Provide a reasonable allocation of risk between the Government and the contractor. 3. Conform to FAR Part**s 12 and** 16 and agency requirements and limitations on the use of the different contract types. Do not use cost-plus-a-percentage-of-cost contracts. **When contracting for commercial items under FAR Part 12, only award firm fixed price contracts and fixed price contracts with economic price adjustment.**

☛ D&Fs are no longer required for cost reimbursable contracts or fixed price incentive contracts. Sections 1021 and 1071 of the Streamlining Act repealed the requirement for Secretarial/Agency Head determinations regarding use of cost type or incentive contracts. Therefore, the FAR at 16.301-3, 16.403, 16.403-1, and 16.403-2 has been amended to delete the requirement. (FAC 90-24)

☛ The FAR now permits contracting officers to sign the determinations and findings that are still required to establish the basis for application of the statutory price or fee limitation in cost-plus-fixed-fee contracts. Previously, the FAR delegated this authority to the "agency head or designee." (§16.306, FAC 90-30, Case 94-700)

(Look for other changes related to new rules on acquiring commercial items and establishing task order contracts).

FUNCTION: Contract Financing

Contract Specialist Workbook, Unit of Instruction21

(Look for changes related to new rules for financing acquisitions of commercial and non-commercial items).

FUNCTION: Use Of Government Property And Supply Sources

Contract Specialist Workbook, Unit of Instruction 22

Part C: Government Sources Of Supply

Duty	Determine whether to authorize contractors to use Government supply sources.
Conditions	Given the availability of Government sources of supply.
Overall Standard(s)	Authorize use for contracts under the Javits-Wagner-O'Day Act, when: · The nonprofit agency requesting use of the supplies and services is providing a commodity or service to the Federal Government, and · The supplies or services received are directly used in making or providing a commodity or service approved by the Committee for Purchase From People Who Are Blind or Severely Disabled to the Federal Government. For other contracts, correctly determine whether the use of Government supply sources can be authorized. If Government supply sources may be used, authorize use if the supplies are necessary for timely contract performance and: · Government is the only source, or · The total cost to the Government would be less than the cost of having the contractor use other sources.

☛ Nonprofit agencies for the blind or severely disabled may use Government supply sources in performing contracts under the Javits-Wagner-O'Day Act, if:

- The nonprofit agency requesting use of the supplies and services is providing a commodity or service to the Federal Government, and
- The supplies or services received are directly used in making or providing a commodity or service approved by the Committee for Purchase From People Who Are Blind or Severely Disabled to the Federal Government (§51.101 and §51.102, FAC 90-31, Case 94-701).

FUNCTION: Solicitation Preparation

Contract Specialist Workbook, Unit of Instruction 24

Duties	1. Select and complete provisions and clauses for solicitations. 2. Tailor or draft provisions and clauses, where appropriate. 3. Assemble and prepare solicitations for issuance.
Conditions	Given Purchase Requests, acquisition histories, data on the market, and presolicitation business decisions from Units 6 through 23.
Overall Standard(s)	Select the format appropriate for the acquisition (e.g., the combined CBD synopsis/solicitation or SFXXX for commercial items). Incorporate all clauses and provisions required for the procurement, given prior decisions on whether the requirement is for a commercial item, method of procurement, type of contract, nature of goods or services being procured, method of procurement, et. al. Select or draft other terms and conditions that represent a net benefit in terms of improving the probability of attaining the Government's minimum needs on-time and at a fair and reasonable price. Except as otherwise directed by FAR Part 12, only incorporate terms and conditions in FAR Part 12 solicitations for commercial requirements that are consistent with customary commercial practice for the market. Where permitted, tailor Part 12 clauses and provisions to more closely reflect commercial practices.

☛ Contracting officers can solicit bids and proposals electronically and permit contractors to submit bids and proposals electronically. When preparing a solicitation authorizing electronic offers, specify the electronic commerce method(s) that bidders may use. Also consider the impact of electronic data interchange on the time reasonably needed by offerors to prepare and submit offers — electronic commerce should speed up the process of preparing and submitting offers. (§14.202-1, 14.202-2, 14.202-8, and 14.203-1; FAC 90-29, Case 91-104).

☛ The Federal Acquisition Streamlining Act repealed the requirement that "every contract or agreement" express the condition that certain officials shall not benefit from the award of that contract or agreement. This condition had been expressed in FAR clause 52.203-1. The clause has been deleted, along with the related statements of policy in FAR 3.102 through 3.102-2. The criminal provisions found at 18 U.S.C. 431 and 432 remain in effect. (§3.102 through 3.102-2 and 52.203-1, FAC 90-30, Case 94-802)

(Look for other changes related to acquiring commercial items).

FUNCTION: Publicizing Proposed Procurements

Contract Specialist Workbook, Unit of Instruction 25

Duty	Select and implement a method or methods of publicizing the proposed procurements.
Conditions	Given a proposed solicitation and market data
Overall Standard(s)	Market notified to extent required and necessary for obtaining competition for prime contracts and to offer subcontracting opportunities to small businesses.

☛ There is an exception to synposizing requirements when the contract action is for the services of an expert to support the Federal Government in any current or anticipated litigation or dispute. (§5.202 and §5.301, FAC 90-31, Case 94-701) *See also "Competition Requirements."*

☛ No synopsis will be required for actions up to $250,000 made through a certified FACNET after Governmentwide FACNET has been certified. Until then, no synopsis is required for any action over $25,000 through the Simplified Acquisition Threshold ($100,000) which is made through a certified FACNET. (§5.202, FAC 90-29, Case 94-770)

☛ If a small business concern requests a copy of an electronically disseminated solicitation, you may e-mail the copies to the concern's electronic address. (§5.102, FAC 90-29, Case 91-104)

☛ When solicitations are made available through electronic data interchange, the CBD synopsis must provide the information necessary to obtain the solicitation (e.g., electronic address and downloading instructions) and respond to it. (§5.207, FAC 90-29, Case 91-104).

(Look for other changes related to acquiring commercial items).

FUNCTION: Amending Solicitations

Contract Specialist Workbook, Unit of Instruction 28

☛ Contracting officers may use electronic data interchange to notify prospective offerors of any change to the closing date for submitting proposals. (§15.410, FAC 90-29, Case 91-104)

FUNCTION: Cancelling Solicitations

Contract Specialist Workbook, Unit of Instruction 29

☛ When canceling an IFB before opening, do not let anyone view electronic bids. Purge each bid and all related data received from the bidder from all data storage systems — both primary and backup. (§14.209; FAC 90-29, Case 91-104)

FUNCTION: Processing Bids

Contract Specialist Workbook, Unit of Instruction 30

☛ Keep electronic bids in a "secured, restricted-access electronic bid box" prior to opening. (§14.401; FAC 90-29, Case 91-104)

☛ If you have reason to believe that electronic bids from "an important segment of bidders" were lost because of problems with the Government's telecommunications equipment or servers (e.g., power outages or software bugs), consider postponing bid opening so that bidders can electronically resubmit their bids. (§14.402-3; FAC 90-29, Case 91-104)

☛ IFBs may allow bidders to modify or withdraw bids by electronic messaging. If a bidder withdraws an electronic bid, purge the bid and all related data from all data storage systems — both primary and backup. . (§14.303; FAC 90-29, Case 91-104)

☛ When conducting a cost comparison, the cost estimate for Government performance can be provided either in a sealed dated envelope or an electronic equivalent. (§7.304, FAC 90-29, Case 91-104)

FUNCTION: Late Offers

Contract Specialist Workbook, Unit of Instruction 32

☛ If submitted by an electronic commerce method authorized by the solicitation, do not consider an offer to be late if the Government received the offer "not later than 5:00 p.m. one working day prior to the date specified for receipt of" bids or proposals. (§14.304-1, 52.214-7, 52.214-23, 52.214-32, 52.214-33, 52.215-10, and 52.215-36; FAC 90-29, Case 91-104)

FUNCTION: Responsiveness

Contract Specialist Workbook, Unit of Instruction 34

Duty	Determine responsiveness to the IFB.
Conditions	Given an IFB and sample bids.
Overall Standard(s)	The apparent low bid complies in all material aspects with the IFB; all minor informalities/irregularities are corrected or waived.

☛ For an electronic bid to be responsive, the bidder must use the electronic commerce method specifically stipulated or permitted by the IFB. (§14.301 and 52.214-5; FAC 90-29, Case 91-104)

☛ Reject "unreadable" electronic bids unless the bidder provides clear and convincing evidence:

- Of the content of the bid as originally submitted; and
- That bid is unreadable because of a Government software or hardware error, malfunction, or other Government mishandling. (§14.406; FAC 90-29, Case 91-104)

An electronic bid is unreadable if you cannot determine whether the bid is responsive (i.e., whether it conforms to the essential requirements of the IFB).

☛ To be responsive, bids must offer a delivery date no later than that required by the IFB. If the contractor offers a delivery date that is "X days following my receipt of the contract or notice of award", contracting officers compare that offered date to the required date. For this purpose, the FAR has long instructed contracting officers to add 5 days to the date of contract award to account for time required by the Post Office to deliver notice of award through the ordinary mail. Now, the FAR instructs contracting officers to add only one day if notice of award is transmitted electronically. (§12.103, §52.212-1, §52.212-2, FAC 90-29, Case 91-104)

(Look for other changes related to acquiring commercial items).

FUNCTION: Processing Proposals

Contract Specialist Workbook, Unit of Instruction 35

Duties	1. Safeguard, open, and record proposals. 2. Identify variances from the RFP's terms and conditions. 3. Select reviewers and assign responsibility for analyzing the proposals.
Conditions	Given an RFP and the offers.
Overall Standard(s)	Correctly identify all potential areas of discussion (i.e., variances from the RFP's terms and conditions). Correctly distinguish "minor irregularities and informalities" from differences requiring discussion. Following the closing date for proposals, immediately exclude (and notify the offerors of such exclusion) proposals from the competitive range that cannot be considered (e.g., offers of items that do NOT meet or exceed the level of commercial or Government market acceptance specified in a FAR Part 12/15 request for proposals to supply commercial items).

☛ Reject offers submitted by electronic commerce unless the offeror used an electronic commerce method specifically stipulated or permitted by the solicitation. (§52.215-9; FAC 90-29, Case 91-104)

☛ If an electronic proposal is “unreadable”, immediately notify the offeror and provide the offeror with an opportunity to submit clear and convincing evidence:

- Of the content of the proposal as originally submitted; and
- That the proposal is unreadable because of a Government software or hardware error, malfunction, or other Government mishandling.

An electronic proposal is unreadable if you cannot determine whether it conforms to the essential requirements of the solicitation. (§15.607; FAC 90-29, Case 91-104)

☛ If an offeror withdraws an electronically transmitted proposal, purge the proposal and all related data from all data storage systems — both primary and backup. . (§15.412; FAC 90-29, Case 91-104)

☛ When conducting a cost comparison, the cost estimate for Government performance can be provided either in a sealed dated envelope or an electronic equivalent. (§7.304, FAC 90-29, Case 91-104)

(Look for other changes related to acquiring commercial items).

FUNCTION: Applying Past Performance, Technical, And Other Non-Price Factors

Contract Specialist Workbook, Unit of Instruction 36

Part A: Surveying Past Performance

Duty	Survey other customers of the offeror
Conditions	Given the solicitation, proposals, and information from the offeror and other sources on past and current customers of the offeror
Overall Standard(s)	Survey questions are designed to collect consistent (from one offeror to the next), reliable and valid data for applying the past performance evaluation factors (price and non-price) stated in the solicitation. When conducting surveys, do not disclose source selection information, such as information on other offerors or on the contents of proposals. Before applying past performance information, provide the offeror an opportunity to discuss information obtained from the customers (but never reveal the names of individuals who provided the past performance information). When developing an overall judgment on the offeror's past performance, consider such factors as: • The number and severity of an offeror's problems, in relation to the offeror's overall work record • The age and relevance of past performance information. • Potential bias on the part of any given customer (e.g., whether the customer is a potential competitor of the offeror for other requirements) • The extent to which poor performance by an offeror on a past contract may have been as much or more the fault of the customer • Differences in requirements between the current solicitation and contracts with the customer (e.g., differences in the level of technical and performance risk) • The extent to which the offeror has taken measures to correct past problems (e.g., are ratings improving with time?) • Survey-related bias (e.g., the "halo" effect). Provide sufficient documentation for the file to demonstrate that the Government's evaluation of past performance was fair, impartial, and reasonable given available data.

☛ Contracting officers may obtain information on the past performance of an offeror from sources other than the offeror. This includes any source (public or private sector) known to the Government. In particular, obtain information from contracting activities anywhere in the Government which have evaluated an offeror's performance as prescribed in FAR Part 42.15. (§15.608, FAC 90-26)

☛ When evaluating past performance information, consider such issues as:

· The number and severity of an offeror's problems,

· Effectiveness of corrective actions taken by the offeror,

- The offeror's overall work record.
- Age and relevance of past performance information.

(§15.608, FAC 90-26)

☛ Assign a neutral evaluation for past performance to any offeror which lacks relevant past performance history. (§15.608, FAC 90-26)

(Look for other changes related to acquiring commercial items).

FUNCTION: Pricing Information From Offerors

Contract Specialist Workbook, Unit of Instruction 38 (formerly "Cost or Pricing Data")

(Look for changes resulting from new rules on the Truth in Negotiations Act).

FUNCTION: Audits

Contract Specialist Workbook, Unit of Instruction 39

Requesting Audits

☛ When reviewing proposed indirect costs, ask the cognizant audit office to determine whether any audits completed during the preceding 12 months addressed those costs. Do not request a new audit of the proposed indirect costs if information from the prior audits is adequate for determining the reasonableness of those costs. [§15.805-5, FAC 90-31, Case 94-740]

Flowdown of Audit Rights

☛ Prime contractors are required to incorporate the audit and records clause at FAR 52.214-26 only in those subcontracts expected to exceed the threshold at 15.804-2(a)(1) for submission of cost or pricing data. Previously, prime contracts had to incorporate such clauses in any subcontract over $10,000. (§52.214-26, FAC 90-31, Case 94-740)

☛ Contractors only have to incorporate the audit and records clause at 52.215-2 in subcontracts that exceed the simplified acquisition threshold and:

- That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
- For which cost or pricing data are required; or
- That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

This conforms the audit rights at the subcontract level with those at the prime contract level. (52.215-2; FAC 90-31, Case 94-740)

Record Keeping Requirements

☛ The FAR redefines the term "records" to include not only books and documents but also "accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form." (§4.703, 52.214-26, and 52.215-2; FAC 90-31, Case 94-740)

☛ Contractors and subcontractors do NOT have to maintain or produce original records for Government audits if they provide photographic or electronic images of the original records AND all of the following are true: (§4.703, FAC 90-31, Case 94-740)

- Electronic records include all significant information from paper originals.
- The imaging process preserves accurate images of the original records, including signatures and other written or graphic images.
- The imaging process is sufficiently reliable and secure to maintain the integrity of the original records.
- An effective indexing system permits timely and convenient access to the imaged records.
- The contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems.

GAO Access to Records

☛ The Comptroller General's right of access to contractor records is established by the clauses at 52.214-26 and 52.215-2 — the clause at 52.215-1 is reserved. The clause at 52.215-2 also stresses that this right of access "may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law". (§4.702, 15.106-1, 25.901, 52.214-26, and 52.215-2, FAC 90-31, Case 94-740)

☛ A new Alternate III to the clause at FAR 52.215-2 waives the Comptroller General's right to examine the records of foreign contractors. Do not automatically waive that right. Rather, the FAR requires every reasonable effort to negotiate incorporation of the "basic" clause at FAR 52.215-2 with the Comptroller's right of access intact — and the FAR maintains essentially the same controls on waivers that formerly applied to decisions about omitting the clause at 52.215-1. (§25.901 and 52.215-2; FAC 90-31, Case 94-740).

FUNCTION: Price Analysis

Contract Specialist Workbook, Unit of Instruction 34

(Look for changes resulting from new rules related to the Truth in Negotiations Act and small business policies).

FUNCTION: Competitive Range

Contract Specialist Workbook, Unit of Instruction 42

Duties	1. Determine whether discussions are necessary. 2. If necessary, establish the competitive range.
Conditions	Given the RFP, proposals, technical reports, and cost/price analysis reports.
Overall Standard(s)	Conducts discussions whenever the RFP includes the provision at FAR 52.215-16 **absent** Alternate II. If RFP includes Alternate II, only conduct discussions if necessary and document the rationale in the contract file. When establishing the competitive range, exclude proposals which do not have a reasonable chance of selection for award. For example, exclude a proposal that is susceptible of being made technically acceptable through discussions—if, relative to other acceptable offers, it has no reasonable chance of being awarded the contract (e.g., if its technical score is far lower than that of the next higher-scoring offeror and its price is higher than that of any of the offerors in the competitive range).

☛ For civilian agencies, FAR 52.215-16, Alternate II, expands the Government's right to award without discussions. Under the previous award clause at 52.215-16, the Government's right to award without discussions had been greatly limited in case law. Basically, the Comptroller General only allowed award without discussions when (1) the RFP provided for award to the lowest priced offer in the competitive range and (2) the contracting officer had no reason to believe that discussions would yield a better price. Now, you can award without discussions even in "greatest value" competitions and trade-off the costs of conducting discussions against the possibility of seeing some slight improvement in BAFO prices vis-à-vis those initially proposed.

For DoD, NASA, and Coast Guard, the new Alternate II replaces the prior Alternate III — with no essential change in language. The language of the former Alternate II is now part of the basic provision.

(§52.215-16 Contract Award , FAC 90-31, Case 94-701)

☛ If the RFP included FAR 215-16 **absent** Alternate II, establish a competitive range and conduct discussions with all offerors in the competitive range.

If Alternate II was incorporated, determine whether discussions are necessary. If necessary, document the reasons in the contract file. The new FAR language provides no examples of circumstances under which discussions might be necessary. Among the potential reasons for conducting discussions:

- No proposal is technically acceptable.
- Only one proposal is technically acceptable, because other offerors appear to have misinterpreted the RFP's requirements.
- All prices appear to be unreasonably high, compared with prior prices or current market prices for like deliverables.
- The lowest offered price appears to be unrealistic (e.g., the product of a potential cost estimating mistake) when compared with the Government estimate.
- All prices are unrealistically low.

(15.610 Written or oral discussion , FAC 90-31, Case 94-701)

FUNCTION: Negotiation

Contract Specialist Workbook, Unit of Instruction 45

Duty	Conduct a negotiation session and prepare the Price Negotiation Memorandum (PNM). • In a sole source situation. • As part of a competitive negotiation. • As part of a post award negotiation (e.g., a contract modification).
Conditions	Given an RFP, proposals, analysis reports, prenegotiation plan, and the prenegotiation strategy.
Overall Standard(s)	Select and correctly apply tactics to accomplish the Government's negotiation strategy, resulting in: • A best and final offer that accomplishes the Government's highest priority objectives for the negotiation, or • An agreement with a sole source supplier that accomplishes the Government's highest priority objectives for the negotiation. In competitive negotiations, comply with FAR 15.610(d)—no technical leveling, no technical transfusion, and no auctioning. Only disclose information to participants in discussions that may be disclosed under FAR 15.413. In writing the PNM, identify and discuss all negotiation issues in sufficient detail to allow accurate reconstruction of the procurement for immediate review and future reference. The PNM must fully support the recommendation for award.

☛ During discussions, provide an offeror the opportunity to discuss past performance information not previously made available to the offeror for review and comment. This does NOT apply to information on past performance collected under FAR 42.15 — unless the contracting activity had failed to provide contractors with opportunities to review and comment on the past performance records as required by that FAR section.

During discussions, DO NOT disclose the names (or other identifiers) of individuals which provided reference information on the offeror's past performance. (§15.610, FAC 90-26)

(Look for changes related to Price Negotiation Memoranda resulting from new rules on the Truth in Negotiations Act).

FUNCTION: Mistakes in Offers

Contract Specialist Workbook, Unit of Instruction 46

☛ When correcting apparent clerical mistakes in electronic bids, include as part of the electronic solicitation file:

- The original bid
- The verification request
- The bid verification.

(§14.407-2; FAC 90-29, Case 91-104)

FUNCTION: Responsibility

Contract Specialist Workbook, Unit of Instruction 47

Duty	Determine and document the responsibility or nonresponsibility of a prospective contractor.
Conditions	Given a solicitation, several offers, the List of Parties Excluded From Procurement and non-Procurement Programs, and the results of market research and acquisition histories
Overall Standard(s)	Awards contracts only to those firms which are reasonably certain of being capable of effective performance in compliance with all terms and conditions of the contract.

☛ Before awarding a contract, contracting officers must check the "List of List of Parties Excluded from Federal Procurement **and Nonprocurement Programs**." Organizations suspended, debarred, or otherwise excluded from "nonprocurement transactions" are now also ineligible for Federal contracts and vice versa. Examples of nonprocurement transactions are grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements. (§9.4, FAC 90-28)

Historically, the General Services Administration maintained two separate lists of parties that are prohibited from receiving Government contracts (the Procurement List) and benefits such as grants and cooperative agreements (the Non-Procurement List). Parties on the Non-Procurement List were eligible to receive contracts as long as their names were not also on the Procurement List, and vice versa. Starting on August 25, 1995, newly initiated suspension and debarment actions will have apply equally to procurement and nonprocurement transactions if the Agency Debarring Official issues an appropriate notification letter.

In the near future, however, GSA will maintain three lists until all suspensions and debarments have Governmentwide effect on both procurement and nonprocurement transactions. Eventually, there will only be one unified reciprocal list.

☛ Contracting officers must consider "relevant past performance information" collected pursuant to subpart 42.15. However, contracting officers may not call a vendor "nonresponsible" solely on the basis of a lack of relevant performance history "except as provided in 9.104-2". (§9.104-2, FAC 90-26).

(Look for other changes related to acquiring commercial items).

FUNCTION: Award

Contract Specialist Workbook, Unit of Instruction 50

Duty	Award the contract.
Conditions	Given the completed contract and related documentation
Overall Standard(s)	The contract is properly approved, signed, and executed. Make all required notifications.

☛ Notify unsuccessful offerors within three days after award. Consider notification by registered mail, with return receipt requested, or E-Mail with automatic return receipt, or fax if your fax software or hardware verifies receipt by the receiving fax station. For the purpose of this section, "day" means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday. (§14.409-1, §15.1002, §25.405, and §36.304, FAC 90-31, Case 94-701)

☛ Contracting officers can use electronic rather than paper medium to transmit preaward notices, postaward notices, and notices of award. (§14.408-1, §14.409-1, Subpart 15.10, and §36.304; FAC 90-31, Case 94-701)

☛ There are new FPDS reporting fields for awards to small disadvantaged business, women owned business concerns, number of offers, award of task order contracts, and awards for commercial items. OFPP is revising the form. (§4.601, FAC 90-31, Case 94-701)

FUNCTION: Debriefing

Contract Specialist Workbook, Unit of Instruction 51

Duty	Identify deficiencies in the offer, cull out materials not to be disclosed, and debrief unsuccessful offerors.
Conditions	Given the solicitation, PNM, technical evaluations, source selection reports, and proposals.
Overall Standard(s)	Disclose no information that must be kept confidential (e.g., proprietary data). Present the basis for not awarding to unsuccessful offerors, in terms of evaluation factors from the solicitation. Disclose other information required by the FAR. Provide any other information that will help the offeror(s) submit better proposals in the future. Tactfully answer all questions from vendor representatives.

Requests for Debriefings

☛ Offerors (including awardees — not just the unsuccessful) may request debriefings whenever award is on the basis of competitive proposals, whether or not the contracting officer conducted discussions and whether or not award was on price and price related factors alone. (§15.1004, FAC 90-31, Case 94-701)

Conducting Debriefings

☛ Debriefings can be by electronic or any other method acceptable to the contracting officer. (§15.1004, FAC 90-31, Case 94-701)

☛ Reaffirms that COs are responsible for chairing debriefings (unless the CO is unavailable, in which case the contracting officer may designate some other agency representative to serve as the chair with approval of an individual a level above the CO). Also reaffirms that "individuals actually responsible for the evaluations shall provide support". (§15.1004, FAC 90-31, Case 94-701)

Debriefing Do's and Don'ts

☛ Previously, the FAR required only that the Government share its evaluation of the significant weaknesses or deficiencies in the offeror's proposal. In addition, the Government team must at minimum now provide information on:

- The overall evaluated cost and technical rating of the successful offeror and the debriefed offeror, if applicable (obviously this would not apply to debriefings of awardees).*
- The overall ranking of all offerors when any ranking was developed by the agency during the source selection.*
- A summary of the rationale for award.*
- For commercial end items delivered under the contract, the make and model of the awardee's deliverable.*

- Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

(* do not apply to A&E contracts)

Purpose -- to facilitate frank and open discussions leading hopefully better proposals on future procurements. In fact, the FAR never prohibited COs from providing the above information. The difference is that providing such information is now mandatory. COs will need to budget more time for debriefings. (§15.1004 and §36.607(b), FAC 90-31, Case 94-701)

☛ However, you still may NOT provide point by point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, you still may NOT reveal any information exempt from release under the Freedom of Information Act, including—

- Trade secrets.
- Privileged or confidential manufacturing processes and techniques.
- Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information. (§15.1004, FAC 90-31, Case 94-701)

☛ The Freedom of Information Act also protects the names of individuals providing reference information about an offeror's past performance. (§15.1004, FAC 90-26)

Summarizing the Debriefing for the Record

☛ You must prepare an “official” summary of the debriefing for the contract file. The FAR doesn’t detail the contents of this summary. It could take the form of a memorandum for the record. Include a copy of the script, if you have such. Also include a list of questions and how they were answered. (§15.1004, FAC 90-31, Case 94-701)

Availability of Information from Debriefings to Prospective Offerors

☛ If, within one year of the protested contract award, you issue a new solicitation or request for BAFOs, make the following information available to all prospective offerors:

- Information on the successful offeror’s proposal provided in any debriefings on the original award.
- Other nonproprietary information that would have been provided to the original offerors.

Purpose: To ensure that an offeror debriefed is not an offeror with an unfair competitive advantage.

You can comply with this policy merely by making available to all offerors an official written summaries of any one of the actual debriefings — after expunging proprietary information on the debriefed offeror's proposal. You can either provide this information with the new solicitation or simply notify all offerors that the information is available at a specified location. (§15.1004, FAC 90-31, Case 94-701)

FUNCTION: Protests

Contract Specialist Workbook, Unit of Instruction 52

(Look for changes resulting from new rules on Protests and Disputes).

FUNCTION: Ordering Against Contracts and Agreements

Contract Specialist Workbook, Unit of Instruction 56

☛ Contracting officers may use an "established electronic communications format" to place orders against Federal Supply Schedules. (§8.405-2, FAC 90-29, Case 91-104)

☛ Orders against indefinite contracts may be placed electronically, using electronic commerce methods. (§16.506, FAC 90-29, Case 91-104)

(Look for other changes related to placing task orders under single and multiple award task order contracts).

FUNCTION: Monitoring, Inspection, And Acceptance

Contract Specialist Workbook, Unit of Instruction 58

Part B: Compliance with Other Terms and Conditions

Duties	1. Monitor compliance with the Contract Clauses in UCF §I (or equivalent clauses in contracts under FAR Part 12) by both the contractor and Government personnel. 2. Perform any actions required of the contracting officer under the terms of the contract. 3. Inform the contractor of any potential breaches. 4. Resolve any compliance problems, where possible, without resorting to a formal contractual remedy.
Conditions	Given a contract, the contract administration plan, and any other related document referenced in the contract.
Overall Standard(s)	Properly enforce all contract and procedural requirements. Monitor actions of contracting officer representatives and other support personnel to preclude breaches by the Government. Identify and document potential breaches and report them to the contractor for correction as early as they occur. Accurately assess the impact of potential problems on performance and delivery requirements.

☛ When acquiring commercial items, contractors do NOT have to require their employees to individually certify that they are familiar with the Procurement Integrity Act and will report violations of the Act. (§3.104-9 and 52.203-8, FAC 90-30, Case 94-804]

(Look for other changes related to acquiring commercial items).

Part C: Protecting contractor whistleblowers.

Duty	Respond to complaints by contractor employees of reprisals for disclosing substantial violations of law.
Conditions	Given a contract and allegations by contractor employees of substantial violations of law.
Overall Standard(s)	Accurately describe the process for investigating complaints of reprisals for disclosures of "substantial violations of law" and potential remedies. Refer such complaints to the Inspector General.

☛ FAR Subpart 3.9 of the FAR implements the whistleblower protections for contractor employees established by sections 6005 and 6006 of the Federal Acquisition Streamlining Act (FASA). This subpart establishes remedies for contractor employees who are discharged, demoted or otherwise discriminated against as a reprisal for disclosing a substantial violation of law related to a contract to an "authorized official of an agency". No clause is prescribed or necessary to make these remedies available to contractor employees.

For the purpose of this subpart, an "authorized official of an agency" means any officer or employee responsible for contracting, program management, audit, inspection, investigation, or enforcement of any law or regulation relating to Government procurement or the subject matter of the contract. If you are an authorized official under this subpart:

1. Document (in the form of memoranda for record) and report disclosures by contractor employees of substantial violations of law.
2. Advise such employees of their rights under FAR subpart 3.9.
3. Refer complaints of reprisals to the Inspector General. [FAC 90-30, Case 94-803]

Contractor employees may seek relief under FAR subpart 3.9 when they:

1. Have disclosed a substantial violation of law to:
   - A member of Congress,
   - An authorized official of an agency (e.g., an officer or employee responsible for contracting, program management, audit, inspection, investigation, or enforcement of any law or regulation relating to Government procurement/contract), or
   - An authorized official of the Department of Justice.
2. As a result of the disclosure, can show that a reprisal action was taken against them.
3. Report the reprisals to the Inspector General (IG) of the agency that awarded the contract.

Subpart 3.9 establishes the following investigative process**.**

1. The contractor employee complains to the IG (the DoD IG for all Defense contracts).
2. The IG conducts an initial inquiry.
3. If the complaint merits further investigation, the IG notifies the complainant, contractor, and the Head of the Contracting Activity (HCA).
4. The IG investigates and reports its findings to agency head or designee, with copies of the "Report of Findings" to the complainant, contractor, and HCA.
5. Both the complainant and Contractor have opportunity to respond in writing to Report of Findings to the agency head or designee. Responses must be filed within 30 days (unless the agency head or designee extends the responsive time).

If the agency head or designee find for the complainant, the agency head or designee may direct the contractor to do any or all of the following.

1. Take affirmative action to abate the reprisal.

2. Reinstate the employee to the position held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would have applied if the reprisal had not been taken.

3. Pay all costs and expenses (including attorneys' fees and expert witnesses' fees) reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal.

Contractors can appeal the order (in terms of conformance with the law and FAR) to the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. This has to be done within 60 days after issuance of the order by the head of the agency or designee. If the contractor fails to comply with order, the agency head may request the Department of Justice to file action for enforcement in U.S. District Court for the district in which the reprisal occurred.

FUNCTION: Delays

Contract Specialist Workbook, Unit of Instruction 59

(Look for changes related to acquiring commercial items).

FUNCTION: Remedies

(Look for changes related to acquiring commercial items).

FUNCTION: Property Administration

Contract Specialist Workbook, Unit of Instruction 62

☛ Contractors may electronically reproduce standard inventory schedule forms, as long as they make no change to the name, content, or sequence of the data elements. Check to ensure that the electronic reproduction includes all essential elements of data and is signed. (§45.606-5, FAC 90-29, Case 91-104)

FUNCTION: Evaluating Contractor Performance

Contract Specialist Workbook, Unit of Instruction 63

☛ When work on the contract is completed, prepare an evaluation of contractor performance for each contract in excess of:

- $1,000,000 beginning July 1, 1995,
- $500,000 beginning July 1, 1996, and
- $100,000 beginning January 1, 1998

Exceptions:

- Contracts awarded under Subparts 8.6 and 8.7.
- Construction and A&E contracts (see §36.201 and 36.604 for policies on recording performance under such contracts).

Also prepare interim evaluations for multiple year contracts as specified by the agency.

(FAR subpart 42.15, FAC 90-26)

☛ Past performance information is information that is relevant to future source selections on a contractor's actions under previously awarded contracts. Record information on such matters as the contractor's:

- Record of conforming to contract requirements and to standards of good workmanship.
- Record of forecasting and controlling costs.
- Adherence to contract schedules, including the administrative aspects of performance.
- History of reasonable and cooperative behavior and commitment to customer satisfaction.
- Business-like concern in general for the interest of the customer. (FAR subpart 42.15, FAC 90-26)

☛ Generally solicit input for the evaluations from the technical office, contracting office, and, where appropriate, end users of the product or service. (FAR subpart 42.15, FAC 90-26)

☛ Provide copies of the agency evaluation of the contractor's performance to the contractor as soon as practicable after completing the evaluation. Give the contractor at least 30 days to comment on the evaluation. If the parties disagree about the evaluation, refer the evaluation to a level above the contracting officer. However, the contracting agency makes the final decision. (FAR subpart 42.15, FAC 90-26)

☛ Retain copies of the evaluation, contractor response, and review comments (if any) and mark this information with the legend "Source Selection Information." Only release the evaluation to other Government personnel and the contractor whose performance is being evaluated. (FAR subpart 42.15, FAC 90-26)

☛ Destroy the evaluation within three years after completion of contract performance. (FAR subpart 42.15, FAC 90-26)

FUNCTION: Payment

Contract Specialist Workbook, Unit of Instruction 65

Part B. Payment of Indirect Costs

Certification of Indirect Cost Proposals

☛ Section 42.703-2 extends requirements for contractor certification of indirect cost rates (both billing and final) to the civilian agencies. Pursuant to 10 U.S.C. 2324(h), the Department of Defense already determines or negotiates contractor indirect cost rates on the basis of a certified proposal. Basically, contracting officers may not agree to billing or final indirect cost rates unless the contractor has certified (using the clause at 52.242-4, Certification of Indirect Costs) that:

- All proposed costs are allowable
- None are unallowable, AND
- All costs included in the proposal are properly allocable to Government contracts on the basis of a beneficial or causal relationship between the expenses incurred and the contracts to which they are allocated in accordance with applicable acquisition regulations.

[§42.703-1 and 52.242-4, FAC 90-31, Case 94-752]

☛ The head of the agency or designee may waive the certification when in the interest of the United States. However, they must put the reasons for the waiver in writing and make those reasons available to the public. For example, waivers might be appropriate for contracts with foreign governments, international organizations, State or local governments subject to OMB circular A-87, educational institutions subject to OMB circular A-21, and non-profit organizations subject to OMB circular A-122. [§42.703-1, FAC 90-31, Case 94-752]

☛ If necessary for continuation of the contract, contracting officers can unilaterally establish the rates if the contractor fails to certify its proposal for billing or indirect cost rates. [§42.703-1, FAC 90-31, Case 94-752]

Determining Final Indirect Cost Rates

☛ The FAR now requires that contracting officers use, not merely take into consideration, established final indirect cost rates in negotiating the final price of fixed-price incentive and fixed-price redeterminable contracts and in other situations requiring that indirect costs be settled before contract prices are established. [§42.703-1, FAC 90-31, Case 94-754]

☛ If the contracting officer is responsible for determining final indirect cost rates, the FAR prohibits the contracting officer from resolving any questioned costs until obtaining—

- Adequate documentation on the costs; and
- The contract auditor's opinion on the allowability of the costs.

The FAR further advises contracting officers, whenever possible, to invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor's final indirect cost rates.

Finally, the FAR adds a specific requirement that the contracting officer notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance. [§42.705-1, FAC 90-31, Case 94-754]

FUNCTION: Unallowable Costs

Contract Specialist Workbook, Unit of Instruction 66

Penalties for Submission of Unallowable Costs

☛ Sections 2101 and 2151 of the Federal Acquisition Streamlining Act of 1994 change the contract value threshold for assessment of penalties on unallowable costs from $100,000 to $500,000 and expand the coverage from the Department of Defense to all executive agencies. With the exception of the threshold value, the penalty provisions in the new law are the same as those implemented in the current Defense Federal Acquisition Regulation Supplement. [§42.709 and 52.242-3, FAC 90-31, Case 94-751]

☛ Contracting officers may assess penalties against contractors for including unallowable indirect costs in—

- Final indirect cost rate proposals; or
- The final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract.

However, this policy only applies to contracts in excess of $500,000 — and does NOT apply to fixed-price contracts without cost incentives or any firm-fixed-price contracts for the purchase of commercial items. [§42.709 and 52.242-3, FAC 90-31, Case 94-751]

☛ The penalty is equal to the amount of the disallowed costs plus interest on the paid portion, if any, of the disallowance. However, if the indirect cost was determined to be unallowable for that contractor before proposal submission, the penalty is double that amount. Any of the following may constitute evidence of prior determinations of unallowability:

- A DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved (see 48 CFR 242.705-2), or any similar notice which the contractor elected not to appeal and was not withdrawn by the cognizant Government agency.
- A contracting officer final decision which was not appealed.
- A prior executive agency Board of Contract Appeals or court decision involving the contractor, which upheld the cost disallowance.
- A determination or agreement of unallowability under 31.201-6.

[§42.709 and 52.242-3, FAC 90-31, Case 94-751]

☛ Determinations of penalty amounts under paragraphs (d) and (e) of the clause at 52.242-3 are final decisions within the meaning of the Contract Disputes Act of 1978. The FAR contains precise instructions for determining the amount of the interest, issuing assessments, and waiving the penalty. [§42.709 and 52.242-3, FAC 90-31, Case 94-751]

Entertainment, Gift And Recreation Costs For Contractor Employees

☛ The costs of recreation are expressly unallowable with the exception of costs of company sponsored employee sports teams and employee organizations designed to improve company loyalty, team work, or physical fitness. The final rule retains the allowability of "wellness/fitness centers" found in the interim rule. The final rule eliminates the requirement that costs are only allowable to the extent that the net amount per employee must be reasonable for all categories of costs under this cost principle. [§31.205-13, FAC 90-31, Case 94-750]

☛ The costs of gifts are expressly unallowable (31.205-13(b)). However, this does not apply to costs which meet the definition of, and are properly accounted for as, compensation or recognition awards under §31.205-6. [§31.205-13, FAC 90-31, Case 94-750]

☛ FAR 31.205-14, “Entertainment Costs”, incorporates the statutory wording of the Federal Acquisition Streamlining Act relating to the unallowability of entertainment costs under any other cost principle. This revision specifically disallows entertainment costs which some may have previously considered allowable. [§31.205-14, FAC 90-31, Case 94-750]

Lobbying and Conventions

☛ The costs of sponsoring conventions are unallowable when "the principal purpose of the event is other than dissemination of technical information or stimulation of production." [§31.205-1 and 205-43, FAC 90-31, Case 94-754]

☛ The FAR imposes additional restrictions on the allowability of severence costs for foreign nationals employed outside the United States. Under certain conditions, for instance, all severence costs are unallowable if the termination of employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States facility in that country at the request of the government of that country.

However, FAR §37.113 allows waivers of the restrictions. [§31.205-6, 37.113, 52.237-8, and 52.237-9; FAC 90-31, Case 94-754]

☛ The costs of lobbying local Governments are unallowable, in the same respect that such costs are unallowable at the State and Federal levels. [§31.205-22, FAC 90-31, Case 94-754]

Statutory Unallowables

☛ Section 31.603 has been expanded to list 15 types of costs that are unallowable in statute. [§31.603 and 31.703, FAC 90-31, Case 94-754]

FUNCTION: Administering Contract Financing Terms and Conditions

Contract Specialist Workbook, Unit of Instruction 69 (formerly "Progress Payments")

(Look for changes related to new rules for financing acquisitions of commercial and non-commercial items).

FUNCTION: Defective Pricing

Contract Specialist Workbook, Unit of Instruction 73

(Look for changes resulting from new rules related to the Truth in Negotiations Act).

FUNCTION: Contract Modifications

Contract Specialist Workbook, Unit of Instruction 75

(Look for changes related to acquiring commercial items).

FUNCTION: Termination

Contract Specialist Workbook, Unit of Instruction 76

(Look for changes related to acquiring commercial items).

FUNCTION: Claims

Contract Specialist Workbook, Unit of Instruction 78

Duty	Analyze and recommend settlement positions and prepare a Contracting Officer's decision.
Conditions	Given a contract and a claim from a contractor.
Overall Standard(s)	Correctly determine the validity of the claim and prepare a proper and complete decision. Protect the Government's interests while treating the contractor fairly and equitably within the terms of the contract.

☛ A new exception to full and open competition allows agencies to acquire the services of an expert for any current or anticipated litigation or dispute. Such authority is necessary to support ADR. For ADR to work, the Government requires authority to essentially “name-request” an unbiased third party, highly regarded as an expert in the field, who is agreeable to both parties. (Case 94-701)

(Look for other changes resulting from new rules on Protests and Disputes).

PART 1

FEDERAL ACQUISITION REGULATIONS SYSTEM

FAC 90-29 amended FAR Subpart 1.1 by redesignating sections 1.102 through 1.105 as 1.103 through 1.106 and adding new sections 1.102 through 1.102-4 to read as follows:

1.102 Statement of Guiding Principles for the Federal Acquisition System.

(a) The vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives. Participants in the acquisition process should work together as a team and should be empowered to make decisions within their area of responsibility.

(b) The Federal Acquisition System will—

(1) Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service by, for example—

(i) Maximizing the use of commercial products and services;

(ii) Using contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform; and

(iii) Promoting competition;

(2) Minimize administrative operating costs;

(3) Conduct business with integrity, fairness, and openness; and

(4) Fulfill public policy objectives.

(c) The Acquisition Team consists of all participants in Government acquisition including not only representatives of the technical, supply, and procurement communities but also the customers they serve, and the contractors who provide the products and services.

(d) The role of each member of the Acquisition Team is to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs. In exercising initiative, Government members of the Acquisition Team may assume if a specific strategy, practice, policy or procedure is in the best interests of the Government and is not addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority.

1.102-1 Discussion.

(a) *Introduction*. The statement of Guiding Principles for the Federal Acquisition System (System) represents a concise statement designed to be user-friendly for all participants in Government acquisition. The following discussion of the principles is provided in order to illuminate the meaning of the terms and phrases used. The framework for the System includes the Guiding Principles for the System and the supporting policies and procedures in the FAR.

(b) *Vision*. All participants in the System are responsible for making acquisition decisions that deliver the best value product or service to the customer. Best value must be viewed from a broad perspective and is achieved by balancing the many competing interests in the System. The result is a system which works better and costs less.

1.102-2 Performance standards.

(a) *Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service*. (1) The principal customers for the product or service provided by the System are the users and line managers, acting on behalf of the American taxpayer.

(2) The System must be responsive and adaptive to customer needs, concerns, and feedback. Implementation of acquisition policies and procedures, as well as consideration of timeliness, quality, and cost throughout the process, must take into account the perspective of the user of the product or service.

(3) When selecting contractors to provide products or perform services, the Government will use contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform.

(4) The Government must not hesitate to communicate with the commercial sector as early as possible in the acquisition cycle to help the Government determine the capabilities available in the commercial marketplace. The Government will maximize its use of commercial products and services in meeting Government requirements.

(5) It is the policy of the System to promote competition in the acquisition process.

(6) The System must perform in a timely, high quality, and cost-effective manner.

(7) All members of the Team are required to employ planning as an integral part of the overall process of acquiring products or services. Although advance planning is required, each member of the Team must be flexible in order to accommodate changing or unforeseen mission needs. Planning is a tool for the accomplishment of tasks, and application of its discipline should be commensurate with the size and nature of a given task.

(b) *Minimize administrative operating costs*. (1) In order to ensure that maximum efficiency is obtained, rules, regulations, and policies should be promulgated only when their benefits clearly exceed the costs of their development, implementation, administration, and enforcement. This applies to internal administrative processes, including reviews, and to rules and procedures applied to the contractor community.

(2) The System must provide uniformity where it contributes to efficiency or where fairness or predictability is essential. The System should also, however, encourage innovation, and local adaptation where uniformity is not essential.

(c) *Conduct business with integrity, fairness, and openness*. (1) An essential consideration in every aspect of the System is maintaining the public's trust. Not only must the System have integrity, but the actions of each member of the Team must reflect integrity, fairness, and openness. The foundation of integrity within the System is a competent, experienced, and well-trained, professional workforce. Accordingly, each member of the Team is responsible and accountable for the wise use of public resources as well as acting in a manner which maintains the public's trust. Fairness and openness require open communication among team members, internal and external customers, and the public.

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

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

1.102-3 Acquisition Team.

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

1.102-4 Role of the Acquisition Team.

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

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

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

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

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

1.601 General.

FAR as of FAC 90-25	*FAR as revised*
Authority and responsibility to contract for authorized supplies and services are vested in the agency head. The agency head may establish contracting activities and delegate ~~to heads of such contracting activities~~ broad authority to manage the agency's contracting functions. Contracts may be entered into and signed on behalf of the Government only by contracting officers. In some agencies, a relatively small number of high level officials are designated contracting officers solely by virtue of their positions. Contracting officers below the level of a head of a contracting activity shall be selected and appointed under 1.603.	**(a) Unless specifically prohibited by another provision of law,** authority and responsibility to contract for authorized supplies and services are vested in the agency head. The agency head may establish contracting activities and delegate **broad authority to manage the agency's contracting functions** to heads of such contracting activities. Contracts may be entered into and signed on behalf of the Government only by contracting officers. In some agencies, a relatively small number of high level officials are designated contracting officers solely by virtue of their positions. Contracting officers below the level of a head of a contracting activity shall be selected and appointed under 1.603. **(b) Agency heads may mutually agree to—** **(1) Assign contracting functions and responsibilities from one agency to another; and** **(2) Create joint or combined offices to exercise acquisition functions and responsibilities.** [FAC 90-33]

1.602-3 Ratification of unauthorized commitments

FAR as of FAC 90-25	*FAR as revised*
(c) *Limitations*. The authority in subparagraph (b)(2) of this subsection may be exercised only when— * * * * * (2) The ratifying official ~~could have granted~~ authority to enter ~~or could have entered~~ into a contractual commitment ~~at the time it was made and still has the authority to do so~~;	(c) *Limitations*. The authority in subparagraph (b)(2) of this subsection may be exercised only when— * * * * * (2) The ratifying official **has the** authority to enter into a contractual commitment. [FAC 90-32]

PART 2

DEFINITIONS OF WORDS AND TERMS

2.101 Definitions.
* * * * *
"Day" means, unless otherwise specified, a calendar day. [FAC 90-31]
* * * * *

2.101 Definitions.
* * * * *
"In writing" or "written" means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information. [FAC 90-29]
* * * * *
"Signature" or "signed" means the discrete, verifiable symbol of an individual which, 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.
[FAC 90-29]
* * * * *

2.101 Definitions.
* * * * *
"Commercial component" means any component that is a commercial item.
[FAC 90-32]
"Commercial item" means—
(a) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that—
(1) Has been sold, leased, or licensed to the general public; or,
(2) Has been offered for sale, lease, or license to the general public;
(b) Any item that evolved from an item described in paragraph (a) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
(c) Any item that would satisfy a criterion expressed in paragraphs (a) or (b) of this definition, but for—
(1) Modifications of a type customarily available in the commercial marketplace; or

(2) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(d) Any combination of items meeting the requirements of paragraphs (a), (b), (c), or (e) of this definition that are of a type customarily combined and sold in combination to the general public;

(e) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (a), (b), (c), or (d) of this definition, and if the source of such services—

(1) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(2) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(f) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

(g) Any item, combination of items, or service referred to in paragraphs (a) through (f), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(h) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments. [FAC 90-32]

"Component" means any item supplied to the Federal Government as part of an end item or of another component. [FAC 90-32]

* * * * *

"Market research" means collecting and analyzing information about capabilities within the market to satisfy agency needs. [FAC 90-32]

* * * * *

"Nondevelopmental item" means—

(a) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(b) Any item described in paragraph (a) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(c) Any item of supply being produced that does not meet the requirements of paragraph (a) or (b) solely because the item is not yet in use. [FAC 90-32]

* * * * *

PART 3

IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.102 Reserved ~~**Officials not to benefit.**~~

~~**3.102-1 General.**~~
~~41 U.S.C. 22 requires that most Government contracts explicitly state that no member of Congress shall be admitted to any share or part of the contract or any benefit arising from it. If a contract is made between the U.S. Government and any member of or delegate to Congress, or resident commissioner, it may constitute a violation of 18 U.S.C. 431 and 432, resulting in—~~
~~(a) Both the officer or employee of the Government who awarded the contract and the member, delegate, or resident commissioner being subject to criminal penalties;~~
~~(b) The contract being void; and~~
~~(c) The contractor having to return any consideration paid by the Government under the contract.~~ [FAC 90-30]

~~**3.102-2 Contract clause.**~~
~~The contracting officer shall insert the clause at 52.203-1, Officials Not to Benefit, in solicitations and contracts exceeding the simplified acquisition threshold, except those related to agriculture that are exempted by 41 U.S.C. 22.~~ [FAC 90-30]

52.203-1 Reserved. ~~Officials Not to Benefit.~~
~~As prescribed in 3.102-2, insert the following clause in solicitations and contracts, except those related to agriculture that are exempted by 41 U.S.C. 22:~~

~~OFFICIALS NOT TO BENEFIT (APR 1984)~~

~~No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit~~. [FAC 90-30]

3.104-9 Certification requirements.

FAR as of FAC 90-25	*FAR as revised*
(a) *Applicability*. Subsection 27(e) of the Act requires certifications, prior to the award of a Federal agency contract or contract modification for property or services in excess of $100,000 awarded or executed on or after December 1, 1990, by the officer or employee of the contractor responsible for the offer or bid for that particular contract or contract modification for property or services, and by the contracting officer for that procurement.	(a) *Applicability*. Subsection 27(e) of the Act requires certifications, prior to the award of a Federal agency contract or contract modification for property or services in excess of $100,000 awarded or executed on or after December 1, 1990, by the officer or employee of the contractor responsible for the offer or bid for that particular contract or contract modification for property or services, and by the contracting officer for that procurement.

(b) *Competing contractor certification*.

(1) Except as provided in 3.104-9(f), contracting officers shall require the competing contractor to—

(i) Certify in writing to the contracting officer responsible for the procurement that, to the best of his or her knowledge and belief, such officer or employee of the competing contractor has no information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act (see 3.104-3) as implemented in the FAR; or

(ii) Disclose to such contracting officer any and all such information, and certify in writing to such contracting officer that any and all such information has been disclosed; and

(iii) Certify in writing to such contracting officer that, to the best of his or her knowledge and belief, each officer, employee, agent, representative, and consultant of such competing contractor who, on or after December 1, 1990, has participated personally and substantially in the preparation or submission of such bid or offer, or in a modification of a contract, as the case may be, has certified in writing to such competing contractor that he or she—

(A) Is familiar with, and will comply with, the requirements of subsection 27(a) of the Act (see 3.104-3) as implemented in the FAR; and

(B) Will report immediately to the officer or employee of the competing contractor responsible for the offer or bid for any contract or the modification of a contract, as the case may be, any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act (see 3.104-3), occurring on or after December 1, 1990, as implemented in the FAR.

(b) *Competing contractor certification*.

(1) Except as provided in 3.104-9(f), contracting officers shall require the competing contractor to—

(i) Certify in writing to the contracting officer responsible for the procurement that, to the best of his or her knowledge and belief, such officer or employee of the competing contractor has no information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act (see 3.104-3) as implemented in the FAR; or

(ii) Disclose to such contracting officer any and all such information, and certify in writing to such contracting officer that any and all such information has been disclosed; and

(iii) **Except in the case of a contract for the procurement of commercial items,** certify in writing to such contracting officer that, to the best of his or her knowledge and belief, each officer, employee, agent, representative, and consultant of such competing contractor who, on or after December 1, 1990, has participated personally and substantially in the preparation or submission of such bid or offer, or in a modification of a contract, as the case may be, has certified in writing to such competing contractor that he or she—

(A) Is familiar with, and will comply with, the requirements of subsection 27(a) of the Act (see 3.104-3) as implemented in the FAR; and

(B) Will report immediately to the officer or employee of the competing contractor responsible for the offer or bid for any contract or the modification of a contract, as the case may be, any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act (see 3.104-3), occurring on or after December 1, 1990, as implemented in the FAR.

[FAC 90-30]

52.203-8 Requirement for Certificate of Procurement Integrity.

FAR as of FAC 90-25	*FAR as revised*
(b) *Certifications.* As required in paragraph (c) of this provision, the officer or employee responsible for this offer shall execute the following certification:	(b) *Certifications.* As required in paragraph (c) of this provision, the officer or employee responsible for this offer shall execute the following certification. **The certification in paragraph (2) of this provision is not required for a procurement of commercial items.** [FAC 90-30]
CERTIFICATE OF PROCUREMENT INTEGRITY	CERTIFICATE OF PROCUREMENT INTEGRITY
* * * * *	* * * * *
(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that, to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of [*Name of Offeror*] who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act, as implemented in the FAR, pertaining to this procurement.	(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that, to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of [*Name of Offeror*] who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act, as implemented in the FAR, pertaining to this procurement.

3.404 Solicitation provision and contract clause.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(b) The contracting officer shall insert the provision at 52.203-4, Contingent Fee Representation and Agreement, in solicitations, except when—	(b) The contracting officer shall insert the provision at 52.203-4, Contingent Fee Representation and Agreement, in solicitations, except when—
* * * * *	* * * * *
(4) * * * * *; ~~or~~	(4) * * * * *;
	(5) The solicitation is for a commercial item (see Parts 2 and 12); or [FAC 90-32]
~~(5)~~ * * * * *.	**(6)** * * * * *. [FAC 90-32]
(c) The contracting officer shall insert the clause at 52.203-5, Covenant Against Contingent Fees, in ~~all~~ solicitations and contracts.	(c) The contracting officer shall insert the clause at 52.203-5, Covenant Against Contingent Fees, in solicitations and contracts **exceeding the simplified acquisition threshold in Part 13 other than those for commercial items (see Parts 2 and 12).** [FAC 90-32]

3.502-2 General.

FAR as of FAC 90-25	*FAR as revised*
The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) was passed to deter subcontractors from making payments and contractors from accepting payments for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract relating to a prime contract. The Act— * * * * * (i) Requires each contracting agency to include in each prime contract a requirement that the prime contractor shall— * * * * *	The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) was passed to deter subcontractors from making payments and contractors from accepting payments for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract relating to a prime contract. The Act— * * * * * (i) Requires each contracting agency to include in each prime contract, **except contracts for commercial items (see Part 12),** a requirement that the prime contractor shall— [FAC 90-32] * * * * *

3.502-3 Contract clause.

FAR as of FAC 90-25	*FAR as revised*
The contracting officer shall insert the clause at 52.203-7, Anti-Kickback Procedures, in ~~all~~ solicitations and contracts.	The contracting officer shall insert the clause at 52.203-7, Anti-Kickback Procedures, in solicitations and contracts **exceeding the simplified acquisition threshold in Part 13 other than those for commercial items (see Part 12).** [FAC 90-32]

3.503-2 Contract clause.

FAR as of FAC 90-25	*FAR as revised*
The clause at 52.203-6, Restrictions on Subcontractor Sales to the Government, ~~shall be inserted~~ in solicitations and contracts ~~for supplies or services.~~	**The contracting officer shall insert** the clause at 52.203-6, Restrictions on Subcontractor Sales to the Government, in solicitations and contracts **exceeding the simplified acquisition threshold in Part 13. For the acquisition of commercial items, the contracting officer shall use the clause with its Alternate I.** [FAC 90-32]

Subpart 3.9—Whistleblower Protections for Contractor Employees

3.900 Scope of subpart.
3.901 Definitions.
3.902 Applicability.
3.903 Policy.
3.904 Procedures for filing complaints.
3.905 Procedures for investigating complaints.
3.906 Remedies.

3.900 Scope of subpart.

This subpart implements 10 U.S.C. 2409 and 41 U.S.C. 251, et seq., as amended by Sections 6005 and 6006 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355).

3.901 Definitions.

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

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

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

3.902 Applicability.

This subpart applies to all Government contracts.

3.903 Policy.

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

3.904 Procedures for filing complaints.

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

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

(1) The name of the contractor;

(2) The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;

(3) The substantial violation of law giving rise to the disclosure;

(4) The nature of the disclosure giving rise to the discriminatory act; and

(5) The specific nature and date of the reprisal.

3.905 Procedures for investigating complaints.

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

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

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

(1) The complainant and any person acting on the complainant's behalf;

(2) The contractor alleged to have committed the violation; and

(3) The head of the contracting activity.

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

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

3.906 Remedies.

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

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

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

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

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

(c) Any person adversely affected or aggrieved by an order issued under this section may obtain review of the order's conformance with the law, and this subpart, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency or designee. Review shall conform to Chapter 7 of Title 5, United States Code. [Subpart added by FAC 90-30]

52.203-4 Contingent Fee Representation and Agreement.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 3.404(b), insert the following provision in solicitations, except those excluded by subparagraphs 3.404(b)(1) through (b)~~(5).~~ If the solicitation is a Request for Quotations, the terms "Quotation" and "Quoter" may be substituted for "Offer" and "Offeror." * * * * *	As prescribed in 3.404(b), insert the following provision in solicitations, except those excluded by subparagraphs 3.404(b)(1) through (b)**(6)**. If the solicitation is a Request for Quotations, the terms "Quotation" and "Quoter" may be substituted for "Offer" and "Offeror." [FAC 90-32] * * * * *

52.203-6 Restrictions on Subcontractor Sales to the Government.

FAR as of FAC 90-25	*FAR as revised*
* * * * * *	* * * * * *
(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract.	(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract **which exceed $100,000.** [FAC 90-29]
(End of clause)	***Alternate I* (OCT 1995). As prescribed in 3.503-2, substitute the following paragraph in place of paragraph (b) of the basic clause:** **(b) The prohibition in paragraph (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation. For acquisitions of commercial items, the prohibition in paragraph (a) applies only to the extent that any agreement restricting sales by subcontractors results in the Federal Government being treated differently from any other prospective purchaser for the sale of the commercial item(s).** [FAC 90-32] (End of clause)

PART 4

ADMINISTRATIVE MATTERS

4.101 Contracting officer's signature.

FAR as of FAC 90-25	*FAR as revised*
(a) Only contracting officers shall sign contracts on behalf of the United States. The contracting officer's name and official title shall be typed, stamped, or printed on the contract. The contracting officer normally signs the contract after it has been signed by the contractor. The contracting officer shall ensure that the signer (s) have authority to bind the contractor (see specific requirements in 4.102 below). ~~(b) Each signed or reproduced copy of the signed contract or modification that is intended to have the same force and effect as the signed original shall be marked "DUPLICATE ORIGINAL."~~	Only contracting officers shall sign contracts on behalf of the United States. The contracting officer's name and official title shall be typed, stamped, or printed on the contract. The contracting officer normally signs the contract after it has been signed by the contractor. The contracting officer shall ensure that the signer(s) have authority to bind the contractor (see specific requirements in 4.102 of this subpart). [FAC 90-29)

4.201 Procedures.

FAR as of FAC 90-25	*FAR as revised*
Contracting officers shall distribute copies of contracts or modifications within 10 working days after execution by all parties. As a minimum, the contracting officer shall— (a) Distribute simultaneously one signed copy or reproduction of the signed contract~~ (see 4.101(b))~~, to the contractor and the paying office; (b) When a contract is assigned to another office for contract administration (see Subpart 42.2), provide to that office— (1) One copy or reproduction of the signed contract and of each modification~~ (stamped "DUPLICATE ORIGINAL," see 4.101(b))~~; and (2) A copy of the contract distribution list, showing those offices that should receive copies of modifications, and any changes to the list as they occur; (c) Distribute one copy to each accounting and finance office (funding office) whose funds are cited in the contract;	Contracting officers shall distribute copies of contracts or modifications within 10 working days after execution by all parties. As a minimum, the contracting officer shall— (a) Distribute simultaneously one signed copy or reproduction of the signed contract, to the contractor and the paying office; (b) When a contract is assigned to another office for contract administration (see Subpart 42.2), provide to that office— (1) One copy or reproduction of the signed contract and of each modification; and (2) A copy of the contract distribution list, showing those offices that should receive copies of modifications, and any changes to the list as they occur; (c) Distribute one copy to each accounting and finance office (funding office) whose funds are cited in the contract;

(d) When the contract is not assigned for administration but contains a Cost Accounting Standards clause, provide one copy of the contract to the cognizant administrative contracting officer and mark the copy "FOR COST ACCOUNTING STANDARDS ADMINISTRATION ONLY" (see 30.~~401~~(b));	(d) When the contract is not assigned for administration but contains a Cost Accounting Standards clause, provide one copy of the contract to the cognizant administrative contracting officer and mark the copy "FOR COST ACCOUNTING STANDARDS ADMINISTRATION ONLY" (see 30.**601**(b)); [FAC 90-29)

4.304 Contract clause.

FAR as of FAC 90-25	*FAR as revised*
The contracting officer shall insert the clause at 52.204-4, Printing/Copying Double-Sided on Recycled Paper, in solicitations and contracts~~.~~	The contracting officer shall insert the clause at 52.204-4, Printing/Copying Double-Sided on Recycled Paper, in solicitations and contracts **greater than the simplified acquisition threshold.** [FAC 90-27]

[The following is an all new subpart pursuant to FAC 90-29]

SUBPART 4.5 — ELECTRONIC COMMERCE IN CONTRACTING

Sec.

4.500 Scope of subpart.

4.501 Definitions.

4.502 Policy.

4.503 Contractor registration.

4.504 FACNET functions.

4.505 FACNET certification.

4.505-1 Interim certification.

4.505-2 Full certification.

4.505-3 Governmentwide certification.

4.505-4 Contract actions excluded.

4.506 Exemptions.

4.507 Contract actions using simplified acquisition procedures.

4.500 Scope of subpart.

This subpart provides policy and procedures for the establishment and use of the Federal Acquisition Computer Network (FACNET) as required by Section 30 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 426).

4.501 Definitions.

ANSI X.12 means the designation assigned by the American National Standards Institute (ANSI) for the structure, format, and content of electronic business transactions conducted through Electronic Data Interchange (EDI). ANSI is the coordinator and clearinghouse for national standards in the United States.

Electronic commerce (EC) means a paperless process including electronic mail, electronic bulletin boards, electronic funds transfer, electronic data interchange, and similar techniques for accomplishing business transactions. The use of terms commonly associated with paper transactions (e.g., "copy", "document", "page", "printed", "sealed envelope" and "stamped") shall not be interpreted to restrict the use of electronic commerce.

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

Federal Acquisition Computer Network (FACNET) means the Governmentwide Electronic Commerce/Electronic Data Interchange EC/EDI systems architecture for the acquisition of supplies and services that provides for electronic data interchange of acquisition information between the Government and the private sector, employs nationally and internationally recognized data formats, and provides universal user access.

Full FACNET means an agency has certified that it has implemented all of the FACNET functions outlined in 4.504, and more than 75 percent of eligible contracts (not otherwise exempted from FACNET) in amounts exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold (see Part 13), were entered into by the agency during the preceding fiscal year using FACNET.

Governmentwide FACNET means that the Federal Government has certified its FACNET capability, and more than 75 percent of eligible contracts (not otherwise exempted from FACNET) in amounts exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold (see Part 13), entered into by the executive agencies during the preceding fiscal year were made through full FACNET.

Interim FACNET means a contracting office has been certified as having implemented a capability to provide widespread public notice of, issue solicitations, and receive responses to solicitations and associated requests for information through FACNET. Such capability must allow the private sector to access notices of solicitations, access and review solicitations, and respond to solicitations.

Transaction Set means the data that is exchanged to convey meaning between Trading Partners engaged in EC/EDI.

Value-Added Network (VAN) means an entity that provides communications services, electronic mailboxing and other communications services for EDI transmissions.

Value-Added Service (VAS) means an entity that provides services beyond communications to its customers. These services may range from translation and segregation of the data to complete turn-key business systems support for customers.

4.502 Policy.

(a) The Federal Government shall use FACNET whenever practicable or cost effective.

(b) FACNET is the preferred method of soliciting and receiving quotes and providing notice of Government purchase requirements exceeding the micro-purchase threshold and not exceeding the simplified acquisition threshold (see 13.103(b)).

(c) Contracting officers may use FACNET for any contract action governed by the FAR, unless specifically exempted (see 4.506 and 13.106-1(a)(2)).

(d) Before using FACNET or any other method of electronic data interchange, the agency head shall ensure that the electronic data interchange system is capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to or modification of the information.

4.503 Contractor registration.

(a) In order for a contractor to conduct electronic commerce with the Federal Government, the contractor must provide registration information to the Central Contractor Registration.

(b) The contractor will be required to submit information in accordance with the Federal implementation conventions of the ASC ANSI X.12 transaction set for contractor registration.

4.504 FACNET functions.

(a) FACNET will permit agencies to do the following electronically--

(1) Provide widespread public notice of contracting opportunities, and issue solicitations;

(2) Receive responses to solicitations and associated requests for information;

(3) Provide widespread public notice of contract awards and issuance orders (including price);

(4) Receive questions regarding solicitations, if practicable;

(5) Issue contracts and orders, if practicable;

(6) Initiate payments to contractors, if practicable; and

(7) Archive data relating to each procurement action.

(b) FACNET will permit the private sector to do the following electronically —

(1) Access notices of solicitations;

(2) Access and review solicitations;

(3) Respond to solicitations;

(4) Receive contracts and orders, if practicable;

(5) Access information on contract awards and issuance of orders; and

(6) Receive payment by purchase card, electronic funds transfer, or other automated means, if practicable.

4.505 FACNET certification.

4.505-1 Interim certification.

(a) A contracting office is considered to have implemented interim FACNET if —

(1) The contracting office — (i) Has implemented the FACNET functions described in 4.504(a)(1) and (2), and (b)(1), (2), and (3); and (ii) Issues notices of solicitations and receives responses to solicitations in a system having those functions;

(2) The contracting office can use FACNET for contracts, not otherwise exempted (see 4.506), that exceed the micro-purchase threshold but do not exceed the simplified acquisition threshold; and

(3) The senior procurement executive of the agency, or the Under Secretary of Defense for Acquisition and Technology for the military departments and defense agencies, has certified to the Administrator of OFPP that the contracting office has implemented interim FACNET.

(b) The senior procurement executive of the agency, or the Under Secretary of Defense for Acquisition and Technology for the military departments and defense agencies, shall notify the private sector via the Commerce Business Daily that a contracting office of the agency has certified interim FACNET. The notice shall establish a date after which it will be required that all responses to solicitations issued by the contracting office through FACNET, must be submitted through FACNET, unless otherwise authorized.

4.505-2 Full certification.

(a) An agency is considered to have implemented full FACNET if —

(1) The agency has implemented all of the FACNET functions described in 4.504;

(2) During the entire preceding fiscal year, more than 75 percent of the agency's eligible contracts not otherwise exempted (see 4.506), that exceeded the micro-purchase threshold, but did not exceed the simplified acquisition threshold were entered into via FACNET; and

(3) The head of the agency, with the concurrence of the Administrator of OFPP, has certified to the Congress that the agency has implemented full FACNET. For the Department of Defense, the certification shall be made by the Secretary of Defense for the Department as a whole.

(b) Eligible contracts do not include any class or classes of contracts that the Federal Acquisition Regulatory Council determines, after October 13, 1997, are not suitable for acquisition through FACNET.

4.505-3 Governmentwide certification.

The Federal Government is considered to have implemented Governmentwide FACNET if —

(a) During the preceding fiscal year, at least 75 percent of eligible contracts entered into by executive agencies that exceeded the micro-purchase threshold but did not exceed the simplified acquisition threshold were made via full FACNET; and

(b) The Administrator of OFPP has certified implementation of Governmentwide FACNET to the Congress.

4.505-4 Contract actions excluded.

For purposes of calculating the percentage of FACNET use referred to in 4.505-2 and 4.505-3, actions issued against established contracts, such as delivery orders, task orders, and in-scope modifications, shall not be included.

4.506 Exemptions.

The following contracts are exempted from the use of FACNET as specified and shall not be considered when determining compliance with the requirements to implement FACNET:

(a) Interim FACNET. (1) Classes of procurements exempted by the head of the contracting activity after a written determination is made that FACNET processing of those procurements is not cost-effective or practicable; and specific purchases for which the contracting officer determines that it is not practicable or cost effective to process via FACNET. Such determinations shall be centrally maintained at the contracting office. (2) Contracts that do not require notice under Subpart 5.2.

(b) Full FACNET. Contracts awarded by a contracting office or a portion of a contracting office, if the office is exempted from use of FACNET by the head of the agency or the Secretary of Defense for the military departments and defense agencies. Any such exemption shall be based on a written determination that FACNET processing is not cost effective or practicable for the contracting office, or portions thereof. Determinations shall be maintained in the office of the senior procurement executive or the Under Secretary of Defense for Acquisition and Technology for the military departments and defense agcncies..

4.507 Contract actions using simplified acquisition procedures.

Contracting officers shall refer to section 13.106 for evaluation and documentation requirements when awarding contracts using simplified acquisition procedures.

4.601 Record requirements.

FAR as of FAC 90-25	*FAR as revised*
* * * *	* * * *
(c) In addition to paragraph (b) above with respect to each procurement carried out using procedures other than competitive procedures, agencies shall be able to access from the computer file—	(c) In addition to paragraph (b) above with respect to each procurement carried out using procedures other than competitive procedures, agencies shall be able to access from the computer file—
(1) The reason under Subpart 6.3 for the use of such procedures; and	(1) The reason under Subpart 6.3 for the use of such procedures; and
(2) The identity of the organization or activity which conducted the procurement.	(2) The identity of the organization or activity which conducted the procurement.
	(d) In addition to the information described in paragraphs (b) and (c) of this section, for procurements in excess of $25,000, agencies shall be able to access information on the following from the computer file:
	(1) Awards to small disadvantaged businesses using either set-asides or full and open competition.
	(2) Awards to business concerns owned and controlled by women.
	(3) The number of offers received in response to a solicitation.
	(4) Task or delivery order contracts.
	(5) Contracts for the acquisition of commercial items. [FAC 90-31]
~~(d)~~ This information shall be transmitted to the Federal Procurement Data System in accordance with agency procedures.	**(e)** This information shall be transmitted to the Federal Procurement Data System in accordance with agency procedures**.**

4.602 Federal Procurement Data System.

FAR as of FAC 90-25	*FAR as revised*
(a) The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data to the Federal Procurement Data Center (FPDC), which collects, processes, and disseminates official statistical data on Federal contracting. The data provide (1) a basis for recurring and special reports to the President, the Congress, the General Accounting Office, Federal executive agencies, and the general public; (2) a means of measuring and assessing the impact of Federal contracting on the	(a) The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data to the Federal Procurement Data Center (FPDC), which collects, processes, and disseminates official statistical data on Federal contracting. The data provide (1) a basis for recurring and special reports to the President, the Congress, the General Accounting Office, Federal executive agencies, and the general public; (2) a means of measuring and assessing the impact of Federal contracting on the

Nation's economy and the extent to which ~~small business concerns and small disadvantaged~~ business concerns are sharing in Federal contracts; and (3) data for other policy and management control purposes.	Nation's economy and the extent to which **small, small disadvantaged and women-owned small** business concerns are sharing in Federal contracts; and (3) data for other policy and management control purposes. [FAC 90-32]
* * * * *	* * * * *

4.603 Solicitation provision.

The contracting officer shall insert the provision at 52.204-5, Women-Owned Business, in all solicitations that are not set aside for small business concerns and that exceed the simplified acquisition threshold in Part 13, when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. [FAC 90-32]

52.204-5 Women-Owned Business.

As prescribed in 4.603, insert the following provision:

WOMEN-OWNED BUSINESS (OCT 1995)

(a) *Representation*. The offeror represents that it ☐ is, ☐ is not a women-owned business concern.

(b) *Definition*. "Women-owned business concern," as used in this provision, means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women. [FAC 90-32]

4.702 Applicability.

FAR as of FAC 90-25	*FAR as revised*
(a) This subpart applies to records generated under contracts that contain one of the following clauses:	(a) This subpart applies to records generated under contracts that contain one of the following clauses:
~~(1) Examination of Records by Comptroller General (52.215-1)~~.	**(1)** Audit **and Records**—Sealed Bidding (52.214-26).
~~(2)~~ Audit—Sealed Bidding (52.214-26).	**(2)** Audit **and Records**—Negotiation (52.215-2) [FAC 90-31]
~~(3)~~ Audit—Negotiation (52.215-2).	**(3) Audit—Commercial Items (52.215-43).** [FAC 90-32]
* * * *	* * * *

4.703 Policy.

FAR as of FAC 90-25	*FAR as revised*
(a) Except as stated in 4.703(b), contractors shall make available books, records, documents, and other supporting evidence to satisfy contract negotiation, administration, and audit requirements of the contracting agencies and the Comptroller General for (1) 3 years after final payment or, for certain records, (2) the period specified in 4.705 through 4.705-3, whichever of these periods expires first.	(a) Except as stated in 4.703(b), contractors shall make available records, **which includes** books, documents, **accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form**, and other supporting evidence to satisfy contract negotiation, administration, and audit requirements of the contracting agencies and the Comptroller General for (1) 3 years after final payment or, for certain records, (2) the period specified in 4.705 through 4.705-3, whichever of these periods expires first.
(b) Contractors shall make available the foregoing ~~documents~~ and supporting evidence for a longer period of time than is required in 4.703(a) if—	(b) Contractors shall make available the foregoing **records** and supporting evidence for a longer period of time than is required in 4.703(a) if—
(1) A retention period longer than that cited in 4.703(a) is specified in any contract clause; or	(1) A retention period longer than that cited in 4.703(a) is specified in any contract clause; or
(2) The contractor, for its own purposes, retains the foregoing ~~documents~~ and supporting evidence for a longer period. Under this circumstance, the retention period shall be the period of the contractor's retention or 3 years after final payment, whichever period expires first.	(2) The contractor, for its own purposes, retains the foregoing **records** and supporting evidence for a longer period. Under this circumstance, the retention period shall be the period of the contractor's retention or 3 years after final payment, whichever period expires first.
(3) The contractor does not meet the original 90-day due date for submission of final indirect cost rate proposals specified in subparagraph (d)(2) of the clause at 52.216-7, Allowable Cost and Payment, and subpara-graph (c)(2) of the clause at 52.216-13, Allowable Cost and Payment—Facilities. Under these circumstances, the retention periods in 4.705 shall be automatically extended one day for each day the proposal is not submitted after the original 90-day due date.	(3) The contractor does not meet the original 90-day due date for submission of final indirect cost rate proposals specified in subparagraph (d)(2) of the clause at 52.216-7, Allowable Cost and Payment, and subpara-graph (c)(2) of the clause at 52.216-13, Allowable Cost and Payment—Facilities. Under these circumstances, the retention periods in 4.705 shall be automatically extended one day for each day the proposal is not submitted after the original 90-day due date.
(c) ~~Contractors need not retain duplicate copies of records or supporting documents unless they contain significant information not shown on the record copy.~~	(c) **Nothing in this section shall be construed to preclude a contractor from duplicating or storing original records in electronic form unless they contain significant information not shown on the record copy. Original records need not be maintained or produced in an audit if the contractor or subcontractor provides photographic or electronic images of the**
~~(d) Contractors may retain records in any medium (paper, electronic, microfilm, etc.) or any combination of media, as long as the requirements of this subpart are satisfied. The process used to create and store records must record and reproduce the original document, including signatures and other~~	

~~written or graphic images, completely, accurately, and clearly. Data transfer, storage, and retrieval procedures shall protect the original data from alteration.~~

original records and meets the following requirements:

(1) The contractor or subcontractor has established procedures to ensure that the imaging process preserves accurate images of the original records, including signatures and other written or graphic images, and that the imaging process is reliable and secure so as to maintain the integrity of the records.

(2) The contractor or subcontractor maintains an effective indexing system to permit timely and convenient access to the imaged records.

(3) The contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems

(e) If the information described in paragraph (a) of this section is maintained on a computer, contractors shall retain the computer data on a reliable medium for the time periods prescribed. Contractors may transfer computer data in machine readable form from one reliable computer medium to another. Contractors' computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. Contractors shall also retain an audit trail describing the data transfer. For the record retention time periods prescribed, contractors shall not destroy, discard, delete, or write over such computer data.

(d) If the information described in paragraph (a) of this section is maintained on a computer, contractors shall retain the computer data on a reliable medium for the time periods prescribed. Contractors may transfer computer data in machine readable form from one reliable computer medium to another. Contractors' computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. Contractors shall also retain an audit trail describing the data transfer. For the record retention time periods prescribed, contractors shall not destroy, discard, delete, or write over such computer data. [FAC 90-23]

4.706 [Reserved] ~~Microfilming records~~.

~~4.706-1 General~~.

~~(a) Contractors may use microfilm (e.g., film chips, jackets, aperture cards, microprints, roll film, and microfiche) for recordkeeping, subject to the limitations in this subpart.~~

~~(b) In the process of microfilming documents, the contractor shall also microfilm all relevant notes, worksheets, and other papers necessary for reconstructing or understanding the records.~~

~~(c) The contractor shall review all microfilm before destroying the hard-copy documents to ensure legibility and reproducibility of the microfilm.~~

~~(d) Unless earlier retirement of records is permitted by 4.705, or the administrative contracting officer agrees to a lesser retention period when the contractor has established adequate internal controls including continuing surveillance over the microfilm system, the contractor shall not destroy original records that have been microfilmed, until—~~

~~(1) All claims under the contract are settled;~~

~~(2) Eighteen months have passed since final payment; or~~

~~(3) The time original records are required to be kept by other laws or regulations has elapsed.~~

~~**4.706-2 Filing and retrieval.**~~

~~The contractor shall—~~

~~(a) Maintain an effective indexing system to permit timely and convenient access to the microfilmed records by the Government;~~

~~(b) Provide strict security measures to prevent the loss of microfilm and to safeguard classified information;~~

~~(c) Store microfilm in a fireproof cabinet in an environment ensuring the safety of these records for the specified retention periods; and~~

~~(d) Have adequate viewing equipment and provide printouts the approximate size of the original material.~~

~~**4.706-3 Quality control.**~~

~~(a) Microfilm, when displayed on a microfilm reader (viewer) or reproduced on paper, must exhibit a high degree of legibility and readability.~~

~~(b) The quality of the contractor's record microfilming process is subject to periodic review by the administrative contracting officer.~~

4.803 Contents of contract files.

FAR as of FAC 90-25	*FAR as revised*
The following are examples of the records normally contained, if applicable, in contract files:	The following are examples of the records normally contained, if applicable, in contract files:
(a) *Contracting office contract file.*	(a) *Contracting office contract file.*
* * * * *	* * * * *
(17) Cost or pricing data and Certificates of Current Cost or Pricing Data or a required justification for waiver.	(17) Cost or pricing data and Certificates of Current Cost or Pricing Data or a required justification for waiver**, or information other than cost or pricing data.** [FAC 90-321]
* * * * *	* * * * *
(b) *Contract administration office contract file*.	(b) *Contract administration office contract file*.
* * * * *	* * * * *
(4) Cost ~~and~~ pricing data, Certificates of Current Cost or Pricing Data, cost or price analysis, and other documentation supporting contractual actions executed by the contract administration office.	(4) Cost **or** pricing data, Certificates of Current Cost or Pricing Data, **or information other than cost or pricing data;** cost or price analysis; and other documentation supporting contractual actions executed by the contract administration office. [FAC 90-32]
* * * * *	* * * * *

PART 5

PUBLICIZING CONTRACT ACTIONS

5.002 Policy.

FAR as of FAC 90-25	*FAR as revised*
Contracting officers shall publicize contract actions in order to— (a) Increase competition; (b) Broaden industry participation in meeting Government requirements; and (c) Assist small business concerns, small disadvantaged business concerns, and ~~labor surplus area~~ concerns in obtaining contracts and subcontracts.	Contracting officers shall publicize contract actions in order to— (a) Increase competition; (b) Broaden industry participation in meeting Government requirements; and (c) Assist small business concerns, small disadvantaged business concerns, and **women-owned small business** concerns in obtaining contracts and subcontracts. [FAC 90-32]

5.101 Methods of disseminating information.

FAR as of FAC 90-25	*FAR as revised*
The Commerce Business Daily (CBD) is the public notification media by which U.S. Government agencies identify proposed contract actions and contract awards. The CBD is published in five or six daily editions weekly, as necessary.	The Commerce Business Daily (CBD) is the public notification media by which U.S. Government agencies identify proposed contract actions and contract awards. The CBD is published in five or six daily editions weekly, as necessary.
(a) As required by the Small Business Act (15 U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), contracting officers shall disseminate information on proposed contract actions as follows:	(a) As required by the Small Business Act (15 U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), contracting officers shall disseminate information on proposed contract actions as follows:
(1) For contract actions expected to exceed ~~the small pur-chase limitation~~ in 13.000, by synopsizing in the Com-merce Business Daily (CBD) (see ~~section~~ 5.201); and	(1) For **proposed** contract actions expected to exceed **$25,000**, by synopsizing in the Commerce Business Daily (CBD) (see 5.201); and
(2) For proposed contract actions expected to exceed $10,000 ($5,000 for Defense activities), but not expected to exceed $25,000, by displaying in a public place at the contracting office issuing the solicitation, an unclassified notice of the solicitation or a copy of the solicitation satisfying the require-	(2) For proposed contract actions expected to exceed $10,000 ($5,000 for Defense activities), but not expected to exceed $25,000, by displaying in a public place at the contracting office issuing the solicitation, an unclassified notice of the solicitation or a copy of the solicitation satisfying the require-

ments of 5.207(c) and (f). Such information shall be posted not later than the date the solicitation is issued and remain posted for at least 10 days ~~regardless of the date of award. Such information shall remain posted~~ until after ~~offers~~ have been ~~opened.~~	ments of 5.207(c) and (f). **The notice shall include a statement that all responsible sources may submit a quotation which, if timely received, shall be considered by the agency.** Such information shall be posted not later than the date the solicitation is issued**,** and **shall** remain posted for at least 10 days **or** until after **quotations** have been **opened, whichever is later. Electronic dissemination available to the public at the contracting office may be used to satisfy the public display requirement.**
(i) If solicitations are posted in lieu of a notice, various methods of satisfying the requirements of 5.207(c) and (f) may be employed. For example, the requirements for 5.207(c) and (f) may be met by stamping the solicitation, by a cover sheet to the solicitation, or by placing a general statement in the display room.	(i) If solicitations are posted in lieu of a notice, various methods of satisfying the requirements of 5.207(c) and (f) may be employed. For example, the requirements for 5.207(c) and (f) may be met by stamping the solicitation, by a cover sheet to the solicitation, or by placing a general statement in the display room.
(ii) The contracting officer need not comply with the display requirements ~~set forth above~~ when the exemptions at 5.202(a)(1), (5) through (9), or (11) apply, or when oral solicitations are used.	(ii) The contracting officer need not comply with the display requirements **of this section** when the exemptions at 5.202(a)(1), (5) through (9), or (11) apply, or when oral **or FACNET** solicitations are used. **The exemption from display requirements does not relieve the contracting officer from the responsibility to consider all quotations timely received from responsible sources**.
(iii) Contracting officers shall post solicitations expected to exceed $25,000 if required by agency regulations.	(iii) Contracting officers shall post solicitations expected to exceed $25,000 if required by agency regulations.
	(iv) Contracting offices utilizing electronic systems for public posting shall periodically publicize the methods for accessing such information. [FAR 90-29]

5.102 Availability of solicitations.

FAR as of FAC 90-25	*FAR as revised*
(a) The contracting officer shall—	(a) The contracting officer shall—
* * * * *	* * * * *
(4) In addition to the methods of disseminating proposed contract information in 5.101(a) and (b), provide, upon request to small business concerns, as required by 15 U.S.C. 637(b)—	(4) In addition to the methods of disseminating proposed contract information in 5.101(a) and (b), provide, upon request to small business concerns, as required by 15 U.S.C. 637(b)—

(i) A copy of the solicitation and ~~specifications;~~ * * * * *	(i) A copy of the solicitation and **specifications. In the case of solicitations disseminated by electronic data interchange, solicitations may be furnished directly to the electronic address of the small business concern.** [FAC 90-29] * * * * *

5.202 Exceptions.

FAR as of FAC 90-25	*FAR as revised*
The contracting officer need not submit the notice required by 5.201 when— (a) The contracting officer determines that— * * * * (6) The contract action is an order placed under ~~a requirements contract~~; * * * * * (11) * * * *;~~ or~~ (12) * * * *. * * * * *	The contracting officer need not submit the notice required by 5.201 when— (a) The contracting officer determines that— * * * * (6) The contract action is an order placed under **Subpart 16.5**; [FAC 90-33] * * * * * (11) * * * *;~~ or~~ (12) * * * *. **(13) The contract action is for an amount expected to exceed $25,000 but not expected to exceed the simplified acquisition threshold and is made by a contracting activity that has been certified as having implemented a system with interim (until December 31, 1999) or full (after December 31, 1999) FACNET and the contract action will be made through FACNET;** [FAC 90-29] **(14) The contract action is for an amount at or below $250,000 and is made through certified FACNET after Governmentwide FACNET has been certified. This exception does not apply when the contract action is not made through certified FACNET (see Subpart 4.5) ; or** [FAC 90-29] **(15) The contract action is made under conditions described in 6.302-3 with respect to the services of an expert to support the Federal Government in any current or anticipated litigation or dispute.** [FAC 90-31] * * * * *

5.203 Publicizing and response time.

FAR as of FAC 90-25	*FAR as revised*
Whenever agencies are required to publish notice of contract actions under 5.201, they shall proceed as follows:	Whenever agencies are required to publish notice of contract actions under 5.201, they shall proceed as follows:
(a) A notice of ~~the~~ contract action shall be published in the CBD at least 15 days before issuance of a solicitation.	(a) A notice of contract action shall be published in the CBD at least 15 days before issuance of a solicitation **except when the combined CBD synopsis/solicitation procedure for acquisition of commercial items is used (see 12.603).** [FAC 90-32]
(b) ~~Agencies shall allow at least 30 days' response time for receipt of bids or proposals from the date of issuance of a solicitation.~~	(b) **The contracting officer shall establish a solicitation response time which will afford potential offerors a reasonable opportunity to respond for (1) each contract action, including actions via FACNET, in an amount estimated to be greater than $25,000, but not greater than the simplified acquisition threshold; or (2) each contract action for the acquisition of commercial items in an amount estimated to be greater than $25,000 (see Part 12). The contracting officer should consider the circumstances of the individual acquisition, such as the complexity, commerciality, availability, and urgency, when establishing the solicitation response time.** [FAC 90-32]
(c) Agencies shall allow at least 30 days' response time ~~from the date of publication of a proper notice of intent to contract for architect-engineer services or before issuance of an order under a basic ordering agreement or similar arrangement.~~ * * * * *	(c) **Except for the acquisition of commercial items (see 5.203(b)),** agencies shall allow at least a 30-day response time **for receipt of bids or proposals from the date of issuance of a solicitation, if the cotract action is expected to exceed the simplified acquisition threshold.** [FAC 90-32] * * * * *
~~(c)~~ Agencies shall allow at least 30 ~~days'~~ response time from the date of publication of a proper notice of intent to contract for architect-engineer services or before issuance of an order under a basic ordering agreement or similar ~~arrangement~~.	**(d)** Agencies shall allow at least a 30 **day** response time from the date of publication of a proper notice of intent to contract for architect-engineer services or before issuance of an order under a basic ordering agreement or similar **arrangement if the contract action is expected to exceed the simplified acquisition threshold.** [FAC 90-32]
~~(d)~~ Agencies shall allow at least 45 ~~days'~~ response time for receipt of bids or proposals from the date of publication of the notice required in	**(e)** Agencies shall allow at least a 45 **day** response time for receipt of bids or proposals from the date of publication of the notice required in

5.201 for contract actions categorized as research and ~~development~~. *****	5.201 for contract actions categorized as research and **development if the contract action is expected to exceed the simplified acquisition threshold.** [FAC 90-32] *****

5.207 Preparation and transmittal of synopses.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(c) *General format for Item 17, "Description."* (1) Prepare a clear and concise description of the supplies or services that is not unnecessarily restrictive of competition and will allow a prospective offeror to make an informed business judgment as to whether a copy of the solicitation should be requested. (2) Do not include In Item 17 the CBD supply or service classification code from Item 6.	(c) *General format for Item 17, "Description."* (1) Prepare a clear and concise description of the supplies or services that is not unnecessarily restrictive of competition and will allow a prospective offeror to make an informed business judgment as to whether a copy of the solicitation should be requested. (2) Do not include In Item 17 the CBD supply or service classification code from Item 6.
* * * * *	* * * * *
	(xi) For a contract action in an amount estimated to be greater than $25,000 but not greater than the simplified acquisition threshold, enter (A) a description of the procedures to be used in awarding the contract (e.g., request for oral or written quotation or solicitation), and (B) the anticipated award date. [FAC 90-29]
~~(xi)~~ * * * * *	**(xii)** * * * * *
~~(xii)~~ Numbered notes (see 5.207(e)), including instructions for set-asides for small businesses ~~and labor surplus area concerns~~.	**(xiii)** Numbered notes (see 5.207(e)), including instructions for set-asides for small businesses. [FAC 90-32]
~~(xiii)~~ In the case of contract actions ~~under Subpart 6.3~~, insert a statement of the reason justifying other than full and open competition, and identify the intended source(s) (see 5.207(e)(3)).	**(xiv)** In the case of **noncompetitive** contract actions, insert a statement of the reason justifying other than full and open competition, and identify the intended source(s) (see 5.207(e)(3)). [FAC 90-29]
~~(xiv)~~ * * * * *	**(xv)** * * * * *
~~(xv)~~ * * * * *	**(xvi)** * * * * *
	(xvii) If the solicitation will be made available to interested parties through electronic data interchange, provide any information necessary to obtain and respond to the solicitation electronically. [FAC 90-29]
(d) *Set-asides*. When the proposed acquisition provides for a total or partial small business ~~or labor surplus area (LSA)~~ set aside, the appropriate CBD Numbered Note will be cited.	(d) *Set-asides*. When the proposed acquisition provides for a total or partial small business set aside, the appropriate CBD Numbered Note will be cited. [FAC 90-32]
* * * * *	* * * * *

(e) *Numbered Notes.* * * * * * * * * * *	(e) *Numbered Notes.* * * * * * **(4) If, under the proposed acquisition, the Government does not intend to acquire a commercial item using Part 12, the synopsis shall refer to Numbered Note 26.** [FAC 90-32] * * * * *

5.301 General.

FAR as of FAC 90-25	*FAR as revised*
(a) Except for contract actions described in paragraph (b) of this section, contracting officers shall synopsize in the Commerce Business Daily (CBD) awards exceeding $25,000 that (1) are subject to the Trade Agreements Act (see 25.402 and 25.403), or (2) are likely to result in the award of any subcontracts. However, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.	(a) Except for contract actions described in paragraph (b) of this section, contracting officers shall synopsize in the Commerce Business Daily (CBD) awards exceeding $25,000 that (1) are subject to the Trade Agreements Act (see 25.402 and 25.403), or (2) are likely to result in the award of any subcontracts. However, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.
(b) A notice is not required under paragraph (a) of this section if— * * * *	(b) A notice is not required under paragraph (a) of this section if— * * * *
(4) The contract action is an order placed under ~~a requirements contract~~;	(4) The contract action is an order placed under **Subpart 16.5**; [FAC 90-33]
* * * *	* * * *
(5) * * * * ; ~~or~~	(5) * * * * ;
(6) The award is for utility services, other than telecommunications services, and only one source is available.	(6) The award is for utility services, other than telecommunications services, and only one source is available; **or**
	(7) The contract action is for an amount greater than $25,000 but not greater than the simplified acquisition threshold, the contract action is made by a contracting office that has been certified as having implemented a system with interim (until December 31, 1999) or full (after December 31, 1999) FACNET, and the contract action has been made through FACNET; or [FAC 90-29]
	(8) The award is for the services of an expert to support the Federal Government in any current or anticipated litigation or dispute pursuant to the exception to full and open competition authorized at 6.302-3. [FAC 90-31]

5.404 Release of long-range acquisition estimates.

5.404-1 Release procedures.

FAR as of FAC 90-25	*FAR as revised*
(a) * * * * *	(a) * * * * *
(b) *Conditions*. The agency head shall ensure that—	(b) *Conditions*. The agency head shall ensure that—
* * * * *; and	* * * * *; and
(6) Each release—	(6) Each release—
* * * * *	* * * * *
(ii) Contains, if applicable, a statement that small business ~~or LSA~~ set-asides may be involved, but that a determination can be made only when acquisition action is initiated; and	(ii) Contains, if applicable, a statement that small business set-asides may be involved, but that a determination can be made only when acquisition action is initiated; and [FAC 90-32]
* * * * *	* * * * *

5.503 Procedures.

FAR as of FAC 90-25	*FAR as revised*
(a) *General.* Orders for paid advertisements may be placed directly with the media or through an advertising agency. Contracting officers shall give small ~~and disadvantaged~~ business concerns maximum opportunity to participate in these acquisitions.	(a) *General.* Orders for paid advertisements may be placed directly with the media or through an advertising agency. Contracting officers shall give small**, small disadvantaged and women-owned small** business concerns maximum opportunity to participate in these acquisitions. [FAC 90-32]
(b) *Rates.* * * * * *	(b) *Rates.* * * * * *
(c) *Forms*. (1) When contracting directly with the media for advertising, contracting officers shall—	(c) *Forms*. (1) When contracting directly with the media for advertising, contracting officers shall—
(i) Use Standard Form 26, Award/Contract, or Standard Form 1447, Solicitation/Contract, when the dollar amount of the acquisition exceeds the ~~small purchase dollar limitations (see 13.000)~~; or	(i) **Shall** use Standard Form 26, Award/Contract, or Standard Form 1447, Solicitation/Contract, when the dollar amount of the acquisition exceeds the **simplified acquisition threshold**; or [FAC 90-29]
(ii) Use Optional Form 347, Order for Supplies or Services, or an approved agency form, when the dollar amount of the acquisition does not exceed the ~~small purchase dollar limitations (see 13.000)~~.	(ii) **May** use Optional Form 347, Order for Supplies or Services, or an approved agency form, when the dollar amount of the acquisition does not exceed **the threshold for use of simplified acquisition procedures (see Part 13).** [FAC 90-29]
* * * * *	* * * * *

PART 6

COMPETITION REQUIREMENTS

6.001 Applicability.

FAR as of FAC 90-25	*FAR as revised*
This part applies to all acquisitions except— * * * * *	This part applies to all acquisitions except— * * * * * **(f) Orders placed against task order and delivery order contracts entered into pursuant to Subpart 16.5.** [FAC 90-33]

6.202 Establishing or maintaining alternative sources.

FAR as of FAC 90-25	*FAR as revised*
(a) Agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would— (1) Increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition, ~~of such supplies or services~~; (2) Be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization; or (3) Be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.	(a) Agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would— (1) Increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition; (2) Be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization; (3) Be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center; **(4) Ensure the continuous availability of a reliable source of supplies or services;** **(5) Satisfy projected needs based on a history of high demand; or** **(6) Satisfy a critical need for medical, safety, or emergency supplies.** [FAC 90-31]

6.203 Set-asides for small business concerns.

FAR as of FAC 90-25	*FAR as revised*
6.203 Set-asides for small business a~~nd labor surplus area concerns.~~	6.203 Set-asides for small business.
(a) To fulfill the statutory requirements relating to small business concerns ~~and labor surplus area concerns~~, contracting officers may set aside solicitations to allow only such business concerns to compete. This includes contract actions conducted under the Small Business Innovation Research Program established under Pub. L. 97-219.	(a) To fulfill the statutory requirements relating to small business concerns, contracting officers may set aside solicitations to allow only such business concerns to compete. This includes contract actions conducted under the Small Business Innovation Research Program established under Pub. L. 97-219.
(b) No separate justification or determination and findings is required under this part to set aside a contract action for small business ~~or labor surplus area~~ concerns.	(b) No separate justification or determination and findings is required under this part to set aside a contract action for small business concerns.
(c) Subpart 19.5 prescribes policies and procedures that shall be followed with respect to ~~small business~~ set-asides.	(c) Subpart 19.5 prescribes policies and procedures that shall be followed with respect to set-asides.
~~(d) Subpart 20.2 prescribes policies and procedures that shall be followed with respect to labor surplus area set-asides.~~	[FAC 90-32]

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

FAR as of FAC 90-25	*FAR as revised*
(a) (2) Full and open competition need not be provided for when it is necessary to award the contract to a particular source or sources in order (i) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization, or (ii) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.	(a) (2) Full and open competition need not be provided for when it is necessary to award the contract to a particular source or sources in order (i) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization, (ii) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center, **or (iii) to acquire the services of an expert for any current or anticipated litigation or dispute**.
	(b) * * * * * (3) Use of the authority in paragraph (a)(2)(iii) of this subsection may be appropriate when it is necessary to acquire the services of either—
	(i) An expert to use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute)

involving the Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, whether or not the expert is expected to testify. Examples of such services include, but are not limited to:

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

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

(ii) A neutral person, e.g., mediators or arbitrators, to facilitate the resolution of issues in an alternative dispute resolution process. [FAC 90-31]

6.302-5 Authorized or required by statute.

FAR as of FAC 90-25	*FAR as revised*
a) *Authority*. (1) Citations: 10 U.S.C. 2304(c)(5) or 41 U.S.C. 253(c)(5). (2) Full and open competition need not be provided for when (i) a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source, or (ii) the agency's need is for a brand name commercial item for authorized resale. (b) *Application*. This authority may be used when statutes, such as the following, expressly authorize or require that acquisition be made from a specified source or through another agency: (1) Federal Prison Industries (UNICOR)—18 U.S.C. 4124 (see Subpart 8.6); (2) Qualified Nonprofit Agencies for the Blind or other Severely Handicapped—41 U.S.C. 46-48c (see Subpart 8.7); (3) Government Printing and Binding—44 U.S.C. 501-504, 1121 (see Subpart 8.8); or (4) Sole source awards under the 8(a) Program-15 U.S.C. 637 (see Subpart 19.8).	a) *Authority*. (1) Citations: 10 U.S.C. 2304(c)(5) or 41 U.S.C. 253(c)(5). (2) Full and open competition need not be provided for when (i) a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source, or (ii) the agency's need is for a brand name commercial item for authorized resale. (b) *Application*. This authority may be used when statutes, such as the following, expressly authorize or require that acquisition be made from a specified source or through another agency: (1) Federal Prison Industries (UNICOR)—18 U.S.C. 4124 (see Subpart 8.6); (2) Qualified Nonprofit Agencies for the Blind or other Severely Handicapped—41 U.S.C. 46-48c (see Subpart 8.7); (3) Government Printing and Binding—44 U.S.C. 501-504, 1121 (see Subpart 8.8); or (4) Sole source awards under the 8(a) Program-15 U.S.C. 637 (see Subpart 19.8).

(c) *Limitations*. (1) *[See below for text. Para (1) is now para (3).]*

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

(i) Identifies the entity involved;

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

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

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

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

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

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

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

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

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

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

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

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

[FAC 90-31]

6.303 Justifications.

6.303-2 Content.

FAR as of FAC 90-25	*FAR as revised*
(a) Each justification shall contain sufficient facts and rationale to justify the use of the specific authority cited. As a minimum, each justification shall include the following information: … (8) A description of the market ~~survey~~ conducted (see ~~7.101~~) and the results or a statement of the reason~~s a~~ market ~~survey~~ was not conducted.	(a) Each justification shall contain sufficient facts and rationale to justify the use of the specific authority cited. As a minimum, each justification shall include the following information: … (8) A description of the market **research** conducted (see Part 10) and the results or a statement of the reason market **research** was not conducted. [FAC 90-32]

6.304 Approval of the justification.

FAR as of FAC 90-25	*FAR as revised*
(a) Except for paragraph (b) of this section, the justification for other than full and open competition shall be approved in writing— (1) For a proposed contract not exceeding $100,000, the contracting officer's certification required by 6.303-2(a)(12) will serve as approval unless a higher approving level is established in agency procedures. (2) For a proposed contract over $100,000 but not exceeding $1,000,000, by the competition advocate for the procuring activity designated pursuant to 6.501. This authority is not delegable. (3) For a proposed contract over $1,000,000 but not exceeding $10,000,000, by the head of the procuring activity, or a designee who— (i) If a member of the armed forces, is a general or flag officer; or (ii) If a civilian, is serving in a position in grade GS 16 or above under the General Schedule (or in a comparable or higher position under another schedule). (4) Except for DOD, NASA, and the Coast Guard, for a proposed contract over $10,000,000, by the senior procurement executive of the agency designated pursuant to the OFPP Act (41 U.S.C. 414(3)) in accordance with agency procedures. This authority is not delegable.	(a) Except for paragraph (b) of this section, the justification for other than full and open competition shall be approved in writing— (1) For a proposed contract not exceeding $100,000, the contracting officer's certification required by 6.303-2(a)(12) will serve as approval unless a higher approving level is established in agency procedures. (2) For a proposed contract over $100,000 but not exceeding $1,000,000, by the competition advocate for the procuring activity designated pursuant to 6.501 **or an official described in paragraph (a)(3) or (a)(4) of this section**. This authority is not delegable. (3) For a proposed contract over $1,000,000 but not exceeding $10,000,000, by the head of the procuring activity, or a designee who— (i) If a member of the armed forces, is a general or flag officer; or (ii) If a civilian, is serving in a position in grade GS 16 or above under the General Schedule (or in a comparable or higher position under another schedule). (4) Except for DOD, NASA, and the Coast Guard, for a proposed contract over $10,000,000, by the senior procurement executive of the agency designated pursuant to the OFPP Act (41 U.S.C. 414(3)) in accordance with agency procedures. This authority is not delegable. [FAC 90-31]

6.501 Requirement.

FAR as of FAC 90-25	*FAR as revised*
As required by Section 20 of the Office of Federal Procurement Policy Act, the head of each executive agency shall designate a competition advocate for the agency and for each procuring activity of the agency. The competition advocates shall— (a) Be in positions other than that of the agency senior procurement executive; (b) Not be assigned any duties or responsibilities that are inconsistent with 6.502 below; and (c) Be provided with staff or assistance (e.g., specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small ~~and disadvantaged~~ business concerns), as may be necessary to carry out the advocate's duties and responsibilities.	As required by Section 20 of the Office of Federal Procurement Policy Act, the head of each executive agency shall designate a competition advocate for the agency and for each procuring activity of the agency. The competition advocates shall— (a) Be in positions other than that of the agency senior procurement executive; (b) Not be assigned any duties or responsibilities that are inconsistent with 6.502 below; and (c) Be provided with staff or assistance (e.g., specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small business concerns), as may be necessary to carry out the advocate's duties and responsibilities. [FAC 90-32]

6.502 Duties and responsibilities.

FAR as of FAC 90-25	*FAR as revised*
[from (a)] ~~(1) Be~~ responsible for challenging barriers to ~~and~~ promoting full and open competition ~~in the acquisition of supplies and services by the agency~~;	**(a) Agency and procuring activity competition advocates are** responsible for **promoting the acquisition of commercial items,** promoting full and open competition**, challenging requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics, and** challenging barriers to **the acquisition of commercial items and full and open competition such as unnecessarily restrictive statements of work, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.**
~~(a)~~ Agency competition advocates shall— ~~(2)~~ Review the contracting operations of the agency and identify and report to the agency senior procurement executive—	**(b)** Agency competition advocates shall— **(1)** Review the contracting operations of the agency and identify and report to the agency senior procurement executive— **(i) Opportunities and actions taken to acquire commercial items to meet the needs of the agency;**
~~(i)~~ Opportunities and actions taken to achieve full and open competition in the contracting operations of the agency; ~~and~~	**(ii)** Opportunities and actions taken to achieve full and open competition in the contracting operations of the agency;

~~(ii)~~ Any condition or action that has the effect of unnecessarily restricting competition in the contract actions of the agency;	**(iii)** Actions taken to challenge requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics; **(iv) Any condition or action that has the effect of unnecessarily restricting the acquisition of commercial items or competition in the contracting actions of the agency;**
~~(3)~~ Prepare and submit an annual report to the agency senior procurement executive, in accordance with agency procedures, describing— (i) Such advocate's activities under this subpart;	**(2)** Prepare and submit an annual report to the agency senior procurement executive, in accordance with agency procedures, describing— (i) Such advocate's activities under this subpart; **(ii) New initiatives required to increase the acquisition of commercial items;**
~~(ii)~~ New initiatives required to increase competition;	**(iii)** New initiatives required to increase competition; **(iv) New initiatives to ensure requirements are stated in terms of functions to be performed, performance required or essential physical characteristics;**
~~(iii)~~ Any barriers to ~~full and open~~ competition that remain; and ~~(iv)~~ Other ways in which the agency has emphasized competition in areas such as acquisition train-ing and research;	**(v)** Any barriers to **the acquisition of commercial items or** competition that remain; and **(vi)** Other ways in which the agency has emphasized **the acquisition of commercial items and** competition in areas such as acquisition training and research.
~~(4)~~ Recommend to the senior procurement executive of the agency goals and plans for increasing competition on a fiscal year basis; and ~~(5)~~ Recommend to the senior procurement executive of the agency a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition. ~~(b) Procuring activity competition advocates designated pursuant to 6.501 shall be responsible for—~~ ~~(1) Promoting full and open competition in the procuring activity; and~~ ~~(2) Challenging barriers to such competition, including unnecessarily detailed specifications and unnecessarily restrictive statements of need.~~	**(3)** Recommend to the senior procurement executive of the agency goals and plans for increasing competition on a fiscal year basis; and **(4)** Recommend to the senior procurement executive of the agency a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition. [FAC 90-32]

PART 7

ACQUISITION PLANNING

7.101 Definitions.

FAR as of FAC 90-25	*FAR as revised*
* * * * * ~~"Market survey" means attempts to ascertain whether other qualified sources capable of satisfying the Government's requirements exist. This testing of the marketplace may range from written or telephone contacts with knowledgeable federal and non-federal experts regarding similar or duplicate requirements, and the results of any market test recently undertaken, to the more formalsources-sought announcements in pertinent publications(e.g., technical/scientific journals, or the Commerce Business Daily), or solicitations for information or planning purposes. (See 15.405.)~~ * * * * *	[FAC 90-32]

7.102 Policy.

FAR as of FAC 90-25	*FAR as revised*
Agencies shall perform acquisition planning and conduct market ~~surveys~~ for all acquisitions in order to promote and provide for full and open competition (see Part 6), or, when full and open competition is not required in accordance with Part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies and services to be acquired (41 U.S.C. 253a(a)(1)). This planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner. Agencies that have a detailed acquisition planning system in place that generally meets the requirements of 7.104 and 7.105 need not revise their system to specifically meet all of these requirements.	**(a)** Agencies shall perform acquisition planning and conduct market **research (see Part 10)** for all acquisitions in order to promote and provide for— **(1) Acquisition of commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items, to the maximum extent practicable (10 U.S.C. 2377 and 41 U.S.C. 251, et seq.); and** **(2)** Full and open competition (see Part 6) or, when full and open competition is not required in accordance with Part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired (**10 U.S.C. 2301(a)(5) and** 41 U.S.C. 253a(a)(1)). **(b) This planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition.**

The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner. Agencies that have a detailed acquisition planning system in place that generally meets the requirements of 7.104 and 7.105 need not revise their system to specifically meet all of these requirements. [FAC 90-32]

7.103 Agency-head responsibilities.

FAR as of FAC 90-25	*FAR as revised*
The agency head or a designee shall prescribe procedures for—	The agency head or a designee shall prescribe procedures for—
[from 7.102]: ~~Agencies shall perform acquisition planning and conduct market surveys for all acquisitions in order to promote and provide~~ for full and open competition (see Part 6), or, when full and open competition is not required in accordance with Part 6, ~~to obtain~~ competition to the maximum extent practicable, with due regard to the nature of the supplies and services to be acquired (41 U.S.C. 253a(a)(1)). ~~* * * * *~~]	**(a) Promoting and providing** for full and open competition (see Part 6) or, when full and open competition is not required in accordance with Part 6, **for obtaining** competition to the maximum extent practicable, with due regard to the nature of the supplies and services to be acquired (41 U.S.C. 253a(a)(1)). [FAC 90-27]
~~(a) Ensuring that in no case is a contract entered into without full and open competition on the basis of a lack of acquisition planning or concerns related to the amount of funds available to the agency for acquisitions (10 U.S.C. 2304(f)(5) and 41 U.S.C. 253f(5)(A)).~~ ~~(b)~~ * * * * * ~~(c)~~ * * * * * ~~(d)~~ * * * * * ~~(e)~~ * * * * * ~~(r)~~ * * * * * ~~(t)~~ * * * * * ~~(h)~~ * * * * * ~~(i)~~ * * * * * ~~(j)~~ * * * * * ~~(k)~~ * * * * *	**(b) Encouraging offerors to supply commercial items, or to the extent that commercial items suitable to meet the agency needs are not available, nondevelopmental items in response to agency solicitations (10 U.S.C. 2377 and 41 U.S.C. 251, *et seq*.); and** [FAC 90-32] **(c)** * * * * * **(d)** * * * * * **(e)** * * * * * **(f)** * * * * * **(g)** * * * * * **(h)** * * * * * **(i)** * * * * * **(j)** * * * * * **(k)** * * * * * **(l)** * * * * *
~~(l)~~ Ensuring that agency planners include use of the metric system of measurement in proposed acquisitions in accordance with 15 U.S.C. 205b (see ~~10.002(c))~~ and agency metric plans and guidelines.	**(m)** Ensuring that agency planners include use of the metric system of measurement in proposed acquisitions in accordance with 15 U.S.C. 205b (see **11.001(b))** and agency metric plans and guidelines. [FAC 90-32]

(n) Ensuring that agency planners specify needs and develop plans, drawings, work statements, specifications, or other product descriptions promoting the use of environmentally preferable and energy-efficient products and services (e.g., promoting energy conservation and the use of recovered material content and the elimination or reduction of ozone-depleting substances usage), and that these are considered in the evaluation and award of contracts, as appropriate (see Part 23). [FAC 90-27]

(o) Making a determination, prior to issuance of a solicitation for advisory and assistance services involving the analysis and evaluation of proposals submitted in response to a solicitation, that a sufficient number of covered personnel with the training and capability to perform an evaluation and analysis of proposals submitted in response to a solicitation are not readily available within the agency or from another Federal agency in accordance with the guidelines at FAR 37.204. [FAC 90-33]

7.105 Contents of written acquisition plans.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(a) *Acquisition background and objectives.* * * * * *	(a) *Acquisition background and objectives.* * * * * *
(5) *Delivery or performance-period requirements.* Describe the basis for establishing delivery or performance-period requirements (see ~~Subpart 12.1).~~ Explain and provide reasons for any urgency if it results in concurrency of development and production or constitutes justification for not providing for full and open competition.	(5) *Delivery or performance-period requirements.* Describe the basis for establishing delivery or performance-period requirements (see **Subpart 11.4**). Explain and provide reasons for any urgency if it results in concurrency of development and production or constitutes justification for not providing for full and open competition. [FAC 90-32]
* * * * *	* * * * *
(8) *Acquisition streamlining*. If specifically desig-nated by the requiring agency as a program subject to acquisition streamlining, discuss plans and proceduresto (i) * * * * *; (ii) * * * * * (iii) state the timeframe for identifying which of those specifications and standards, originally provided for guidance only, shall become mandatory ~~(see 10.002(c)).~~	(8) *Acquisition streamlining*. If specifically desig-nated by the requiring agency as a program subject to acquisition streamlining, discuss plans and proceduresto (i) * * * * *; (ii) * * * * * (iii) state the timeframe for identifying which of those specifications and standards, originally provided for guidance only, shall become mandatory. [FAC 90-32]

(b) *Plan of action.* (1) *Sources.* Indicate the prospective sources of supplies and/or services that can meet the need. Consider required sources of supplies and services (see Part 8). Include consideration of small business, small disadvantaged business, ~~and labor surplus area concerns (see Parts 19 and 20). If the acquisition or a part of it is for commercial or commercial-type products (see Part 11),address the results of market research and analysis andindicate their impact on the various elements of the plan. If the acquisition or part of it is for other than commercial or commercial-type products,~~ address the extent and results of the market ~~survey conducted or the reasons one was not or will not be conducted.~~

* * * * *

(b) *Plan of action*—(1) *Sources.* Indicate the prospective sources of supplies and/or services that can meet the need. Consider required sources of supplies or services (see Part 8). Include consideration of small business, small disadvantaged business, **and women-owned small business concerns (see Part 19).** Address the extent and results of the market **research and indicate their impact on the various elements of the plan (see Part 10).** [FAC 90-32]

* * * * *

(6) *Product descriptions.* In accordance with Part ~~10,~~ explain the choice of product description types to be used in the acquisition.

(6) *Product descriptions.* In accordance with Part **11**, explain the choice of product description types to be used in the acquisition. [FAC 90-32]

(7) *Priorities, allocations, and allotments.* When urgency of the requirement dictates a particularly short delivery or performance schedule, certain priorities may apply. If so, specify the method for obtaining and using priorities, allocations, and allotments, and the reasons for them (~~see Subpart 12.3~~).

* * * * *

(7) *Priorities, allocations, and allotments.* When urgency of the requirement dictates a particularly short delivery or performance schedule, certain priorities may apply. If so, specify the method for obtaining and using priorities, allocations, and allotments, and the reasons for them (**see Subpart 11.6**). [FAC 90-32]

* * * * *

(12) *Logistics considerations.* Describe—

(i) The assumptions determining contractor or agency support, both initially and over the life of the acquisition, including consideration of contractor or agency maintenance and servicing (see Subpart 7.3) and distribution of commercial ~~products (see Part 11);~~

* * * * *

(12) *Logistics considerations.* Describe—

(i) The assumptions determining contractor or agency support, both initially and over the life of the acquisition, including consideration of contractor or agency maintenance and servicing (see Subpart 7.3) and distribution of commercial **items**; [FAC 90-32]

* * * * *

(15) *Environmental ~~considerations~~.* Discuss environmental ~~issues~~ associated with the acquisition, the applicability of an environmental assessment or environmental impact statement (see 40 CFR 1502), the proposed resolution of environmental issues, and any environment-related requirements to be included in solicitations and contracts.

* * * * *

(15) *Environmental **and energy conservation objectives***. Discuss **all applicable** environmental **and energy conservation objectives** associated with the acquisition **(see Part 23)**, the applicability of an **environmental assessment or** environmental impact statement (see 40 CFR 1502), the proposed resolution of environmental issues, and any environmentally-related requirements to be included in solicitations and contracts. [FAC 90-27]

* * * * *

(17) *Other considerations.* Discuss, as applicable, ~~energy conservation measures,~~ standardization concepts, the industrial readiness program, the Defense Production Act, the Occupational Safety and Health Act, foreign sales implications, and any other matters germane to the plan not covered elsewhere. * * * * *	(17) *Other considerations.* Discuss, as applicable, standardization concepts, the industrial readiness program, the Defense Production Act, the Occupational Safety and Health Act, foreign sales implications, and any other matters germane to the plan not covered elsewhere. [FAC 90-27] * * * * *

7.304 Procedures.

FAR as of FAC 90-25	*FAR as revised*
(b) *Cost estimate* * * * * * (3) Submit to the contracting officer the completed form and all necessary detailed supporting data in a sealed, dated envelope not later than the time established for receipt of initial proposals or bid opening. If more time is needed to develop the Government's cost estimate, the contracting officer shall amend the opening date of the solicitation.	(b) *Cost estimate* * * * * * (3) Submit to the contracting officer the completed form and all necessary detailed supporting data in a sealed, dated envelope, **or electronic equivalent**, not later than the time established for receipt of initial proposals or bid opening. If more time is needed to develop the Government's cost estimate, the contracting officer shall amend the opening date of the solicitation. [FAC 90-29]

7.306 Evaluation.

FAR as of FAC 90-25	*FAR as revised*
(a) *Sealed bidding.* (1) At the public bid opening, after recording of bids, the contracting officer shall— (i) Open the sealed ~~envelope containing the~~ cost comparison ~~form on~~ which the cost estimate for Government performance has been entered;	(a) *Sealed bidding.* (1) At the public bid opening, after recording of bids, the contracting officer shall— (i) Open the sealed cost comparison on which the cost estimate for Government performance has been entered; [FAC 90-29]

7.307 Appeals.

FAR as of FAC 90-25	*FAR as revised*
* * * * * (b) The Circular provides that the appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and shall not apply to questions concerning selection of one contractor in preference to another, which shall be treated as prescribed in 14.40~~7~~-8, Protests against award. * * * * *	* * * * * (b) The Circular provides that the appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and shall not apply to questions concerning selection of one contractor in preference to another, which shall be treated as prescribed in 14.40**8**-8, Protests against award. * * * * * [FAC 90-29]

PART 8

REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.404 Using schedules.

FAR as of FAC 90-25	*FAR as revised*
(a) *General.* When agency requirements are to be satisfied through the use of Federal Supply Schedules as set forth in this subpart 8.4, the policies and procedures of FAR Part 13 do not apply. When placing orders under a Federal Supply Schedule, ordering activities need not seek further competition, synopsize the requirement, or make a separate determination of fair and reasonable pricing.	(a) *General.* When agency requirements are to be satisfied through the use of Federal Supply Schedules as set forth in this subpart 8.4, the policies and procedures of FAR Part 13 do not apply. When placing orders under a Federal Supply Schedule, ordering activities need not seek further competition, synopsize the requirement, make a separate determination of fair and reasonable pricing, **or consider small business set-asides in accordance with 19.5.**

8.405-2 Order placement.

FAR as of FAC 90-25	*FAR as revised*
Ordering offices may use Optional Form 347, ~~or~~ an agency-prescribed form, to order items from schedules and shall place orders directly with the contractor within the limitations specified in each schedule. Orders shall include, at a minimum, the following information in addition to any information required by the schedule: * * * * *	Ordering offices may use Optional Form 347, an agency-prescribed form, **or an established electronic communications format** to order items from schedules and shall place orders directly with the contractor within the limitations specified in each schedule. Orders shall include, at a minimum, the following information in addition to any information required by the schedule: [FAC 90-29] * * * * *

8.705-3 Allocation process.

FAR as of FAC 90-25	*FAR as revised*
(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 "JWOD 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 "JWOD participating nonprofit agency" to produce the supplies or provide the service within the required delivery or performance schedule.	(a) When the direct order process has not been authorized, the ordering office shall submit a **written** request for allocation (requesting the designation of the "JWOD 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 "JWOD participating nonprofit agency" to produce the supplies or provide the service within the required delivery or performance schedule. [FAC 90-29]

8.1104 Contract clauses.

FAR as of FAC 90-25	*FAR as revised*
The contracting officer shall insert the following clauses in solicitations and contracts for leasing of motor vehicles, unless the motor vehicles are leased in foreign countries: * * * * * (e) The provisions and clauses prescribed elsewhere in the FAR for solicitations and contracts for supplies when a fixed-price contract is contemplated, but excluding — (1) The clause at ~~52.212-9,~~ Variation in Quantity; * * * * *	The contracting officer shall insert the following clauses in solicitations and contracts for leasing of motor vehicles, unless the motor vehicles are leased in foreign countries: * * * * * (e) The provisions and clauses prescribed elsewhere in the FAR for solicitations and contracts for supplies when a fixed-price contract is contemplated, but excluding — (1) The clause at **52.211-16**, Variation in Quantity; [FAC 90-32] * * * * *

PART 9

CONTRACTOR QUALIFICATIONS

9.104-1 General standards.

FAR as of FAC 90-25	*FAR as revised*
To be determined responsible, a prospective contractor must— * * * * * (c) Have a satisfactory performance record (see 9.104-3(c)); * * * * *	To be determined responsible, a prospective contractor must— * * * * * (c) Have a satisfactory performance record (see 9.104-3(c) **and Subpart 42.15). A prospective contractor shall not be determined responsible or nonresponsible solely on the basis of a lack of relevant performance history, except as provided in 9.104-2**; [FAC 90-26] * * * * *

9.104-3 Application of standards.

FAR as of FAC 90-25	*FAR as revised*
* * * * * (c) *Satisfactory performance record.* A prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be nonresponsible, unless the contracting officer determines that the circumstances were properly beyond the contractor's control, or that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of nonresponsibility. Failure to meet the quality requirements of the contract is a significant factor to consider in determining satisfactory performance. The contracting officer shall consider the number of contracts involved and the extent of deficient performance in each contract when making this determination. If the pending contract requires a subcontracting plan pursuant to Subpart 19.7, Subcontracting with ~~Small Business and Small Disadvantaged Business Concerns~~, the contracting officer shall also consider the prospective contractor's compliance with subcontracting plans under recent contracts. * * * * *	* * * * * (c) *Satisfactory performance record*. A prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be nonresponsible, unless the contracting officer determines that the circumstances were properly beyond the contractor's control, or that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of nonresponsibility. Failure to meet the quality requirements of the contract is a significant factor to consider in determining satisfactory performance. The contracting officer shall consider the number of contracts involved and the extent of deficient performance in each contract when making this determination. If the pending contract requires a subcontracting plan pursuant to Subpart 19.7, Subcontracting with **Small, Small Disadvantaged Business and Women-Owned Small Business Concerns**, the contracting officer shall also consider the prospective contractor's compliance with subcontracting plans under recent contracts. [FAC 90-32] * * * * *

9.105-1 Obtaining information.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(c) The contracting officer should use the following sources of information to support determinations of responsibility or nonresponsibility: (1) The ~~list entitled~~ Parties Excluded from Procurement Programs ~~(list of contractors debarred, suspended, proposed for debarment, and declared ineligible)~~ maintained in accordance with Subpart 9.4.	(c) **In making the determination of responsibility (see 9.104-1(c)), the contracting officer shall consider relevant past performance information (see Subpart 42.15). In addition**, the contracting officer should use the following sources of information to support such determinations: [FAC 90-26] (1) The **List of** Parties Excluded from **Federal** Procurement **and Nonprocurement** Programs maintained in accordance with Subpart 9.4. [FAC 90-28]
* * * * *	* * * * *

9.106-1 Conditions for preaward surveys.

FAR as of FAC 90-25	*FAR as revised*
(a) A preaward survey is normally required when the information on hand or readily available to the contracting officer is not sufficient to make a determination regarding responsibility. However, if the contemplated contract ~~(1) will be for $25,000 or less or (2)~~ will have a fixed price ~~of less than $100,000 and~~ will involve commercial ~~products (see 11.001) only~~, the contracting officer should *not* request a preaward survey unless circumstances justify its cost.	(a) A preaward survey is normally required when the information on hand or readily available to the contracting officer is not sufficient to make a determination regarding responsibility. However, if the contemplated contract will have a fixed price **at or below the simplified acquisition threshold or** will involve **the acquisition of** commercial **items (see Part 12),** the contracting officer should not request a preaward survey unless circumstances justify its cost. [FAC 90-32]
* * * * *	* * * * *

9.206-3 Competition.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(b) *Posts olicitation.* The contracting officer shall submit to the agency activity which established the qualification requirement the names and addresses of concerns which ~~requested copies of the solicitation~~ but are not included on the applicable QPL, QML, or QBL or identified as meeting the qualification requirement. The activity will then assist interested concerns in meeting the standards specified for qualification (see 9.202(a)(2) and (4)).	(b) *Posts olicitation.* The contracting officer shall submit to the agency activity which established the qualification requirement the names and addresses of concerns which **expressed interest in the acquisition** but are not included on the applicable QPL, QML, or QBL or identified as meeting the qualification requirement. The activity will then assist interested concerns in meeting the standards specified for qualification (see 9.202(a)(2) and (4)). [FAC 90-28]

9.306 Solicitation requirements.

FAR as of FAC 90-25	*FAR as revised*
Solicitations containing a testing and approval requirement shall— * * * * * (f) Contain a delivery schedule for the production quantity ~~(see 12.104)~~. The delivery schedule may— * * * * *	Solicitations containing a testing and approval requirement shall— * * * * * (f) Contain a delivery schedule for the production quantity **(see 11.404).** The delivery schedule may— [FAC 90-32] * * * * *

9.401 Applicability.

FAR as of FAC 90-25	*FAR as revised*
~~This subpart does not apply to the exclusion of participants or principals from Federal financial or nonfinancial assistance programs and benefits pursuant to Executive Order 12549. Such exclusions are contained within the list entitled Parties Excluded from Nonprocurement Programs of the lists of Parties Excluded from Federal Procurement or Nonprocurement Programs~~.	**In accordance with Public Law 103-355, Section 2455 (31 U.S.C. 6101, note), and Executive Order 12689, any debarment, suspension or other Government-wide exclusion initiated under the Nonprocurement Common Rule implementing Executive Order 12549 on or after August 25, 1995, shall be recognized by and effective for Executive Branch agencies as a debarment or suspension under this subpart. Similarly, any debarment, suspension, proposed debarment or other Government-wide exclusion initiated on or after August 25, 1995, under this subpart shall also be recognized by and effective for those agencies and participants as an exclusion under the Nonprocurement Common Rule**. [FAC 90-28]

9.403 Definitions.

FAR as of FAC 90-25	*FAR as revised*
* * * * * *"Parties Excluded from Procurement Programs,"* ~~formerly referred to as the Consolidated List of Debarred, Suspended, and Ineligible Contractors~~, means a list compiled, maintained, and distributed by the General Services Administration, ~~in accordance with 9.404~~, containing the names of ~~contractors~~ debarred, suspended, or proposed for debarment ~~by agencies under the procedures of this~~	* * * * * ***List of*** *Parties Excluded from Federal Procurement* ***and Nonprocurement Programs*** means a list compiled, maintained and distributed by the General Services Administration (GSA) containing the names **and other information about parties** debarred, suspended, **or voluntarily excluded under the Nonprocurement Common Rule or the Federal**

~~subpart, as well as contractors declared~~ ineligible ~~under other statutory or regulatory authority other than Executive Order 12549. The list of Parties Excluded from Procurement Programs is contained within the lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.~~	**Acquisition Regulation, parties who have been** proposed for debarment **under the Federal Acquisition Regulation, and parties determined to be** ineligible. [FAC 90-28] ***Nonprocurement Common Rule* means the procedures used by Federal Executive Agencies to suspend, debar, or exclude individuals or entities from participation in nonprocurement transactions under Executive Order 12549. Examples of nonprocurement transactions are grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements.** [FAC 90-28] * * * * *

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

FAR as of FAC 90-25	*FAR as revised*
(a) The General Services Administration (GSA) shall—	(a) The General Services Administration (GSA) shall—
(1) Compile and maintain a current, ~~consolidated~~ list of all ~~contractors~~ debarred, suspended, proposed for debarment, or declared ineligible by agencies or by the General Accounting Office; * * * * *	(1) Compile and maintain a current list of all **parties** debarred, suspended, proposed for debarment, or declared ineligible by agencies or by the General Accounting Office; [FAC 90-28] * * * * *
(b) The list ~~entitled~~ Parties Excluded from Procurement Programs shall indicate— * * * * *	(b) The List **of** Parties Excluded from **Federal** Procurement **and Nonprocurement** Programs shall indicate— [FAC 90-28]

Other sections where the name of the list was changed:

9.207(a)(9); 9.404; 9.405; 9.405-2; 22.1025; **28.203-7**; **44.202-2**; **44.303**; **52.209-6**

9.405-2 Restrictions on subcontracting.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(b) The Government suspends or debars contractors to protect the Government's interests. Contractors shall not enter into any subcontract ~~equal to or in excess of the small purchase limitation at 13.000~~ with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. If a contractor intends to subcontract with a party that is debarred, suspended, or proposed for debarment as evidenced by the parties' inclusion on the ~~list of Parties Excluded from Procurement Programs~~ (see 9.404), a corporate officer or designee of the contractor is required by operation of the clause at 52.209-6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, to notify the contracting officer, in writing, before entering into such subcontract. The notice must provide the following:	(b) The Government suspends or debars contractors to protect the Government's interests. **By operation of the clause at 52.209-6, Protecting the Government's Interests When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment,** contractors shall not enter into any subcontract **in excess of $25,000** with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. If a contractor intends to subcontract with a party that is debarred, suspended, or proposed for debarment as evidenced by the parties' inclusion on the **List of Parties Excluded from Federal Procurement and Nonprocurement Programs** (see 9.404), a corporate officer or designee of the contractor is required by operation of the clause at 52.209-6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, to notify the contracting officer, in writing, before entering into such subcontract. The notice must provide the following: [FAC 90-28; FAC 90-29; FAC 90-32]
(1) The name of the subcontractor;	(1) The name of the subcontractor;
(2) The contractor's knowledge of the reasons for the subcontractor being on the ~~list of Parties Excluded from Procurement Programs;~~	(2) The contractor's knowledge of the reasons for the subcontractor being on the **List of Parties Excluded from Federal Procurement and Nonprocurement Programs**; [FAC 90-28]
(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the ~~list of Parties Excluded from Procurement Programs~~; and	(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the **party's inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs**; and [FAC 90-28]
* * * * *	*** * * * ***

9.409 Solicitation provision and contract clause.

FAR as of FAC 90-25	*FAR as revised*
(a) The contracting officer shall insert the provision at 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, in solicitations where the contract value is expected to exceed ~~$25,000~~.	(a) The contracting officer shall insert the provision at 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, in solicitations where the contract value is expected to exceed **the simplified acquisition threshold.**
(b) The contracting officer shall insert the clause at 52.209-6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, in solicitations and contracts where the contract value exceeds $25,000.	(b) The contracting officer shall insert the clause at 52.209-6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, in solicitations and contracts where the contract value exceeds $25,000.

9.507-1 Solicitation Provisions.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(c) The contracting officer shall insert the provision at 52.209-8, Organizational Conflicts of Interest Certificate—Advisory and Assistance Services, in solicitations for advisory and assistance services if the contract amount is expected to exceed ~~$25,000~~.	(c) The contracting officer shall insert the provision at 52.209-8, Organizational Conflicts of Interest Certificate—Advisory and Assistance Services, in solicitations for advisory and assistance services if the contract is expected to exceed **the simplified acquisition threshold**.
(d) The provisions required by paragraphs (b) and (c) of this subsection shall not be used in solicitations for—	(d) The provisions required by paragraphs (b) and (c) of this subsection shall not be used in solicitations for—
(1) Services excluded in section 37.2~~04~~;	(1) Services excluded in section 37.2;
* * * * *	* * * * *

PART 10

MARKET RESEARCH

[Entire Part revised by FAC 90-32]
[Note that "before" (or left) column on pages 10-2 and 10-3 is from previous Part 11]

PART 10—MARKET RESEARCH
Sec.
10.000Scope of part.
10.001Policy.
10.002Procedures.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

10.000 Scope of part.

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

10.001 Policy.

(a) Agencies shall—

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

(2) Conduct market research appropriate to the circumstances—

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

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

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

(3) Use the results of market research to—

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

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

(A) Meet the agency's requirements;

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

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

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

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

(v) Ensure maximum practicable use of recovered materials (see Subpart 23.4) and promote energy conservation and efficiency.

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

FAR as of FAC 90-25	*FAR as revised*
~~**11.003 General.**~~	
Acquisition ~~of commercial products~~ begins with a description of the Government's needs stated in ~~functional~~ terms ~~in~~ sufficient ~~detail so that~~ market research~~ and analysis can be used to help determine whether commercial products, distribution systems, and logistics support are available to fill those needs.~~	**(a)** Acquisition**s** begin with a description of the Government's needs stated in terms sufficient **to allow conduct of** market research**.**
~~**11.004 Market research and analysis.**~~	
~~(a) *General.* Once~~ the Government's needs~~ have been functionally described,~~ market research ~~and analysis shall be~~ conducted to ~~ascertain the availability of~~ commercial ~~products~~ to meet ~~those~~ needs ~~and to identify the market practices, including warranty terms, of firms engaged in producing, distributing, and supporting these products.~~	**(b)** Market research **is then** conducted to **determine if** commercial **items or nondevelopmental items are available** to meet the Government's needs **or could be modified to meet the Government's needs.**
~~(b) *Requirements.* Agencies shall conduct market research and analysis as needed to ensure full and open competition and that the Government's needs are met in a cost effective manner.~~ The extent of market research ~~and analysis~~ will vary depending upon such factors as urgency, estimated dollar value, complexity, and past experience.	**(1)** The extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. Market research involves obtaining information **specific to the item being acquired and should include—**
~~(c) *Developing information.*~~ Market research ~~and analysis~~ involves obtaining ~~the following~~ information~~, as appropriate~~:	
~~(1) The availability of products suitable, as is or with minor modification, for meeting the need.~~	**(i) Whether the Government's needs can be met by—** **(A) Items of a type customarily available in the commercial marketplace;** **(B) Items of a type customarily available in the commercial marketplace with modifications; or** **(C) Items used exclusively for governmental purposes;** **(ii) Customary practices regarding customizing, modifying or tailoring of items to meet customer needs and associated costs;**
~~(2) The terms and conditions and~~ warranty practices under which commercial sales of the products are made.	**(iii) Customary** practices**, including** warranty**, buyer financing, discounts, etc.,** under which commercial sales of the products are made**;**

~~(3)~~ The requirements of ~~controlling~~ laws and regulations.

~~(4) The number of sales and length of time over which they must occur to provide reasonable assurance that a particular product is reliable.~~
~~(5)~~ The distribution and support capabilities of potential suppliers, including alternative arrangements and cost estimates.
~~(6) The potential cost of modifying commercial products to meet particular needs, if required.~~

~~(d) *Information sources.* The information described in paragraph (c) above may be acquired from the following sources, among others:~~
~~(1)~~ Source lists ~~for~~ items ~~of a~~ similar ~~nature maintained at~~ contracting activities~~.~~
~~(2)~~ Catalogs published by manufacturers, distributors, and dealers.
~~(3) Informational requests for quotations.~~
~~(4) Responses to advance notices and solicitation synopses published in Commerce Business Daily.~~
~~(5) GSA Federal Supply Schedules.~~
~~(6) Other Federal agencies.~~

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

(v) The availability of items that contain recovered materials and items that are energy efficient;
(vi) The distribution and support capabilities of potential suppliers, including alternative arrangements and cost estimates**; and**
(vii) Size and status of potential sources (see Part 19).

(2) Techniques for conducting market research may include any or all of the following:
(i) Contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements.
(ii) Reviewing the results of recent market research undertaken to meet similar or identical requirements.
(iii) Publishing formal requests for information in appropriate technical or scientific journals or business publications.
(iv) Querying Government data bases that provide information relevant to agency acquisitions.
(v) Participating in interactive, on-line communication among industry, acquisition personnel, and customers.
(vi) Obtaining source lists **of** similar items **from other** contracting activities **or agencies, trade associations or other sources.**
(vii) Reviewing catalogs **and other generally available product literature** published by manufacturers, distributors, and dealers **or available on-line.**
(viii) Conducting interchange meetings or holding presolicitation conferences to involve potential offerors early in the acquisition process.

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

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

(2) If market research establishes that the Government's need cannot be met by a type of item or service customarily available in the marketplace, Part 12 shall not be used. When publication of the notice at 5.201 is required, the contracting officer shall include a notice to prospective offerors that the Government does not intend to use Part 12 for the acquisition (see 5.207(e)(4)).

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

PART 11

DESCRIBING AGENCY NEEDS

[Entire Part revised by FAC 90-32]

11.000 Scope of part.

This part prescribes policies and procedures for describing agency needs.

11.001 Definitions.

***Material*, as used in this part, includes, but is not limited to, raw material, parts, items, components, and end products.**

***New*, as used in this part, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former Government surplus property.**

***Other than new*, as used in this part, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.**

***Reconditioned*, as used in this part, means restored to an earlier normal operating condition by readjustments and replacement of parts.**

***Remanufactured*, as used in this part, means factory rebuilt to new equipment performance specification and unused subsequent to rebuilding.**

11.002 Policy.

~~**10.002 Policy.**~~

FAR as of FAC 90-25	*FAR as revised*
(a) In fulfilling the requirements of 10 U.S.C. 2305(a)(1) and 41 U.S.C. 253a(a) ~~regarding the preparation for acquisition of supplies and services~~:	(a) In fulfilling requirements of 10 U.S.C. 2305(a)(1)**, 10 U.S.C. 2377,** 41 U.S.C. 253a(a)**, and 41 U.S.C. 264b, agencies shall—**
(1) ~~Agencies shall~~ specify needs in a manner designed to promote full and open competition (see Part 6) ~~for acquisitions~~. ~~(2) Agencies shall develop specifications and purchase descriptions using market research in a manner designed to promote full and open competition,~~ with due regard to the nature of the supplies or services to be acquired.	(1) Specify needs **using market research** in a manner designed to— **(i)** Promote full and open competition (see Part 6), with due regard to the nature of the supplies or services to be acquired; **and**
~~(3) In solicitations, agencies shall include specifications and purchase descriptions that—~~ ~~(i) Permit full and open competition; and~~ ~~(ii)~~ Include restrictive provisions or conditions only to the extent necessary to satisfy the minimum needs of the agency or as authorized by law.	**(ii)** Only include restrictive provisions or conditions to the extent necessary to satisfy the minimum needs of the agency or as authorized by law.

~~(4) Agencies shall prepare specifications and purchase descriptions which reflect the minimum needs of the agency and the market available to satisfy such needs. Specifications and purchase descriptions may be stated~~ in terms of—

~~(i)~~ Function, ~~so that a variety of products or services may qualify;~~

~~(ii)~~ Performance~~, including specifications of the range of acceptance characteristics or of the minimum acceptable standards; or~~

~~(iii) Design requirements.~~

(2) To the maximum extent practicable, ensure that acquisition officials—

(i) State requirements with respect to an acquisition of supplies or services in terms of—

(A) Functions **to be performed;**

(B) Performance **required; or**

(C) Essential physical characteristics;

(ii) Define requirements in terms that enable and encourage offerors to supply commercial items, or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items, in response to the agency solicitations;

(iii) Provide offerors of commercial items and nondevelopmental items an opportunity to compete in any acquisition to fill such requirements;

(iv) Require prime contractors and subcontractors at all tiers under the agency contracts to incorporate commercial items or nondevelopmental items as components of items supplied to the agency; and

(v) Modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items.

~~(b) Acquisition policies and procedures shall require descriptions of agency requirements, whenever practicable, to be stated in terms of functions to be performed or performance required.~~

~~(c)~~ The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205a, et seq.), designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce. It ~~also~~ requires that each ~~Federal~~ agency~~, by a date certain and to the extent economically feasible by the end of fiscal year 1992,~~ use the metric system of measurement in its ~~procurements~~, except to the extent that such use is

(b) The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205a, *et seq.*), designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce**, and** it requires that each agency use the metric system of measurement in its **acquisitions**, except to the extent that such use is **impracticable** or is likely to cause significant inefficiencies or loss of markets to United States

~~impractical~~ or is likely to cause significant inefficiencies or loss of markets to United States firms. Requiring activities are responsible for establishing guidance implementing this policy in formulating their requirements for acquisitions.

firms. Requiring activities are responsible for establishing guidance implementing this policy in formulating their requirements for acquisitions.

[paragraph (d) moved to new §11.101]

~~(f)~~ Requiring agencies~~, for programs which they have designated as subject to acquisition streamlining,~~ should apply specifications, standards, and related documents initially for guidance only, making final decisions on the application and tailoring of these documents as a product of the design and development process. Requiring agencies should not dictate detailed design solutions prematurely~~. The objective of acquisition streamlining is to reduce the time and cost, and improve the quality of systems acquisitions, by ensuring that contracts contain only those necessary specifications, standards, and related documents which have been tailored for application at the most appropriate time in the system acquisition cycle. To the extent practicable, contractors should be involved in~~ recommending application and tailoring~~ of such specifications, standards, and related documents in one phase for proposed application to the succeeding phase of the acquisition cycle~~.

(c) To the extent practicable and consistent with Subpart 9.5, potential offerors should be given an opportunity to comment on agency requirements or to recommend application and tailoring **of requirements documents and alternative approaches.** Requiring agencies should apply specifications, standards, and related documents initially for guidance only, making final decisions on the application and tailoring of these documents as a product of the design and development process. Requiring agencies should not dictate detailed design solutions prematurely **(see 7.101 and 7.105(a)(8)).**

(d) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*), as amended, and Executive Order 12873, dated October 20, 1993, establish requirements for the procurement of products containing recovered materials, and environmentally preferable and energy-efficient products and services. Requiring activities shall prepare plans, drawings, specifications, standards (including voluntary standards), and purchase descriptions that consider the requirements set forth in Part 23.

SUBPART 11.1—SELECTING AND DEVELOPING REQUIREMENTS DOCUMENTS

11.101 Order of precedence for requirements documents.

FAR as of FAC 90-25	*FAR as revised*
~~(d) To the maximum practicable extent, unless inconsistent with applicable law or incapable of meeting the Government's needs,~~ agencies ~~shall use the following types of product descriptions, which~~	**(a)** Agencies **may select from existing requirements documents, modify or combine existing requirements documents, or create new requirements documents to**

~~are listed in descending~~ order of ~~preference~~:
~~(1) Voluntary~~ standards~~;~~
~~(2) CID's in the acquisition of commercial or commercial-type products;~~
~~(3) Government~~ product descriptions ~~stated predominantly in terms of functions to be performed or~~ performance ~~required~~;
~~(4) Government~~ product descriptions ~~stated predominantly in terms of material, finish, schematics, tolerances, operating characteristics, component parts, or other~~ design ~~requirements~~.

meet agency needs, consistent with the following order of **precedence**:

(1) Documents mandated for use by law.

(2) Performance-**oriented documents**:

(3) Detailed design-**oriented documents**:

(4) Standards**, specifications and related publications issued by the Government outside the Defense or Federal series for the non-repetitive acquisition of items.**

(b) Agencies should prepare product descriptions **to achieve maximum practicable use of recovered material and other materials that are environmentally preferable (see Subparts 23.4 and 23.7).**

11.102 Standardization program.

Agencies shall select existing requirements documents or develop new requirements documents that meet the needs of the agency in accordance with the guidance contained in the Federal Standardization Manual and, for DOD components, DOD 4120.3-M, Defense Standardization Program Policies and Procedures. The Federal Standardization Manual may be obtained from General Services Administration, Federal Supply Service Bureau, Specifications Section, Suite 8100, 470 L'Enfant Plaza, SW, Washington, DC 20407. DOD 4120.3-M may be obtained from DOD Single Stock Point, Standardization Document Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111-5094.

11.103 Market acceptance.

(a) Section 8002(c) of Pub. L. 103-355 provides that, in accordance with agency procedures, the head of an agency may, under appropriate circumstances, require offerors to demonstrate that the items offered—

(1) Have either—

(i) Achieved commercial market acceptance; or

(ii) Been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements; and

(2) Otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation.

(b) Appropriate circumstances may, for example, include situations where the agency's minimum need is for an item that has a demonstrated reliability, performance or product support record in a specified environment. Use of market acceptance is inappropriate when new or evolving items may meet the agency's needs.

(c) In developing criteria for demonstrating that an item has achieved commercial market acceptance, the contracting officer shall ensure the criteria in the solicitation—

(1) Reflect the minimum need of the agency and are reasonably related to the demonstration of an item's acceptability to meet the agency's minimum need;

(2) Relate to an item's performance and intended use, not an offeror's capability;

(3) Are supported by market research;

(4) Include consideration of items supplied satisfactorily under recent or current Government contracts, for the same or similar items; and

(5) Consider the entire relevant commercial market, including small business concerns.

(d) Commercial market acceptance shall not be used as a sole criterion to evaluate whether an item meets the Government's requirements.

(e) When commercial market acceptance is used, the contracting officer shall document the file to—

(1) Describe the circumstances justifying the use of commercial market acceptance criteria; and

(2) Support the specific criteria being used.

11.104 Items peculiar to one manufacturer.

FAR as of FAC 90-25	*FAR as revised*
[from old 10.004(b)]	
~~(2) Purchase~~ descriptions shall not be written so as to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless—	**Agency** requirements shall not be written so as to require a particular brand-name, product, or **a** feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless—
~~(i)~~ The particular brand name, product, or feature is essential to the Government's requirements, and ~~that~~ other companies' similar products, or products lacking the particular feature, ~~would~~ not meet the minimum ~~requirements for the item~~; and	**(a)** The particular brand-name, product, or feature is essential to the Government's requirements, and **market research indicates** other companies' similar products, or products lacking the particular feature, **do** not meet, **or can not be modified to meet,** the agency's minimum **needs**; and
~~(ii)~~ The authority to contract without providing for full and open competition is supported by the required justifications and approvals (see 6.302-1).	**(b)** The authority to contract without providing for full and open competition is supported by the required justifications and approvals (see 6.302-1).

SUBPART 11.2—USING AND MAINTAINING REQUIREMENTS DOCUMENTS

11.201 Identification and availability of specifications.

~~**10.008 Identification and availability of specifications.**~~

FAR as of FAC 90-25	*FAR as revised*
(a) Solicitations citing ~~specifications~~ listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, DODISS, or other agency index shall identify each ~~specification's~~ approval date and the dates of any applicable amendments and revisions. Contracting offices will not normally furnish these cited specifications with the solicitation, except when—	(a) Solicitations citing **requirements documents** listed in the **General Services Administration** (GSA) Index of Federal Specifications, Standards and Commercial Item Descriptions, the **DoD Index of Specifications and Standards** (DoDISS), or other agency index shall identify each **document's** approval date and the dates of any applicable amendments and revisions. **Do not use general identification references, such as "the issue in effect on**

the date of the solicitation." Contracting offices will not normally furnish these cited documents with the solicitation, except when—

(1) ~~The product being acquired will be so complex that the specification~~ must be furnished with the solicitation to enable prospective contractors to make a competent initial evaluation of the solicitation;

(1) **The requirements document** must be furnished with the solicitation to enable prospective contractors to make a competent evaluation of the solicitation;

(2) In the judgment of the contracting officer, it would be impracticable for prospective contractors to obtain the ~~specifications~~ in reasonable time to respond to the solicitation; or

(2) In the judgment of the contracting officer, it would be impracticable for prospective contractors to obtain the **documents** in reasonable time to respond to the solicitation; or

(3) A prospective contractor ~~who has not previously bid on the product~~ requests a copy of ~~the specification~~.

(3) A prospective contractor requests a copy of **a Government promulgated requirements document.**

~~(b) Solicitations shall not contain general identification references such as "the issue in effect on the date of the solicitation."~~

~~(c) Solicitations citing voluntary standards shall advise offerors to obtain the standards from the publisher.~~

~~(d)~~ Contracting offices shall clearly identify in the solicitation ~~specifications and any other~~ pertinent documents not listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions or DODISS ~~and normally furnish them with the solicitation.~~

(b) Contracting offices shall clearly identify in the solicitation any pertinent documents not listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions or DoDISS. **Such documents shall be furnished with the solicitation or specific instructions shall be furnished for obtaining or examining such documents.**

~~(e)~~ When ~~specifications~~ refer to other ~~specifications~~, such references shall (1) be restricted to documents, or appropriate portions of documents, that ~~shall~~ apply in the acquisition; (2) cite the extent of their applicability; (3) not conflict with other ~~specifications~~ and provisions of the solicitation; and (4) identify all applicable first tier references.

(c) When **documents** refer to other **documents**, such references shall (1) be restricted to documents, or appropriate portions of documents, that apply in the acquisition; (2) cite the extent of their applicability; (3) not conflict with other **documents** and provisions of the solicitation; and (4) identify all applicable first tier references.

~~(f) Contracting offices shall furnish with the solicitation any brand name or equal description used.~~

~~(g)~~ The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions ~~and DODISS~~ may be purchased from the ~~Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.~~

(d) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions may be purchased from the **General Services Administration, Federal Supply Service Bureau, Specification Section, Suite 8100, 470 L'Enfant Plaza, SW, Washington, DC 20407, telephone (202)**

755-0325/0326. The DoDISS may be purchased from the Standardization Documents Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, telephone (215) 697-2569.

(e) Agencies may generally obtain from the GSA Specification Section or the DOD Standardization Documents Desk those nongovernment (voluntary) standards adopted for use by Federal or Defense activities. Standards not available from these sources may be obtained from Government libraries, activities subscribing to document handling services or the organization responsible for their preparation, publication or maintenance of the standard.

11.202 Maintenance of standardization documents.

~~**10.005 Management of purchase descriptions.**~~

FAR as of FAC 90-25	*FAR as revised*
~~(c)~~ Recommendations for changes ~~in specifications and standards~~ listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions should be submitted to the General Services Administration, Federal Supply Service, ~~Item Management Division~~, Washington, D.C. 20406. Recommendations for changes ~~in military specifications and standards and other~~ standardization documents listed in the DODISS ~~should be submitted~~ to the cognizant preparing activity.	**(a)** Recommendations for changes **to standardization documents** listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions should be submitted to the General Services Administration, Federal Supply Service, **Office of Acquisition**, Washington, DC 20406. **Agencies shall submit** recommendations for changes **to** standardization documents listed in the DoDISS to the cognizant preparing activity.
	(b) When an agency cites an existing standardization document but modifies it to meet its needs, the agency shall follow the guidance in Federal Standardization Manual and, for Defense components, DoD 4120.3-M, Defense Standardization Program Policies and Procedures.
~~(a) Responsible agencies shall ensure compliance with the policies prescribed in this part for all specifications and standards listed in their indexes.~~ ~~(b) When a responsible agency determines, in accordance with its established procedures and criteria, that a listed specification or standard does~~	

~~not meet a particular minimum need of the Government, applicable amendments, revisions, or new descriptions shall be prepared and used. (See 10.007 with regard to deviations.)~~

11.203 Customer satisfaction.

~~**10.009 User satisfaction.**~~

FAR as of FAC 90-25	*FAR as revised*
~~(a) Agencies shall encourage users to communicate with acquisition organizations on—~~ ~~(1) The adequacy of specifications to communicate the user's minimum~~ needs~~;~~ ~~(2) Product capability;~~ ~~(3) Product failures and deficiencies; and~~ ~~(4)~~ Suggestions for corrective actions. ~~(b)~~ Whenever practicable, the agency may provide affected industry an opportunity to comment on the ~~critiques~~. ~~(c) Acquisition organizations shall consider user critiques and take appropriate action on bona fide complaints and suggestions.~~	**Acquisition organizations shall communicate with customers to determine how well the requirements document reflects the customer's** needs **and to obtain** suggestions for corrective actions. Whenever practicable, the agency may provide affected industry an opportunity to comment on the **requirements documents**.

11.204 Solicitation provisions and contract clauses.

~~**10.011 Solicitation provisions and contract clauses.**~~

FAR as of FAC 90-25	*FAR as revised*
(a) The contracting officer shall insert the provision at ~~52.210-1~~, Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, in solicitations that ~~(i)~~ are issued by civilian agency contracting offices and ~~(ii)~~ cite specifications listed in the Index that are not furnished with the solicitation.	(a) The contracting officer shall insert the provision at **52.211-1**, Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, in solicitations that **(1)** are issued by civilian agency contracting offices and **(2)** cite specifications listed in the Index that are not furnished with the solicitation.
(b) The contracting officer shall insert the provision at ~~52.210-2,~~ Availability of Specifications Listed in the DOD Index of Specifications and Standards (DODISS), in solicitations that ~~(i)~~ are issued by DOD contracting offices and ~~(ii)~~ cite specifications listed in the DODISS that are not furnished with the solicitation.	(b) The contracting officer shall insert the provision at **52.211-2**, Availability of Specifications Listed in the DoD Index of Specifications and Standards (DoDISS), in solicitations that **(1)** are issued by DoD contracting offices and **(2)** cite specifications listed in the DoDISS that are not furnished with the solicitation.

(c) The contracting officer shall insert a provision substantially the same as the provision at ~~52.210-3,~~ Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, in solicitations that cite specifications that are not listed in the Index and are not furnished with the solicitation, but may be obtained from a designated source.

(c) The contracting officer shall insert a provision substantially the same as the provision at **52.211-3,** Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, in solicitations that cite specifications that are not listed in the Index and are not furnished with the solicitation, but may be obtained from a designated source.

(d) The contracting officer shall insert a provision substantially the same as the provision at ~~52.210-4~~, Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, in solicitations that cite specifications that are not listed in the Index and are available for examination at a specified location.

(d) The contracting officer shall insert a provision substantially the same as the provision at **52.211-4**, Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, in solicitations that cite specifications that are not listed in the Index and are available for examination at a specified location.

[paragraphs (e), (f), and (g) moved to new §11.302)

SUBPART 11.3—ACQUIRING OTHER THAN NEW MATERIAL, FORMER GOVERNMENT SURPLUS PROPERTY, AND RESIDUAL INVENTORY.

~~**10.010 Acquiring used or reconditioned material, former Government surplus property, and residual inventory.**~~

11.301 Policy.

FAR as of FAC 90-25	*FAR as revised*
(a) ~~Generally, all contractually furnished supplies and their components, including~~ former Government property, ~~will be new, including recycled (see Subpart 23.4 for policy on recovered materials). However, agencies may acquire used or reconditioned material,~~ former Government surplus property, or residual inventory ~~conforming to the solicitation's requirements, if the contracting officer determines that it is acceptable. When such a determination is made,~~ the solicitation shall clearly identify the ~~supplies or their components~~ that ~~need not~~ be new~~, along with the necessary details on their acceptability.~~ Offerors ~~wishing to provide such used or reconditioned material, former Government surplus property, or residual inventory shall do so in accordance~~ with the clause at ~~52.210-5,~~ New Material, ~~or~~ the provision at ~~52.210-6~~, Listing of ~~Used or Reconditioned Material~~, Residual Inventory, and Former Government Surplus Property, and the clause at ~~52.210-7~~, ~~Used or Reconditioned Material~~, Residual Inventory, and Former Government Surplus Property, as appropriate.	(a) **Agencies shall allow offers of other than new material,** former Government surplus property, or residual inventory **unless it is determined that such materials are unacceptable. When acquiring commercial items, the contracting officer should consider the customary practice in the industry for the item being acquired. When only new material is acceptable,** the solicitation shall clearly identify the **material** that **must** be new. Offerors **providing other than new material shall be required to comply** with the clause at **52.211-5,** New Material, the provision at **52.211-6,** Listing of **Other Than New Material**, Residual Inventory, and Former Government Surplus Property, and the clause at **52.211-7**, **Other Than New Material**, Residual Inventory, and Former Government Surplus Property, as appropriate.

	(b) Agencies shall specify products, including packaging, that contain the highest practicable percentage of recovered and environmentally preferable materials, and where applicable, post-consumer material, consistent with performance requirements, availability, price reasonableness, and cost-effectiveness.
~~(b)~~ Contracting officers shall consider the following when determining whether ~~used or reconditioned~~ materials, former Government surplus property, or residual inventory are acceptable: (1) Safety of persons or property. ~~(2)~~ Total cost to the Government (including maintenance, inspection, testing, and useful life). ~~(3)~~ Performance requirements. ~~(4) Availability and cost of new materials and components.~~ ~~(c) With regard to former Government surplus property, the contracting officer shall ensure that the~~ prices ~~paid for such items are~~ reasonable ~~considering overall cost savings to the Government.~~	**(c)** Contracting officers shall consider the following when determining whether **other than new** materials, former Government surplus property, or residual inventory are acceptable: (1) Safety of persons or property. **(2) Specification and** performance requirements. **(3)** Price reasonableness**.** **(4)** Total cost to the Government (including maintenance, inspection, testing, and useful life).
When a contract calls for material to be furnished at cost, the allowable charge for former Government surplus property shall not exceed the cost at which the contractor acquired the property.	**(d)** When a contract calls for material to be furnished at cost, the allowable charge for former Government surplus property shall not exceed the cost at which the contractor acquired the property.

11.302 Solicitation provisions and contract clauses.

FAR as of FAC 90-25	*FAR as revised*
[from old 10.011] ~~(e)(1)~~ The contracting officer ~~shall~~ insert the clause at ~~52.210-5~~, New Material, in solicitations and contracts for supplies, ~~unless, in the judgment of the contracting officer, the clause would serve no useful purpose.~~ ~~(2) The contracting officer may insert the clause in solicitations and contracts for services that may involve the incidental furnishing of parts.~~	**(a)** The contracting officer **may** insert the clause at **52.211-5,** New Material, in solicitations and contracts for supplies. **The clause shall not be used if it would be contrary to customary commercial practices for the item being acquired.**
~~(f)(1)~~ The contracting officer shall insert the provision at ~~52.210-6~~, Listing of ~~Used or Reconditioned~~ Material, Residual Inventory, and Former Government Surplus Property, in solicitations ~~for supplies, unless, in the judgment of the contracting officer, the provision would serve no useful purpose.~~	**(b)** The contracting officer shall insert the provision at **52.211-6**, Listing of **Other Than New** Material, Residual Inventory, and Former Government Surplus Property, in solicitations **containing the clause at 52.211-5.**

~~(2) The contracting officer may insert the provision in solicitations for services that may involve the incidental furnishing of parts.~~

~~(g)(1)~~ The contracting officer shall insert the clause at ~~52.210-7, Used or Reconditioned~~ Material, Residual Inventory, and Former Government Surplus Property, in ~~solicitations and~~ contracts ~~for supplies, unless, in the judgment of the contracting officer, the clause would serve no useful purpose.~~
~~(2) The contracting officer may insert the clause in solicitations and contracts for services that may involve the incidental furnishing of parts.~~

(c) The contracting officer shall insert the clause at **52.211-7, Other Than New** Material, Residual Inventory, and Former Government Surplus Property, in contracts **containing the clause at 52.211-5.**

[FAC 90-32]

SUBPART 11.4—DELIVERY OR PERFORMANCE SCHEDULES

[REDESIGNATED FROM OLD SUBPART 12.1 WITH MINOR CHANGES AND UPDATED REFERENCES]

SUBPART 11.5—LIQUIDATED DAMAGES

[REDESIGNATED FROM OLD SUBPART 12.2 WITH UPDATED REFERENCES]

SUBPART 11.6—PRIORITIES AND ALLOCATIONS

[REDESIGNATED FROM OLD SUBPART 12.3 WITH UPDATED REFERENCES]

SUBPART 11.7—VARIATION IN QUANTITY

[REDESIGNATED FROM OLD SUBPART 12.4 WITH UPDATED REFERENCES]

PART 52.211-1 THROUGH PART 52.211-7

[REDESIGNATED FROM OLD PART 52.210-1 THRU 52.210-7 WITH UPDATED REFERENCES]

PART 52.211-8 THROUGH PART 52.211-18

[REDESIGNATED FROM OLD PART 52.212-1 THRU 52.212-11 WITH UPDATED REFERENCES]

11.403 [FAC 90-29]
~~**12.103 Supplies or services.**~~

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(e) In invitations for bids, if the delivery schedule is based on the date of the contract, and a bid offers delivery based on the date the contractor receives the	In invitations for bids, if the delivery schedule is based on the date of the contract, and a bid offers delivery based on the date the contractor receives the

contract or notice of award, the contracting officer shall evaluate the bid by adding 5 days (as representing the normal time for arrival through ordinary mail). If the offered delivery date computed with mailing time is later than the delivery date required by the invitation for bids, the bid shall be considered nonresponsive and rejected. If award is made, the delivery date will be the number of days offered in the bid after the contractor actually receives the notice of award.

contract or notice of award, the contracting officer shall evaluate the bid by adding 5 calendar days (as representing the normal time for arrival through ordinary mail). **If the contract or notice of award will be transmitted electronically, (1) the solicitation shall so state; and (2) the contracting officer shall evaluate delivery schedule based on the date of contract receipt or notice of award, by adding one working day. (The term "working day" excludes weekends and U.S. Federal holidays.)** If the offered delivery date computed with mailing **or transmittal time** is later than the delivery date required by the invitation for bids, the bid shall be considered nonresponsive and rejected. If award is made, the delivery date will be the number of days offered in the bid after the contractor actually receives the notice of award.

52.211-8
~~**52.212-1 Time of Delivery**~~.

* * * * *

(b) Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed, or otherwise furnished to the successful offeror, results in a binding contract. The Government will mail or otherwise furnish to the offeror an award or notice of award not later than the day award is dated. Therefore, the offeror should compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails. However, the Government will evaluate an offer that proposes delivery based on the Contractor’s date of receipt of the contract or notice of award by adding five days for delivery of the award through the ordinary mails. If, as so computed, the offered delivery date is later than the required delivery date, the offer will be considered nonresponsive and rejected.

* * * * *

(b) Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed, or otherwise furnished to the successful offeror, results in a binding contract. The Government will mail or otherwise furnish to the offeror an award or notice of award not later than the day award is dated. Therefore, the offeror should compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails. However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the contract or notice of award by adding **(i)** five calendar days for delivery of the award through the ordinary mails, **or (ii) one working day if the solicitation states that the contract or notice of award will be transmitted electronically. (The term "working day" excludes weekends and U.S. Federal holidays.)**. If, as so computed, the offered delivery date is later than the required delivery date, the offer will be considered nonresponsive and rejected. [FAC 90-29]

52.211-9
~~**52.212-2 Time of Delivery**.~~

* * * * *

(b) Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed or otherwise furnished to the successful offeror results in a binding contract. The Government will mail or otherwise furnish to the offeror an award or notice of award not later than the day the award is dated. Therefore, the offeror shall compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails. However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the contract or notice of award by adding five days for delivery of the award through the ordinary mails. If, as so computed, the offered delivery date is later than the required delivery date, the offer will be considered nonresponsive and rejected.

* * * * *

(b) Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed or otherwise furnished to the successful offeror results in a binding contract. The Government will mail or otherwise furnish to the offeror an award or notice of award not later than the day the award is dated. Therefore, the offeror shall compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails. However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the contract or notice of award by adding **(i)** five calendar days for delivery of the award through the ordinary mails, **or (ii) one working day if the solicitation states that the contract or notice of award will be transmitted electronically. (The term "working day" excludes weekends and U.S. Federal holidays.)** If, as so computed, the offered delivery date is later than the required delivery date, the offer will be considered nonresponsive and rejected.
[FAC 90-29]

PART 12

ACQUISITION OF COMMERCIAL ITEMS

[Entire Part added by FAC 90-32.]
{NOTE: Since all text is new, it is not in bold to save space.}

PART 12—ACQUISITION OF COMMERCIAL ITEMS

Table of Contents

12.000 Scope of part.
12.001 Definition.

Subpart 12.1—Acquisition of Commercial Items—General
12.101 Policy.
12.102 Applicability.

Subpart 12.2—Special Requirements for the Acquisition of Commercial Items
12.201 General.
12.202 Market research and description of agency need.
12.203 Procedures for solicitation, evaluation, and award.
12.204 Solicitation/contract form.
12.205 Offers.
12.206 Use of past performance.
12.207 Contract type.
12.208 Contract quality assurance.
12.209 Pricing of commercial items when contracting by negotiation.
12.210 Contract financing.
12.211 Technical data.
12.212 Computer software.
12.213 Other customary commercial practices.

Subpart 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items
12.300 Scope of subpart.
12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.
12.302 Tailoring of provisions and clauses for the acquisition of commercial items.
12.303 Contract format.

Subpart 12.4—Unique Requirements Regarding Terms and Conditions for Commercial Items
12.401 General.
12.402 Acceptance.
12.403 Termination.
12.404 Warranties.

Subpart 12.5—Applicability of Certain Laws to the Acquisition of Commercial Items
12.500 Scope of subpart.
12.501 Applicability.
12.502 Procedures.
12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.
12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

Subpart 12.6—Streamlined Procedures for Evaluation and Solicitation for Commercial Items
12.601 General.
12.602 Streamlined evaluation of offers.
12.603 Streamlined solicitation for commercial items.

PART 12

ACQUISITION OF COMMERCIAL ITEMS

12.000 Scope of part.

This part prescribes policies and procedures unique to the acquisition of commercial items. It implements the Federal Government's preference for the acquisition of commercial items contained in Title VIII of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355) by establishing acquisition policies more closely resembling those of the commercial marketplace and encouraging the acquisition of commercial items and components.

12.001 Definition.

Subcontract, as used in this part, includes, but is not limited to, a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

Subpart 12.1—Acquisition of Commercial Items— General

12.101 Policy.

Agencies shall—

(a) Conduct market research to determine whether commercial items or nondevelopmental items are available that could meet the agency's requirements;

(b) Acquire commercial items or nondevelopmental items when they are available to meet the needs of the agency; and

(c) Require prime contractors and subcontractors at all tiers to incorporate, to the maximum extent practicable, commercial items or nondevelopmental items as components of items supplied to the agency.

12.102 Applicability.

(a) This part shall be used for the acquisition of supplies or services that meet the definition of commercial items at section 2.101.

(b) Contracting officers shall use the policies in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in Part 13, Simplified Acquisition Procedures; Part 14, Sealed Bidding; or Part 15, Contracting by Negotiation, as appropriate for the particular acquisition.

(c) Contracts for the acquisition of commercial items are subject to the policies in other parts of this regulation. When a policy in another part of this regulation is inconsistent with a policy in this part, this Part 12 shall take precedence for the acquisition of commercial items.

(d) This part shall not apply to the acquisition of commercial items—

(1) At or below the micro-purchase threshold (see Subpart 13.6);

(2) Using the SF 44 (see section 13.505-3);

(3) Using the imprest fund (see Subpart 13.4); or

(4) Using the Governmentwide commercial purchase card (see Subpart 13.6).

Subpart 12.2—Special Requirements for the Acquisition of Commercial Items

12.201 General.

Public Law 103-355 establishes special requirements for the acquisition of commercial items intended to more closely resemble those customarily used in the commercial marketplace. This subpart identifies those special requirements as well as other considerations necessary for proper planning, solicitation, evaluation and award of contracts for commercial items.

12.202 Market research and description of agency need.

(a) Market research (see 10.001) is an essential element of building an effective strategy for the acquisition of commercial items and establishes the foundation for the agency description of need (see Part 11), the solicitation, and resulting contract.

(b) The description of agency need must contain sufficient detail for potential offerors of commercial items to know which commercial products or services to offer. Generally, for acquisitions in excess of the simplified acquisition threshold, an agency's statement of need for a commercial item will describe the product or service to be acquired and explain how the agency intends to use the product or service in terms of function to be performed, performance requirement or essential physical characteristics. Describing the agency's need in these terms allows offerors to propose methods that will best meet the needs of the Government.

(c) Follow the procedures in Subpart 11.2 regarding the identification and availability of specifications, standards and commercial item descriptions.

12.203 Procedures for solicitation, evaluation, and award.

Contracting officers shall use the policies unique to the acquisition of commercial items prescribed in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in Part 13, Simplified Acquisition Procedures; Part 14, Sealed Bidding; or Part 15, Contracting by Negotiation, as appropriate for the particular acquisition. The contracting officer may use the streamlined procedure for soliciting offers for commercial items prescribed in 12.603.

12.204 Solicitation/contract form.

The Standard Form 1449, Solicitation/Contract/Order for Commercial Items, shall be used by the contracting officer when issuing written solicitations and awarding contracts and placing orders for commercial items. This form contains the information necessary for solicitations and contracts. The form may also be used for documenting receipt, inspection and acceptance of commercial items. Other forms shall not be used for solicitation or award of contracts or orders for the acquisition of commercial items.

12.205 Offers.

(a) Where technical information is necessary for evaluation of offers, agencies should, as part of market research, review existing product literature generally available in the industry to determine its adequacy for purposes of evaluation. If adequate, contracting officers shall request existing product literature from offerors of commercial items in lieu of unique technical proposals.

(b) Contracting officers should allow offerors to propose more than one product that will meet a Government need in response to solicitations for commercial items. The contracting officer shall evaluate each product as a separate offer.

(c) Contracting officers may, considering the circumstances described in 5.203(b), allow fewer than 30 days response time for receipt of offers for commercial items.

12.206 Use of past performance.

Past performance should be an important element of every evaluation and contract award for commercial items. Contracting officers should consider past performance data from a wide variety of sources both inside and outside the Federal Government in accordance with the policies and procedures contained in Subpart 9.1, section 13.106-1, or Subpart 15.6, as applicable.

12.207 Contract type.

Agencies shall use firm-fixed-price contracts or fixed-price contracts with economic price adjustment for the acquisition of commercial items. Indefinite-delivery contracts (see Subpart 16.5) may be used where the prices are established based on a firm-fixed-price or fixed-price with economic price adjustment. Use of any other contract type to acquire commercial items is prohibited.

12.208 Contract quality assurance.

Contracts for commercial items shall rely on contractors' existing quality assurance systems as a substitute for Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired include in-process inspection. Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice.

12.209 Pricing of commercial items when contracting by negotiation.

(a) When contracting by negotiation for commercial items, the policies and procedures in Part 15 shall be used to establish the reasonableness of prices.

(b) The provisions and clauses prescribed in this part for the acquisition of commercial items do not include the provisions and clauses prescribed in Part 15 because they assume prices for commercial items will either (1) not be subject to the Truth in Negotiations Act because the contract price is below the dollar threshold for application of the Act; or (2) be based upon one of the exceptions to cost or pricing data requirements contained in 15.804-1(a)(1).

(c) If the contracting officer determines it is appropriate to use the commercial item exception to cost or pricing data requirements (see 15.804-1(a)(2)), the provisions and clauses prescribed in 15.804-8 and 15.106 for this purpose shall be inserted in an addendum to the solicitation and contract.

(d) If the contracting officer is required to obtain cost or pricing data (see 15.804-1(b)(4) and 15.804-2), the provisions and clauses prescribed in 15.804-8 and 15.106 for this purpose shall be inserted in an addendum to the solicitation and contract.

(e) When a contract is priced using the exceptions at 15.804-1(a)(1), no cost or pricing data may be obtained for modifications unless the proposed modification would change the contract from a contract for a commercial item to a contract for other than a commercial item (see 15.804-1(b)(6)). If the exceptions at 15.804-1(a)(1) are not used, the contracting officer may be required to obtain cost or pricing data to determine the reasonableness of prices for subsequent modifications (see 15.804-2(a)(1)) and the contracting officer shall insert the provisions and clauses prescribed for this purpose in an addendum to the solicitation and contract.

12.210 Contract financing.

Customary market practice for some commercial items may include buyer contract financing. The contracting officer may offer Government financing in accordance with the policies and procedures in Part 32.

12.211 Technical data.

Except as provided by agency-specific statutes, the Government shall acquire only the technical data and the rights in that data customarily provided to the public with a commercial item or process. The contracting officer shall presume that data delivered under a contract for commercial items was developed exclusively at private expense. When a contract for commercial items requires the delivery of technical data, the contracting officer shall include appropriate provisions and clauses delineating the rights in the technical data in addenda to the solicitation and contract (see Part 27 or agency FAR supplements).

12.212 Computer software.

(a) Commercial computer software or commercial computer software documentation shall be acquired under licenses customarily provided to the public to the extent such licenses are consistent with Federal law and otherwise satisfy the Government's needs. Generally, offerors and contractors shall not be required to—

(1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except as mutually agreed to by the parties.

(b) With regard to commercial computer software and commercial computer software documentation, the Government shall have only those rights specified in the license contained in any addendum to the contract.

12.213 Other customary commercial practices.

It is customary practice in the commercial marketplace for both the buyer and seller to propose terms and conditions for a given transaction, each written from their particular perspectives. The terms and conditions prescribed in this Part 12 seek to balance the interests of both the buyer and seller. These terms and conditions are generally appropriate for use in a wide range of acquisitions. However, market research may indicate other customary commercial practices that are appropriate for the acquisition of the particular item. These practices should be considered for incorporation into the solicitation and contract if the contracting officer determines them appropriate in concluding a business arrangement satisfactory to both parties and not otherwise precluded by law or executive order.

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

12.300 Scope of subpart.

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

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

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

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

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

(b) To implement this Act, the contracting officer shall insert the following provisions in solicitations for the acquisition of commercial items, and clauses in solicitations and contracts for the acquisition of commercial items:

(1) The provision at 52.212-1, Instructions to Offerors—Commercial Items. This provision provides a single, streamlined set of instructions to be used when soliciting offers for commercial items and is incorporated in the solicitation by reference (see Block 26, SF 1449). The contracting officer may tailor these instructions or provide additional instructions tailored to the specific acquisition in accordance with 12.302;

(2) The provision at 52.212-3, Offeror Representations and Certifications - Commercial Items. This provision provides a single, consolidated list of certifications and representations for the acquisition of commercial items and is attached to the solicitation for offerors to complete and return with their offer. This provision may not be tailored except in accordance with Subpart 1.4;

(3) The clause at 52.212-4, Contract Terms and Conditions - Commercial Items. This clause includes terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practices and is incorporated in the solicitation and contract by reference (see Block 26, SF 1449). The contracting officer may tailor this clause in accordance with 12.302; and

(4) The clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders - Commercial Items. This clause incorporates by reference only those clauses required to implement provisions of law or executive orders applicable to the acquisition of commercial items. The contracting officer shall attach this clause to the solicitation and contract and, using the appropriate clause prescriptions, indicate which, if any, of the additional clauses cited in 52.212-5(b) or (c) are applicable to the specific acquisition. When cost information is obtained pursuant to Part 15 to establish the reasonableness of prices for commercial items, the contracting officer shall insert the clauses prescribed for this purpose in an addendum to the solicitation and contract. This clause may not be tailored.

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

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

(2) Include a similar provision containing all evaluation factors required by section 13.106-1, Subpart 14.2 or Subpart 15.6, as an addendum (see 12.302(d)).

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

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

(1) The contracting officer may include appropriate clauses when an indefinite-delivery type of contract will be used. The clauses prescribed at 16.505 may be used for this purpose.

(2) The contracting officer may include appropriate provisions and clauses when the use of options is in the Government's interest. The provisions and clauses prescribed in 17.208 may be used for this purpose. If the provision at 52.212-2 is used, paragraph (b) provides for the evaluation of options.

(3) The contracting officer may use the provisions and clauses contained in Part 23 regarding the use of recovered material when appropriate for the item being acquired.

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

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

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

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

(1) Assignments;
(2) Disputes;
(3) Payment;
(4) Invoice;
(5) Other compliances; and
(6) Compliance with laws unique to Government contracts.

(c) *Tailoring inconsistent with customary commercial practice*. The contracting officer shall not tailor any clause or otherwise include any additional terms or conditions in a solicitation or contract for commercial items in a manner that is inconsistent with customary commercial practice for the item being acquired unless a waiver is approved in accordance with agency procedures. The request for waiver must describe the customary commercial practice found in the marketplace, support the need to include a term or condition that is inconsistent with that practice and include a determination that use of the customary commercial practice is inconsistent with the needs of the Government. A waiver may be requested for an individual or class of contracts for that specific item.

(d) Tailoring shall be by addenda to the solicitation and contract. The contracting officer shall indicate in Block 26 of the SF 1449 if addenda are attached. These addenda may include, for example, a continuation of the schedule of supplies/services to be acquired from blocks 18 through 21 of the SF 1449; a continuation of the description of the supplies/services being acquired; further elaboration of any other item(s) on the SF 1449; any other terms or conditions necessary for the performance of the proposed contract (such as options, ordering procedures for indefinite-delivery type contracts, warranties, contract financing arrangements, etc.).

12.303 Contract format.

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

(a) Standard Form (SF) 1449;

(b) Continuation of any block from SF 1449, such as—

(1) Block 10 if set-aside for emerging small businesses;

(2) Block 16B for remittance address;

(3) Block 18 for contract line item numbers;

(4) Block 19 for schedule of supplies/services; or

(5) Block 24 for accounting data;

(c) Contract clauses—

(1) 52.212-4, Contract Terms and Conditions—Commercial Items, by reference (see SF 1449 block 26);

(2) Any addendum to 52.212-4; and

(3) 52.212-5, Contract Terms and Conditions Required to Implement Statutes and Executive orders;

(d) Any contract documents, exhibits or attachments; and

(e) Solicitation provisions—

(1) 52.212-1, Instructions to Offerors—Commercial Items, by reference (see SF 1449, Block 26);

(2) Any addendum to 52.212-1;

(3) 52.212-2, Evaluation—Commercial Items, or other description of evaluation factors for award, if used; and

(4) 52.212-3, Offeror Representations and Certifications—Commercial Items.

Subpart 12.4—Unique Requirements Regarding Terms and Conditions for Commercial Items

12.401 General.

This subpart provides—

(a) Guidance regarding tailoring of the paragraphs in the clause at 52.212-4, Contract Terms and Conditions—Commercial Items, when the paragraphs do not reflect the customary practice for a particular market; and

(b) Guidance on the administration of contracts for commercial items in those areas where the terms and conditions in 52.212-4 differ substantially from those contained elsewhere in the FAR.

12.402 Acceptance.

(a) The acceptance paragraph in 52.212-4 is based upon the assumption that the Government will rely on the contractor's assurances that the commercial item tendered for acceptance conforms to the contract requirements. The Government inspection of commercial items will not prejudice its other rights under the acceptance paragraph. Additionally, although the paragraph does not address the issue of rejection, the Government always has the right to refuse acceptance of nonconforming items. This paragraph is generally appropriate when the Government is acquiring noncomplex commercial items.

(b) Other acceptance procedures may be more appropriate for the acquisition of complex commercial items or commercial items used in critical applications. In such cases, the contracting officer shall include alternative inspection procedure(s) in an addendum and ensure these procedures and the postaward remedies adequately protect the interests of the Government. The contracting officer must carefully examine the terms and conditions of any express warranty with regard to the effect it may have on the Government's available postaward remedies (see 12.404).

(c) The acquisition of commercial items under other circumstances such as on an "as is" basis may also require acceptance procedures different from those contained in 52.212-4. The contracting officer should consider the effect the specific circumstances will have on the acceptance paragraph as well as other paragraphs of the clause.

12.403 Termination.

(a) *General*. The clause at 52.212-4 permits the Government to terminate a contract for commercial items either for the convenience of the Government or for cause. However, the paragraphs in 52.212-4 entitled “Termination for the Government’s Convenience” and “Termination for Cause” contain concepts which differ from those contained in the termination clauses prescribed in Part 49. Consequently, the requirements of Part 49 do not apply when terminating contracts for commercial items and contracting officers shall follow the procedures in this section. Contracting officers may continue to use Part 49 as guidance to the extent that Part 49 does not conflict with this section and the language of the termination paragraphs in 52.212-4.

(b) *Policy*. The contracting officer should exercise the Government’s right to terminate a contract for commercial items either for convenience or for cause only when such a termination would be in the best interests of the Government. The contracting officer should consult with counsel prior to terminating for cause.

(c) *Termination for cause*. (1) The paragraph in 52.212-4 entitled "Excusable Delay" requires contractors notify the contracting officer as soon as possible after commencement of any excusable delay. In most situations, this requirement should eliminate the need for a show cause notice prior to terminating a contract. The contracting officer shall send a cure notice prior to terminating a contract for a reason other than late delivery.

(2) The Government’s rights after a termination for cause shall include all the remedies available to any buyer in the marketplace. The Government’s preferred remedy will be to acquire similar items from another contractor and to charge the defaulted contractor with any excess reprocurement costs together with any incidental or consequential damages incurred because of the termination.

(3) When a termination for cause is appropriate, the contracting officer shall send the contractor a written notification regarding the termination. At a minimum, this notification shall—

(i) Indicate the contract is terminated for cause;

(ii) Specify the reasons for the termination;

(iii) Indicate which remedies the Government intends to seek or provide a date by which the Government will inform the contractor of the remedy; and

(iv) State that the notice constitutes a final decision of the contracting officer and that the contractor has the right to appeal under the Disputes clause (see 33.211).

(d) *Termination for the Government’s convenience*. (1) When the contracting officer terminates a contract for commercial items for the Government’s convenience, the contractor shall be paid—

(i) The percentage of the contract price reflecting the percentage of the work performed prior to the notice of the termination, and

(ii) Any charges the contractor can demonstrate directly resulted from the termination. The contractor may demonstrate such charges using its standard record keeping system and is not required to comply with the cost accounting standards or the contract cost principles in Part 31. The Government does not have any right to audit the contractor’s records solely because of the termination for convenience.

(2) Generally, the parties should mutually agree upon the requirements of the termination proposal. The parties must balance the Government’s need to obtain sufficient documentation to support payment to the contractor against the goal of having a simple and expeditious settlement.

12.404 Warranties.

(a) *Implied warranties*. The Government’s post award rights contained in 52.212-4 are the implied warranty of merchantability, the implied warranty of fitness for particular purpose and the remedies contained in the acceptance paragraph.

(1) The implied warranty of merchantability provides that an item is reasonably fit for the ordinary purposes for which such items are used. The items must be of at least average, fair or medium-grade quality and must be comparable in quality to those that will pass without objection in the trade or market for items of the same description.

(2) The implied warranty of fitness for a particular purpose provides that an item is fit for use for the particular purpose for which the Government will use the items. The Government can rely upon an implied warranty of fitness for particular purpose when—

(i) The seller knows the particular purpose for which the Government intends to use the item; and

(ii) The Government relied upon the contractor's skill and judgment that the item would be appropriate for that particular purpose.

(3) Contracting officers should consult with legal counsel prior to asserting any claim for a breach of an implied warranty.

(b) *Express warranties*. The Federal Acquisition Streamlining Act of 1994 (41 U.S.C. 264 note) requires contracting officers to take advantage of commercial warranties. To the maximum extent practicable, solicitations for commercial items shall require offerors to offer the Government at least the same warranty terms, including offers of extended warranties, offered to the general public in customary commercial practice. Solicitations may specify minimum warranty terms, such as minimum duration, appropriate for the Government's intended use of the item.

(1) Any express warranty the Government intends to rely upon must meet the needs of the Government. The contracting officer should analyze any commercial warranty to determine if—

(i) The warranty is adequate to protect the needs of the Government, e.g., items covered by the warranty and length of warranty;

(ii) The terms allow the Government effective postaward administration of the warranty to include the identification of warranted items, procedures for the return of warranted items to the contractor for repair or replacement, and collection of product performance information; and

(iii) The warranty is cost-effective.

(2) In some markets, it may be customary commercial practice for contractors to exclude or limit the implied warranties contained in 52.212-4 in the provisions of an express warranty. In such cases, the contracting officer shall ensure that the express warranty provides for the repair or replacement of defective items discovered within a reasonable period of time after acceptance.

(3) Express warranties shall be included in the contract by addendum (see 12.302).

Subpart 12.5—Applicability of Certain Laws to the Acquisition of Commercial Items

12.500 Scope of subpart.

As required by Section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430), this subpart lists provisions of laws that are not applicable to contracts for the acquisition of commercial items, or are not applicable to subcontracts, at any tier, for the acquisition of a commercial item. This subpart also lists provisions of law that have been amended to eliminate or modify their applicability to either contracts or subcontracts for the acquisition of commercial items.

12.501 Applicability.

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

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

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

12.502 Procedures.

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

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

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

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

(1) 41 U.S.C. 43, Walsh-Healey Act (see Subpart 22.6).

(2) 41 U.S.C. 254(a) and 10 U.S.C. 2306(b), Contingent Fees (see 3.404).

(3) 41 U.S.C. 416(a)(6), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see 5.203).

(4) 41 U.S.C. 701, *et seq.*, Drug-Free Workplace Act of 1988 (see 23.501).

(b) Certain requirements of the following laws have been eliminated for executive agency contracts for the acquisition of commercial items:

(1) 33 U.S.C. 1368, Requirement for a certificate and clause under the Federal Water Pollution Control Act (see 23.105).

(2) 40 U.S.C. 327 et seq., Requirement for a certificate and clause under the Contract Work Hours and Safety Standards Act (see 22.305).

(3) 41 U.S.C. 57(a) and (b), and 58, Requirement for a clause and certain other requirements related to the Anti-Kickback Act of 1986 (see 3.502).

(4) 41 U.S.C. 423(e)(1)(B), Requirement for a certain certification under the Procurement Integrity Act (see 3.104-9).

(5) 42 U.S.C. 7606, Requirements for a certificate and clause under the Clean Air Act (see 23.105).

(6) 49 U.S.C. 40118, Requirement for a certificate and clause under the Fly American provisions (see 47.405).

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

(1) 41 U.S.C. 253g and 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see 3.503).

(2) 41 U.S.C. 254(d) and 10 U.S.C. 2306a, Truth in Negotiations Act (see 15.804).

(3) 41 U.S.C. 422, Cost Accounting Standards (see 48 CFR chapter 99).

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

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

(1) 15 U.S.C. 644(d), Requirements relative to labor surplus areas under the Small Business Act (see Subpart 19.2).

(2) 19 U.S.C. 1202, Tariff Act of 1930 (see Subpart 25.6).

(3) 19 U.S.C. 1309, Supplies for Certain Vessels and Aircraft (see Subpart 25.6).

(4) 19 U.S.C. 2701, et seq., Authority to Grant Duty Free Treatment (see Subpart 25.6).

(5) 31 U.S.C. 1352, Limitation on Payments to Influence Certain Federal Transactions (see Subpart 3.8).

(6) 41 U.S.C. 43, Walsh-Healey Act (see Subpart 22.6).

(7) 41 U.S.C. 253d, Validation of Proprietary Data Restrictions (see Subpart 27.4).

(8) 41 U.S.C. 254(a) and 10 U.S.C. 2306(b), Contingent Fees (see Subpart 3.4).

(9) 41 U.S.C. 254d(c) and 10 U.S.C. 2313(c), Examination of Records of Contractor, when a subcontractor is not required to provide cost or pricing data (see Subpart 15.1).

(10) 41 U.S.C. 351, Service Contract Act of 1965, as amended (see Subpart 22.10).

(11) 41 U.S.C. 416(a)(6), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see Subpart 5.2).

(12) 41 U.S.C. 418a, Rights in Technical Data (see Subpart 27.4).

(13) 41 U.S.C. 701, *et seq.*, Drug-Free Workplace Act of 1988 (see Subpart 23.5).

(14) 46 U.S.C. 1241(b), Transportation in American Vessels of Government Personnel and Certain Cargo (see Subpart 47.5) (inapplicability effective May 1, 1996).

(15) 49 U.S.C. 40118, Fly American provisions (see Subpart 47.4).

(16) Pub. L. 90-469, William Langer Jewel Bearing Plant Special Act (see Subpart 8.2).

(b) Certain requirements of the following laws have been eliminated for subcontracts at any tier for the acquisition of commercial items or commercial components:

(1) 33 U.S.C. 1368, Requirement for a certificate and clause under the Federal Water Pollution Control Act (see Subpart 23.1).

(2) 40 U.S.C. 327, *et seq*., Requirement for a certificate and clause under the Contract Work Hours and Safety Standards Act (see Subpart 22.3).

(3) 41 U.S.C. 423(e)(1)(B), Requirement for certain certifications under the Procurement Integrity Act (see Subpart 3.1).

(4) 42 U.S.C. 7606, Requirements for a certificate and clause under the Clean Air Act (see Subpart 23.1).

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

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

(2) 41 U.S.C. 254(d) and 10 U.S.C. 2306a, Truth in Negotiations Act (see Subpart 15.8).

(3) 41 U.S.C. 422, Cost Accounting Standards (see 48 CFR chapter 99).

Subpart 12.6—Streamlined Procedures for Evaluation and Solicitation for Commercial Items

12.601 General.

This subpart provides optional procedures for (a) streamlined evaluation of offers for commercial items; and (b) streamlined solicitation of offers for commercial items for use where appropriate. These procedures are intended to simplify the process of preparing and issuing solicitations, and evaluating offers for commercial items consistent with customary commercial practices.

12.602 Streamlined evaluation of offers.

(a) When evaluation factors are used, the contracting officer may insert a provision substantially the same as the provision at 52.212-2, Evaluation—Commercial Items, in solicitations for commercial items or comply with the procedures in 13.106-1 if the acquisition is being made using the procedures in Part 13. When the provision at 52.212-2 is used, paragraph (a) of the provision shall be tailored to the specific acquisition to describe the evaluation factors and relative importance of those factors. This provision contemplates an approach designed to select the source whose offer will provide the Government with the greatest value in terms of performance and other factors. Other methods of evaluation and basis for award may be more appropriate for a given acquisition.

(b) Offers shall be evaluated in accordance with the criteria contained in the solicitation. For many commercial items, the criteria need not be more detailed than technical (capability of the item offered to meet the agency need), price and past performance. Technical capability may be evaluated by how well the proposed products meet the Government requirement instead of predetermined subfactors. Solicitations for commercial items do not have to contain subfactors for technical capability when the solicitation adequately describes the item's intended use. A technical evaluation would normally include examination of such things as product literature, product samples (if requested), technical features and warranty provisions. Past performance shall be evaluated in accordance with the procedures in section 13.106-1 or Subpart 15.6, as applicable. The contracting officer shall ensure the instructions provided in the provision at 52.212-1, Instructions to Offerors—Commercial Items, and the evaluation criteria provided in the provision at 52.212-2, Evaluation—Commercial Items, are in agreement.

(c) Select the offer that is most advantageous to the Government based on the factors contained in the solicitation. Fully document the rationale for selection of the successful offeror including discussion of any trade-offs considered.

12.603 Streamlined solicitation for commercial items.

(a) When a written solicitation will be issued, the contracting officer may use the following procedure to reduce the time required to solicit and award contracts for the acquisition of commercial items. This procedure combines the Commerce Business Daily (CBD) synopsis required by 5.203 and the issuance of the solicitation into a single document with the following limitations:

(1) Section 5.207 limits submissions to the CBD to 12,000 textual characters (approximately 3 1/2 single-spaced pages).

(2) This combined CBD synopsis/solicitation is only appropriate where the solicitation is relatively simple and is not recommended for use when lengthy addenda to the solicitation are necessary.

(b) When using the combined synopsis/solicitation procedure, the SF 1449 is not used for issuing the solicitation.

(c) To use these procedures, the contracting officer shall—

(1) Prepare the synopsis as described at 5.207 for items 1-16.

(2) In item 17, Description, include the following additional information:

(i) The following statement:

> This is a combined synopsis/solicitation for commercial items prepared in accordance with the format in FAR Subpart 12.6, as supplemented with additional information included in this notice. This announcement constitutes the only solicitation; proposals are being requested and a written solicitation will not be issued.

(ii) The solicitation number and a statement that the solicitation is issued as an invitation to bid (IFB), request for quotation (RFQ) or request for proposal (RFP).

(iii) A statement that the solicitation document and incorporated provisions and clauses are those in effect through Federal Acquisition Circular _____.

(iv) A notice regarding any set-aside and the associated standard industrial classification code and small business size standard. Also include a statement regarding the Small Business Competitiveness Demonstration Program, if applicable.

(v) A list of contract line item number(s) and items, quantities and units of measure, (including option(s), if applicable).

(vi) Description of requirements for the items to be acquired.

(vii) Date(s) and place(s) of delivery and acceptance and FOB point.

(viii) A statement that the provision at 52.212-1, Instructions to Offerors—Commercial, applies to this acquisition and a statement regarding any addenda to the provision.

(ix) A statement regarding the applicability of the provision at 52.212-2, Evaluation—Commercial Items, if used, and the specific evaluation criteria to be included in paragraph (a) of that provision. If this provision is not used, describe the evaluation procedures to be used.

(x) A statement advising offerors to include a completed copy of the provision at 52.212-3, Offeror Representations and Certifications—Commercial Items, with its offer.

(xi) A statement that the clause at 52.212-4, Contract Terms and Conditions—Commercial Items, applies to this acquisition and a statement regarding any addenda to the clause.

(xii) A statement that the clause at 52.212-5, Contract Terms and Conditions Required To Implement Statutes Or Executive Orders—Commercial Items, applies to this acquisition and a statement regarding which, if any, of the additional FAR clauses cited in the clause are applicable to the acquisition.

(xiii) A statement regarding any additional contract requirement(s) or terms and conditions (such as contract financing arrangements, warranty requirements or GSA Delegation of Procurement Authority (DPA) case number (see 48 CFR 201-39.106-4)) determined by the contracting officer to be necessary for this acquisition and consistent with customary commercial practices.

(xiv) A statement regarding the Defense Priorities and Allocations System (DPAS) and assigned rating, if applicable.

(xv) A statement regarding any applicable Commerce Business Daily numbered notes.

(xvi) The date, time and place offers are due.

(xvii) The name and telephone number of the individual to contact for information regarding the solicitation.

(3) Allow response time for receipt of offers as follows:

(i) Because the CBD synopsis and solicitation are contained in a single document, it is not necessary to publish a separate CBD synopsis 15 days before the issuance of the solicitation.

(ii) When using the combined CBD synopsis/ solicitation, contracting officers shall establish a response time in accordance with 5.203(b), but shall allow at least 15 days response time from the date the notice is published in the CBD.

(4) Publish amendments to solicitations in the same manner as the initial synopsis/solicitation.

52.212-1 THROUGH 52.212-5

52.212-1 Instructions to Offerors—Commercial Items.

As prescribed in 12.301(b)(1), insert the following provision:

INSTRUCTIONS TO OFFERORS—COMMERCIAL ITEMS
(OCT 1995)

(a) *Standard industrial classification (SIC) code and small business size standard*. The SIC code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) *Submission of offers*. Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show—

(1) The solicitation number;

(2) The time specified in the solicitation for receipt of offers;

(3) The name, address, and telephone number of the offeror;

(4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;

(5) Terms of any express warranty;

(6) Price and any discount terms;

(7) "Remit to" address, if different than mailing address;

(8) A completed copy of the representations and certifications at FAR 52.212-3;

(9) Acknowledgment of Solicitation Amendments;

(10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and

(11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) *Period for acceptance of offers*. The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) *Product samples*. When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

(e) *Multiple offers*. Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) *Late offers*. Offers or modifications of offers received at the address specified for the receipt of offers after the exact time specified for receipt of offers will not be considered.

(g) *Contract award (not applicable to Invitation for Bids)*. The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) *Multiple awards*. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) *Availability of requirements documents cited in the solicitation*. (1) The Index of Federal Specifications, Standards and Commercial Item Descriptions and the documents listed in it may be obtained from the General Services Administration, Federal Supply Service Bureau, Specifications Section, Suite 8100, 470 L'Enfant Plaza, SW, Washington, DC 20407 ((202) 755-0325/0326).

(2) The DOD Index of Specifications and Standards (DODISS) and documents listed in it may be obtained from the Standardization Documents Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111-5094 (telephone (215) 697-2569).

(i) Automatic distribution may be obtained on a subscription basis.

(ii) Individual documents may be ordered from the Telespecs ordering system by touch-tone telephone. A customer number is required to use this service and can be obtained from the Standardization Documents Order Desk or the Special Assistance Desk (telephone (610) 607-2667/2179).

(3) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication or maintenance.

(End of provision)

52.212-2 Evaluation—Commercial Items.

As prescribed in 12.301(c), the Contracting Officer may insert a provision substantially as follows:

EVALUATION—COMMERCIAL ITEMS (OCT 1995)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

_____

_____

[*Contracting Officer shall insert the significant evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR 15.605) and include them in the relative order of importance of the evaluation factors, such as in descending order of importance.]*

Technical and past performance, when combined, are _____ *[Contracting Officer state, in accordance with FAR 15.605, the relative importance of all other evaluation factors, when combined, when compared to price.]*

(b) *Options*. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of Provision)

52.212-3 Offeror Representations and Certifications - Commercial Items.

As prescribed in 12.301(b)(2), insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (OCT 1995)

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

Emerging small business means a small business concern whose size is no greater than 50 percent of the numerical size standard for the standard industrial classification code designated.

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 size standards in this solicitation.

Small disadvantaged business concern means a small business concern that—

(1) Is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business, having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and

(2) Has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian organization and which meets the requirements of 13 CFR Part 124.

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

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

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

Women-owned business concern means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) *Taxpayer identification number (TIN) (26 U.S.C. 6050M).* (1) Taxpayer Identification Number (TIN).

☐ TIN:_____.
☐ TIN has been applied for.
☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income
effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of a Federal, state, or local government;

☐ Other. State basis._____

(2) Corporate Status.

☐ Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;

☐ Other corporate entity;
☐ Not a corporate entity:
☐ Sole proprietorship
☐ Partnership

☐ Hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(3) Common Parent.

☐ Offeror is not owned or controlled by a common parent.

☐ Name and TIN of common parent:
Name_____
TIN_____

(c) Offerors must complete the following representations when the resulting contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. Check all that apply.

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

(2) *Small disadvantaged business concern*. The offeror represents and certifies that it ☐ is, ☐ is not a small disadvantaged business concern.

(3) *Women-owned small business concern.* The offeror represents that it ☐ is, ☐ is not a women-owned small business concern.

> ***Note***: Complete paragraphs (c)(4) and (c)(5) only if this solicitation is expected to exceed the simplified acquisition threshold.

(4) *Women-owned business concern*. The offeror represents that it ☐ is, ☐ is not, a women-owned business concern.

(5) *Tie bid priority for labor surplus area concerns*. If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price: ____.

(6) *Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program*. [*Complete only if the offeror has certified itself to be a small business concern under the size standards for this solicitation*.]

(i) (*Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs).)* The offeror represents as part of its offer that it ☐ is, ☐ is not an emerging small business.

(ii) (*Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).*) Offeror represents and certifies as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts)

(Check one of the following):

Number of Employees	Average Annual Gross Revenues
___ 50 or fewer	___ $1 million or less
___ 51 - 100	___ $1,000,001 - $2 million
___ 101 - 250	___ $2,000,001 - $3.5 million
___ 251 - 500	___ $3,500,001 - $5 million
___ 501 - 750	___ $5,000,001 - $10 million
___ 751 - 1,000	___ $10,000,001 - $17 million
___ Over 1,000	___ Over $17 million

(d) Certifications and representations required to implement provisions of Executive Order 11246—

(1) *Certification of non-segregated facilities*. (Applies only if the contract amount is expected to exceed $10,000)—

By submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees, any facilities that are segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise and that it does not and will not permit its employees to perform their services at any location where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.

(2) Previous Contracts and Compliance. The offeror represents that—

(i) It ☐ has, ☐ has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order 10925, or the clause contained in Section 201 of Executive Order 11114; and

(ii) It ☐ has, ☐ has not, filed all required compliance reports.

(3) Affirmative Action Compliance. The offeror represents that—

(i) It ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR Subparts 60-1 and 60-2), or

(ii) It ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) *Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352)*. (Applies only if the contract is expected to exceed $100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract.

(f) *Buy American Act—Trade Agreements—Balance of Payments Program Certificate*. (Applies only if FAR clause 52.225-9, Buy American Act - Trade Agreement - Balance of Payments Program, is included in this solicitation.)

(1) The offeror hereby certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act - Trade Agreements - Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States, a designated country, a North American Free Trade Agreement (NAFTA) country, or a Caribbean Basin country, as defined in section 25.401 of the Federal Acquisition Regulation.

(2) Excluded End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____

(List as necessary)

(3) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (f)(2) of this provision, offerors must identify and certify below those excluded end products that are designated or NAFTA country end products, or Caribbean Basin country end products. Products that are not identified and certified below will not be deemed designated country end products, NAFTA country end products, or Caribbean Basin country end products. Offerors must certify by inserting the applicable line item numbers in the following:

(i) The offeror certifies that the following supplies qualify as "designated or NAFTA country end products" as those terms are defined in the clause entitled "Buy American Act - Trade Agreements - Balance of Payments Program:"

_____
_____
_____

(Insert line item numbers)

(ii) The offeror certifies that the following supplies qualify as "Caribbean Basin country end products" as that term is defined in the clause entitled "Buy American Act - Trade Agreements - Balance of Payments Program":

_____
_____
_____

(Insert line item numbers)

(4) Offers will be evaluated in accordance with FAR Part 25.

(g) *Buy American Act - North American Free Trade Agreement (NAFTA) Implementation Act - Balance of Payments Program Certificate*. (Applies only if FAR clause 52.225-21, Buy American Act - North American Free Trade Agreement (NAFTA) Implementation Act - Balance of Payments Program, is included in this solicitation.)

(1) The offeror hereby certifies that each end product, except those listed in paragraph (g)(2) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act - North American Free Trade Agreement (NAFTA) Implementation Act - Balance of Payments Program" and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

(2) Excluded End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____

(List as necessary)

(3) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (g)(2) of this provision, offerors must identify and certify below those excluded end products that are NAFTA country end products. Products that are not identified and certified below will not be deemed NAFTA country end products. Offerors must certify by inserting the applicable line item numbers in the following:

The offeror certifies that the following supplies qualify as "NAFTA country end products" as that term is defined in the clause entitled "Buy American Act - North American Free Trade Agreement Implementation Act - Balance of Payments Program:"

_____
_____
_____

(Insert line item numbers)

(4) Offers will be evaluated in accordance with FAR Part 25.

(h) *Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12549)*. The offeror certifies, to the best of its knowledge and belief, that—

(1) The offeror and/or any of its principals ☐ are,
☐ are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency, and

(2) ☐ Have, ☐ have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or

receiving stolen property; and ☐ are, ☐ are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

(i) *Procurement Integrity Certification (41 U.S.C. 423).* (Applies only if the contract is expected to exceed $100,000.)

I, the undersigned, am the officer or employee responsible for the preparation of this offer. I certify, to the best of my knowledge and belief, that either—

☐ I have no information, or

☐ I have disclosed information to the Contracting Officer concerning a violation or possible violation of subsection (a), (b), (d) or (f) of 41 U.S.C. 423, Procurement Integrity, or its implementing regulations that may have occurred during the conduct of this procurement.

_____
Signature of the officer or employee responsible for the offer and date.

(End of Provision)

52.212-4 Contract Terms and Conditions - Commercial Items.

As prescribed in 12.301(b)(3), insert the following clause:

CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS
(OCT 1995)

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee's rights to be paid amounts due as a result of performance of this contract, may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727).

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) *Excusable delays*. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.* The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized,) to the address designated in the contract to receive invoices. An invoice must include—

(1) Name and address of the Contractor;

(2) Invoice date;

(3) Contract number, contract line item number and, if applicable, the order number;

(4) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(6) Terms of any prompt payment discount offered;

(7) Name and address of official to whom payment is to be sent; and

(8) Name, title, and phone number of person to be notified in event of defective invoice.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment.

(h) *Patent indemnity*. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Payments under this contract may be made by the Government either by check, electronic funds transfer, or the Automated Clearing House, at the option of the Government.

In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

(j) *Risk of loss*. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title*. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty*. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability*. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C 327, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58,
Anti-Kickback Act of 1986; 41 U.S.C. 251 related to whistle blower protections; and 49 U.S.C 40118, Fly American.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) the schedule of supplies/services; (2) the Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause; (3) the clause at 52.212-5; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and attachments; and (9) the specification.

(End of clause)

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

As prescribed in 12.301(b)(4), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS
(OCT 1995)

(a) The Contractor agrees to comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.222-3, Convict Labor (E.O. 11755); and

(2) 52.233-3, Protest After Award (31 U.S.C 3553 and 40 U.S.C. 759).

(b) The Contractor agrees to comply with the FAR and FIRMR clauses in this paragraph (b) which the contracting officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

(Contracting Officer shall check as appropriate.)

___ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).

___ (2) 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity (41 U.S.C. 423).

___ (3) 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (15 U.S.C. 637 (d)(2) and (3));

___ (4) 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (15 U.S.C. 637 (d)(4));

___ (5) 52.219-14, Limitation on Subcontracting (15 U.S.C. 637(a)(14)).

___ (6) 52.222-26, Equal Opportunity (E.O. 11246).

___ (7) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212).

___ (8) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

___ (9) 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).

___ (10) 52.225-3, Buy American Act - Supplies (41 U.S.C. 10).

___ (11) 52.225-9, Buy American Act - Trade Agreements Act - Balance of Payments Program (41 U.S.C. 10, 19 U.S.C. 2501-2582).

___ (12) 52.225-17, Buy American Act - Supplies Under European Community Sanctions for End Products (E.O. 12849).

___ (13) 52.225-18, European Community Sanctions for End Products (E.O. 12849).

___ (14) 52.225-19, European Community Sanctions for Services (E.O. 12849).

___ (15) 52.225-21, Buy American Act - North American Free Trade Agreement Implementation Act - Balance of Payments Program (41 U.S.C 10, Pub. L. 103-187).

___ (16) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241).

___ (17) 201-39.5202-3, Procurement Authority (FIRMR).
(This acquisition is being conducted under _____ delegation of GSA's exclusive procurement authority for FIP resources. The specific GSA DPA case number is _____).

(c) The Contractor agrees to comply with the FAR clauses in this paragraph (c), applicable to commercial services, which the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

(Contracting Officer check as appropriate.)

___ (1) 52.222-41, Service Contract Act of 1965, As amended (41 U.S.C. 351, *et seq.*).

___ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

___ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

___ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act - Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

___ (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351, *et seq.*).

(d) *Comptroller General Examination of Record*. The Contractor agrees to comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor’s directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) or (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below (and as may be required by an addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components—

(1) 52.222-26, Equal Opportunity (E.O. 11246);

(2) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 2012(a)); and

(3) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

(4) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(End of clause)

PART 13

SIMPLIFIED ACQUISITION PROCEDURES

13.000 Scope of part.

FAR as of FAC 90-25	*FAR as revised*
This part prescribes policies and procedures for the acquisition of ~~supplies,~~ services, ~~and~~ construction ~~from commercial sources,~~ the aggregate amount of which does not exceed ~~$25,000~~.	This part prescribes policies and procedures for the acquisition of supplies **and** services, **including** construction **and research and development**, the aggregate amount of which does not exceed **the simplified acquisition threshold (see 13.103(b))**. **See 36.602-5 for simplified procedures to be used when acquiring architect-engineering services.**

SUBPART 13.1—GENERAL

13.101 Definitions.

FAR as of FAC 90-25	*FAR as revised*
"Bulk funding" means a system whereby a contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligation authority on each purchase document	"Bulk funding" means a system whereby a contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligational authority on each purchase document.
"Delivery ~~Order," as used in this part~~, means an order for supplies or services placed against an established contract or with Government sources of supply.	"Delivery **order"** means an order for supplies or services placed against an established contract or with Government sources of supply.
	"Governmentwide commercial purchase card" means a purchase card, similar in nature to a commercial credit card, issued to authorized agency officials for their use in acquiring supplies and services. [FAC 90-24]
	Imprest fund" means a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for relatively small amounts.

	“Micro-purchase” means an acquisition of supplies or services (except construction), the aggregate amount of which does not exceed $2,500. Micro-purchases for construction are limited to $2,000. [FAC 90-24]
“Purchase ~~Order,” as used in this part,~~ means an offer by the Government to buy ~~certain~~ supplies or ~~services and~~ construction ~~from commercial sources,~~ upon specified terms and conditions, ~~the aggregate amount of which does not exceed the small purchase limit. The Optional Form 347, Order for Supplies or Services, is designed for this purpose~~.	"Purchase **order”** 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**.
" “~~Small purchase procedures”~~ means the methods prescribed in this part for making ~~small~~ purchases using imprest funds, purchase orders, and blanket purchase ~~agreements. The term excludes—~~ ~~(a) Requirements obtained through the use of Delivery Orders;~~ ~~(b) Contracts with the Small Business Administration (SBA) under Section 8(a) of the Small Business Act (see Part 19); and~~ ~~(c) Contracts awarded through (1) sealed bidding (see Part 14), (2) the negotiation procedures in Part 15, or (3) small business or labor surplus area set-asides (see Parts 19 and 20), other than small business-small purchase set-asides prescribed in 13.105~~. * * * * * ~~13.104(f) This part does not preclude using (1) Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)) or (2) negotiated two-party contracts (see Part 15), for acquisitions not exceeding the small purchase limitation~~.	**Simplified acquisition procedures**" means the methods prescribed in this part for making purchases **of supplies or services** using imprest funds, purchase orders, blanket purchase **agreements, Governmentwide commercial purchase cards, or any other appropriate authorized method**.
~~“Small purchase” means an acquisition of supplies, services, and construction in the amount of $25,000 or less using the procedures prescribed in this part~~.	**"Simplified acquisition threshold" means $100,000 (but see 13.103(b)). In the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation, the term means $200,000.**

13.102 Purpose.

FAR as of FAC 90-25	*FAR as revised*
The purpose of this part is to prescribe simplified procedures ~~for small purchases~~ in order to ~~(1)~~ ~~reduce~~ administrative ~~costs and (2) improve~~ opportunities for small business ~~concerns~~ and small disadvantaged business concerns to obtain a fair proportion of Government ~~contracts.~~	The purpose of this part is to prescribe simplified **acquisition** procedures in order to— **(a) Reduce** administrative costs; **(b) Improve** opportunities for small business and small disadvantaged business concerns to obtain a fair proportion of Government

contracts; (c) Promote efficiency and economy in contracting; and, (d) Avoid unnecessary burdens for agencies and contractors.

13.103 Policy.

FAR as of FAC 90-25	*FAR as revised*
(a) ~~The~~ procedures ~~prescribed in this part~~ shall be used to the maximum extent practicable for all purchases of supplies or services not exceeding the ~~small purchase limitation~~ unless requirements can be met by using required sources of supply ~~(see Part 8)~~.	(a) **Simplified acquisition** procedures shall be used to the maximum extent practicable for all purchases of supplies or services not exceeding the **simplified acquisition threshold** unless requirements can be met by using required sources of supply **under Part 8 (e.g., Federal Prison Industries, Committee for Purchase from People who are Blind or Severely Disabled, and Federal Supply Schedule contracts) or orders under Federal Information Processing multiple award schedule contracts.**
	(b) Simplified acquisition procedures may not be used for contract actions exceeding $50,000, and not exceeding the simplified acquisition threshold, unless the contracting office making the purchase has been certified as having interim FACNET in accordance with 4.505-1. The contracting office shall not use simplified acquisition procedures for contract actions exceeding $50,000 after December 31, 1999, unless the office's cognizant agency has certified full FACNET capability in accordance with 4.505-2.
~~(b) Small purchase~~ procedures shall not be used in the acquisition of supplies and services initially estimated to exceed the ~~small purchase limitation~~ even though resulting awards do not exceed that ~~limit.~~ Requirements aggregating more than the ~~small purchase dollar limitation~~ shall not be broken down into several purchases that are less than the ~~limit~~ merely to permit ~~negotiation under small purchase~~ procedures.	. **(c) Simplified acquisition** procedures shall not be used in the acquisition of supplies and services initially estimated to exceed the **simplified acquisition threshold** even though resulting awards do not exceed that **threshold.** Requirements aggregating more than the **simplified acquisition threshold** shall not be broken down into several purchases that are less than the **threshold** merely to permit **use of simplified acquisition** procedures.
~~(c) Small purchase~~ procedures may be used to acquire personal services if the agency has specific statutory authority to acquire personal services ~~by contract~~ (see 37.104).	**(d) Simplified acquisition procedures** may be used to acquire personal services if the agency has specific statutory authority to acquire personal services (see 37.104).

(e) FACNET is the preferred means for acquiring supplies and services, including construction and research and development, in amounts exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold.

(f) Contracting officers shall establish deadlines for the submission of responses to solicitations which afford contractors a reasonable opportunity to respond.

(g) Contracting officers are encouraged to use innovative approaches in awarding contracts using the simplified acquisition procedures under the authority of this part. For example, the procedures of other FAR parts may, as appropriate, be adapted for use in awarding contracts under this part. Other FAR parts that may be adapted include, but are not limited to—

(1) Part 14, Sealed Bidding;

(2) Part 15, Contracting by Negotiation;

(3) Part 11, Acquisition and Distribution of Commercial Products; and

(4) Part 36, Construction and Architect-Engineer Contracts, including the use if Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)).

13.104 Procedures.

FAR as of FAC 90-25	*FAR as revised*
(a) Contracting officers ~~shall use the small purchase procedure~~ that is most suitable, efficient, and economical in the circumstances of each acquisition. Contracting officers may use the procedures in this part in acquisitions from Government supply sources (see Part 8), if their use is authorized by the basic contract or concurred in by the source.	(a) Contracting officers shall **make awards under this part in the simplified manner** that is most suitable, efficient, and economical in the circumstances of each acquisition. Contracting officers may use the procedures in this part in acquisitions from Government supply sources (see Part 8), if their use is authorized by the basic contract or concurred in by the source.
(b) Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation and the award made on an "all-or-none" basis if suppliers are so advised when quotations are requested.	(b) Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation and the award made on an “all-or-none” basis if suppliers are so advised when quotations are requested.

(c) Agencies shall use bulk funding to the maximum extent practicable to reduce processing time, handling, and documentation. Bulk funding is particularly appropriate if numerous purchases using the same type of funds are to be made during a given period.	(c) Agencies shall use bulk funding to the maximum extent practicable to reduce processing time, handling, and documentation. Bulk funding is particularly appropriate if numerous purchases using the same type of funds are to be made during a given period.
(d) Agencies shall inspect items or services acquired under ~~small purchas~~e procedures as prescribed in 46.404	(d) Agencies shall inspect items or services acquired under **simplified acquisition procedures** as prescribed in 46.404. .
(e) Agencies shall use United States-owned foreign currency, if appropriate, in making payments ~~for small purchases~~ (see Subpart 25.3).	(e) Agencies shall use United States-owned foreign currency, if appropriate, in making payments **when using simplified acquisition procedures** (see Subpart 25.3).
~~[(f) See Interim 13.101]~~	
~~(g)~~ For proposed purchases covered by this part, see ~~5.101(a)(2)~~ for public display requirements.	**(f)** For proposed purchases covered by this part, see **5.101** for public display **and synopsis** requirements.
~~(h)~~ When a quotation, oral or written, is to be rejected because a small business firm is determined to be ~~not responsible~~ (see Subpart 9.1), see 19.6 with respect to ~~Certificates~~ of ~~Competency~~.	**(g)** When a quotation, oral or written, is to be rejected because a small business firm is determined to be **nonresponsible** (see Subpart 9.1), see **Subpart** 19.6 with respect to **certificates** of **competency.**

13.105 Small business set-asides.

FAR as of FAC 90-25	*FAR as revised*
(a) Except as provided in paragraphs ~~(b), (c), and (d),~~ of this section, each acquisition of supplies or services that has an anticipated dollar value exceeding ~~$2,500, but not exceeding $25,000, and is subject to small purchase procedures, shall be~~ reserved exclusively for small business ~~concerns~~. ~~This shall be accomplished by using the category of set-asides established by Pub. L. 95-507, specifically for small purchases, identified as small business—small purchase set-asides established by Section 15(j) of the Small Business Act (15 U.S.C. 644(j)) (see Pub. L. 95-507)~~. [FAC 90-24]	(a) Except as provided in paragraphs **(b) and (c)** of this section, each acquisition **(non-FACNET and FACNET)** of supplies or services that has an anticipated dollar value exceeding **$2,500 and not exceeding $100,000, is reserved exclusively for small business concerns and shall be set aside (see Subpart 19.5).**
(b) The requirements of this section ~~13.105~~ apply only to purchases in the United States, its territories and possessions, Puerto Rico, and the Trust Territory of the Pacific Islands (see ~~19.000(b))~~. Foreign concerns shall not be solicited ~~or awarded~~ acquisitions ~~reserved~~ for small business concerns ~~(c) The requirement for small business-small purchase set-asides does not affect the responsibility of agencies to make purchases from required sources of supply, such as Federal Prison Industries, Industries for the Blind and Other Severely Handicapped, and Federal Supply Schedule contracts.~~	(b) The requirements of this section apply only to purchases in the United States, its territories and possessions, Puerto Rico, and the Trust Territory of the Pacific Islands (see **19.000).** Foreign concerns shall not be solicited **for** acquisitions **set aside** for small business concerns..

~~13.105 (d)~~ (1) Each written solicitation under a ~~small business- small purchase~~ set-aside shall contain the ~~provision at 52.219-4, Notice of Small Business-Small Purchase Set-Aside~~. If the solicitation is oral, however, information substantially identical to that which is in the provision shall be given to potential quoters.

(c)(1) Each written solicitation under a set-aside shall contain the **appropriate provisions or clauses prescribed by Part 19.** If the solicitation is oral, however, information substantially identical to that which is in the provision **or clause** shall be given to potential quoters.

~~13.105 (d)~~ (2) If the contracting officer determines there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns ~~(or at least one if the purchase does not exceed the dollar threshold, prescribed in 13.106, for obtaining competition and price reasonableness)~~ that will be competitive in terms of market price, quality, and delivery, the contracting officer need not proceed with the small business-small purchase set-aside and may purchase on an unrestricted basis. If the SBA procurement center representative disagrees with a contracting officer's decision not to proceed with a small business-small purchase set-aside, the SBA procurement center representative may appeal the decision in accordance with the procedures set forth in 19.505.

(2) If the contracting officer determines there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns that will be competitive in terms of market price, quality, and delivery, the contracting officer need not proceed with the small business set-aside and may purchase on an unrestricted basis. If the SBA procurement center representative disagrees with a contracting officer's decision not to proceed with the small business set-aside, the SBA procurement center representative may appeal the decision in accordance with the procedures set forth in 19.505.

~~13.105 (d)~~ (3) If the contracting officer proceeds with the ~~small business-small purchase~~ set-aside and receives a quotation from only one responsible small business concern at a reasonable price (see ~~13.106(c)),~~ the contracting officer shall make an award to that concern. However, if the contracting officer does not receive a reasonable quotation from a responsible small business concern, the contracting officer may cancel the ~~small business-small purchase~~ set-aside and complete the purchase on an unrestricted basis.

(3) If the contracting officer proceeds with the set-aside and receives a quotation from only one responsible small business concern at a reasonable price (see **13.106-2(a)),** the contracting officer shall make an award to that concern. However, if the contracting officer does not receive a reasonable quotation from a responsible small business concern, the contracting officer may cancel the set-aside and complete the purchase on an unrestricted basis.

~~13.105 (d) (4) When proceeding under 13.105(d)(1) or (3), the contracting officer shall ascertain the availability of small business suppliers by telephone or other informal means (see 13.106(b)(4)).~~

~~13.105 (d) (5)~~ If the purchase is on an unrestricted basis under ~~13.105(d)(2),~~ the contracting officer shall document in the file the reason for the unrestricted purchase.

(4) If the purchase is on an unrestricted basis under **13.105(c)(2),** the contracting officer shall document in the file the reason for the unrestricted purchase.

(5) See Part 19 for policy concerning—
(i) Contracting with the Small Business Administration under the 8(a) Program (Subpart 19.8);
(ii) Emerging small business set-aside (19.1006(c)); and
(iii) The Small Business Competitiveness Demonstration Program (Subpart 19.10).

~~(e) Policy concerning nonmanufacturers under small business-small purchase set-asides is prescribed in 19.501(f)(2).~~

13.106 Purchases exceeding the micro-purchase threshold.

13.106-1 Soliciting competition, evaluation of quotes, and award.
(a) ***Soliciting Competition.***

FAR as of FAC 90-25	*FAR as revised*
~~13.106(a) Purchases over 10 percent of the small purchase limitation~~. (1) Contracting officers shall solicit ~~quotations from~~ a reasonable number of sources to promote competition to the maximum extent ~~practicable and~~ ensure that the purchase is advantageous to the Government, price and other factors ~~considered,~~ including the administrative cost of the purchase.	(1) Contracting officers shall solicit a reasonable number of sources to promote competition to the maximum extent **practicable, and to** ensure that the purchase is advantageous to the Government, **based, as appropriate, on either price alone or** price and other factors **(e.g., past performance and quality)** including the administrative cost of the purchase**. Requests for quotations or solicitations shall notify suppliers of the basis upon which award is to be made**.
~~13.106 (a)(2) Generally, quotations should be solicited orally except that written solicitations shall be used for construction contracts over $2,000. Written solicitations should be used when obtaining oral quotations is not considered economical or practical.~~	**(2) FACNET is the preferred method of soliciting simplified acquisitions. However, if FACNET is not available, or if the contracting officer has made a determination that it is not practicable or cost-effective to process a specific purchase via FACNET, or if the head of the contracting activity has made a determination that it is not practicable or cost-effective to process a class of purchases via FACNET (see 4.506), quotations may be solicited through other appropriate means. Requests for quotations should be solicited orally to the maximum extent practicable for contract actions not expected to exceed $25,000, when FACNET is not available or a determination has been made that it is not practicable or cost effective to purchase via FACNET. Oral solicitations may not be practicable for most contract actions exceeding $25,000 because of the synopsis requirement in 5.101. A synopsis may incorporate enough information for the contracting officer to receive oral quotes. The contracting officer is not required to issue a separate written solicitation. Paper solicitations for contract actions not expected to exceed $25,000 should only be issued when obtaining electronic or oral quotations is not considered economical or practical. Solicitations for construction contracts over $2,000 shall only be issued electronically or by paper solicitation.**
~~13.106(a)(3) Maximum~~ practicable competition ~~for small purchases~~ ordinarily can be obtained without soliciting quotations from sources outside the trade ~~area in which the purchasing office is located~~..	**(3) When not soliciting quotations electronically, maximum** practicable competition ordinarily can be obtained without soliciting quotations **or offers** from sources outside the **local** trade **area.**

~~13.106(a)(5)~~ Generally, solicitation of at least three sources may be considered to promote competition to the maximum extent ~~practicable.~~ If practicable, two sources not included in the previous solicitation should be requested to furnish quotations.

Generally, solicitation of at least three sources may be considered to promote competition to the maximum extent practicable **if the contract action does not exceed $25,000.** If practicable, two sources not included in the previous solicitation should be requested to furnish quotations.

.~~13.106(a)(6)~~ The following factors influence the number of quotations required in connection with any particular purchase:
(i) The nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive.
(ii) Information obtained in making recent purchases of the same or similar item.
(iii) The urgency of the proposed purchase.
(iv) The dollar value of the proposed purchase.
(v) Past experience concerning specific dealers' prices.

The following factors influence the number of quotations required in connection with any particular purchase:
(i) The nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive.
(ii) Information obtained in making recent purchases of the same or similar item.
(iii) The urgency of the proposed purchase.
(iv) The dollar value of the proposed purchase.
(v) Past experience concerning specific dealers' prices

~~13.106(a) Purchases over 10 percent of the small purchase limitation. (1) … Solicitations may only be limited to~~ one source if the contracting officer determines that only one source ~~is~~ reasonably ~~available~~.

(4) Contracting officers may solicit from one source if the contracting officer determines that **the circumstances of the contract action deem** only one source reasonably **available (e.g., urgency).**

.~~13.106(a)(3) …~~ Contracting officers shall not limit solicitations to suppliers of well known and widely distributed makes or brands, ~~nor shall~~ quotations ~~be solicited~~ on a personal preference basis. ~~New~~ supply ~~sources,~~ disclosed through trade journals or other ~~media,~~ shall be continuously reviewed and, if appropriate, added to the ~~list of available sources~~.

(5) Contracting officers shall not limit solicitations to suppliers of well known and widely distributed makes or brands, **or solicit** quotations on a personal preference basis. **If it is necessary to maintain a list of sources, new** supply sources disclosed through trade journals or other **media** shall be continuously reviewed and, if appropriate, added to the **list**

~~13.107(b) *Discounts*. Consistent with the applicable principles in 14.407-3,~~ contracting officers shall make every effort to obtain trade and prompt payment discounts. However, prompt payment discounts shall not be considered in the evaluation of quotations.

(6) In accordance with 14.408-3, contracting officers shall make every effort to obtain trade and prompt payment discounts. However, prompt payment discounts shall not be considered in the evaluation of quotations.

~~13.106(a) (4)(i)~~ Unless exempted from this requirement by the head of the contracting activity, each contracting office shall maintain a ~~small purchase~~ source list (or lists, if more convenient) and shall record on the list the status of each source (when the status is made known to the contracting office) in the following categories:

(A) Small business.
(B) Small disadvantaged business.
(C) ~~Certified in a labor surplus area~~.
(ii) The status information ~~shall~~ be used to ensure that small business concerns are given opportunities to ~~submit quotations in response to small purchase solicitations. The names of additional concerns may be obtained from the Small and Disadvantaged Business~~

(7)(i) Unless exempted from this requirement by the head of the contracting activity, **or unless purchases are made through FACNET,** each contracting office should maintain a source list (or lists, if more convenient) and should record on the list the status of each source (when the status is made known to the contracting office) in the following categories:
(A) Small business.
(B) Small disadvantaged business.
(C) **Women-owned small business**.
(ii) The status information **should** be used to ensure that small business concerns are given opportunities to **respond to solicitations issued using simplified acquisition procedures.**

~~Utilization Specialist who, in turn, may request support from the SBA Procurement Center Representative or other Federal and private sources which maintain lists of small business concerns. (See Subpart 19.1 for pertinent definitions.~~)

13.106-1 Soliciting competition, evaluation of quotes, and award.
(b) ***Evaluation of Quotes or Offers.***

FAR as of FAC 90-25	*FAR as revised*
	(1) Contracting officers may evaluate quotations or offers based on price alone or price and other factors (e.g., past performance, or quality). Formal evaluation plans, conduct of discussions, and scoring of quotes or offers are not required. Evaluation of other factors does not require the creation or existence of a formal data base, but may be based on such information as the contracting officer's knowledge, previous experience, or customer surveys.
~~13.106(a)(7) If suppliers furnish standing~~ price quotations ~~on supplies or services required on an intermittent and recurring basis, the information~~ may be used in lieu of obtaining individual quotations each time a purchase is contemplated. ~~The~~ buyer shall ensure that the price information is current and that the Government obtains the benefit of maximum ~~discounts~~.	**(2) Standing** price quotations may be used in lieu of obtaining individual quotations each time a purchase is contemplated. **In such case, the** buyer shall ensure that the price information is current and that the Government obtains the benefit of maximum **discounts before award is made.**
~~13.107(c) *Transportation charges.*~~ Contracting officers shall evaluate quotations inclusive of transportation charges from the shipping point of the supplier to the delivery destination.	**(3)** Contracting officers shall evaluate quotations inclusive of transportation charges from the shipping point of the supplier to the delivery destination.
~~13.107 (d) Economic purchase quantities (supplies).~~ Contracting officers shall comply with the economic purchase ~~quantity planning requirements for supplies in Subpart 7.2. If quotations are solicited in writing, contracting officers shall comply with 7.203 and 7.204. If quotations are solicited orally, contracting officers shall orally request the information covered by the provision at 52.207-4 in accordance with the instructions at 7.203 and then comply with 7.204.~~	**(4)** Contracting officers shall comply with the **policy in 7.202 relating to** economic purchase **quantities**, **when practicable**.

13.106-1 Soliciting competition, evaluation of quotes, and award.
(c) ***Award.***

FAR as of FAC 90-25	*FAR as revised*
~~13.106(a)(8)~~ Occasionally an item can be obtained only from a supplier who quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantities required. In these instances, the contracting officer should inform the requiring activity of all facts regarding the quotation and ~~request~~ it to confirm or alter its requirement. The file shall be documented to support the final action taken.	**(1)** Occasionally an item can be obtained only from a supplier who quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantities required. In these instances, the contracting officer should inform the requiring activity of all facts regarding the quotation and **ask** it to confirm or alter its requirement. The file shall be documented to support the final action taken.
~~13.106(a)(9)~~ Notification to unsuccessful suppliers shall be given only if requested.	**(2)** Notification to unsuccessful suppliers shall be given only if requested**. When a supplier requests information on an award which was based on factors other than price alone, the notification shall include a brief explanation of the basis for the contract award decision (see 15.1001(c)(3)).**

13.106-2 Data to support purchases.

FAR as of FAC 90-25	*FAR as revised*
~~13.105(b) Data to support small purchases over 10 percent of the small purchase limitation. (1)~~ The determination that a proposed price is reasonable should be based on competitive quotations. If only one response is received, or the price variance between multiple responses reflects lack of adequate competition, a statement shall be included in the contract file giving the basis of the determination of fair and reasonable price. The determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, value analysis, the contracting officer's personal knowledge of the item being purchased, or any other reasonable basis. ~~In any case, the contracting officer should gain as much knowledge as practicable of the physical and material characteristics and intended use of the item to be purchased as an aid to determine price reasonableness~~.	**(a)** The determination that a proposed price is reasonable should be based on competitive quotations. If only one response is received, or the price variance between multiple responses reflects lack of adequate competition, a statement shall be included in the contract file giving the basis of the determination of fair and reasonable price. The determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, value analysis, the contracting officer's personal knowledge of the item being purchased or any other reasonable basis.
	(b) When other than price related factors are considered in selecting the supplier (see 13.106-1(b)(1)), the contracting officer shall document the file to support the final contract award decision.

~~13.105(b)(2)~~ If only one source is solicited, an additional notation shall be made to explain the absence of competition, except for acquisition of utility services available only from one source or of educational services from nonprofit institutions.

(c) If only one source is solicited, an additional notation shall be made to explain the absence of competition, except for acquisition of utility services available only from one source or of educational services from nonprofit institutions.

~~13.105(b)(3)~~ The following illustrate the extent to which quotation information should be recorded:

~~(i)~~ *Oral solicitations*. The contracting office shall establish and maintain informal records of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases, this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each. ~~Handwritten notations on the purchase requisition are satisfactory for this purpose~~.

(ii) *Written ~~solicitations~~.* Written records of solicitations may be limited to notes or abstracts to show prices, delivery, references to printed price lists used, the ~~vendor~~ or ~~vendors~~ contacted, and other pertinent data.

(d) Simplified documentation practices should be used. The following illustrate the extent to which quotation information should be recorded.

(1) *Oral solicitations*. The contracting office should establish and maintain informal records of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each.

(2) *Written* **solicitations (see 2.101).** Written records of solicitations may be limited to notes or abstracts to show prices, delivery, references to printed price lists used, the **supplier** or **suppliers** contacted, and other pertinent data.

~~13.105(b)(4)~~ Purchasing offices shall retain data supporting ~~small~~ purchases to the minimum extent and duration necessary for management review ~~purposes. (See Subpart 4.8, Contract Files.)~~

(e) Purchasing offices shall retain data supporting purchases **using simplified acquisition procedures** to the minimum extent and duration necessary for management review **purposes (see Subpart 4.8).**

13.107 Solicitation forms.

FAR as of FAC 90-25	*FAR as revised*
~~13.107(a) *Forms*. (1)~~ Except when quotations are solicited orally, Standard Form 18, Request for Quotations ~~(illustrated in~~ 53.301-18), is ~~designed for use in obtaining price, delivery, and related information from suppliers. (2)~~ Standard Form 18 is ~~available~~ for use by all agencies, and ~~shall be used when using the form is considered economical and efficient for obtaining written quotations for small purchases~~.	**(a)** Except when quotations are solicited **via FACNET or** orally, Standard Form 18, Request for Quotations (53.301-18), is **available, but not required,** for use by all agencies.
~~13.107(a)(3)~~ Optional Form 336, Continuation Sheet, may be used with Standard Form 18 when additional space is needed.	**(b)** Optional Form 336, Continuation Sheet, may be used with Standard Form 18 when additional space is needed.
~~13.107(a)(4)~~ If Standard Form 18 is not used for written solicitations, contracting officers may request quotations using an agency-designed form, an agency-approved automated format, or ~~teletype~~.	**(c)** If Standard Form 18 is not used for written solicitations, contracting officers may request quotations using an agency-designed form, an agency-approved automated format, or **electronically.**

~~13.107(a)(5)~~ Each agency-designed request for quotations form shall conform with Standard Form 18, ~~insofar as practical~~.	**(d)** Each agency-designed request for quotations form shall conform with Standard Form 18, **to the maximum extent practicable.**
~~13.107(a)(6)~~ When using ~~a teletype~~ for transmission of a request for quotations, the provisions and clauses applicable to the solicitation shall be incorporated by reference.	**(e)** When using **an unsigned electronic purchase order (see 13.506)** for transmission of a request for quotations, the provisions and clauses applicable to the solicitation shall be incorporated by reference.

13.108 Legal effect of quotations.

FAR as of FAC 90-25	*FAR as revised*
(a) A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract (see 15.402(e)). Therefore, issuance by the Government of an order for supplies or services in response to a supplier's quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer or begins performance.	(a) A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract (see 15.402(e)). Therefore, issuance by the Government of an order for supplies or services in response to a supplier's quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract comes into being when the supplier accepts the offer.
(b) When appropriate, the contracting officer may ~~request~~ the supplier to indicate acceptance of an order by notification to the Government, preferably in writing. In other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.	(b) When appropriate, the contracting officer may **ask** the supplier to indicate acceptance of an order by notification to the Government, preferably in writing. In other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.
(c) If the Government issues an order resulting from a quotation, the Government may (by written notice to the supplier, at any time before acceptance occurs) withdraw, amend, or cancel its offer. (See 13.504 for procedures on termination or cancellation of purchase orders.)	(c) If the Government issues an order resulting from a quotation, the Government may (by written notice to the supplier, at any time before acceptance occurs) withdraw, amend, or cancel its offer. (See 13.504 for procedures on termination or cancellation of purchase orders.)

13.109 Agency use of indefinite delivery contracts.

FAR as of FAC 90-25	*FAR as revised*
~~Small purchase costs~~ and processing time may be reduced through the use of indefinite delivery contracts (see Subpart 16.5) that permit delivery orders to be placed by several contracting or ordering offices in one or more executive agencies. Therefore, contracting offices are encouraged to seek opportunities to cooperate with each other to achieve small purchase efficiency and economy through the use of indefinite delivery contracts.	**Costs** and processing time **for acquisitions at or below the simplified acquisition threshold** may be reduced through the use of indefinite delivery contracts (see Subpart 16.5) that permit delivery orders to be placed by several contracting or ordering offices in one or more executive agencies. Therefore contracting offices are encouraged to seek opportunities to cooperate with each other to achieve efficiency and economy through the use of indefinite delivery contracts.

13.110 Federal Acquisition Streamlining Act of 1994 (FASA) list of inapplicable laws.

(a) The following laws are inapplicable to all contracts and subcontracts (if otherwise applicable to subcontracts) at or below the simplified acquisition threshold:

(1) 41 U.S.C. 57(a) & (b) (Anti-Kickback Act of 1986). (Only the requirement for the incorporation of the contractor procedures for the prevention and detection of violations, and the contractual requirement for contractor cooperation in investigations are inapplicable.)

(2) 40 U.S.C. 27 (Miller Act).

(3) 40 U.S.C. 329 (Contract Work Hours and Safety Standards Act — Overtime Compensation).

(4) 41 U.S.C. 701(a)(1) (Section 5152 of the Drug Free Workplace Act of 1988), except for individuals.

(5) 42 U.S.C. 6962 (Solid Waste Disposal Act)(Only the requirement for providing the estimate of recovered material utilized in the performance of the contract is inapplicable).

(6) 10 U.S.C. 2306(b) and 41 U.S.C. 254(a) (Contract Clause Regarding Contingent Fees).

(7) 10 U.S.C. 2313 and 41 U.S.C. 254(c) (Authority to Examine Books and Records of Contractors).

(8) 10 U.S.C. 2384(b) (Requirement to Identify Suppliers and Sources of Supply).

(9) 10 U.S.C. 2393(d) (Prohibition Against Doing Business with Certain Offerors or Contractors).

(10) 10 U.S.C. 2402 and 41 U.S.C. 253g (Prohibition on Limiting Subcontractor Direct Sales to the United States).

(11) 10 U.S.C. 2408(a) (Prohibition on Persons Convicted of Defense Related Felonies).

(12) 10 U.S.C. 2410b (Contractor Inventory Accounting System Standards).

(13) 10 U.S.C. 2534 (Miscellaneous Procurement Limitations).

(b) The Federal Acquisition Regulatory Council will include any law enacted after October 13, 1994, that sets forth policies, procedures, requirements, or restrictions for the procurement of property or services, on the list set forth in 13.110(a), unless the FAR Council makes a written determination that it is in the best interests of the Government that the enactment should apply to contracts or subcontracts not greater than the simplified acquisition threshold.

(c) The provisions of 13.110(b) do not apply to laws that—

(1) Provide for criminal or civil penalties; or

(2) Specifically state that notwithstanding the language of Section 4101, Pub. L. 103-355, the enactment will be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) Any individual may petition the Administrator of the Office of Federal Procurement Policy to include any applicable provision of law not included on the list set forth in 13.110(a) unless the FAR Council has already determined in writing that the law is applicable. The Administrator of OFPP will include the law on the list in 13.110(a) unless the FAR Council makes a determination that it is applicable within sixty days of receiving the petition.

13.111 Inapplicable provisions and clauses

Pursuant to Pub. L. 103-355, the following provisions and clauses are inapplicable to contracts and subcontracts at or below the simplified acquisition threshold—
(a) 28.102-3, Miller Act requirements;
(b) 52.203-1, Officials Not to Benefit;
(c) 52.203-4, Contingent Fee Representation and Agreement;
(d) 52.203-5, Covenant Against Contingent Fees;
(e) 52.203-6, Restrictions on Subcontractor Sales to the Government;
(f) 52.203.7, Anti-Kickback Procedures;
(g) 52.215-1, Examination of Records by Comptroller General;
(h) 52.222-4, Contract Work Hours and Safety Standards Act — Overtime Compensation;
(i) 52-223-5, Certification Regarding a Drug-Free workplace, except for individuals; and
(j) 52.223-6, Drug-Free Workplace, except for individuals.

13.112 Use of options in acquisition using simplified acquisition procedures

Options may be included in acquisitions using simplified acquisition procedures provided that the requirements of Subpart 17.2 are met, and the aggregate value of the acquisition and all options does not exceed the dollar threshold for use of simplified acquisition procedures under this part.

SUBPART 13.2 — BLANKET PURCHASE AGREEMENTS

13.201 General.

FAR as of FAC 90-25	*FAR as revised*
(a) A blanket purchase agreement (BPA) is a simpli fied method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply (see Subpart 16.7 for additional coverage of agreements).	(a) A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for supplies or services by establishing “charge accounts” with qualified sources of supply (see Subpart 16.7 for additional coverage of agreements).
(b) ~~BPA’s are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents~~.	
~~(c) BPA’s~~ should be established ~~at the appropriate~~ level responsible for providing supplies for its own operations or for other offices, installations, projects, or functions. Such levels, for example, may be organized supply points, separate independent or detached field parties, or one-person posts or activities.	**(b) BPAs** should be established **for use by the** level responsible for providing supplies for its own operations or for other offices, installations, projects, or functions. Such levels, for example, may be organized supply points, separate independent or detached field parties, or one-person posts or activities.
~~(d)~~ The use of ~~BPA’s~~ does not exempt the agency from responsibility for keeping obligations and expenditures within available ~~funds, but this should be done by using simplified methods and by avoiding formal fiscal recording of individual deliveries and transactions~~.	**(c)** The use of **BPAs** does not exempt the agency from the responsibility for keeping obligations and expenditures within available **funds.**

13.202 [Reserved]

13.203 Establishment of Blanket Purchase Agreements.

13.203-1 General.

FAR as of FAC 90-25	*FAR as revised*
(a) The following are circumstances under which contracting officers may establish BPAs**:** (1) If there is a wide variety of items in a broad class of goods (e.g., hardware) that are generally purchased but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably. (2) If there is a need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise. (3) In any other case in which the writing of numerous purchase orders can be avoided through the use of this procedure.	(a) The following are circumstances under which contracting officers may establish BPAs~~:~~ (1) If there is a wide variety of items in a broad class of goods (e.g., hardware) that are generally purchased but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably. (2) If there is a need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise. (3) In any other case in which the writing of numerous purchase orders can be avoided through the use of this procedure.
(b) A BPA should be established without a purchase requisition.	(b) A BPA should be established without a purchase requisition.
(c) A BPA shall not cite accounting and appropriation data **(**see 13.204(e)(4)).	(c) A BPA shall not cite accounting and appropriation data (see 13.204(e)(4)).
(d) BPAs should be made with firms from which numerous individual purchases will likely be made in a given period. For example, if past experience has shown that certain firms are dependable and consistently lower in price than other firms dealing in the same commodities, and if numerous purchases at or below the simplified acquisition threshold are usually made from such suppliers, it would be advantageous to establish BPAs with those firms.	(d) BPAs should be made with firms from which numerous individual purchases will likely be made in a given period. For example, if past experience has shown that certain firms are dependable and consistently lower in price than other firms dealing in the same commodities, and if numerous small purchases are usually made from such suppliers, it would be advantageous to establish BPA's with those firms.
(e) To the extent practical, BPAs for items of the same type should be placed concurrently with more than one supplier. All competitive sources should be given an equal opportunity to furnish supplies or services under BPAs.	(e) To the extent practical, BPAs for items of the same type should be placed concurrently with more than one supplier. All competitive sources should be given an equal opportunity to furnish supplies or services under BPAs.
(f) BPAs may also be established with Federal Supply Schedule contractors and ~~GSA Nonmandatory ADP~~ Schedule contractors (see Part 39), if not inconsistent with the terms of the applicable schedule contract.	(f) BPAs may also be established with Federal Supply Schedule contractors and **Federal Information Processing Multiple Award** Schedule contractors (see Part 39), if not inconsistent with the terms of the applicable schedule contract.
(g) If it is determined that BPAs would be advantageous, suppliers should be contacted to make the necessary arrangements for securing maximum discounts,	(g) If it is determined that BPAs would be advantageous, suppliers should be contacted to make the necessary arrangements for securing maximum discounts,

documenting the individual purchase transactions, periodic billing, and other necessary details.

(h) A BPA may be limited to furnishing individual items or commodity groups or classes, or it may be unlimited for all items or services that the source of supply is in a position to furnish.

(i) **BPAs may** be prepared and issues on any agency-authorized purchase order form.

(j) BPAs shall contain the following terms and conditions:

(1) *Description of agreement*. A statement that the supplier shall furnish supplies or services, described in general terms, if and when requested by the contracting officer (or the authorized representative of the contracting officer) during a specified period and within a stipulated aggregate amount, if any.

(2) *Extent of obligation.* A statement that the Government is obligated only to the extent of authorized purchases actually made under the BPA.

(3) *Pricing.* A statement that the prices to the Government shall be as low or lower than those charged the supplier's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment.

(4) *Purchase limitation*. A statement that specifies the dollar limitation for each individual purchase under the BPA (see 13.204(b)).

(5) *Notice of individuals authorized to purchase under the BPA~~ and dollar limitations by title of position or name.~~* A statement that a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual shall be furnished to the supplier by the contracting officer.

(6) *Delivery tickets.* A requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

(i) Name of supplier.
(ii) BPA number.
(iii) Date of purchase.

documenting the individual purchase transactions, periodic billing, and other necessary details.

(h) A BPA may be limited to furnishing individual items or commodity groups or classes, or it may be unlimited for all items or services that the source of supply is in a position to furnish.

(i) ~~BPA's shall~~ be prepared and issues on any agency-autorized purchase order form.

(j) BPAs shall contain the following terms and conditions:

(1) *Description of agreement*. A statement that the supplier shall furnish supplies or services, described in general terms, if and when requested by the contracting officer (or the authorized representative of the contracting officer) during a specified period and within a stipulated aggregate amount, if any.

(2) *Extent of obligation*. A statement that the Government is obligated only to the extent of authorized purchases actually made under the BPA.

(3) *Pricing.* A statement that the prices to the Government shall be as low or lower than those charged the supplier's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment.

(4) *Purchase limitation*. A statement that specifies the dollar limitation for each individual purchase under the BPA (see 13.204(b)).

(5) *Notice of individuals authorized to purchase under the BPA.* A statement that a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual shall be furnished to the supplier by the contracting officer.

(6) *Delivery tickets*. A requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

(i) Name of supplier.
(ii) BPA number.
(iii) Date of purchase.

(iv) Purchase number.

(v) Itemized list of supplies or services furnished.

(vi) Quantity, unit price, and extension of each item, less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show this information).

(vii) Date of delivery or shipment.

(7) *Invoices.* One of the following statements (except that the statement in paragraph ~~(iii)~~ of this section should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method):

(i) A summary invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipt copies of the delivery tickets.

(ii) An itemized invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets.

(iii) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated; provided, that —

(A) A consolidated payment will be made for each specified period; and

(B) The period of any discounts will commence on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.

(iv) An invoice for subscriptions or other charges for newspapers, magazines, or other periodicals shall show the starting and ending dates and shall state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.

(k) BPAs in which the fast payment procedure is used shall include the requirements stated under 13.303(b).

(iv) Purchase number.

(v) Itemized list of supplies or services furnished.

(vi) Quantity, unit price, and extension of each item, less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show this information).

(vii) Date of delivery or shipment.

(7) *Invoices.* One of the following statements (except that statement in paragraph **(j)(7)(iii)** of this section should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method):

(i) A summary invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipted copies of the delivery tickets.

(ii) An itemized invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets.

(iii) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated; provided, that—

(A) A consolidated payment will be made for each specified period; and

(B) The period of any discounts will commence on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.

(iv) An invoice for subscriptions or other charges for newspapers, magazines, or other periodicals shall show the starting and ending dates and shall state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.

(k) BPAs in which the fast payment procedure is used shall include the requirements stated under 13.303(b).

13.203-2 Clauses.

FAR as of FAC 90-25	*FAR as revised*
(a) The contracting officer shall insert in each BPA the clauses prescribed elsewhere in the ~~FAR~~ that are required for or applicable to the particular BPA.	(a) The contracting officer shall insert in each BPA the clauses prescribed elsewhere in th**is Part** that are required for or applicable to the particular BPA.
(b) Unless a clause prescription specifies otherwise, (e.g., see 22.305(a)(1), 22.605(a)(5), or 22.1006), if the prescription includes a dollar threshold, the amount to be compared to that threshold is that of any particular order under the BPA.	(b) Unless a clause prescription specifies otherwise, (e.g., see 22.305(a)(1), 22.605(a)(5), or 22.1006), if the prescription includes a dollar threshold, the amount to be compared to that threshold is that of any particular order under the BPA.

13.204 Purchases under Blanket Purchase Agreements.

FAR as of FAC 90-25	*FAR as revised*
(a) The use of a BPA does not authorize purchases that are not otherwise authorized by law or regulation. For example, the ~~blanket purchase agreement,~~ being a method of simplifying the making of individual ~~small~~ purchases, shall not be used to avoid the ~~small purchase limitation.~~	(a) The use of a BPA does not authorize purchases that are not otherwise authorized by law or regulation. For example, the **BPA,** being a method of simplifying the making of individual purchases, shall not be used to avoid the **simplified acquisition threshold.**
(b) Unless otherwise specified in agency regulations, individual purchases under ~~BPA's,~~ except those ~~BPA'S~~ established in accordance with 13.203-1(f), shall not exceed~~ the dollar limitation for small purchases (see 13.103).~~	(b) Unless otherwise specified in agency regulations, individual purchases under **BPAs,** except those **BPAs** established in accordance with 13.203-1(f), shall not exceed **(i) $50,000, or (ii) $100,000 when the contracting office has certified interim FACNET (see 13.103(b)).**
c) The existence of a BPA does not justify purchasing from only one source or avoiding small business~~-small purchase~~ set-asides. The requirements of 13.106 and 13.107 also apply to each order under a BPA.	(c) The existence of a BPA does not justify purchasing from only one source or avoiding small business set-asides. The requirements of 13.105 and 13.106 also apply to each order under a BPA. (
(d) If there is an insufficient number of ~~BPA's~~ to ensure maximum practicable competition for a particular purchase, the contracting officer shall— (1) Solicit quotations from other sources and make the purchase as appropriate; and (2) Establish additional ~~BPA's~~ to facilitate future purchases if (i) ~~recurring~~ requirements for the same or similar items or services seem likely, (ii) ~~qualified~~ sources are willing to accept BPA's, and (iii) ~~it~~ is otherwise practical to do so.	(d) If there is an insufficient number of **BPAs** to ensure maximum practicable competition for a particular purchase, the contracting officer shall **—** (1) Solicit quotations from other sources and make the purchase as appropriate; and (2) Establish additional **BPAs** to facilitate future purchases if **—** (i) **Recurring** requirements for the same or similar items or services seem likely, (ii) **Qualified** sources are willing to accept BPAs, and (iii) **It** is otherwise practical to do so.
(e) Documentation of purchases under ~~BPA's~~ shall be limited to essential information and ~~forms,~~ as follows:	(e) Documentation of purchases under **BPAs** shall be limited to essential information and **forms** as follows:

(1) Purchases under BPA's generally should be made ~~orally, but a~~ purchase document may be issued if written communications are necessary to ensure that the vendor and the purchaser agree concerning the transaction.	(1) Purchases under **BPAs** generally should be made **electronically**, **or orally when it is not considered economical or practical to use electronic methods**. **(2) A paper** purchase document may be issued if written communications are necessary to ensure that the vendor and the purchaser agree concerning the transaction.
~~(2)~~ If a ~~purchase~~ document is not issued, the essential elements (e.g., date, vendor, items or services, price, delivery date) shall be recorded on the purchase requisition, in an informal memorandum, or on a form developed locally for the purpose. ~~(3) If a purchase document is issued, informal correspondence, an authorized purchase form, or a form developed locally for the purpose, may be used.~~	**(3)** If a **paper** document is not issued, the essential elements (e.g., date, vendor, items or services, price, delivery date) shall be recorded on the purchase requisition, in an informal memorandum, or on a form developed locally for the purpose.
(4) Documentation of ~~individual~~ purchases under ~~BPA's~~ shall also cite the pertinent purchase requisitions and the accounting and appropriation data.	(4) Documentation of purchases under **BPAs** shall also cite the pertinent purchase requisitions and the accounting and appropriation data.
(5) When delivery is made or the services are performed, the vendor's sales document, delivery document, or invoice may (if it reflects the essential elements) be used for the purpose of recording receipt and acceptance of the items or services. However, if the purchase is assigned to another activity for administration, receipt and acceptance of supplies or services shall be documented by signature and date on the agency specified form by the authorized Government representative after verification and notation of any exceptions.	(5) When delivery is made or the services are performed, the vendor's sales document, delivery document, or invoice may (if it reflects the essential elements) be used for the purpose of recording receipt and acceptance of the items or services. However, if the purchase is assigned to another activity for administration, receipt and acceptance of supplies or services shall be documented by signature and date on the agency specified form by the authorized Government representative after verification and notation of any exceptions.

[NOTE: No substantive changes to FAR sections 13.205, 13.206, 13.301, 13.304, 13.503, 13.504]

SUBPART 13.3—FAST PAYMENT PROCEDURE

*****

13.302 Conditions for use.

FAR as of FAC 90-25	*FAR as revised*
If the conditions in paragraphs (a) through (f) of this section are present, the fast payment procedure may be used, provided that use of the procedure is consistent with the other conditions of the purchase. The conditions for use of the fast payment procedure are as follows:	If the conditions in paragraphs (a) through (f) of this section are present, the fast payment procedure may be used, provided that use of the procedure is consistent with the other conditions of the purchase. The conditions for use of the fast payment procedure are as follows:
(a) Individual orders do not exceed $25,000 except that executive agencies may permit higher dollar limitations for specified activities or items on a case-by-case basis.	(a) Individual orders do not exceed $25,000 except that executive agencies may permit higher dollar limitations for specified activities or items on a case-by-case basis.

(b) Deliveries of supplies are to occur at locations where there is both a geographical separation and a lack of adequate communications facilities between Government receiving and disbursing activities that will make it impractical to make timely payment based on evidence of Government acceptance. Use of the fast payment procedure would not be indicated, for example, for small purchases by an activity if material being purchased is destined for use at that activity and contract administration will be performed by the ~~purchasing~~ office at that activity.	(b) Deliveries of supplies are to occur at locations where there is both a geographical separation and a lack of adequate communications facilities between Government receiving and disbursing activities that will make it impractical to make timely payment based on evidence of Government acceptance. Use of the fast payment procedure would not be indicated, for example, for small purchases by an activity if material being purchased is destined for use at that activity and contract administration will be performed by the **contracting** office at that activity.
(c) Title to the supplies will vest in the Government (1) ~~upon~~ delivery to a post office or common carrier for mailing or shipment to destination, or (2) ~~upon~~ receipt by the Government if the shipment is by means other than Postal Service or common carrier	(c) Title to the supplies will vest in the Government **—** (1) **Upon** delivery to a post office or common carrier for mailing or shipment to destination; or (2) **Upon** receipt by the Government if the shipment is by means other than Postal Service or common carrier..
(d) The supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.	(d) The supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.
(e) The purchasing instrument is a firm-fixed price contract, a purchase order, or a delivery order for supplies.	(e) The purchasing instrument is a firm-fixed price contract, a purchase order, or a delivery order for supplies.
(f) A system is in place to ensure (1) ~~documenting~~ evidence of contractor performance under fast payment ~~acquisitions,~~ (2) ~~timely~~ feedback to the contracting officer in case of contractor ~~deficiencies, and~~ (3) ~~identification~~ of suppliers who have a current history of abusing the fast payment procedure. ~~(Also~~ see Subpart 9.1.)	(f) A system is in place to ensure**—** (1) **Documenting** evidence of contractor performance under fast payment **acquisitions;** (2) **Timely** feedback to the contracting officer in case of contractor **deficiencies; and** (3) **Identification** of suppliers who have a current history of abusing the fast payment procedure. **(also** see Subpart 9.1.**).**

13.303 Preparation and execution of orders.

FAR as of FAC 90-25	*FAR as revised*
(a) ~~Orders~~ incorporating the fast payment procedure shall be issued on Optional Form 347, Order for Supplies or Services, or other agency authorized purchase order form ~~(but see~~ 13.204(e) for purchases under ~~BPA's).~~ Orders may be either priced or unpriced.	(a) **Except when orders are placed via FACNET, orders** incorporating the fast payment procedure should be issued on Optional Form 347, Order for Supplies or Services, or other agency authorized purchase order form **(see** 13.204(e) for purchases under **BPAs).** Orders may be either priced or unpriced.
(b) Contracts, purchase orders, or BPAs using the fast payment procedure shall include the following: (1) A requirement that the supplies be shipped transportation or postage prepaid. (2) A requirement that invoices be submitted directly to the finance or other office designated in the order, or in the case of unpriced purchase orders, to the contracting officer (see 13.502(c)).	(b) Contracts, purchase orders, or BPAs using the fast payment procedure shall include the following: (1) A requirement that the supplies be shipped transportation or postage prepaid. (2) A requirement that invoices be submitted directly to the finance or other office designated in the order, or in the case of unpriced purchase orders, to the contracting officer (see 13.502(c)).

(3) The following statement on consignee's copy: CONSIGNEE'S NOTIFICATION TO PURCHASING ACTIVITY OF NONRECEIPT, DAMAGE, OR NONCONFORMANCE The consignee shall notify the purchasing office promptly after the specified date of delivery of supplies not received, damaged in transit, or not conforming to specifications of the purchase order. Unless extenuating circumstances exist, the notification should be made not later than 60 days after the specified date of delivery.	(3) The following statement on consignee's copy: Consignee's Notification to Purchasing Activity of Nonreceipt, Damage, or Nonconformance. The consignee shall notify the purchasing office promptly after the specified date of delivery of supplies not received, damaged in transit, or not conforming to specifications of the purchase order. Unless extenuating circumstances exist, the notification should be made not later than 60 days after the specified date of delivery.
(4) A requirement that the contractor mark outer shipping containers "FAST PAY."	(4) A requirement that the contractor mark outer shipping containers "FAST PAY."

13.305 Contract clause.

FAR as of FAC 90-25	*FAR as revised*
The contracting officer shall insert the clause at 52.213-1, Fast Payment Procedure, in solicitations and contracts when the conditions in 13.302 are applicable and it is intended that the fast payment procedure be used in the contract (in the case of ~~BPA's~~, the contracting officer may elect to insert the clause either in the BPA or in orders under the BPA).	The contracting officer shall insert the clause at 52.213-1, Fast Payment Procedure, in solicitations and contracts when the conditions in 13.302 are applicable and it is intended that the fast payment procedure be used in the contract (in the case of **BPAs,** the contracting officer may elect to insert the clause either in the BPA or in orders under the BPA.

SUBPART 13.4—IMPREST FUND

13.401 General.

FAR as of FAC 90-25	*FAR as revised*
~~**13.401 Definition.** Imprest fund," as used in this subpart, means a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for relatively small purchases.~~	
~~**13.402**~~ **General.** This subpart prescribes policies and procedures for using imprest funds to ~~make small purchases of~~ supplies or services. Related policies and regulations concerning the establishment of and accounting for imprest funds, including the responsibilities of designated cashiers and alternates, are contained in Part IV of the Treasury Financial Manual for Guidance of Departments and Agencies, Title 7 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, and the agency implementing regulations. Agencies shall also be guided by the Manual of Procedures and Instructions for Cashiers, issued by the Financial Management Service, Department of the Treasury.	This subpart prescribes policies and procedures for using imprest funds to **purchase** supplies or services. Related policies and regulations concerning the establishment of and accounting for imprest funds, including the responsibilities of designated cashiers and alternates, are contained in Part IV of the Treasury Financial Manual for Guidance of Departments and Agencies, Title 7 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, and the agency implementing regulations. Agencies shall also be guided by the Manual of Procedures and Instructions for Cashiers, issued by the Financial Management Service, Department of the Treasury.

13.402 Agency responsibilities.

FAR as of FAC 90-25	*FAR as revised*
Each agency using imprest funds shall— (a) Periodically review and determine whether there is continuing need for each fund established, and that amounts of those funds are not in excess of actual needs; (b) Take prompt action to have imprest funds adjusted to a level commensurate with demonstrated needs whenever circumstances warrant such action; and (c) Develop and issue appropriate implementing regulations. These regulations shall include (but are not limited to) procedures covering— (1) Designation of personnel authorized to make purchases using imprest funds; and (2) Documentation of purchases using imprest funds, including documentation ~~of~~ (i) ~~receipt~~ and acceptance of supplies and services by the~~ Government,~~ (ii) ~~receipt~~ of cash payments by the ~~suppliers,~~ and (iii)~~ cash~~ advances and reimbursements.	Each agency using imprest funds shall— (a) Periodically review and determine whether there is continuing need for each fund established, and that amounts of those funds are not in excess of actual needs; (b) Take prompt action to have imprest funds adjusted to a level commensurate with demonstrated needs whenever circumstances warrant such action; and (c) Develop and issue appropriate implementing regulations. These regulations shall include (but are not limited to) procedures covering— (1) Designation of personnel authorized to make purchases using imprest funds; and (2) Documentation of purchases using imprest funds, including documentation of— (i) **Receipt** and acceptance of supplies and services by the **Government;** (ii) **Receipt** of cash payments by the **suppliers;** and (iii) **Cash** advances and reimbursements.

13.403 Conditions for use.

FAR as of FAC 90-25	*FAR as revised*
Imprest funds may be used for purchases when — (a) the transaction does not exceed $500 or such other limits as have been approved by the agency head; (b) the use of imprest funds is considered to be advantageous to the Government; and (c) the use of imprest funds for the transaction otherwise complies with any additional conditions established by agencies and with the policies and regulations referenced in ~~13.402.~~	Imprest funds may be used for purchases when — (a) the transaction does not exceed $500 or such other limits as have been approved by the agency head; (b) the use of imprest funds is considered to be advantageous to the Government; and (c) the use of imprest funds for the transaction otherwise complies with any additional conditions established by agencies and with the policies and regulations referenced in **13.401.**

13.404 Procedures.

FAR as of FAC 90-25	*FAR as revised*
a) Each purchase using imprest funds shall be based upon an authorized purchase requisition. (b) Normally, orders to suppliers should be placed orally and without soliciting competition if prices are considered reasonable. (c) Purchases shall be distributed equitably among qualified suppliers~~ (see 13.105).~~ (d) Prompt payment discounts shall be solicited.	(a) Each purchase using imprest funds shall be based upon an authorized purchase requisition. (b) Normally, orders to suppliers should be placed orally and without soliciting competition if prices are considered reasonable. (c) Purchases shall be distributed equitably among qualified suppliers**.** (d) Prompt payment discounts shall be solicited.

(e) Any agency-authorized purchase order form or Standard Form 1165, Receipt for Cash-Subvoucher, may be used if a written order is considered ~~necessary; e.g.,~~ if required by the supplier for discount, tax exemption, or other ~~reasons.~~ If a purchase order is used for this purpose, it shall be endorsed "Payment to be made from Imprest ~~Fund."~~	(e) Any agency-authorized purchase order form or Standard Form 1165, Receipt for Cash-Subvoucher, may be used if a written order is considered **necessary (e.g.,** if required by the supplier for discount, tax exemption, or other **reasons).** If a purchase order is used for this purpose, it shall be endorsed "Payment to be made from Imprest **Fund".**
(f) The individual authorized to make purchases using imprest funds shall—	(f) The individual authorized to make purchases using imprest funds shall—
(1) Furnish to the imprest fund cashier a copy of the purchase requisition annotated to reflect (i) ~~that~~ an imprest fund purchase has been ~~made,~~ (ii) ~~the~~ unit prices and ~~extensions,~~ (iii) ~~the~~ supplier's name and ~~address,~~ and (iv) ~~the~~ date of anticipated delivery; and	(1) Furnish to the imprest fund cashier a copy of the purchase requisition annotated to reflect— (i) **That** an imprest fund purchase has been **made; (ii) The** unit prices and **extensions;** (iii) **The** supplier's name and **address;** (iv) **The** date of anticipated delivery; and
(2) Require the supplier to include with delivery of the supplies an invoice, packing slip, or other sales instrument giving (i) ~~the~~ supplier's name and ~~address,~~ (ii) ~~list~~ and quantity of ~~items,~~ (iii) ~~unit~~ prices and ~~extensions,~~ and (iv) ~~cash~~ discount, if any.	(2) Require the supplier to include with delivery of the supplies an invoice, packing slip, or other sales instrument giving— (i) **The** supplier's name and **address;** (ii) **List** and quantity of **items;** (iii) **Unit** prices and **extensions;** and (iv) **Cash** discount, if any.

SUBPART 13.5—PURCHASE ORDERS

FAR as of FAC 90-25	*FAR as revised*
Subpart 13.5—Purchase Orders	**Subpart 13.5—Purchase Orders**
13.501 General.	13.501 General.
13.502 Unpriced purchase orders.	13.502 Unpriced purchase orders.
13.503 Obtaining contractor acceptance and modifying purchase orders.	13.503 Obtaining contractor acceptance and modifying purchase orders.
13.504 Termination or cancellation of purchase orders.	13.504 Termination or cancellation of purchase orders.
13.505 Purchase order and related forms.	13.505 Purchase order and related forms.
13.505-1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.	13.505-1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.
13.505-2 **[Reserved]**	13.505-2 ~~Agency order forms in lieu of Optional Forms 347 and 348~~.
13.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.	13.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.
13.506 **Unsigned electronic purchase orders.**	13.506 ~~Purchase orders via written telecommunications~~.
13.507 **Provisions and** clauses.	13.507 Clauses.

13.501 General.

FAR as of FAC 90-25	*FAR as revised*
(a) Except as provided under the unpriced purchase order method (see 13.502), purchase orders ~~(1)~~ shall be issued on a fixed-price ~~basis, and (2) shall not contain economic price adjustment or redetermination clauses.~~	(a) Except as provided under the unpriced purchase order method (see 13.502), purchase orders shall be issued on a fixed-price **basis unless otherwise authorized by agency procedures.**
(b) Purchase orders shall include any trade and prompt payment discounts that are offered, consistent with the applicable principles in ~~14.407-3.~~	(b) Purchase orders shall include any trade and prompt payment discounts that are offered, consistent with the applicable principles in **14.408-3.**
(c) Purchase orders shall specify the quantity of supplies or services ~~ordered (but see Subpart 12.4)~~.	(c) Purchase orders shall specify the quantity of supplies or services **ordered**.
(d) Inspections under ~~small purchases~~ shall be as prescribed in Part 46. Orders generally shall provide that inspection and acceptance will be at ~~destination~~ and source inspection should be specified only if required by Part 46. If inspection and acceptance are to be performed at destination, advance copies of the purchase order shall be furnished to consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of material.	(d) Inspections under **simplified acquisition procedures** shall be as prescribed in Part 46. Orders generally shall provide that inspection and acceptance will be at **destination,** and source inspection should be specified only if required by Part 46. If inspection and acceptance are to be performed at destination, advance copies of the purchase order shall be furnished to consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of material.
(e) F.o.b. destination shall be specified for supplies to be delivered within the United States, except Alaska and Hawaii, unless there are valid reasons to the contrary.	(e) F.o.b. destination shall be specified for supplies to be delivered within the United States, except Alaska and Hawaii, unless there are valid reasons to the contrary.
(f) Each purchase order shall contain a determinable date by which delivery of supplies or performance of services is required.	(f) Each purchase order shall contain a determinable date by which delivery of supplies or performance of services is required.
(g) The contracting officer's signature on purchase orders shall be in accordance with 4.101. Facsimile signature may be used in the production of purchase orders by automated methods.	(g) The contracting officer's signature on purchase orders shall be in accordance with 4.101. Facsimile signature may be used in the production of purchase orders by automated methods.
(h) Distribution of copies of purchase orders and related forms shall be limited to those copies required for essential administration and transmission of contractual information.	(h) Distribution of copies of purchase orders and related forms shall be limited to those copies required for essential administration and transmission of contractual information.

13.502 Unpriced purchase orders.

FAR as of FAC 90-25	*FAR as revised*
(a) An unpriced purchase order is an order for supplies or services, the price of which is not established at the time of issuance of the order.	(a) An unpriced purchase order is an order for supplies or services, the price of which is not established at the time of issuance of the order.

(b) An unpriced purchase order may be used only when—	(b) An unpriced purchase order may be used only when—
(1) It is anticipated that the transaction will not ~~exceed the small purchase limit~~;	(1) It is anticipated that the transaction will not **exceed— (i) $50,000; or (ii) $100,000 when the contracting office of an agency has certified interim or full FACNET (see 13.103(b)).**
(2) It is impractical to obtain pricing in advance of issuance of the purchase order; and	(2) It is impractical to obtain pricing in advance of issuance of the purchase order; and
(3) The purchase is for—	(3) The purchase is for—
(i) Repairs to equipment requiring disassembly to determine the nature and extent of repairs;	(i) Repairs to equipment requiring disassembly to determine the nature and extent of repairs;
(ii) Material available from only one source and for which cost cannot be readily established; or	(ii) Material available from only one source and for which cost cannot be readily established; or
(iii) Supplies or services for which prices are known to be competitive but exact prices are not known (e.g., miscellaneous repair parts, maintenance agreements).	(iii) Supplies or services for which prices are known to be competitive but exact prices are not known (e.g., miscellaneous repair parts, maintenance agreements).
(c) Unpriced purchase orders may be issued by using written purchase orders or ~~written telecommunications~~ (see 13.506). A realistic monetary limitation, either for each line item or for the total order, shall be placed on each unpriced purchase ~~order (see 13.507(d)).~~ The monetary limitation shall be an obligation subject to adjustment when the firm price is established. The contracting office shall follow-up each order to ensure timely pricing. The contracting officer or the contracting officer's designated representative shall review the invoice price and, if reasonable (see ~~13.106(b)),~~ process the invoice for payment.	(c) Unpriced purchase orders may be issued by using written purchase orders or **electronically** (see 13.506). A realistic monetary limitation, either for each line item or for the total order, shall be placed on each unpriced purchase **order.** The monetary limitation shall be an obligation subject to adjustment when the firm price is established. The contracting office shall follow-up each order to ensure timely pricing. The contracting officer or the contracting officer's designated representative shall review the invoice price and, if reasonable (see **13.106-2(a)),** process the invoice for payment.

13.505 Purchase order and related forms.

13.505-1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.

FAR as of FAC 90-25	*FAR as revised*
(a) ~~General. (1)~~ Optional Form 347 (illustrated in 53.302-347) and Optional Form 348 (illustrated in 53.302-348) are multipurpose forms designed for the ~~following uses: (i)~~ Negotiated purchases of supplies or ~~services not in excess of the small purchase limit.~~ ~~(ii) A delivery order for ordering or scheduling deliveries against established contracts or from Government sources of supply~~. ~~(iii) A receiving and inspection report~~. ~~(iv) An invoice~~. (2) ~~Optional Forms 347 and 348 may be used when the agency concerned considers it economical and efficient to do so (also see 13.505-2).~~ (b) ~~Clauses. (1) Clauses generally suitable for most small purchases are incorporated by reference on the~~	**(a)** Optional Form 347 (illustrated in 53.302-347) and Optional Form 348 (illustrated in 53.302-348) are multipurpose forms designed for the **following:** **(1)** Negotiated purchases of supplies or **services.** **(2) Delivery orders.** **(3) Inspection and receiving reports.** **(4) Invoices.**

~~reverse of Optional Form 347 (but see 13.507)~~.

~~(2) Agencies may add (i) other clauses prescribed by the FAR, as appropriate, and (ii) agency clauses, if they do not conflict with clauses prescribed by the FAR and are designated as agency clauses.~~

~~13.505-2 Agency order forms in lieu of Optional Forms 347 and 348.~~

~~(a) Order forms used in lieu of Optional Forms 347 and 348 shall conform insofar as practicable with the forms illustrated in 53.302-347 and 53.302-348~~.

(b) Agencies ~~using agency~~ order forms~~ in lieu of~~ Optional Form 347 may print on those forms the clauses they consider to be generally suitable for ~~most of~~ their ~~small purchases. The clauses, however, (1) should include the clauses incorporated by reference on the reverse of Optional Form 347, (2) may include clauses not listed on the reverse of Optional Form 347 that are prescribed by the FAR, and (3)~~ may include agency clauses, if they do not conflict with clauses prescribed by the FAR and are designated as agency ~~clauses (see 13.507).~~

(b) Agencies **may use** order forms **other than** Optional Form 347 **and 348 and** may print on those forms the clauses they consider to be generally suitable for their **purchases using simplified acquisition procedures. The clauses** may include agency clauses, if they do not conflict with clauses prescribed by the FAR and are designated as agency **clauses.**

13.505-2 [Reserved]

13.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

FAR as of FAC 90-25	*FAR as revised*
(a) Standard Form 44, Purchase Order-Invoice-Voucher (illustrated in 53.301-44) is a pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services while away from the purchasing office or at isolated activities. It is a multipurpose form that can be used as a purchase order, receiving report, invoice, and public voucher.	(a) Standard Form 44, Purchase Order-Invoice-Voucher (illustrated in 53.301-44) is a pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services while away from the purchasing office or at isolated activities. It is a multipurpose form that can be used as a purchase order, receiving report, invoice, and public voucher.
(b) Standard Form 44 may be used if all of the following conditions are satisfied:	(b) Standard Form 44 may be used if all of the following conditions are satisfied:
(1) ~~Except~~ for purchases made under unusual and compelling ~~urgency, the amount of the purchase is not over $2,500.~~ Agencies may establish higher dollar limitations for specific activities or items.	(1) **The amount of the purchase is at or below the micro-purchase threshold, except** for purchases made under unusual and compelling **urgency or in support of a contingency operation.** Agencies may establish higher dollar limitations for specific activities or items.
(2) The supplies or services are immediately available.	(2) The supplies or services are immediately available.
(3) One delivery and one payment will be made.	(3) One delivery and one payment will be made.
(4) Its use is determined to be more economical and efficient than use of other ~~small purchase~~ methods.	(4) Its use is determined to be more economical and efficient than use of other **simplified acquisition** methods.
(c) General procedural instructions governing the use of Standard Form 44 are printed on the form and on the inside front cover of each book of forms.	(c) General procedural instructions governing the use of Standard Form 44 are printed on the form and on the inside front cover of each book of forms.

~~13.507(b)~~ Since there is, for all practical purposes, simultaneous placing of purchase orders on Standard Form 44 and delivery of the items ordered, clauses are not required for purchases using this form.	**(d)** Since there is, for all practical purposes, simultaneous placing of purchase orders on Standard Form 44 and delivery of the items ordered, clauses are not required for purchases using this form
~~d)~~ Agencies shall provide adequate safeguards regarding the control of forms and accounting for purchases.	**(e)** Agencies shall provide adequate safeguards regarding the control of forms and accounting for purchases.

13.506 Unsigned electronic purchase orders.

~~**13.506 Purchase orders via written telecommunications.**~~

FAR as of FAC 90-25	*FAR as revised*
(a) ~~A written telecommunicated purchase order is an order for supplies or services that is electrically transmitted to a supplier and is not signed by the contracting officer~~	(a) **An unsigned electronic** purchase order **(EPO)** may be **issued** when the following conditions are **present—**
~~(b)~~ A ~~written telecommunicated~~ purchase order may be ~~used only~~ when ~~all of~~ the following conditions are ~~present:~~	
(1) Its use is more advantageous to the Government than any other ~~small purchase technique~~.	(1) Its use is more advantageous to the Government than any other **simplified acquisition method;**
(2) ~~An unsigned transmitted order~~ is acceptable to the ~~supplier~~.	(2) **It** is acceptable to the **supplier;**
(3) ~~The order~~ is approved by the contracting ~~officer before its transmission.~~	(3) **It** is approved by the contracting **officer;**
(4) ~~The order~~ does not require written acceptance by the ~~supplier~~.	(4) **It** does not require written acceptance by the **supplier; and**
(5) The purchasing office retains all contract administration functions.	(5) The purchasing office retains all contract administration functions.
~~(c)~~ When ~~a written telecommunicated purchase order~~ is used—	**(b)** When **an unsigned EPO** is used—
(1) ~~Clauses appropriate to the purchase order~~ shall be incorporated by ~~reference in the transmitted order;~~	(1) **Appropriate clauses** shall be incorporated by **reference;**
(2) Administrative information that is not needed by the supplier ~~should not be transmitted but should~~ be placed only on copies intended for internal distribution;	(2) Administrative information that is not needed by the supplier **shall** be placed only on copies intended for internal distribution;
(3) The same distribution shall be made of the ~~transmitted order~~ as is made of ~~written~~ purchase orders; and	(3) The same distribution shall be made of the **unsigned EPO** as is made of **signed** purchase orders; and
(4) No purchase order form ~~shall be issued.~~	(4) No purchase order form **is required.**
~~(d)~~ A ~~written telecommunicated purchase order~~ may be unpriced if it meets the conditions in 13.502.	**(c) An unsigned EPO** may be unpriced if it meets the conditions in 13.502.

13.507 Provisions and clauses.

FAR as of FAC 90-25	*FAR as revised*
(a) ~~Except as provided in paragraph (b) below, each~~ purchase order (and each purchase order modification (see 13.503)) shall incorporate all clauses required for or applicable to the particular acquisition. ~~The clauses listed on Optional Form 347, are not necessarily all that are required.~~	(a) **Each** purchase order (and each purchase order modification (see 13.503)) shall incorporate all clauses required for or applicable to the particular acquisition.
~~(b) Since there is, for all practical purposes, simultaneous placing of purchase orders on Standard Form 44 and delivery of the items ordered, clauses are not required for purchases using this form.~~	
~~(c)~~ The contracting officer shall insert the clause at 52.213-2, Invoices, in purchase orders that authorize advance payments (see 31 U.S.C. 3324(d)(2)) for subscriptions or other charges for newspapers, magazines, periodicals, or other publications (i.e., any publication printed, microfilmed, photocopied, or magnetically or otherwise recorded for auditory or visual usage).	**(b)** The contracting officer shall insert the clause at 52.213-2, Invoices, in purchase orders that authorize advance payments (see 31 U.S.C. 3324(d)(2)) for subscriptions or other charges for newspapers, magazines, periodicals, or other publications (i.e., any publication printed, microfilmed, photocopied, or magnetically or otherwise recorded for auditory or visual usage).
~~(d)~~ The contracting officer shall insert the clause at 52.213-3, Notice to Supplier, in unpriced purchase orders.	**(c)** The contracting officer shall insert the clause at 52.213-3, Notice to Supplier, in unpriced purchase orders.

PART 14

SEALED BIDDING

14.201-2 Part I—The Schedule.

FAR as of FAC 90-25	*FAR as revised*
The contracting officer shall prepare the Schedule as follows: * * * * *	The contracting officer shall prepare the Schedule as follows: * * * * *
(b) *Section B, Supplies or services and prices.* Include a brief description of the supplies or services; e.g., item number, national stock number/part number if applicable, title or name identifying the supplies or services, and quantities ~~(see Part 10, Specifications, Standards, and Other Product Descriptions~~). The SF 33 and the SF 1447 may be supplemented as necessary by the Optional Form 336 (OF 336), Continuation Sheet (53.302-336).	(b) *Section B, Supplies or services and prices.* Include a brief description of the supplies or services; e.g., item number, national stock number/part number if applicable, title or name identifying the supplies or services, and quantities (**see Part 11**). The SF 33 and the SF 1447 may be supplemented as necessary by the Optional Form 336 (OF 336), Continuation Sheet (53.302-336). [FAC 90-32, CASE 94-790]
(c) *Section C, Description/specifications*. Include any description or specifications needed in addition to Section B to permit full and open competition ~~(see Part 10, Specifications, Standards, and Other Product Descriptions~~).	(c) *Section C, Description/specifications*. Include any description or specifications needed in addition to Section B to permit full and open competition (**see Part 11**). [FAC 90-32, CASE 94-790]
(d) *Section D, Packaging and marking.* Provide packaging, packing, preservation, and marking requirements, if any ~~(see 10.004(e)).~~ * * * * *	(d) *Section D, Packaging and marking.* Provide packaging, packing, preservation, and marking requirements, if any. [FAC 90-32, CASE 94-790] * * * * *
(f) *Section F, Deliveries or performance.* Specify the requirements for time, place, and method of delivery or performance (see Part 12, Contract Delivery or Performance). * * * * *	(f) *Section F, Deliveries or performance.* Specify the requirements for time, place, and method of delivery or performance (see Subpart 11.4, Delivery or Performance Schedules). [FAC 90-32, CASE 94-790] * * * * *

14.201-6 Solicitation provisions.

FAR as of FAC 90-25	*FAR as revised*
* * * *	* * * *
(e) The contracting officer shall insert in invitations for bids, except those for construction, the provisions at—	(e) The contracting officer shall insert in invitations for bids, except those for construction, the provisions at—
(1) 52.214-9, Failure to Submit Bid; and	(1) 52.214-9, Failure to Submit Bid, **except when using electronic data interchange methods not requiring solicitation mailing lists**; and [FAC 90-29, Case 91-104]
* * * *	* * * *

52.214-9 Failure to Submit Bid.

FAR as of FAC 90-25	*FAR as revised*
Recipients of this solicitation not responding with a bid should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter ~~or~~ postcard whether they want to receive future solicitations for similar requirements. If a recipient does not submit a bid and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.	Recipients of this solicitation not responding with a bid should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter, postcard, **or established electronic commerce methods**, whether they want to receive future solicitations for similar requirements. If a recipient does not submit a bid and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list. [FAC 90-29]

14.201-7 Contract clauses.

FAR as of FAC 90-25	*FAR as revised*
(a) When contracting by sealed bidding, the contracting officer shall insert the clause at 52.214-26, Audit—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold for submission of cost or pricing data at 15.804-2(a)(1). [FAC 90-22]	(a) When contracting by sealed bidding, the contracting officer shall insert the clause at 52.214-26, Audit **and Records**—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold at 15.804-2(a)(1) for submission of cost or pricing data. [FAC 90-31, Case 94-740]
* * * *	* * * *
(d) ~~Contracting officers shall, if requested by the prime contractor, modify contracts to change the threshold in the contract to the cost or pricing data~~	(d) When contracting by sealed bidding the contracting officer shall insert the clause at 52.214-

~~threshold in 15.804-2(a)(1), without requiring consideration. The contract modification shall be accomplished by inserting into the contract the current version of clauses 52.214-27, Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding, and 52.214-28, Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding. These new contract clauses shall apply only to contract modifications and subcontracts for which agreement on price occurs after the contracting officer has inserted the new clauses~~.[FAC 90-22]

(e) When contracting by sealed bidding the contracting officer shall insert the clause at 52.214-29, Order of Precedence—Sealed Bidding, in solicitations and contracts to which the uniform contract format applies. [redesignated as (e) by FAC 90-22]

29, Order of Precedence—Sealed Bidding, in solicitations and contracts to which the uniform contract format applies. [redesignated as (e) by FAC 90-32]

52.214-26 Audit and Records—Sealed Bidding.

FAR as of FAC 90-25	*FAR as revised*
	(a) As used in this clause, *records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
(a) *Cost or pricing data*. If the Contractor has ~~submitted~~ cost or pricing data in connection with the pricing of any modification to this contract, ~~unless the pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation~~, the Contracting Officer or a representative ~~who is an employee of the Government~~ shall have the right to examine and audit all ~~books, records, documents, and other data of the Contractor~~ (including computations and projections) related to ~~negotiating, pricing or performing the modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data~~.	(b) *Cost or pricing data*. If the Contractor has **been required to submit** cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer, or **an authorized** representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all **of the Contractor's records**, including computations and projections, related to— (1) **The proposal for the modification**; (2) **The discussions conducted on the proposal(s), including those related to negotiating**; (3) **Pricing of the modification**; or (4) **Performance of the modification**.
In the case of pricing any modification, the Comptroller General of the United States or a representative ~~who is an employee of the~~	(c) *Comptroller General*. In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, shall

~~Government~~ shall have the same rights.	have the same rights **as specified in paragraph (b) of this clause**.
(b) *Availability*. The Contractor shall make available at its office at all reasonable times the materials described in paragraph ~~(a)~~ above, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.	(d) *Availability*. The Contractor shall make available at its office at all reasonable times the materials described in paragraph **(b)** of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.
(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.	(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.
(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.	(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.
(c) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph ~~(c)~~, in all subcontracts ~~over $10,000 under this contract, altering the clause only as necessary to identify properly the contracting parties and the contracting office under the Government prime contract~~.	(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph **(e)**, in all subcontracts **expected to exceed the threshold in FAR 15.804-2(a)(1) for submission of cost or pricing data**.

14.202-1 Bidding time. [FAC 90-29, 91-104)]

FAR as of FAC 90-25	*FAR as revised*
(a) *Policy*. A reasonable time for prospective bidders to prepare and submit bids shall be allowed in all invitations, consistent with the needs of the Government. (For construction contracts, see 36.303(a).) A bidding time (i.e., the time between issuance of the solicitation and opening of bids) of at least 30 calendar days shall be provided, when synopsis is required by Subpart 5.2.	(a) *Policy*. A reasonable time for prospective bidders to prepare and submit bids shall be allowed in all invitations, consistent with the needs of the Government. (For construction contracts, see 36.303(a).) A bidding time (i.e., the time between issuance of the solicitation and opening of bids) of at least 30 calendar days shall be provided, when synopsis is required by Subpart 5.2.
(b) *Factors to be considered*. Because of unduly limited bidding time, some potential sources may be precluded from bidding and others may be forced to include amounts for contingencies that, with additional time, could be eliminated. To avoid unduly restricting competition or paying higher-than-necessary prices, consideration shall be given to	(b) *Factors to be considered*. Because of unduly limited bidding time, some potential sources may be precluded from bidding and others may be forced to include amounts for contingencies that, with additional time, could be eliminated. To avoid unduly restricting competition or paying higher-than-necessary prices, consideration shall be given to

such factors as the following in establishing a reasonable bidding time: (1) degree of urgency; (2) complexity of requirement; (3) anticipated extent of subcontracting; (4) whether use was made of presolicitation notices; (5) geographic distribution of bidders; and (6) normal mailing time for both invitations and bids.	such factors as the following in establishing a reasonable bidding time: (1) degree of urgency; (2) complexity of requirement; (3) anticipated extent of subcontracting; (4) whether use was made of presolicitation notices; (5) geographic distribution of bidders; and (6) normal **transmittal** time for both invitations and bids. [FAC 90-29]

14.202-2 Telegraphic bids.

FAR as of FAC 90-25	*FAR as revised*
(a) Telegraphic bids and mailgrams shall be authorized only when— (1) The date for the opening of bids will not allow bidders sufficient time to submit bids **on the prescribed forms**; or (2) Prices are subject to frequent changes.	(a) Telegraphic bids and mailgrams shall be authorized only when— (1) The date for the opening of bids will not allow bidders sufficient time to submit bids **in the prescribed format**; or [FAC 90-29] (2) Prices are subject to frequent changes.

14.202-8 Electronic bids. [New]

In accordance with Subpart 4.5, contracting officers may authorize use of electronic commerce for submission of bids. If electronic bids are authorized, the solicitation shall specify the electronic commerce method(s) that bidders may use. [FAC 90-29]

14.203-1 Mailing or delivery to prospective bidders.

FAR as of FAC 90-25	*FAR as revised*
Invitations for bids or presolicitation notices shall be ~~mailed or delivered to prospective bidders~~ as specified in 14.205, and shall be provided to others in accordance with 5.102. When a contracting office is located in the United States, any solicitation sent to a prospective bidder locatedat a foreign address shall be sent by international air mail if security classification permits.	Invitations for bids or presolicitation notices shall be **transmitted** as specified in 14.205, and shall be provided to others in accordance with 5.102. When a contracting office is located in the United States, any solicitation sent to a prospective bidder located at a foreign address shall be sent by **electronic data interchange** or international air mail if security classification permits. [FAC 90-29]

14.205 Solicitation mailing lists. [FAC 90-29, 91-104]

14.205-1 Establishment of lists.

FAR as of FAC 90-25	*FAR as revised*
(a) Solicitation mailing lists shall be established by contracting activities to assure access to adequate sources of supplies and services. This rule need not be followed, however, when the requirements of the contracting office can be obtained ~~within the local trade area~~ through use of ~~the small purchase~~ procedures (see Part 13), ~~or~~ are nonrecurring. Lists may be established as ~~(1)~~ a central list for use by all contracting officeswithin the contracting activity, or ~~(2)~~ local lists maintained by each contracting office.	(a) Solicitation mailing lists shall be established by contracting activities to assure access to adequate sources of supplies and services. This rule need not be followed, however, when **(1)** the requirements of the contracting office can be obtained through use of **simplified acquisition** procedures (see Part 13), **(2) the requirements** are nonrecurring**, or (3) electronic commerce methods are used which transmit solicitations or presolicitation notices automatically to all interested sources participating in electronic contracting with the purchasing activity**. Lists may be established as a central list for use by all contracting offices within the contracting activity, or **as** local lists maintained by each contracting office. [FAC 90-29]
* * * * *	* * * * *
(e) Business concerns listed on solicitation mailing lists shall be identified by size in accordance with 19.102. Size status should be established before listing a business concern on a list. Disadvantaged business concern designations shall be shown on the list whenever noted on the Standard Form 129 submitted by a particular concern.	(e) Business concerns listed on solicitation mailing lists shall be identified by size in accordance with 19.102. Size status should be established before listing a business concern on a list. Disadvantaged **and women-owned small** business concern designations shall be shown on the list whenever noted on the Standard Form 129 submitted by a particular concern. [FAC 90-32, CASE 94-780]

14.205-4 Excessively long solicitation mailing lists.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(b) *Rotation of lists*. By using different portions of a list for separate acquisitions, solicitation mailing lists may be rotated. However, considerable judgment must be exercised in determining whether the size of the acquisition justifies the rotation. The use of a presolicitation notice (see paragraph (c) below), time permitting, also should be considered. In rotating a list, the interests of small businesses (see 19.202-4) ~~and labor surplus areas (see 20.104(e) and (f))~~ shall be considered. Whenever a list is	(b) *Rotation of lists*. By using different portions of a list for separate acquisitions, solicitation mailing lists may be rotated. However, considerable judgment must be exercised in determining whether the size of the acquisition justifies the rotation. The use of a presolicitation notice (see paragraph (c) below), time permitting, also should be considered. In rotating a list, the interests of small**, small disadvantaged and women-owned small** businesses (see 19.202-4) shall be considered.

rotated, bids shall be solicited from (1) the previously successful bidder, (2) prospective suppliers who have been added to the solicitation mailing list since the last solicitation, and (3) concerns on the segment of the list selected for use in a particular acquisition. However, the rule does not apply when such action would be precluded by use of a total set-aside (see ~~Parts 19 and 20~~).	Whenever a list is rotated, bids shall be solicited from (1) the previously successful bidder, (2) prospective suppliers who have been added to the solicitation mailing list since the last solicitation, and (3) concerns on the segment of the list selected for use in a particular acquisition. However, the rule does not apply when such action would be precluded by use of a total set-aside (see **Part 19**). [FAC 90-32, CASE 94-780]
* * * * *	* * * * *

14.206 Small business set-asides. [FAC 90-32, CASE 94-780]

FAR as of FAC 90-25	*FAR as revised*
14.206 Small business ~~and labor surplus area~~ set-asides.	
~~See parts 19 and 20.~~	**(See Part 19.)**

14.209 Cancellation of invitations before opening. [FAC 90-29, 91-104]

FAR as of FAC 90-25	*FAR as revised*
* * * *	* * * *
(b) When an invitation is cancelled, bids that have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom invitations were issued.	(b) When an invitation is cancelled, bids that have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom invitations were issued. **For bids received electronically, the data received shall not be viewed and shall be purged from primary and backup data storage systems.** [FAC 90-29]

14.301 Responsiveness of bids. [FAC 90-29, 91-104]

FAR as of FAC 90-25	*FAR as revised*
(a) To be considered for award, a bid must comply in all material respects with the invitation for bids. Such compliance enables bidders to stand on an equal footing and maintain the integrity of the sealed bidding system. * * * *	(a) To be considered for award, a bid must comply in all material respects with the invitation for bids. Such compliance enables bidders to stand on an equal footing and maintain the integrity of the sealed bidding system. * * * *
(d) Bids should be filled out, executed, and submitted in accordance with the instructions in the invitation. If a bidder uses its own bid form or a letter to submit a bid, the bid may be considered only if (1) the bidder accepts all the terms and conditions of the invitation and (2) award on the bid would result in a binding contract with terms and conditions that do not vary from the terms and conditions of the invitation.	(d) Bids should be filled out, executed, and submitted in accordance with the instructions in the invitation. If a bidder uses its own bid form or a letter to submit a bid, the bid may be considered only if (1) the bidder accepts all the terms and conditions of the invitation and (2) award on the bid would result in a binding contract with terms and conditions that do not vary from the terms and conditions of the invitation. **(e) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.** [FAC 90-29]

52.214-5 Submission of Bids. * * * * (d) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

14.303 Modification or withdrawal of bids. [FAC 90-29, 91-104]

FAR as of FAC 90-25	*FAR as revised*
(a) Bids may be modified or withdrawn by ~~written or telegraphic notice~~ received in the office designated in the ~~invitation for bids~~ not later than the exact time set for opening of bids. * * * *	(a) Bids may be modified or withdrawn by **any method authorized by the solicitation**, **if notice is** received in the office designated in the **solicitation** not later than the exact time set for opening of bids. [FAC 90-29] * * * * **(c) Upon withdrawal of an electronically transmitted bid, the data received shall not be viewed and shall be purged from primary and backup data storage systems**. [FAC 90-29]

14.304-1 General. [FAC 90-29, 91-104]

FAR as of FAC 90-25	*FAR as revised*
Bids received in the office designated in the invitation for bids after the exact time set for opening are "late bids."	Bids received in the office designated in the invitation for bids after the exact time set for opening are "late bids."
(a) A late bid, modification of bid, or withdrawal of bid shall not be considered unless received before contract award, and ~~either~~—	(a) A late bid, modification of bid, or withdrawal of bid shall not be considered unless received before contract award, and —
* * * *	* * * *
(3) * * * * .	(3) * * * *; or
	(4) It was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of bids. [FAC 90-29]

52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.

FAR as of FAC 90-25	*FAR as revised*
(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—	(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—
* * * *	* * * *
(3) * * * * .	(3) * * * *; or
	(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m., one working day prior to the date specified for receipt of bids.

52.214-23 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.

FAR as of FAC 90-25	*FAR as revised*
(a) Any technical proposal under step one of two-step sealed bidding received at the office designated in this solicitation after the exact time specified for receipt will not be considered unless it is received	(a) Any technical proposal under step one of two-step sealed bidding received at the office designated in this solicitation after the exact time specified for receipt will not be considered unless it is received

before the invitation for bids in step two is issued and it— * * * * (3) * * * * .	before the invitation for bids in step two is issued and it— * * * * (3) * * * *; or **(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of technical proposals; or**

52.214-32 Late Submissions, Modifications, and Withdrawals of Bids (Overseas).

FAR as of FAC 90-25	*FAR as revised*
(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation. * * * * *	(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it— (1) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; **or** **(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of bids. The term "working day" excludes weekends and U.S. Federal holidays**. [FAC 90-29] * * * * *

52.214-33 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding (Overseas).

FAR as of FAC 90-25	*FAR as revised*
(a) Any technical proposal under step one of two-step sealed bidding received at the office designated in this solicitation after the exact time specified for receipt will not be considered unless it is received before the invitation for bids in step two is issued and it— (1) Was sent (i) by mail, or (ii) if authorized by the solicitation, was sent by telegram (including mailgram) or via facsimile, and it is	(a) Any technical proposal under step one of two-step sealed bidding received at the office designated in this solicitation after the exact time specified for receipt will not be considered unless it is received before the invitation for bids in step two is issued and it— (1) Was sent (i) by mail, or (ii) if authorized by the solicitation, was sent by telegram (including mailgram) or via facsimile, and it is

determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or (2) Is the only technical proposal received. * * * * *	determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; (2) **Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of technical proposals. The term "working day" excludes weekends and U.S. Federal holidays; or** (**3**) Is the only technical proposal received. [FAC 90-29] * * * * *

14.401 Receipt and safeguarding of bids. [FAC 90-29, 91-104]

FAR as of FAC 90-25	*FAR as revised*
(a) All bids (including modifications) received before the time set for the opening of bids shall be kept secure. Except as provided in paragraph (b) below, the bids shall remain unopened in a locked bid box or safe. If an invitation for bids is cancelled, bids shall be returned to the bidders. Necessary precautions shall be taken to ensure the security of the bid box or safe. Before bid opening, information concerning the identity and number of bids received shall be made available only to Government employees. Such disclosure shall be only on a “need to know” basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.	(a) All bids (including modifications) received before the time set for the opening of bids shall be kept secure. Except as provided in paragraph (b) **of this section**, **the bids shall not be opened or viewed, and shall remain in a locked bid box, a safe, or in a secured, restricted-access electronic bid box**. If an invitation for bids is cancelled, bids shall be returned to the bidders. Necessary precautions shall be taken to ensure the security of the bid box or safe. Before bid opening, information concerning the identity and number of bids received shall be made available only to Government employees. Such disclosure shall be only on a “need to know” basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening. [FAC 90-29]

14.402-3 Postponement of openings. [FAC 90-29, 91-104]

FAR as of FAC 90-25	*FAR as revised*
(a) A bid opening may be postponed even after	(a) A bid opening may be postponed even after

the time scheduled for bid opening (but otherwise in accordance with 14.208) when— (1) The contracting officer has reason to believe that the bids of an important segment of bidders have been delayed in the mails for causes beyond their control and without their fault or negligence (e.g., flood, fire, accident, weather conditions, or strikes); or	the time scheduled for bid opening (but otherwise in accordance with 14.208) when— (1) The contracting officer has reason to believe that the bids of an important segment of bidders have been delayed in the mails, **or in the communications system specified for transmission of bids**, for causes beyond their control and without their fault or negligence (e.g., flood, fire, accident, weather conditions, strikes, **or Government equipment blackout or malfunction when bids are due**); or

14.404-1 Cancellation of invitations after opening.

FAR as of FAC 90-25	*FAR as revised*
* * * * * (b) When it is determined before award but after opening that the requirements of ~~10.008~~ (relating to the availability and identification of specifications) have not been met, the invitation shall be cancelled. * * * * *	* * * * * (b) When it is determined before award but after opening that the requirements of **11.201** (relating to the availability and identification of specifications) have not been met, the invitation shall be cancelled. [FAC 90-32, CASE 94-790] * * * * *

14.406 Receipt of an unreadable electronic bid. [Section added by FAC 90-29, 91-104]

If a bid received at the Government facility by electronic data interchange is unreadable to the degree that conformance to the essential requirements of the invitation for bids cannot be ascertained, the contracting officer immediately shall notify the bidder that the bid will be rejected unless the bidder provides clear and convincing evidence—

(a) Of the content of the bid as originally submitted; and

(b) That the unreadable condition of the bid was caused by Government software or hardware error, malfunction, or other Government mishandling.

14.407-2 Apparent clerical mistakes. [FAC 90-29, 91-104]

FAR as of FAC 90-25	*FAR as revised*
(a) Any clerical mistake, apparent on its face in the bid, may be corrected by the contracting officer before award. The contracting officer first shall obtain from the bidder a verification of the bid intended. Examples of apparent mistakes are— (1) Obvious misplacement of a decimal point; (2) Obviously incorrect discounts (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days); (3) Obvious reversal of the price f.o.b. destination and price f.o.b. origin; and (4) Obvious mistake in designation of unit. (b) Correction of the bid shall be effected by attaching the verification to the original bid and a copy of the verification to the duplicate bid. Correction shall not be made on the face of the bid; however, it shall be reflected in the award document.	(a) Any clerical mistake, apparent on its face in the bid, may be corrected by the contracting officer before award. The contracting officer first shall obtain from the bidder a verification of the bid intended. Examples of apparent mistakes are— (1) Obvious misplacement of a decimal point; (2) Obviously incorrect discounts (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days); (3) Obvious reversal of the price f.o.b. destination and price f.o.b. origin; and (4) Obvious mistake in designation of unit. (b) Correction of the bid shall be effected by attaching the verification to the original bid and a copy of the verification to the duplicate bid. Correction shall not be made on the face of the bid; however, it shall be reflected in the award document. **(c) Correction of bids submitted by electronic data interchange shall be effected by including in the electronic solicitation file the original bid, the verification request, and the bid verification. [FAC 90-29]**

14.408-1 General. [FAC 90-31, Case 94-701]

FAR as of FAC 90-25	*FAR as revised*
(a) The contracting officer shall make a contract award (1) by written notice, (2) within the time for acceptance specified in the bid or an extension (see 14.404-1(d)), and (3) to that responsible bidder whose bid, conforming to the invitation, will be most advantageous to the Government, considering only price and the price-related factors (see 14.201-8) included in the invitation. Award shall not be made until all required approvals have been obtained and the award otherwise conforms with 14.103-2. * * * *	(a) The contracting officer shall make a contract award (1) by written **or electronic** notice, (2) within the time for acceptance specified in the bid or an extension (see 14.404-1(d)), and (3) to that responsible bidder whose bid, conforming to the invitation, will be most advantageous to the Government, considering only price and the price-related factors (see 14.201-8) included in the invitation. Award shall not be made until all required approvals have been obtained and the award otherwise conforms with 14.103-2. * * * *
(d)(1) Award is generally made by using the Award portion of Standard Form (SF) 33, Solicitation, Offer, and Award, or SF 1447, Solicitation/Contract (see 53.214). If an offer from	(d)(1) Award is generally made by using the Award portion of Standard Form (SF) 33, Solicitation, Offer, and Award, or SF 1447, Solicitation/Contract (see 53.214). If an offer from

a SF 33 leads to further changes, the resulting contract shall be prepared as a bilateral document on SF 26, Award/Contract.

(2) Use of the Award portion of SF 33, SF 26, or SF 1447, does not preclude the additional use of informal documents, including telegrams, as notices of awards.

a SF 33 leads to further changes, the resulting contract shall be prepared as a bilateral document on SF 26, Award/Contract.

(2) Use of the Award portion of SF 33, SF 26, or SF 1447, does not preclude the additional use of informal documents, including telegrams **or electronic transmissions**, as notices of awards.

14.408-6 Equal low bids. [FAC 90-29]

FAR as of FAC 90-25	*FAR as revised*
~~**14.407-6**~~ **Equal low bids.**	
(a) Contracts shall be awarded in the following order of priority when two or more low bids are equal in all respects: (1) Small business concerns that are also labor surplus area concerns. (2) Other small business concerns. ~~(3) Other business concerns that are also labor surplus area concerns.~~ ~~(4)~~ Other business concerns. * * * * *	(a) Contracts shall be awarded in the following order of priority when two or more low bids are equal in all respects: (1) Small business concerns that are also labor surplus area concerns. (2) Other small business concerns. **(3)** Other business concerns. [FAC 90-32, CASE 94-780] * * * * *

14.409-1 Award of unclassified contracts. [FAC 90-31, Case 94-701]

FAR as of FAC 90-25	*FAR as revised*
(a)(1) The contracting officer shall as a minimum (subject to any restrictions in Subpart 9.4)— (i) Notify unsuccessful bidders promptly that their bids were not accepted; (ii) Extend appreciation for the interest the unsuccessful bidders have shown in submitting a bid; and (iii) When award is made to other than a low bidder, state the reason for rejection in the notice to each of the unsuccessful low bidders. (2) For acquisitions subject to the Trade Agreements Act or the North American Free Trade Agreement (NAFTA) Implementation Act (see 25.405(e)), agencies shall ~~promptly, but in~~	(a)(1) The contracting officer shall as a minimum (subject to any restrictions in Subpart 9.4)— (i) Notify **each unsuccessful bidder in writing or electronically within three days after contract award, that its** bid was not accepted. "Day", for purposes of the notification process, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday; (ii) Extend appreciation for the interest the unsuccessful bidder has shown in submitting a bid; and (iii) When award is made to other than a low bidder, state the reason for rejection in the notice to each of the unsuccessful low bidders.

~~no eve nt l ater tha n 7 work ing days aft er a ward~~, ~~gi ve u nsuc cess ful offe rors fro m de sign ated or NA FTA coun trie s wr itte n no tice sta ting —~~ ~~(i) That their offers were not accepted;~~ ~~(ii) That a contract has been awarded;~~ ~~(iii) The dollar amount of the successful offer; and~~ ~~(iv) The name and address of the successful offeror~~.	(2) F or a cqui siti ons subj ect to t he T rade Ag reem ents Act or the Nort h Am eric an F ree Tr ade Agre emen t (N AFTA) Im plem enta tion Act (s ee 2 5.40 5(e)), **agencies shall include in notices given unsuccessful bidders from designated or NAFTA countries—** **(i) The dollar amount of the successful bid; and** **(ii) The name and address of the successful bidder**.
~~(b) Notification to unsuccessful bidders may be oral or in writing through the use of a form postal card or other appropriate means.~~	
(c) ~~Should additional information be requested, the contracting officer shall provide the~~ unsuccessful bidders with the name and address of the successful bidder, the contract price, ~~and the location where a copy of the abstract of offers is available for inspection~~. ~~However~~, when multiple awards have been made and furnishing information on the successful bids would require so much work as to interfere with normal operations of the contracting office, only information concerning location of the abstract of offers need be given.	(b) **Information included in paragraph (a)(2) of this subsection shall be provided to any** unsuccessful bidder **upon request except** when multiple awards have been made and furnishing information on the successful bids would require so much work as to interfere with normal operations of the contracting office. **In such circumstances**, only information concerning location of the abstract of offers need be given.
(d) When a request is received concerning an unclassified invitation from an inquirer who is neither abidder nor a representative of a bidder, the contracting officer should make every effort to furnish the names of successful bidders and, if requested, the prices at which awards were made. However, when such requests require so much work as to interfere with the normal operations of the contracting office, the inquirer will be advised where a copy of the abstract of offers may be seen.	(c) When a request is received concerning an unclassified invitation from an inquirer who is neither a bidder nor a representative of a bidder, the contracting officer should make every effort to furnish the names of successful bidders and, if requested, the prices at which awards were made. However, when such requests require so much work as to interfere with the normal operations of the contracting office, the inquirer will be advised where a copy of the abstract of offers may be seen.
(e) Requests for records shall be governed by agency regulations implementing Subpart 24.2.	(d) Requests for records shall be governed by agency regulations implementing Subpart 24.2.

14.502 Conditions for use.

FAR as of FAC 90-25	*FAR as revised*
(a) * * * * *	(a) * * * * *
(b) None of the following precludes the use of two-step sealed bidding:	(b) None of the following precludes the use of two-step sealed bidding:
(1) Multi-year contracting.	(1) Multi-year contracting.
(2) Government-owned facilities or special tooling to be made available to the successful bidder.	(2) Government-owned facilities or special tooling to be made available to the successful bidder.

(3) A total small business ~~and/or labor surplus area set-aside (see 19.502-2 and 20.201)~~.	(3) A total small business **set-aside (see 19.502-2).** [FAC 90-32, CASE 94-780]
(4) A first or subsequent production quantity is being acquired under a performance specification.	(4) A first or subsequent production quantity is being acquired under a performance specification.

52.214-27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 14.201-7(b), insert the following clause: PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING ~~(NOV 1994)~~	As prescribed in 14.201-7(b), insert the following clause: PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING **(OCT 1995)** [FAC 90-32, CASE 94-721]
(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, ~~of more than the threshold for~~ submission of cost or pricing data at FAR 15.804-2(a)(1), except that this clause does not apply to ~~any modification for which the price is— [FAC 90-22] (1) Based on adequate price competition; (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or (3) Set by law or regulation.~~ * * * * *	(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, **expected to exceed the threshold for the** submission of cost or pricing data at FAR 15.804-2(a)(1), except that this clause does not apply to **a modification if an exception under FAR 15.804-1 applies.** [FAC 90-32, CASE 94-721] * * * * *
(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid— (1) * * * * * (2) ~~For Department of Defense contracts only,~~ a penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent. (End of clause)	(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid— (1) * * * * * (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent. [FAC 90-32, CASE 94-721] (End of clause)

52.214-28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 14.201-7(c), insert the following clause in solicitations and contracts: SUBCONTRACTOR COST OR PRICING DATA— MODIFICATIONS—SEALED BIDDING ~~(NOV 1994)~~	As prescribed in 14.201-7(c), insert the following clause in solicitations and contracts: SUBCONTRACTOR COST OR PRICING DATA— MODIFICATIONS—SEALED BIDDING **(OCT 1995)** [FAC 90-32, CASE 94-721]
(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) ~~when entered into, or~~ pricing any subcontract ~~modification~~ involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless ~~the price is— [FAC 90-22]~~ ~~(1) Based on adequate price competition;~~ ~~(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or~~ ~~(3) Set by law or regulation.~~ * * * * *	(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), **on the date of agreement on price or the date of award, whichever is later; or before** pricing any subcontract **modifications** involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless **an exception under FAR 15.804-1 applies.** [FAC 90-32, CASE 94-721] * * * * *
(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) when entered into. [FAC 90-22] (End of clause)	(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that**, when entered into,** exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1). [FAC 90-32, CASE 94-721] (End of clause)

PART 15

CONTRACTING BY NEGOTIATION

~~**15.106-1 Examination of Records clause.**~~

~~(a) This subsection implements 10 U.S.C. 2313(b) and (c) and 41 U.S.C. 254(c).~~

~~(b) When contracting by negotiation, the contracting officer shall insert the clause at 52.215-1, Examination of Records by Comptroller General, in solicitations and contracts, except when—~~

~~(1) Making small purchases (see Part 13);~~

~~(2) Contracting for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge; or~~

~~(3) Making contracts with foreign contractors for which the agency head authorizes omission under Subpart 25.9.~~

~~(c) In connection with administration of the clause in research and development contracts with nonprofit institutions, including subcontracts under these contracts, the Comptroller General does not require original documentation of transportation costs (exclusive of travel).~~

[FAC 90-31, Case 94-740]

15.106-1 Audit and Records—Negotiation clause. [FAC 90-31, Case 94-740]

FAR as of FAC 90-25	*FAR as revised*
~~**15.106-2 Audit—Negotiation clause.**~~ (a) This subsection implements 10 U.S.C. 2313~~(a)~~, 41 U.S.C. 254~~(b)~~, ~~10 U.S.C. 2306(f)~~, and OMB Circular No. A-133.	(a) This subsection implements 10 U.S.C. 2313, 41 U.S.C. 254**d**, and OMB Circular No. A-133. [FAC 90-31, Case 94-740]
(b) The contracting officer shall, ~~when~~ contracting by negotiation, insert the clause at 52.215-2, Audit— Negotiation, in solicitations and contracts, ~~unless the acquisition is a small purchase under Part 13~~.	(b) The contracting officer shall, **if** contracting by negotiation, insert the clause at 52.215-2, Audit **and Records**—Negotiation, in solicitations and contracts **except those (1) not exceeding the simplified acquisition threshold in Part 13; or (2) for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge**. [FAC 90-31, Case 94-740]

In facilities contracts, the contracting officer shall use the clause with its Alternate I. In cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II.

(c) In facilities contracts, the contracting officer shall use the clause with its Alternate I. In cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II. **If the examination of records by the Comptroller General is waived in accordance with 25.901, the contracting officer shall use the clause with its Alternate III**. [FAC 90-31, Case 94-740]

52.215-2 Audit and Records—Negotiation. [FAC 90-31, Case 94-740]

FAR as of FAC 90-25	*FAR as revised*
	(a) As used in this clause, *records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
(a) *Examination of costs*. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of these, the Contractor shall maintain—and the Contracting Officer or representative~~s~~ of the Contracting Officer shall have the right to examine and audit~~—books~~, records, ~~documents~~, and other evidence ~~and accounting procedures and practices, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.),~~ sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract. This right of examinations shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.	(b) *Examination of costs*. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or **an authorized** representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.
(b) *Cost or pricing data*. If, ~~pursuant to law~~, the Contractor has been required to submit cost or pricing data in connection with pricing this contract ~~or any modification to this contract~~, the Contracting Officer or representative~~s~~ of the Contracting Officer ~~who are employees of the Government~~ shall have the right to examine and audit all of the Contractor's ~~books~~, records, ~~documents, and other data, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities,~~	(c) *Cost or pricing data*. If the Contractor has been required to submit cost or pricing data in connection with **any** pricing **action relating to** this contract, the Contracting Officer, or **an authorized** representative of the Contracting Officer, **in order** to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to— (1) The proposal for the contract, subcontract, or modification;

~~etc.), including computations and projections~~, related to proposing, negotiating, pricing, or performing the contract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. ~~The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used~~.

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the contract, subcontract, or modification; or

(4) Performance of the contract, subcontract or modification.

(d) *Comptroller General*—(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(c) *Reports*. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or representative~~s~~ of the Contracting Officer ~~who are employees of the Government~~ shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(e) *Reports*. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or **an authorized** representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(d) *Availability*. The Contractor shall make available at its office at all reasonable times the materials described in paragraphs (a) and (b) ~~above~~, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and

(2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are ~~disposed of~~.

(f) *Availability*. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), **(c), (d), and (e) of this clause**, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and

(2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are **finally resolved**.

~~(e) Except as otherwise provided in FAR Subpart 4.7, Contractor Records Retention, the Contractor may transfer computer data in machine readable form from one reliable computer medium to another. The Contractor's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original data. The contractor's choice of form or type of materials described in paragraphs (a), (b), and (c) of this clause affects neither the Contractor's obligations nor the Government's rights under this clause~~.

(f) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph ~~(f)~~, in all subcontracts under this contract that ~~are over the small purchase limitation~~ in FAR Part 13, ~~altering the clause~~ only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that **exceed the simplified acquisition threshold** in FAR Part 13, **and**—

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

Alternate I (APR 1984). In facilities contracts, add the following sentence at the end of paragraph (a) of the basic clause:

The obligations and rights specified in this paragraph shall extend to the use of, and charges for the use of, the facilities under this contract.

Alternate I (OCT 1995). **As prescribed in 15.106-1(c)**, in facilities contracts, add the following sentence at the end of paragraph (b) of the basic clause:

The obligations and rights specified in this paragraph shall extend to the use of, and charges for the use of, the facilities under this contract.

Alternate II (FEB 1993). In cost-reimbursement contracts with educational and other nonprofit institutions, add the following paragraph (g) to the basic clause:

(g) The provisions of OMB Circular No. A-133 “Audits of Institutions of Higher Learning and Other Nonprofit Institutions” apply to this contract.

Alternate II (OCT 1995). **As prescribed in 15.106-1(c)**, in cost-reimbursement contracts with educational and other non-profit institutions, add the following paragraph (h) to the basic clause:

(h) The provisions of OMB Circular No. A-133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions," apply to this contract.

***Alternate III* (OCT 1995). As prescribed in 15.106-1(c), delete paragraph (d) of the basic clause and redesignate the remaining paragraphs accordingly**.

15.106-2 Audit— Commercial items. [FAC 90-32, CASE 94-721]

(a) This subsection implements 10 U.S.C. 2306a(d)(2) and (3) and 41 U.S.C. 254b(d)(2) and (3).

(b) The contracting officer shall, when contracting by negotiation, insert clause 52.215-43, Audit—Commercial Items, in solicitations and contracts when submission of cost or pricing data is expected to be excepted under 15.804-1(a)(2) (i.e., a commercial item where price is otherwise fair and reasonable). The clause shall also be included in solicitations and contracts when cost or pricing data are required, for incorporation into subcontracts that may be excepted under 15.804-1(a)(2).

52.215-43 Audit—Commercial Items. [FAC 90-32, CASE 94-721]

As prescribed at 15.106-2, insert the following clause:

AUDIT—COMMERCIAL ITEMS (OCT 1995)

(a) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or any other form.

(b) This paragraph applies to solicitations and contracts or subcontracts for commercial items that may be or have been granted an exception from submittal of cost or pricing data only under FAR 15.804-1(a)(2). In order to determine the accuracy of the information on prices at which the same or similar items have been sold in the commercial market, the Contracting Officer and authorized representatives have a right to examine such information provided by the offeror, Contractor, or subcontractor, and all records that directly relate to such information. Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the marketplace. This right shall expire two years after the date of award of the contract, or two years after the date of any modification to the contract, with respect to which this information is provided.

(c) If the prime Contractor and each higher-tier subcontractor were required to submit cost or pricing data, the Contractor and each subcontractor shall insert the substance of this clause, including this paragraph (c), in each subcontract for which submission of cost or pricing data was required or for which an exception was granted under FAR 15.804-1(a)(2).

(End of clause)

15.402 General.

(k) In accordance with Subpart 4.5, contracting officers may authorize use of electronic commerce for submission of offers. If electronic offers are authorized, the solicitation shall specify the electronic commerce method(s) that offerors may use. [FAC 90-29, 91-104]

52.215-9 Submission of Offers. * * * * * (d) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation. [FAC 90-29, 91-104]

~~**52.215-10 Late Submissions, Modifications, and Withdrawals of Proposals.** [FAC 90-29, 91-104]~~

~~**52.215-36 Late Submissions, Modifications, and Withdrawals of Proposals (Overseas).** [FAC 90-29, 91-104]~~

15.406-5 Part IV—Representations and instructions.

FAR as of FAC 90-25	*FAR as revised*
(b) *Section L, Instructions, conditions, and notices to offerors or quoters*. Insert in this section solicitation provisions and other information and instructions not required elsewhere to guide offerors or quoters in preparing proposals or quotations. Any alteration pertaining to the solicitation shall be included in this section as part of the provision at 52.252-3, Alterations in Solicitation. Prospective offerors or quoters may be instructed to submit technical proposals in severable parts to meet agency requirements. The severable parts should provide for separation of ~~technical and~~ cost or pricing data. The instructions may specify further organization of proposal or quotation parts, such as (1) administrative, (2) management, (3) technical, ~~and~~ (4) cost or pricing data.	(b) *Section L, Instructions, conditions, and notices to offerors or quoters*. Insert in this section solicitation provisions and other information and instructions not required elsewhere to guide offerors or quoters in preparing proposals or quotations. Any alteration pertaining to the solicitation shall be included in this section as part of the provision at 52.252-3, Alterations in Solicitation. Prospective offerors or quoters may be instructed to submit technical proposals in severable parts to meet agency requirements. The severable parts should provide for separation of cost or pricing data, **past performance data and, when needed, technical data**. The instructions may specify further organization of proposal or quotation parts, such as (1) administrative, (2) management, (3) technical, (4) **past performance**, and (5) cost or pricing data **(see 15.804-6 and 15.804-8)**. [FACs 90-26 & 90-32, CASE 94-721]
(c) *Section M, Evaluation factors for award*. Identify all factors, including cost or price, cost or price-related factors, and non-cost or non-price-related factors, and any significant subfactors that will be considered in awarding the contract (see 15.605(e) and (f) and the multiple award provision at 52.215-34) and state the relative importance the Government places on those evaluation factors and subfactors.	(c) *Section M, Evaluation factors for award*. Identify all **significant** factors, including cost or price, cost or price-related factors, and non-cost or non-price-related factors, and any significant subfactors that will be considered in awarding the contract (see 15.605(d) and e) and the multiple award provision at 52.215-34) and state the relative importance the Government places on those evaluation factors and subfactors. [FAC 90-31, Case 94-701]

15.407 Solicitation provisions.

FAR as of FAC 90-25	*FAR as revised*
(d) The contracting officer shall— (1) Insert in RFP's for other than construction the provision at 52.215-13, Preparation of Offers; (2) Insert in RFP's the provision at 52.215-14, Explanation to Prospective Offerors; (3) Insert in RFP's the provision at 52.215-15, Failure to Submit Offer; and * * * * *	(d) The contracting officer shall— (1) Insert in RFP's for other than construction the provision at 52.215-13, Preparation of Offers; (2) Insert in RFP's the provision at 52.215-14, Explanation to Prospective Offerors; (3) Insert in RFP's the provision at 52.215-15, Failure to Submit Offer, e**xcept when using electronic data interchange methods not requiring solicitation mailing lists**; and [FAC 90-29, Case 91-104] * * * * *

52.215-15 Failure to Submit Offer.

FAR as of FAC 90-25	*FAR as revised*
Recipients of this solicitation not responding with an offer should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter or postcard whether they want to receive future solicitations for similar requirements. If a recipient does not submit an offer and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.	Recipients of this solicitation not responding with an offer should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter, postcard, **or established electronic commerce methods**, whether they want to receive future solicitations for similar requirements. If a recipient does not submit an offer and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list. [FAC 90-29, Case 91-104]

15.407 Solicitation provisions. (FAC 90-31, Case 94-701)

FAR as of FAC 90-25	*FAR as revised*
(d) The contracting officer shall— * * * * 4) Insert in RFP's the provision at 52.215-16, Contract Award. (i) ~~Civilian agencies, other than the Coast Guard and the National Aeronautics and Space Administration, shall use the basic provision as stated.~~ (ii) If the RFP is for construction, the contracting officer shall use the provision with its Alternate I. (iii) ~~The Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration shall use the basic provision with its Alternate II if the contracting officer intends that proposals will be evaluated with, and award made after, discussions with the offerors~~. (iv) ~~The Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration shall use the basic provision with its Alternate III~~ if the contracting officer intends ~~that proposals will be evaluated, and award made~~, ~~without discussions~~ ~~with offerors~~.	(d) The contracting officer shall— * * * * (4) Insert in RFP's the provision at 52.215-16, Contract Award. (i) If the RFP is for construction, the contracting officer shall use the provision with its Alternate I. **If awards are to be made without discussions, also use Alternate II**. (ii) **If the contracting officer intends to evaluate offers and make award without discussions, use the basic provision with its Alternate II**.

52.215-16 Contract Award. (FAC 90-31, Case 94-701)

FAR as of FAC 90-25	*FAR as revised*
* * * *	* * * *
(c) ~~The Government may award a contract on the basis of initial offers received, without discussions~~. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.	(c) **The Government intends to evaluate proposals and award a contract after conducting written or oral discussions with all responsible offerors whose proposals have been determined to be within the competitive range. However, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.**
* * * *	* * * *
	<u>Alternate II</u> (SEPT 1995). As prescribed in 15.407(d)(4)(ii), substitute the following paragraph (c) for paragraph (c) of the basic provision:
	(c) The Government intends to evaluate proposals and award a contract without discussions with offerors (except communications conducted for the purpose of minor clarification). Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary.

15.406-2 Part I—The Schedule.

FAR as of FAC 90-25	*FAR as revised*
The contracting officer shall prepare the contract Schedule as follows:	The contracting officer shall prepare the contract Schedule as follows:
* * * * *	* * * * *
(c) S*ection C, Description/specifications/work statement.* Include any description or specifications needed in addition to Section B (s~~ee Part 10, Specifications, Standards, and Other Product Descriptions~~).	(c) S*ection C, Description/specifications/work statement.* Include any description or specifications needed in addition to Section B (**see Part 11**). [FAC 90-32, CASE 94-790]
(d) *Section D, Packaging and marking*. Provide packaging, packing, preservation, and marking requirements, if any ~~(see 10.004(e))~~.	(d) *Section D, Packaging and marking*. Provide packaging, packing, preservation, and marking requirements, if any. [FAC 90-32, CASE 94-790]
* * * * *	* * * * *
(f) *Section F, Deliveries or performance.* Specify	(f) *Section F, Deliveries or performance.* Specify

the requirements for time, place, and method of delivery or performance (~~see Part 12, Contract Delivery or Performance,~~ and 47.301-1).
* * * * *

the requirements for time, place, and method of delivery or performance (**Subpart 11.4, Delivery or Performance Schedules**, and 47.301-1). [FAC 90-32, CASE 94-790]
* * * * *

15.410 Amendment of solicitations before closing date.

FAR as of FAC 90-25	*FAR as revised*
* * * *	* * * *
(b) The contracting officer shall determine if the closing date needs to be changed when amending a solicitation. If the time available before closing is insufficient, prospective offerors or quoters shall be notified by telegram or telephone of an extension of the closing date, ~~and the notification~~ shall be confirmed in the written amendment to the solicitation. The contracting officer shall not award a contract unless any amendments made to an RFP have been issued in sufficient time to be considered by prospective offerors.	(b) The contracting officer shall determine if the closing date needs to be changed when amending a solicitation. If the time available before closing is insufficient, prospective offerors or quoters shall be notified by **electronic data interchange**, telegram, or telephone of an extension of the closing date. **Telephonic and telegraphic notices** shall be confirmed in the written amendment to the solicitation. The contracting officer shall not award a contract unless any amendments made to an RFP have been issued in sufficient time to be considered by prospective offerors. [FAC 90-29, Case 91-104]

15.412 Late proposals, modifications, and withdrawals of proposals.

FAR as of FAC 90-25	*FAR as revised*
* * * *	* * * *
(d) When a late proposal or modification is received and it is clear from available information that it cannot be considered for award, the contracting officer shall promptly notify the offeror that it was received late and will not be considered. The notice need not be given when the proposed contract is to be awarded within a few days and the notice prescribed in 15.1001(c)(1) would suffice.	(d) When a late proposal or modification is received and it is clear from available information that it cannot be considered for award, the contracting officer shall promptly notify the offeror that it was received late and will not be considered. The notice need not be given when the proposed contract is to be awarded within a few days and the notice prescribed in 15.100**2**(c)(1) would suffice. [FAC 90-31]
	* * * *
	(h) Upon withdrawal of an electronically transmitted proposal, the data received shall not be viewed and shall be purged from primary and backup data storage systems. [FAC 90-29, Case 91-104)

52.215-10 Late Submissions, Modifications, and Withdrawals of Proposals. [FAC 90-29, 91-104]

FAR as of FAC 90-25	*FAR as revised*
(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—	(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it— * * * * **(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or** * * * * *

52.215-36 Late Submissions, Modifications, and Withdrawals of Proposals (Overseas). [FAC 90-29, 91-104]

FAR as of FAC 90-25	*FAR as revised*
(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it— (1) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or (2) Is the only proposal received.	(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it— (1) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government the late receipt was due solely to mishandling by the Government after receipt at the Government installation; (2) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or [FAC 90-29] (3) Is the only proposal received.

15.501 Definitions.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
"Commercial ~~product~~ offer" means an offer of a commercial ~~product that is usually sold to the general public and that~~ the vendor wishes to see introduced in the Government's supply system as an alternate or replacement for an existing supply item.	"Commercial **item** offer" means an offer of a commercial **item** the vendor wishes to see introduced in the Government's supply system as an alternate or replacement for an existing supply item. [FAC 90-32, CASE 94-790]
* * * * *	* * * * *

15.503 General.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(b) Advertising material, commercial ~~product~~ offers, contributions, or technical correspondence as defined in 15.501 are not unsolicited proposals.	(b) Advertising material, commercial **item** offers, contributions, or technical correspondence as defined in 15.501 are not unsolicited proposals. [FAC 90-32, CASE 94-790]
* * * * *	* * * * *

15.604 Responsibilities.

(a) Agency heads or their designees are responsible for source selection.

(b) The cognizant technical official is responsible for the technical requirements related to the source selection process.

(c) The contracting officer is responsible for contractual actions related to the source selection process, including—

(1) Issuing solicitations to which this subpart applies in accordance with Subpart 15.4 and this subpart;

(2) Conducting or coordinating cost or price analyses as prescribed in Subpart 15.8;

(3) Conducting or controlling all negotiations concerning cost or price, technical requirements,

(a) Agency heads or their designees are responsible for source selection.

(b) The cognizant technical official is responsible for the technical **and past performance requirements** related to the source selection process. [FAC 90-26]

(c) The contracting officer is responsible for contractual actions related to the source selection process, including—

(1) Issuing solicitations to which this subpart applies in accordance with Subpart 15.4 and this subpart;

(2) Conducting or coordinating cost or price analyses as prescribed in Subpart 15.8;

(3) Conducting or controlling all negotiations

and other terms and conditions; and

(4) Selecting the source for contract award, unless another official is designated as the source selection authority.

concerning cost or price, technical requirements, **past performance**, and other terms and conditions; and [90-26]

(4) Selecting the source for contract award, unless another official is designated as the source selection authority.

~~*Past Performance and Quality*~~

~~☛ Contracting officers must evaluate "past performance" in every competitive negotiation if the estimated value of the requirement exceeds:~~

- ~~$1,000,000 for solicitations issued on or after July 1, 1995.~~
- ~~$500,000 for solicitations issued on or after July 1, 1997~~
- ~~$100,000 for solicitations issued on or after January 1, 1999.~~

~~**Exception**: You do not have to evaluate past performance if the contracting officer documents the rationale for disregarding past performance in the contract file. [§15.605, FAC 90-26]~~

~~☛ Contracting officers must also consider quality in **every** source selection, through inclusion in one or more non-price factors (e.g., past performance, technical excellence, management capability, personnel qualifications, prior experience, and schedule compliance). [§15.605, FAC 90-26]~~

~~*Environmental Objectives*~~

~~☛ Contracting officers must consider "environmental objectives" in every source selection "where appropriate". Possible objectives: "promoting waste reduction, source reduction, energy efficiency, and maximum practicable recovered material content" [§15.605, FAC 90-27]~~

~~*Award On Low Price or Cost*~~

~~☛ The FAR reaffirms that contracting officers may continue to award contracts, where appropriate, on the basis of lowest [evaluated] price or cost to responsible offerors whose offers meet the solicitation's minimum criteria for acceptable award. Remember to state this basis of award in the solicitation. (§15.605, FAC 90-31, Case 94-701)~~

~~In this context, you generally may not use responsibility-related factors (e.g., past performance) other than for responsibility determinations, and such determinations are subject to "Certificate of Competency" review by the Small Business Administration.~~

~~*Greatest Value Competitions*~~

~~☞ Numerical weights are NOT mandated (or encouraged) by the FAR. The FAR reaffirms that numerical weights can be used — and do not necessarily have to be disclosed in the RFP. Contracting officers may disclose numerical weights "on a case by case basis" in the solicitation. Although the new FAR language does not discourage this practice, disclosing weights generally is NOT good practice. The Comptroller General has repeatedly ruled that Source Selection Authorities have discretion to overrule numerical scores when weights are NOT disclosed in the solicitation. (§15.605, FAC 90-31, Case 94-701)~~

~~*Incorporating Evaluation Factors in RFPs*~~

~~☞ Contracting officers no longer have to state **all** evaluation factors in requests for proposals — only the **significant** factors. (FAC 90-31, Case 94-701) *See also §15.406-5.*~~

~~☞ RFPs must directly, expressly state whether:~~

~~Insert this language as the prelude in Section M (when using the UCF). (FAC 90-31, Case 94-701)~~

15.605 Evaluation factors and subfactors.

FAR as of FAC 90-25	*FAR as revised*
(a) The factors that will be considered in evaluating proposals ~~should~~ be tailored to each acquisition and include only those factors that will have an impact on the source selection decision.	(a) The factors **and subfactors** that will be considered in evaluating proposals **shall** be tailored to each acquisition and **shall** include only those factors that will have an impact on the source selection decision. [FAC 90-31, Case 94-701]
(b) The evaluation factors that apply to an acquisition and the relative importance of those factors are within the broad discretion of agency acquisition ~~officials. However~~, price or cost to the Government shall be included as an evaluation factor in every source selection.	(b) The evaluation factors **and subfactors** that apply to an acquisition and the relative importance of those factors **and subfactors** are within the broad discretion of agency acquisition officials **except that—** [FACs 90-26 & 90-31, Case 94-701] **(i) P**rice or cost to the Government shall be included as an evaluation factor in every source selection. [FAC 90-26]

(ii) **Past performance shall be evaluated in all competitively negotiated ~~acquisi~~ acquisitions expected to exceed $100,000 not later than January 1, 1999, unless the contracting officer documents in the ~~con~~ contract file the reasons why past ~~perfor~~ performance should not be evaluated. Agencies may develop their own phase-in schedule for past performance evaluations which meets or exceeds the following ~~mile~~ milestones: All solicitations with an**

~~estima~~ **estimated value in excess of (A) $1,000,000**
~~is~~ **issued on or after July 1, 1995; (B) $500,000 issued on or after July 1, 1997; and (C) $100,000 issued on or after**
~~Janu~~ **January 1, 1999. Past performance may be evaluated in competitively negotiated**
~~ac~~ **acquisitions estimated at $100,000 or less at the discretion of the contracting**
~~offi~~ **officer.** [FAC 90-26]

Quality ~~also~~ shall be addressed in every source selection. ~~In~~ evaluation factors, ~~quality may be expressed in terms of~~ technical excellence, management capability, personnel qualifications, prior experience, ~~past performance~~, and schedule compliance.

(iii) Quality shall be addressed in every source selection **through inclusion in one or more of the non-cost** evaluation factors **or subfactors, such as past performance,** technical excellence, management capability, personnel qualifications, prior experience, and schedule compliance. [FACs 90-26 and 90-31, Case 94-701]

(iv) **Environmental objectives, such as promoting waste reduction, source reduction, energy efficiency, and maximum practicable recovered material content (see Part 23), shall also be considered in every source selection, when appropriate.** [FAC 90-27]

Any other relevant factors, such as cost realism, may also be included.

(2) Any other relevant factors **or subfactors**, such as cost realism, may also be included. [FACs 90-26 and 90-31, Case 94-701]

(c) ~~While the lowest price or lowest total cost to the Government is properly the deciding factor in many source selections, in certain acquisitions the Government may select the source whose proposal offers the greatest value to the Government in terms of performance and other factors. This may be the case, for example, in the acquisition of research and development or professional services, or when cost-reimbursement contracting is anticipated~~.

(d) In awarding a cost-reimbursement contract, the cost proposal should not be controlling, since advance estimates of cost may not be valid indicators of final actual costs. There is no requirement that cost-reimbursement contracts be awarded on the basis of lowest proposed cost, lowest proposed fee, or the lowest total proposed cost plus fee. The award of cost-reimbursement contracts primarily on the basis of estimated costs may encourage the submission of unrealistically low estimates and increase the likelihood of cost overruns. The primary consideration should be which offeror can perform the contract in a manner most advantageous to the Government, as determined by evaluation of proposals according to the established evaluation criteria.

(~~d~~c) In awarding a cost-reimbursement contract, the cost proposal should not be controlling, since advance estimates of cost may not be valid indicators of final actual costs. There is no requirement that cost-reimbursement contracts be awarded on the basis of lowest proposed cost, lowest proposed fee, or the lowest total proposed cost plus fee. The award of cost-reimbursement contracts primarily on the basis of estimated costs may encourage the submission of unrealistically low estimates and increase the likelihood of cost overruns. The primary consideration should be which offeror can perform the contract in a manner most advantageous to the Government, as determined by evaluation of proposals according to the established evaluation criteria.

(e) The solicitation shall clearly state the evaluation factors, including cost or price, cost or price-related factors, and non-cost or non-price-related factors, and any significant subfactors, that will be considered in making the source selection and their relative importance (see 15.406-5(c)). Numerical weights, which may be employed in the evaluation of proposals, need not be disclosed in solicitations. The solicitation shall inform offerors of minimum requirements that apply to particular evaluation factors and significant subfactors.

(~~e~~d)**(1)** The solicitation should be structured to provide for the selection of the source whose proposal offers the greatest value to the Government in terms of performance, risk management, cost or price, and other factors. **At a minimum**, the solicitation shall clearly state the **significant** evaluation factors, **such as** cost or price, cost or price-related factors, past performance and other non-cost or non-price-related factors, and any significant subfactors, that will be considered in making the source selection, and their relative importance (see 15.406-5(c)). Numerical weights, which may be employed in the evaluation of proposals, need not be disclosed in solicitations. The solicitation shall inform offerors of minimum requirements that apply to particular evaluation factors and significant subfactors. The solicitation shall inform offerors of minimum requirements that apply to particular evaluation factors and significant subfactors. **Further, the solicitation shall state whether all evaluation factors other than cost or price, when combined, are**

(i) Significantly more important than cost or price,

(ii) Approximately equal to cost or price, or

(iii) Significantly less important than cost or price.

(2) The solicitation may elaborate on the relative importance of factors and subfactors at the discretion of the contracting officer. Agencies may elect to assign numerical weights to evaluation factors and employ those weights when evaluating proposals. Numerical weights need not be disclosed in solicitations; **however, nothing precludes an agency from disclosing the weights on a case-by-case basis. The solicitation may state that award will be made to the offeror that meets the solicitation's minimum criteria for acceptable award at the lowest cost or price**. [FAC 90-31, Case 94-701)

(f) In addition to other factors, offers will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (see 15.407(h)). The contracting officer shall assume for the purpose of

(~~f~~e) In addition to other factors, offers will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (see 15.407(h)). The contracting officer shall assume for the purpose of

making multiple awards that $500 would be the administrative cost to the Government for issuing and administering each contract awarded under a solicitation. Individual awards shall be for the items or combination of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

making multiple awards that $500 would be the administrative cost to the Government for issuing and administering each contract awarded under a solicitation. Individual awards shall be for the items or combination of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

15.607 Disclosure of mistakes before award.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
	(d) If a proposal received at the Government facility in electronic format is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document, the contracting officer immediately shall notify the offeror and provide the opportunity for the offeror to submit clear and convincing evidence—
	(1) Of the content of the proposal as originally submitted; and
	(2) That the unreadable condition of the proposal was caused by Government software or hardware error, malfunction, or other Government mishandling. [FAC 90-29, 91-104]

15.608 Proposal evaluation.

FAR as of FAC 90-25	*FAR as revised*
(a) Proposal evaluation is an assessment of both the proposal and the offeror's ability ~~(as conveyed by the proposal)~~ to successfully accomplish the prospective contract. An agency shall evaluate competitive proposals solely on the factors specified in the solicitation.	(a) Proposal evaluation is an assessment of both the proposal and the offeror's ability to successfully accomplish the prospective contract. An agency shall evaluate competitive proposals solely on the factors specified in the solicitation. [FAC 90-26]
(1) *Cost or price evaluation.* The contracting officer shall use cost or price analysis (see Subpart 15.8) to evaluate the cost estimate or price, not only to determine whether it is reasonable, but also to determine the offeror's understanding of the work and ability to perform the contract. The contracting offi-	(1) *Cost or price evaluation.* The contracting officer shall use cost or price analysis (see Subpart 15.8) to evaluate the cost estimate or price, not only to determine whether it is reasonable, but also to determine the offeror's understanding of the work and ability to perform the contract. The contracting officer shall document the cost or price evaluation.

cer shall document the cost or price evaluation.

(2) ***Past Performance evaluation*****. (i) Past performance information is an**
~~indica~~ **indicator of an offeror's ability to perform the contract. The comparative assessment of past performance information is separate from the responsibility determination**
~~re~~ **required under 9.103. The number and**
~~se~~ **severity of an offeror's problems, the**
~~effec~~ **effectiveness of corrective actions taken, the offeror's overall work record, and the age and relevance of past performance**
~~infor~~ **information should be considered at the time it is used.**

(ii) Where past performance is to be evaluated, the solicitation shall afford
~~of~~ **offerors the opportunity to identify Federal, state and local government, and private contracts performed by the offerors that were similar in nature to the contract**
~~be~~ **being evaluated, so that the Government may verify the offerors' past performance on these contracts. In addition, at the discretion of the contracting officer, the offerors may provide information on**
~~prob~~ **problems encountered on the identified**
~~con~~ **contracts and the offerors' corrective actions. Past performance information may also be obtained from other sources known to the Government. The source and type of past performance information to be included in the evaluation is within the broad**
~~discre~~ **discretion of agency acquisition officials and should be tailored to the circumstances of each acquisition. Evaluations of**
~~contrac~~ **contractor performance prepared in accordance with Subpart 42.15 are one source of performance**
~~formance~~**information which may be used.**

(iii) Firms lacking relevant past
~~per~~ **performance history shall receive a neutral evaluation for past performance.** [FAC 90-26]

~~(2)~~ *Technical evaluation.* * * * *

(3) *Technical evaluation.* * * * *

15.610 Written or oral discussion.

FAR as of FAC 90-25	*FAR as revised*
(a) The requirement in paragraph (b) of this section for written or oral discussion need not be applied in acquisitions—	(a) The requirement in paragraph (b) of this section for written or oral discussion need not be applied in acquisitions—
(1) In which prices are fixed by law or regulation;	(1) In which prices are fixed by law or regulation;
(2) Of the set-aside portion of a partial set-aside;	(2) Of the set-aside portion of a partial set-aside;
(3) ~~For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, in which it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of the most favorable initial proposal without discussion would result in the lowest overall cost to the Government at a fair and reasonable price; *provided*, that—~~ ~~(i) The solicitation notified all offerors of the possibility that award might be made without discussion; and~~ ~~(ii) The award is in fact made without any written or oral discussion with any offeror; or~~ ~~(4) For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, if the contracting officer determines that discussions are not necessary, provided the solicitation contains the provision at 52.215-16 with its Alternate III.~~ Once the Government states its intent to award without discussions, the rationale for reversal of this decision shall be documented in the contract file.	(3) **In which the solicitation notified all offerors that the Government intends to evaluate proposals and make award without discussion unless the contracting officer determines that discussions (other than communications conducted for the purpose of minor clarification) are considered necessary (see 15.407(d)(4)). Once the Government states its intent to award without discussions, the rationale for reversal of this decision shall be documented in the contract file**. [FAC 90-31, Case 94-701
(b) Except as provided in paragraph (a) above, the contracting officer shall conduct written or oral discussion with all responsible offerors who submit proposals within the competitive range. The content and extent of the discussions is a matter of the contracting officer's judgment, based on the particular facts of each acquisition (but see paragraphs (c) and (d) ~~below~~).	(b) Except as provided in paragraph (a) **of this section**, the contracting officer shall conduct written or oral discussion with all responsible offerors who submit proposals within the competitive range. The content and extent of the discussions is a matter of the contracting officer's judgment, based on the particular facts of each acquisition (but see paragraphs (c) and (d) **of this section**.

15.610 Written or oral discussion.

FAR as of FAC 90-25	*FAR as revised*
* * * *	* * * *
(c) The contracting officer shall—	(c) The contracting officer shall—
(1) Control all discussions;	(1) Control all discussions;
(2) Advise the offeror of deficiencies in its proposal so that the offeror is given an opportunity to satisfy the Government's requirements;	(2) Advise the offeror of deficiencies in its proposal so that the offeror is given an opportunity to satisfy the Government's requirements;
(3) Attempt to resolve any uncertainties concerning the technical proposal and other terms and conditions of the proposal;	(3) Attempt to resolve any uncertainties concerning the technical proposal and other terms and conditions of the proposal;
(4) Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offerors' proposals or the evaluation process (see 15.607 and Part 24); ~~and~~	(4) Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offerors' proposals or the evaluation process (see 15.607 and Part 24);
(5) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal that may result from the discussions.	(5) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal that may result from the discussions; and
	(6) Provide the offeror an opportunity to discuss past performance information obtained from references on which the offeror had not had a previous opportunity to comment. Names of individuals providing reference information about an offeror's past performance shall not be disclosed. [FAC 90-26]

15.703 Acquisitions requiring make-or-buy programs.

FAR as of FAC 90-25	*FAR as revised*
(a) Contracting officers shall require prospective contractors to submit make-or-buy programs for all negotiated acquisitions whose estimated value is $5 million or more, except when the proposed contract—	(a) Contracting officers shall require prospective contractors to submit make-or-buy programs for all negotiated acquisitions whose estimated value is $5 million or more, except when the proposed contract—
* * * * *	* * * * *
(2) ~~Is priced on the basis of (i) adequate price competition, or (ii) established catalog or market prices of commercial items sold in substantial quantities to the general public, or has only prices set by law or regulation (see 15.804-3)~~; or	(2) **Qualifies for an exception from the requirement to submit cost or pricing data under 15.804-1**; or [FAC 90-32, CASE 94-721]
* * * * *	* * * * *

15.704 Items and work included.

FAR as of FAC 90-25	*FAR as revised*
The information required from a prospective contractor in a make-or-buy program shall be confined to those major items or work efforts that would normally require company management review of the make-or-buy decision because they are complex, costly, needed in large quantities, or require additional facilities to produce. Raw materials, commercial ~~products (see 11.001)~~, and off-the-shelf items (see 46.101) shall not be included, unless their potential impact on contract cost or schedule is critical. As a rule, make-or-buy programs should not include items or work efforts estimated to cost less than (a) 1 percent of the total estimated contract price or (b) any minimum dollar amount set by the agency, whichever is less.	The information required from a prospective contractor in a make-or-buy program shall be confined to those major items or work efforts that would normally require company management review of the make-or-buy decision because they are complex, costly, needed in large quantities, or require additional facilities to produce. Raw materials, commercial **items (see 2.101),** and off-the-shelf items (see 46.101) shall not be included, unless their potential impact on contract cost or schedule is critical. As a rule, make-or-buy programs should not include items or work efforts estimated to cost less than (a) 1 percent of the total estimated contract price or (b) any minimum dollar amount set by the agency, whichever is less. [FAC 90-32, CASE 94-790]

15.705 Solicitation requirements.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(b) A description of factors to be used in evaluating the proposed program, such as capability, capacity, availability of ~~small business and labor surplus area~~ concerns for subcontracting, establishment of new facilities in or near labor surplus areas, delivery or performance schedules, control of technical and schedule interfaces, proprietary processes, technical superiority or exclusiveness, and technical risks involved; and	(b) A description of factors to be used in evaluating the proposed program, such as capability, capacity, availability of **small, small disadvantaged and women-owned small business** concerns for subcontracting, establishment of new facilities in or near labor surplus areas, delivery or performance schedules, control of technical and schedule interfaces, proprietary processes, technical superiority or exclusiveness, and technical risks involved; and [FAC 90-32, CASE 94-780]
* * * * *	* * * * *

15.706 Evaluation, negotiation, and agreement.

FAR as of FAC 90-25	*FAR as revised*
(a) * * * * *	(a) * * * * *
(b) In preparing to evaluate and negotiate prospective contractors' make-or-buy programs, the contracting officer shall request the recommendations of appropriate personnel, including technical and program management personnel, and the activity small ~~and disadvantaged business utilization~~ specialist. The proposed program shall also be made available to the Small Business Administration representative, if any, for review and recommendation. The contracting officer shall request these recommendations early enough to consider them fully before (1) agreeing to a make-or-buy program or (2) consenting to a change in a make-or-buy program already incorporated in a contract.	(b) In preparing to evaluate and negotiate prospective contractors' make-or-buy programs, the contracting officer shall request the recommendations of appropriate personnel, including technical and program management personnel, and the activity small **business** specialist. The proposed program shall also be made available to the Small Business Administration representative, if any, for review and recommendation. The contracting officer shall request these recommendations early enough to consider them fully before (1) agreeing to a make-or-buy program or (2) consenting to a change in a make-or-buy program already incorporated in a contract. [FAC 90-32, CASE 94-780]
* * * * *	* * * * *
(d) Contracting officers shall give primary consideration to the effect of the proposed make-or-buy program on price, quality, delivery, and performance, including technical or financial risk involved. The evaluation of "must make" and "must buy" items should normally be confined to ensuring that they are properly categorized. The effect of the following factors on the Government's interests shall also be considered:	(d) Contracting officers shall give primary consideration to the effect of the proposed make-or-buy program on price, quality, delivery, and performance, including technical or financial risk involved. The evaluation of "must make" and "must buy" items should normally be confined to ensuring that they are properly categorized. The effect of the following factors on the Government's interests shall also be considered:
* * * * *	* * * * *
(4) The contractor's consideration of the competence, ability, experience, and capacity available in other firms, especially small business, small disadvantaged business, or ~~labor surplus area concerns~~.	(4) The contractor's consideration of the competence, ability, experience, and capacity available in other firms, especially small business, small disadvantaged business, or **women-owned small business concerns**. [FAC 90-32, CASE 94-780]
* * * * *	* * * * *

15.801 Definitions.

FAR as of FAC 90-25	*FAR as revised*
	"Commercial item" is defined in 2.101. [FAC 90-32, CASE 94-721]
"Cost analysis" means the review and evaluation of the separate cost elements and proposed profit of (a) an offeror's or contractor's cost or pricing data and (b) the judgmental factors applied in projecting from the data to the estimated costs in order to form an opinion on the degree to which the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.	"Cost analysis" means the review and evaluation of the separate cost elements and proposed profit of (a) an offeror's or contractor's cost or pricing data **or information other than cost or pricing data** and (b) the judgmental factors applied in projecting from the data to the estimated costs in order to form an opinion on the degree to which the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency. [FAC 90-32, CASE 94-721]
"Cost or pricing data" means all facts as of the date of price agreement ~~that~~ prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as * * * * *	"Cost or pricing data" means all facts that, as of the date of price agreement **or, if applicable, another date agreed upon between the parties that is as close as practicable to the date of agreement on price,** prudent buyers and sellers would reasonably expect to affect price negotiations significantly. **Cost or pricing data are data requiring certification in accordance with 15.804-4.** Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as— * * * * * [FAC 90-32, CASE 94-721]
	"Cost realism" means the costs in an offeror's proposal are (a) realistic for the work to be performed; (b) reflect a clear understanding of the requirements; and (c) are consistent with the various elements of the offeror's technical proposal. [FAC 90-32, CASE 94-721]
* * * * *	* * * * * **"Information other than cost or pricing data" means any type of information that**

	is not required to be certified, in accordance with 15.804-4, that is necessary to determine price reasonableness or cost realism. For example, such information may include pricing, sales, or cost information, and includes cost or pricing data for which certification is determined inapplicable after submission. [FAC 90-32, CASE 94-721]
* * * * *	* * * * *
	"Subcontract," as used in this subpart, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor. [FAC 90-32, CASE 94-721]

15.802 Policy. [FAC 90-32, CASE 94-721]

FAR as of FAC 90-25	*FAR as revised*
~~(a) 10 U.S.C. 2306a and 41 U.S.C. 254(d) provide that all executive agencies shall require a prime contractor or any subcontractor to submit and certify cost or pricing data under certain circumstances. The Acts also require inclusion of contract clauses that provide for reduction of the contract price by any significant amounts that such price was increased because of submission of contractor or subcontractor defective cost or pricing data.~~	
~~(b)~~ Contracting officers shall—	Contracting officers shall—
~~(1)~~ Purchase supplies and services from responsible sources at fair and reasonable prices;	**(a)** Purchase supplies and services from responsible sources at fair and reasonable prices. **In establishing the reasonableness of the offered prices, the contracting officer shall not obtain more information than is necessary. To the extent that the Truth in Negotiations Act, as implemented in 15.804-2 and 15.804-5(b) permits, the contracting officer shall generally use the following order of preference in determining the type of information required:** **(1) No further information from the offeror if the price is based on adequate price competition, except as provided by 15.804-5(a)(3).** **(2) Information other than cost or pricing data:** **(i) Information related to prices (e.g.,**

	established catalog or market prices), relying first on information available within the Government; second, on information obtained from sources other than the offeror; and, if necessary, on information obtained from the offeror.
	(ii) Cost information, which does not meet the definition of cost or pricing data at 15.801.
	(3) *Cost or pricing data*. The contracting officer should use every means available to ascertain a fair and reasonable price prior to requesting cost or pricing data. Contracting officers shall not unnecessarily require the submission of cost or pricing data, because it leads to increased proposal preparation costs, generally extends acquisition lead-time, and wastes both contractor and Government resources.
~~(2)~~ Price each contract separately and independently and not ~~(i)~~ use proposed price reductions under other contracts as an evaluation factor or ~~(ii)~~ consider losses or profits realized or anticipated under other contracts; ~~and~~	**(b)** Price each contract separately and independently and not— **(1)** Use proposed price reductions under other contracts as an evaluation factor, or **(2)** Consider losses or profits realized or anticipated under other contracts.
~~(3)~~ Not include in a contract price any amount for a specified contingency to the extent that the contract provides for price adjustment based upon the occurrence of that contingency.	**(c)** Not include in a contract price any amount for a specified contingency to the extent that the contract provides for a price adjustment based upon the occurrence of that contingency.

15.803 General.

FAR as of FAC 90-25	*FAR as revised*
(a) Since information from sources other than an offeror's or contractor's records may significantly affect the Government's negotiating position, Government personnel shall not disclose to an offeror or contractor any conclusions, recommendations, or portions of administrative contracting officer or auditor reports regarding the offeror's or contractor's proposal without the concurrence of the contracting officer responsible for negotiation. This prohibition does not preclude disclosing discrepancies or mistakes of fact (such as duplications, omissions, and errors in computation) contained in the cost or pricing data supporting the proposal.	(a) Since information from sources other than an offeror's or contractor's records may significantly affect the Government's negotiating position, Government personnel shall not disclose to an offeror or contractor any conclusions, recommendations, or portions of administrative contracting officer or auditor reports regarding the offeror's or contractor's proposal without the concurrence of the contracting officer responsible for negotiation. This prohibition does not preclude disclosing discrepancies or mistakes of fact (such as duplications, omissions, and errors in computation) contained in the cost or pricing data **or information other than cost or**

* * * * *	**pricing data** supporting the proposal. [FAC 90-32, CASE 94-721] * * * * *

15.804 Cost or pricing data and information other than cost or pricing data. [FAC 90-32, CASE 94-721]

~~**15.804 Cost or pricing data.**~~

15.804-1 Prohibition on obtaining cost or pricing data. [FAC 90-32, CASE 94-721]

~~**15.804-1 General.**~~

~~(a) Cost or pricing data submitted by an offeror or contractor enable the Government to perform cost or price analysis and ultimately enable the Government and the contractor to negotiate fair and reasonable prices. Cost or pricing data may be submitted actually or by specific identification in writing.~~

~~(b) The Armed Services Procurement Manual for Contract Pricing (ASPM No. 1) was issued by the Department of Defense to guide pricing and negotiating personnel. It provides detailed discussions and examples applying pricing policies to pricing problems. ASPM No. 1 is available for use for instruction and professional guidance. However, it is not directive, and its references to Department of Defense forms and regulations should be considered informational only. Copies of ASPM No. 1 (Stock No. 008-000-00221-5) may be purchased from the Superintendent of Documents, Attn: Mail List Section, U.S. Government Printing Office, Washington, DC 20402.~~

FAR as of FAC 90-25	*FAR as revised*
~~**15.804-3 Exemptions from or waiver of submission of certified cost or pricing data.**~~	(a) ***Exceptions to cost or pricing data requirements.*** The contracting officer shall not**, pursuant to 10 U.S.C. 2306a and 41 U.S.C. 254b,** require submission of cost or pricing data **(but may require information other than cost or pricing data to support a determination of price reasonableness or cost realism)**—
(a) ~~*General.* Except as provided in paragraphs (b) and (c) below,~~ the contracting officer shall not require submission ~~or certification~~ of cost or pricing data ~~when~~ the contracting officer determines that prices are—	**(1) If** the contracting officer determines that prices **agreed upon** are **based on**—
~~(1) Based on~~ adequate price competition (see ~~paragraph (b) below);~~	**(i)** Adequate price competition (see **exception standards at paragraph (b)(1) of this subsection);**
~~(2) Based on~~ established catalog or market prices of commercial items sold in substantial quantities to the general public (see ~~paragraph (c) below);~~ or	**(ii)** Established catalog or market prices of commercial items sold in substantial quantities to the general public (see **exception standards at paragraph (b)(2) of this section);** or
~~(3)~~ Set by law or regulation (see ~~paragraph (d) below).~~	**(iii) Prices** set by law or regulation (see **exception standards at paragraph (b)(3) of this subsection).**
	(2) For acquisition of a commercial item, if the contracting officer does not have sufficient information to support an

exception under paragraph (a)(1) of this section, but the contracting officer can determine the price is fair and reasonable (see exception standards at paragraph (b)(4) of this subsection and pricing requirements at 15.804-5(b));

(3) For exceptional cases where a waiver has been granted (see exception standards at paragraph (b)(5) of this section); or

(4) For modifications to contracts or subcontracts for commercial items, if the basic contract or subcontract was awarded without the submission of cost or pricing data because the action was granted an exception from cost or pricing data requirements under paragraph (a)(1) of this subsection and the modification does not change the contract or subcontract to a contract or subcontract for the acquisition of other than a commercial item (see exception standards at paragraph (b)(6) of this subsection).

(b) *Adequate price competition.* (1) ~~Price competition exists if—~~

~~(i) Offers are solicited;~~

~~(ii)~~ Two or more responsible offerors ~~that can satisfy the Government's requirements~~ submit priced offers responsive to the ~~solicitation's~~ expressed requirements; and

~~(iii) These offerors compete independently for a contract to be awarded to the responsible offeror submitting~~ the lowest evaluated price.

~~(2) If price competition exists, the contracting officer shall presume that it is adequate unless—~~

~~(i) The solicitation is made under conditions that unreasonably deny to one or more known and qualified offerors an opportunity to compete;~~

~~(ii) The low offeror has such a decided advantage that it is practically immune from competition; or~~

~~(iii) There is a finding, supported by a statement of the facts and approved at a level above the contracting officer, that the lowest price is unreasonable.~~

(b) ***Standards for exceptions from cost or pricing data requirements***—(1) *Adequate price competition*. **A price is based on adequate price competition if—**

(i) Two or more responsible offerors**, competing independently,** submit priced offers responsive to the **Government's** expressed requirement and **if—**

(A) Award will be made to a responsible offeror whose proposal offers either—

(*1*) The greatest value (see 15.605(c)) to the Government and price is a substantial factor in source selection; or

(*2*) The lowest evaluated price; **and**

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

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

responsible, responsive offeror and if—

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

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

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

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

~~(3) A price is "based on" adequate price competition if it results directly from price competition or if~~ price analysis ~~alone~~ clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or ~~substantially the same~~ items purchased in comparable quantities, terms, and conditions under contracts that resulted from adequate price competition.

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

(c) *Established catalog or market prices.* ~~A proposal is exempt from the requirement for submission of certified cost or pricing data if the prices are, or are based on, established catalog or established market prices of commercial items sold in substantial quantities to the general public. In order to qualify for this exemption, the terms of the proposed purchase, such as quantity and delivery requirements, should be sufficiently similar to those of the commercial sales that the catalog or market price will be fair and reasonable.~~

(2) *Established catalog or market prices—*

~~(1)~~ "Established catalog prices" ~~must be recorded in a form regularly maintained by the manufacturer or vendor. This form may be~~ a catalog, price list, schedule, or other verifiable and established record. ~~The record must (i) be~~ published or otherwise available for customer inspection ~~and (ii) state current or last sales price to a significant number of buyers constituting the general public (see subparagraph (5) below).~~

(i) *Established catalog price*. **Established catalog prices are prices (including discount prices) recorded in** a catalog, price list, schedule, or other verifiable and established record **that (A) are regularly maintained by the manufacturer or vendor; and (B) are** published or otherwise available for customer inspection.

(2) "Established market prices" ~~are current prices that (i) are~~ established in the course of ordinary and usual trade between buyers and sellers free to bargain and ~~(ii)~~ can be substantiated by data from sources independent of the ~~manufacturer or vendor~~.

(ii) *Established market price*. **An established market price is a price that is** established in the course of ordinary and usual trade between buyers and sellers free to bargain and **that** can be substantiated by data from sources independent of the offeror.

~~(3) "Commercial items" are supplies or services regularly used for other than Government purposes and sold or traded to the general public in the course of normal business operations.~~

~~(7) If an item is substantially similar to a commercial item for which there is an established catalog or market price at which substantial quantities are sold to the general public, but the price proposed is not *based on* this catalog or market price (see subparagraph (6) above), the contracting officer may, if doing so will result in a fair and reasonable price, limit any requirement for cost or pricing data to those data that pertain to the differences between the items. When the difference between the catalog or market price of an item or items and the proposed total contract price exceeds the pertinent threshold set forth at 15.804-2(a)(1), the contracting officer shall require submission of certified cost or pricing data to identify and justify that difference unless an exemption or waiver is granted.~~

(iii) *Based on*. A price may also be based on an established catalog or market price if the item or class of items being purchased is not itself a catalog or market priced commercial item but is sufficiently similar to the catalog or market priced commercial item to ensure that any difference in prices can be identified and justified without resorting to cost analysis.

~~(4)~~ An item is "sold in substantial quantities" ~~only when the quantities regularly sold are sufficient to constitute a real commercial market. Nominal quantities, such as~~ models, samples, prototypes, ~~or~~ experimental units~~, do not meet this requirement~~. For services to be sold in substantial quantities, they must be customarily provided by the offeror, using personnel regularly employed and equipment (if any is necessary) regularly maintained ~~solely or~~ principally to provide the services.

(iv) *Sold in substantial quantities*. An item is sold in substantial quantities if there are sales of more than a nominal quantity based on the norm of the industry segment. In determining what constitutes a substantial quantity, the contracting officer should consider such things as the size of the market; and how recently the item was introduced into the market. Models, samples, prototypes, **and** experimental units **are not substantial quantities**. For services to be sold in substantial quantities, they must **also** be customarily provided by the offeror, using personnel regularly employed and equipment (if any is necessary) regularly maintained principally to provide the services.

(A) The method used to establish sales may be sales order, contract, shipment, invoice, actual recorded sales, or other records, so long as the method used is consistent, provides an accurate indication of sales activity, and is verifiable. If the item would not otherwise qualify for an exception, sales of the item by affiliates may be considered. In addition, sales of essentially the same commercial item by other manufacturers or vendors may be considered in determining whether sales are substantial, provided that the price of those sales is also considered. Data to support sales quantities may also come

from other manufacturers, industry associations or marketing groups, annual financial reports, etc.

(B) An exception may apply for an item based on the market price of the item regardless of the quantity of sales of the item previously made by the offeror or the types of customers for these sales, provided that sales of the same or similar items by other sellers meet the exception criteria.

~~(5) The "general public" is a significant number of buyers other than the Government or affiliates of the offeror; the item involved must not be for Government end use. For the purpose of this subsection 15.804-3, items acquired for "Government end use" include items acquired for foreign military sales.~~

(v) *General public*. The general public ordinarily consists of buyers other than the U.S. Government or its instrumentalities, *e.g.*, U.S. Government corporations. Sales to the general public do not include sales to affiliates of the offerors or purchases by the U.S. Government on behalf of foreign governments, such as for Foreign Military Sales. If the contracting officer can determine without requiring information from the offeror that sales are for Government end use, these sales need not be considered sales to the general public.

~~(6) A price is "based on" a catalog or market price only if the item being purchased is sufficiently similar to the catalog- or market-priced commercial item to ensure that any difference in prices can be identified and justified without resort to cost analysis.~~

~~(8) Even though there is an established catalog or market price of commercial items sold in substantial quantities to the general public, the contracting officer may require cost or pricing data if (i) the contracting officer makes a written finding that the price is not reasonable, including the facts upon which the finding is based, and (ii) the finding is approved at a level above the contracting officer.~~

~~(d)~~ *Prices set by law or regulation.* ~~A price set by law or regulation is exempt from the requirement for submission of certified cost or pricing data.~~ Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws, are sufficient to ~~establish the~~ price.

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

(4) *Commercial items*. For acquisition of a commercial item, if the contracting officer does not have sufficient information to support an exception under 15.804-1(a)(1) or (a)(4), the contracting

officer shall grant an exception for a contract, subcontract, or modification of a contract or subcontract if the contracting officer obtains the pricing information described in 15.804-5(b). Cost or pricing data may be obtained for such a commercial item only if the contracting officer makes a written determination that the pricing information is inadequate for performing a price analysis and determining price reasonableness.

~~(i) *Waiver for exceptional cases.* The agency head (or, if the contract is with a foreign government or agency, the head of the contracting activity) may, in exceptional cases, waive the requirement for submission of certified cost or pricing data. The authorization for the waiver and the reasons for granting it shall be in writing. The agency head may delegate this authority. When the agency head or designee has waived the requirement for submission of certified cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to make available cost or pricing data for purposes of 15.804-2(a)(1)(iii). Consequently, award of any lower-tier subcontract expected to exceed the certified cost or pricing data unless exempt or waived under this subsection 15.804-3.~~

(5) *Exceptional cases*. The head of the contracting activity may, **without power of delegation,** waive the requirement for submission of cost or pricing data. The authorization for the waiver and the reasons for granting it shall be in writing. **A waiver may be considered if another exception does not apply but the price can be determined to be fair and reasonable without submission of cost or pricing data. For example, if cost or pricing data were furnished on previous production buys and the contracting officer determines such data are sufficient, when combined with updated information, a waiver may be granted. If the head of the contracting activity** has waived the requirement for submission of cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to make available cost or pricing data. Consequently, award of any lower-tier subcontract expected to exceed the **cost or pricing data threshold** requires the submission of cost or pricing data unless **an exception otherwise applies to the subcontract.**

(6) *Modifications*. This exception only applies when the original contract or subcontract was exempt from cost or pricing data based on adequate price competition, catalog or market price, or price set by law or regulation (15.804-1(a)(1)). For modifications of contracts or subcontracts for commercial items, the exception at 15.804-1(a)(4) applies if the modification does not change the item from a commercial item to a noncommercial item. However, if the modification to a contract or a subcontract changes the nature of the work under the contract or subcontract either by a change to the commercial item or by the addition of other noncommercial

work, the contracting officer is not prohibited from obtaining cost or pricing data for the added work.

(c) *Special circumstances when purchasing commercial items*. (1) It is not necessary to obtain information supporting an exception for each line item. Sampling techniques may be used.

(2) If the U.S. Government has acted favorably on an exception request for the same or similar items, the contracting officer may consider the prior submissions as support for the current exception request. Relief from the submission of new information does not relieve the contracting officer from the requirement to determine reasonableness of price on the current acquisition.

(3) When acquiring by separate contract an item included on an active Federal Supply Service or Information Technology Service Multiple Award Schedule contract, the contracting officer should grant an exception and not require documentation if the offeror has provided proof that an exception has been granted for the schedule item. Price analysis shall be performed in accordance with 15.805-2 to determine reasonableness of price.

(4) The contracting officer and offeror may make special arrangements for the submission of exception requests for repetitive acquisitions. These arrangements can take any form as long as they set forth an effective period and the exception criteria at 15.804-1 are satisfied. Such arrangements may be extended to other Government offices with their concurrence.

~~(e) *Claiming and granting exemption.* To receive an exemption under paragraph (c) or (d) of this subsection, the offeror must ordinarily claim it on Standard Form 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, when the total proposed amount exceeds the pertinent threshold set forth at 15.804-2(a)(1), and more than one catalog item for which an exemption is claimed exceeds $50,000. When an exemption is claimed for more than one item in a proposal, a separate SF 1412 is required for each item exceeding $50,000 except as otherwise provided in the solicitation. The contracting officer may grant an exemption and need not require the submission of SF 1412 when—~~

~~(1) The Government has acted favorably on an exemption claim for the same item or similar items within the past year. In that case, except as otherwise directed by the contracting officer, the offeror may furnish a copy of the prior claim and related Government action. The offeror must also submit a statement to the effect that to its knowledge since the prior submission, except as expressly set forth in the statement, there have been no changes in the catalog price or discounts, volume of actual sales, or the ratio of sales for Government end use to sales in other categories which would cause a cumulative change in price exceeding $25,000;~~

~~(2) Special arrangements for the submission of exemption claims have been made in anticipation of~~

(d) *Requesting an exception*. In order to qualify for an exception, other than an exception for adequate price competition, from the requirements to submit cost or pricing data, the offeror must submit a written request. The solicitation provision at 52.215-41 or other methods may be used. It is the responsibility of the contracting officer to determine, based on the information submitted, and any other information available to the contracting officer, which exception, if any, applies.

~~repetitive acquisitions of catalog items; or~~

~~(3) There is evidence, before solicitation, that the item has an acceptable established catalog or market price or a price set by law or regulation. Evidence may include (i) recent submissions by offerors or (ii) the contracting officer's knowledge of market conditions, prevailing prices, or sources.~~

~~(f) *Verification.* (1) When a prospective contractor requests exemption from submission of certified cost or pricing data, the contracting officer shall ensure that applicable criteria in either paragraph (c) or (d) above, as appropriate, are satisfied before issuing the exemption.~~

~~(2) SF 1412 lists three categories of sales related to the established catalog price of a commercial item sold in substantial quantities to the general public: A, Sales to the U.S. Government or to contractors for U.S. Government use; B, Sales at catalog price to the general public; and C, Sales to the general public at other than catalog price. Although "substantial quantities" cannot be precisely defined (see subparagraph (c)(4) above), the following guidelines are provided for determining whether exemption claims submitted under the catalog price provision of SF 1412 meet the "substantial quantities" criterion:~~

~~(i) Sales to the general public are normally regarded as substantial if (A) Category B and C sales are not negligible in themselves and comprise at least 55 percent of total sales of the item and (B) Category B sales comprise at least 75 percent of the total of Category B and C sales.~~

~~(ii) Sales to the general public are rarely considered substantial enough to grant an exemption if (A) Category B and C sales comprise less than 35 percent of total sales of the item or (B) Category B sales comprise less than 55 percent of the total of Category B and C sales.~~

~~(iii) When percentages fall between those above, the contracting officer should analyze the individual situation in order to determine whether or not an exemption is justified.~~

~~(3) The contracting officer may verify or obtain verification (including audit or contract administration assistance) of the submitted data pertaining to catalog or market prices or prices set by law or regulation. Access to the prospective contractor's records is limited to access to the facts bearing directly on the exemption claimed. It does not extend to cost, profit, or other data relevant solely to the reasonableness of the catalog or proposed price.~~

~~(g) *Individual or class exemptions.* The chief of the contracting office may authorize individual or class exemptions for exceptional cases when the contracting officer recommends that an exemption should be made, even though the case does not strictly meet all the criteria for catalog- or market-price exemption. The quantity and prices of actual commercial sales compared with prices offered to the Government, and price relationships as influenced by prevailing trade practices, are the important factors for consideration. The Government's need and the prospective contractor's resistance are not appropriate considerations.~~

~~(h) *Price analysis.* Even though an item qualifies for exemption from the requirement for submission of certified cost or pricing data, the contracting officer shall make a price analysis to determine the reasonableness of the price and any need for further negotiation. Unless information is available from Government sources, it may be necessary to obtain from the prospective contractor information such as that regarding—~~

~~(1) The supplier's marketing system (e.g., use of jobbers, brokers, sales agencies, or distributors);~~

~~(2) The services normally provided commercial purchasers (e.g., engineering, financing, or advertising or promotion);~~

~~(3) Normal quantity per order; and~~

~~(4) Annual volume of sales to largest customers.~~

15.804-2 Requiring cost or pricing data. [FAC 90-32, CASE 94-721]

~~**15.804-2 Requiring certified cost or pricing data.**~~

FAR as of FAC 90-25	*FAR as revised*
(a)(1) The threshold for obtaining cost or pricing data is $500,000. This amount will be subject to adjustment, effective October 1, 1995, and every five years thereafter. ~~Except as provided in 15.804-3~~, certified cost or pricing data are required before accomplishing any of the following actions expected to exceed the threshold in effect ~~at time~~ of agreement on price or, in the case of existing contracts, the threshold specified in the contract—	(a)(1) **Pursuant to 10 U.S.C. 2306a and 41 U.S.C. 254b, cost or pricing data shall be obtained only if the contracting officer concludes that none of the exceptions in 15.804-1 applies. However, if the contracting officer has sufficient information available to determine price reasonableness, then a waiver under the exception at 15.804-1(b)(5) should be considered.** The threshold for obtaining cost or pricing data is $500,000. This amount will be subject to adjustment, effective October 1, 1995, and every five years thereafter. **Unless an exception applies**, cost or pricing data are required before accomplishing any of the following actions expected to exceed the threshold in effect **on the date** of agreement on price, **or the date of award, whichever is later;** or, in the case of existing contracts, the threshold specified in the contract:
(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts);	(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).
(ii) The award of a subcontract at any tier, if the contractor and each higher tier subcontractor have been required to furnish cost or pricing data ~~(see 15.804-3(i); or~~	(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor have been required to furnish cost or pricing data **(but see exceptional cases at 15.804-1(b)(5)).**
(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts shall consider both increases and decreases. (For example, a $150,000 modification resulting from a reduction of $350,000 and an increase of $200,000 is a pricing adjustment exceeding $500,000.) This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification. [entire (1) revised by FAC 90-22]	(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts shall consider both increases and decreases. (For example, a $150,000 modification resulting from a reduction of $350,000 and an increase of $200,000 is a pricing adjustment exceeding $500,000.) This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.
~~(2) Contracting officers shall, if requested by the prime contractor, modify contracts to change the threshold in the contract to the cost or pricing data threshold in paragraph (a)(1) of this subsection, without requiring consideration. The contract modi-~~	

~~fication shall be accomplished by inserting into the contract the current version of the clauses 52.215-23, Price Reduction for Defective Cost or Pricing Data—Modifications, and 52.215-25, Subcontractor Cost or Pricing Data—Modifications, or 52.215-24, Subcontractor Cost or Pricing Data, as applicable. These new contract clauses shall apply only to contract modifications and subcontracts for which agreement on price occurs after the contracting officer has inserted the new clauses. [entire (2) revised by FAC 90-22]~~

~~(3) The contracting officer may obtain certified~~ cost or pricing data for pricing actions below the pertinent threshold in ~~subparagraph~~ (a)(1) of this ~~subsection~~ provided the action exceeds the ~~small purchase limitation. For such pricing actions, the instances in which certified cost or pricing data and inclusion of defective pricing clauses would be justified should be few; however, the contracting officer shall give special consideration to requiring certified cost or pricing data for such pricing actions if the offeror, contractor, or subcontractor—~~

~~(i) Has been the subject of recent or recurring, and significant findings of defective pricing;~~

~~(ii) Currently has significant deficiencies in its cost estimating systems; or~~

~~(iii) Has recently been indicted for, convicted of, or the subject of an administrative or judicial finding of fraud regarding its cost estimating systems or cost accounting practices.~~

~~The contracting officer~~ shall ~~document the file to~~ justify the requirement for cost or pricing data ~~not required by regulation~~. The documentation shall include ~~the contracting officer's~~ written finding that ~~certified~~ cost or pricing data are necessary~~, the facts supporting that finding, and the approval of the finding at a level above the contracting officer~~.

~~(4) The contracting officer shall not require certified cost or pricing data when awarding a contract below the small purchase limitation at 13.000.~~

~~(5) When certified cost or pricing data are not required, the contracting officer may request partial or limited data to determine a reasonable price (see 15.804-6(a)(2)).~~

(2) Unless prohibited because an exception at 15.804-1(a)(1) applies, the head of the contracting activity, without power of delegation, may authorize the contracting officer to obtain cost or pricing data for pricing actions below the pertinent threshold in **paragraph** (a)(1) of this **subsection** provided the action exceeds the **simplified acquisition threshold. The head of the contracting activity** shall justify the requirement for cost or pricing data. The documentation shall include **a** written finding that cost or pricing data are necessary **to determine whether the price is fair and reasonable and the facts supporting that finding.**

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

(1) The cost or pricing data.

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

(1) The cost or pricing data.

(2) A certificate of current cost or pricing data, in the format specified in 15.804-4, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of ~~final~~ agreement on price.	(2) A certificate of current cost or pricing data, in the format specified in 15.804-4, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of agreement on price **or, if applicable, another date agreed upon between the parties that is as close as practicable to the date of agreement on price.**
	(c) If cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data as defined in 15.801 and shall not be certified in accordance with 15.804-4.
(c) The requirements of this section also apply to contracts entered into by the head of an agency on behalf of a foreign government.	(d) The requirements of this section also apply to contracts entered into by the head of an agency on behalf of a foreign government.

15.804-3 [Reserved] [FAC 90-32, CASE 94-721]

~~**15.804-3 Exemptions from or waiver of submission of certified cost or pricing data.**~~
[moved to 15.804-1]
~~* * * * *~~

15.804-4 Certificate of Current Cost or Pricing Data.

FAR as of FAC 90-25	FAR as revised
(a) When ~~certified~~ cost or pricing data are required ~~under 15.804-2,~~ the contracting officer shall require the contractor to execute a Certificate of Current Cost or Pricing Data, shown ~~below~~, and shall include the executed certificate in the contract file. ~~The certificate states that the cost or pricing data are accurate, complete, and current as of the date the contractor and the Government agreed on a price. Only one certificate shall be required; the contractor shall submit it as soon as practicable after price agreement is reached.~~	(a) When cost or pricing data are required, the contracting officer shall require the contractor to execute a Certificate of Current Cost or Pricing Data, shown **following this paragraph (a),** and shall include the executed certificate in the contract file. [FAC 90-32, CASE 94-721]
CERTIFICATE OF CURRENT COST OR PRICING DATA	**CERTIFICATE OF CURRENT COST OR PRICING DATA**
This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.801 of the Federal Acquisition Regula-	This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.801 of the Federal Acquisition Regula-

tion (FAR) and required under FAR subsection 15.804-2) submitted, either actually or by specific identification in writing, to the contracting officer or to the contracting officer's representative in support of .....* are accurate, complete, and current as of .....**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

* * * * *

** Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

* * * * *

(c) Closing or cutoff dates should be included as part of the data submitted with the proposal. ~~Certain data may not be reasonably available before normal periodic closing dates (e.g., actual indirect costs).~~ Before agreement on price, ~~the contractor shall update all data as of the latest dates for which information is reasonably available.~~ Data within the contractor's or a subcontractor's organization on matters significant to contractor management and to the Government will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

* * * * *

(e) ~~Even though the solicitation may have requested cost or pricing data, the contracting officer shall not require a Certificate of Current Cost or Pricing Data when the resulting award is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation (see 15.804-3(a) through (d)).~~

* * * * *

tion (FAR) and required under FAR subsection 15.804-2) submitted, either actually or by specific identification in writing, to the contracting officer or to the contracting officer's representative in support of .....* are accurate, complete, and current as of .....**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

* * * * *

** Insert the day, month, and year when price negotiations were concluded and price agreement was reached **or, if applicable, another date agreed upon between the parties that is as close as practicable to the date of agreement on price.** [FAC 90-32, CASE 94-721]

* * * * *

(c) **The contracting officer and contractor are encouraged to reach a prior agreement on criteria for establishing closing or cutoff dates when appropriate in order to minimize delays associated with proposal updates.** Closing or cutoff dates should be included as part of the data submitted with the proposal **and,** before agreement on price**, data should be updated by the contractor to the latest closing or cutoff dates for which the data are available. Use of cutoff dates coinciding with reports is acceptable, as certain data may not be reasonably available before normal periodic closing dates (e.g., actual indirect costs).** Data within the contractor's or a subcontractor's organization on matters significant to contractor management and to the Government will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition. [FAC 90-32, CASE 94-721]

* * * * *

(e) **If cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data and shall not be certified in accordance with this subsection.** [FAC 90-32, CASE 94-721]

* * * * *

~~**15.804-5 Reserved.**~~

15.804-5 Requiring information other than cost or pricing data. [FAC 90-32, CASE 94-721]

(a)(1) If cost or pricing data are not required because an exception applies, or an action is at or below the cost or pricing data threshold, the contracting officer shall make a price analysis to determine the reasonableness of the price and any need for further negotiation.

(2) The contracting officer may require submission of information other than cost or pricing data only to the extent necessary to determine reasonableness of the price or cost realism. The contractor's format for submitting such information shall be used unless the contracting officer determines that use of a specific format is essential. The contracting officer shall ensure that information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price. Requests for updated offeror information should be limited to information that affects the adequacy of the proposal for negotiations, such as changes in price lists. Such data shall not be certified in accordance with 15.804-4.

(3) When an acquisition is based on adequate price competition, generally no additional information is necessary to determine the reasonableness of price. However, if it is determined that additional information is necessary to determine the reasonableness of the price, the contracting officer shall, to the maximum extent practicable, obtain the additional information from sources other than the offeror. In addition, the contracting officer may request information to determine the cost realism of competing offers or to evaluate competing approaches.

(4) When cost or pricing data are not required because an action is at or below the cost or pricing data threshold, information requested shall include, as a minimum, appropriate information on the prices and quantities at which the same or similar items have previously been sold, that is adequate for evaluating the reasonableness of the proposed price. Cost information may also be required. For example, cost information might be necessary to support an analysis of material costs.

(b)(1) When acquiring commercial items for which an exception under 15.804-1(a)(2) may apply, the contracting officer shall seek to obtain from the offeror or contractor information on prices at which the same or similar items have been sold in the commercial market, that is adequate for evaluating, through price analysis, the reasonableness of the price of the action.

(2) If such information is not available from the offeror or contractor, the contracting officer shall seek to obtain such information from another source or sources.

(3) Requests for sales data relating to commercial items shall be limited to data for the same or similar items during a relevant time period.

(4) In requesting information from an offeror under this paragraph (b), the contracting officer shall, to the maximum extent practicable, limit the scope of the request to include only information that is in the form regularly maintained by the offeror in commercial operations.

(5) Any information obtained pursuant to this paragraph (b) that is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)) shall not be disclosed by the Government.

(c) If, after receipt of offers, the contracting officer concludes there is insufficient information available to determine price reasonableness and none of the exceptions applies, then cost or pricing data shall be obtained.

15.804-6 Instructions for submission of cost or pricing data or information other than cost or pricing data. [FAC 90-32, CASE 94-721]

~~**15.804-6 Submission of data**.~~

FAR as of FAC 90-25	*FAR as revised*
(a)(1) The contracting officer shall specify ~~(i)~~ whether ~~or not~~ cost or pricing data are required~~, (ii) whether or not certification will be required, and (iii) the form~~ (see paragraph (b) of this ~~subsection~~) in which the cost or pricing data shall be submitted. ~~Even if the solicitation does not so specify, however, the contracting officer is not precluded from requesting such data if they are later found necessary.~~ ~~(2) When certified cost or pricing data are not required because an action is below the pertinent threshold set forth at 15.804-2(a)(1), the contracting officer may request partial or limited data to determine a reasonable price. The contracting officer shall request only that data which the contracting officer considers necessary to determine a reasonable price. For example, cost data might be necessary to support an analysis of material costs, but not for labor and overhead costs. When such partial or limited data are requested, the contracting officer should require, as a minimum, the submission of information on the prices and quantities at which the offeror has previously sold the same or similar products.~~	(a) **Taking into consideration the hierarchy at 15.802,** the contracting officer shall specify **in the solicitation (see 15.804-8(h) and (i))—** **(1)** Whether cost or pricing data are required; **(2) That, in lieu of submitting cost or pricing data, the offeror may submit a request for exception from the requirement to submit cost or pricing data;** **(3) Whether information other than cost or pricing data is required, if cost or pricing data are not necessary;** **(4) The format** (see paragraph (b) of this **subsection**) in which the cost or pricing data or **information other than cost or pricing data** shall be submitted; **and** **(5) Necessary preaward or postaward access to offeror's records if not provided by the use of a standard form or clause.** [FAC 90-32, CASE 94-721]
(b)(1) Cost or pricing data shall be submitted on ~~Standard Form 1411~~ (SF 1411), ~~Contract Pricing Proposal Cover Sheet,~~ unless required to be submitted on one of the termination forms specified in Subpart 49.6. Data supporting forward pricing rate agreements or final indirect cost proposals shall be submitted in a format acceptable to the contracting officer.	(b)(1) Cost or pricing data shall be submitted on **a** SF 1411 unless required to be submitted on one of the termination forms specified in Subpart 49.6. **The SF 1411 shall not be used unless cost or pricing data are required to be submitted. Contract pricing proposals submitted on a SF 1411 with supporting attachments shall be prepared in accordance with Table 15-2 or as specified by the contracting officer.** Data supporting forward pricing rate agreements or final indirect cost proposals shall be submitted in a format acceptable to the contracting officer.
~~(2) Contract pricing proposals submitted on SF 1411 with supporting attachments shall be prepared to satisfy the instructions and appropriate format of Table 15-2.Direct Labor—Provide a time-phased (e.g., monthly, quarterly, etc.) breakdown of labor hours, rates, and cost by appropriate category, and~~	**(2) If information other than cost or pricing data is required to support price reasonableness or cost realism, the contracting officer may require such information to be submitted using a SF 1448. Requests for information should be tai-**

~~furnish bases for estimates.~~

lored so that only necessary data are requested. The information is not considered cost or pricing data and shall not be certified in accordance with 15.804-4. Information submitted on a SF 1448 shall be prepared following the instructions provided in Table 15-3.
[FAC 90-32, CASE 94-721]

TABLE 15-2 INSTRUCTIONS FOR SUBMISSION OF A CONTRACT PRICING PROPOSAL
~~1.~~ The SF 1411 provides a ~~vehicle for the offeror~~ to submit to the Government a pricing proposal of estimated and/or ~~incurred~~ costs ~~by contract line item with supporting information, adequately crossprefer-enced, suitable for detailed analysis~~

TABLE 15-2 INSTRUCTIONS FOR SUBMISSION OF A CONTRACT PRICING PROPOSAL **WHEN COST OR PRICING DATA ARE REQUIRED** [FAC 90-32, CASE 94-721]
The SF 1411 provides a **cover sheet for use by offerors** to submit to the Government a pricing proposal of estimated and/or **actual** costs **only when cost or pricing data are required**.
[FAC 90-32, CASE 94-721]

~~A~~ cost element breakdown, using the applicable format prescribed in 8A, B, or C ~~below~~, ~~shall be attached~~ for each proposed line item ~~and must reflect~~ any specific requirements of the contracting officer. Supporting breakdowns ~~must be furnished~~ for each cost element, consistent with the offeror's cost accounting system.
* * * * *

1. The pricing proposal shall be segregated by contract line item with sufficient detail to permit cost analysis. **Attach** cost-element breakdown**s,** using the applicable formats prescribed in Item 8A, B, or C **of this section**, for each proposed line item. **These breakdowns must conform to the instructions in the solicitation and** any specific requirements established by the contracting officer. **Furnish** supporting breakdowns for each cost element, consistent with the offeror's cost accounting system. [FAC 90-32, CASE 94-721]
* * * * *

Established Catalog or Market Price/ Prices Set by Law or Regulation —When an ~~exemption~~ from the requirement to submit cost or pricing data is ~~claimed~~, whether the item was produced by others or by the offeror, provide justification for the ~~exemption~~ as required by 15.804-3~~(e)~~.
* * * * *

Established Catalog or Market Prices or Prices Set by Law or Regulation ***or Commercial Item Not Covered By Another Exception***—When an **exception** from the requirement to submit cost or pricing data is **requested**, whether the item was produced by others or by the offeror, provide justification for the **exception** as required by 15.804-**1(d)**. [FAC 90-32, CASE 94-721]
* * * * *

4. There is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of cost or pricing data is met when all accurate cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the contracting officer or an authorized representative. As later information comes into the offeror’s possession, it should be promptly submitted to the contracting officer. The requirement for sub-

4. There is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of cost or pricing data is met when all accurate cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the contracting officer or an authorized representative. As later information comes into the offeror's possession, it should be promptly submitted to the contracting officer **in a manner that**

mission of cost or pricing data continues up to the time of ~~final~~ agreement on price.

* * * * *

8. HEADINGS FOR SUBMISSION OF LINE-ITEM SUMMARIES:

A. New Contracts (including Letter contracts).

* * * * *

B. Change Orders, Modifications, and Claims.

* * * * *

Under Column (2—Include ~~(i)~~ current estimates of what the cost would have been to complete deleted work not yet performed, and ~~(ii)~~ the cost of deleted work already performed.

* * * * *

C. Price Revision/Redetermination.

* * * * *

clearly shows how the information relates to the offeror's price proposal. The requirement for submission of cost or pricing data continues up to the time of agreement on price**, or another date agreed upon between the parties if applicable.** [FAC 90-32, CASE 94-721]

* * * * *

8. HEADINGS FOR SUBMISSION OF LINE-ITEM SUMMARIES:

A. New Contracts (including Letter contracts).

* * * * *

B. Change Orders, Modifications, and Claims.

* * * * *

Under Column (2)—Include **the** current estimates of what the cost would have been to complete the deleted work not yet performed **(not the original proposal estimates),** and the cost of deleted work already performed. [FAC 90-32, CASE 94-721]

* * * * *

C. Price Revision/Redetermination.

* * * * *

TABLE 15-3 INSTRUCTIONS FOR SUBMISSION OF INFORMATION OTHER THAN COST OR PRICING DATA [FAC 90-32, CASE 94-721]

SF 1448 is a cover sheet for use by offerors to submit information to the Government when cost or pricing data are not required but the contracting officer has requested information to help establish price reasonableness or cost realism. Such information is not considered cost or pricing data, and shall not be certified in accordance with 15.804-4.

1. The information submitted shall be at the level of detail described in the solicitation or specified by the contracting officer. The offeror's own format is acceptable unless the contracting officer determines that use of a specific format is essential.

A. If adequate price competition is expected, the information may include cost or technical information necessary to determine the cost realism and adequacy of the offeror's proposal, e.g., information adequate to validate that the proposed costs are consistent with the technical proposal, or cost breakdowns to help identify unrealistically priced proposals.

B. If the offer is expected to be at or below the cost or pricing data threshold, and adequate price competition is not expected, the information may consist of data to permit the contracting officer and authorized representatives to determine price reasonableness, e.g., information to support an analysis of material costs (when sufficient information on labor and overhead rates is already available), or information on prices and quantities at which the offeror has previously sold the same or similar items.

2. Any information submitted must support the price proposed. Include sufficient detail or cross references to clearly establish the relationship of the information provided to the price proposed. Support any information provided by explanations or supporting rationale as needed to permit the contracting officer and authorized representatives to evaluate the documentation.

(c) Closing or cutoff dates should be included as part of the data submitted with the proposal. ~~If possible, the contracting officer and offeror should reach a prior understanding on criteria for establishing closing or cutoff dates~~ (see 15.804-4(c)).

(c) Closing or cutoff dates should be included as part of the data submitted with the proposal (see 15.804-4(c)). [FAC 90-32, CASE 94-721]

(d) The requirement for submission of cost or pricing data is met if all cost or pricing data reasonably available to the offeror are either submitted or identified in writing by the time of agreement on price. However, there is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The latter does not constitute "submission" of cost or pricing data.
* * * * *

(d) The requirement for submission of cost or pricing data is met if all cost or pricing data reasonably available to the offeror are either submitted or **specifically** identified in writing by the time of agreement on price **or another time agreed upon by the parties.** However, there is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The latter does not constitute "submission" of cost or pricing data. [FAC 90-32, CASE 94-721]
* * * * *

15.804-7 Defective cost or pricing data.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(b) * * * * *	(b) * * * * *
(7)(i) In addition to the price adjustment amount, the Government is also entitled to interest on any overpayments. ~~On DoD contracts only,~~ the Government is also entitled to penalty amounts on certain of these overpayments. Overpayment occurs only when payment is made for supplies or services accepted by the Government. Overpayments would not result from amounts paid for contract financing as defined in 32.902.	(7)(i) In addition to the price adjustment amount, the Government is entitled to interest on any overpayments. The Government is also entitled to penalty amounts on certain of these overpayments. Overpayment occurs only when payment is made for supplies or services accepted by the Government. Overpayments would not result from amounts paid for contract financing as defined in 32.902. [FAC 90-32, CASE 94-721]
(ii) In calculating the interest amount due, the contracting officer shall—	(ii) In calculating the interest amount due, the contracting officer shall—
(A) * * * * *	(A) * * * * *
(B) Consider the date of each overpayment (The date of overpayment for this interest calculation shall be the date payment was made for the related completed and accepted contract items.); and	(B) Consider the date of each overpayment (the date of overpayment for this interest calculation shall be **(1)** the date payment was made for the related completed and accepted contract items, **or (2) for subcontract defective pricing, the date payment was made to the prime contractor, based on prime contract progress billings or deliveries, which included payments for a completed and accepted subcontract item**); and [FAC 90-32, CASE 94-721]
(C) * * * * *	(C) * * * * *

(iii) In arriving at the amount due for penalties on ~~Department of Defense~~ contracts where the submission of defective cost or pricing data was a knowing submission, the contracting officer shall obtain an amount equal to the amount of overpayment made. Before taking any contractual actions concerning penalties, the contracting officer shall obtain the advice of counsel.

* * * * *

(iii) In arriving at the amount due for penalties on contracts where the submission of defective cost or pricing data was a knowing submission, the contracting officer shall obtain an amount equal to the amount of overpayment made. Before taking any contractual actions concerning penalties, the contracting officer shall obtain the advice of counsel. [FAC 90-32, CASE 94-721]

* * * * *

~~**15.804-8 Contract clauses.**~~
* * * * *

15.804-8 Contract clauses and solicitation provisions. [FAC 90-32, CASE 94-721]
* * * * *

(h) ***Requirements for cost or pricing data or information other than cost or pricing data.*** **Considering the hierarchy at 15.802, the contracting officer may insert the provision at 52.215-41, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, in solicitations if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required. This provision also provides instructions to offerors on how to request an exception. Use the provision with Alternate I to specify a format for cost or pricing data other than the format required by Table 15-2 of 15.804-6(b). Use the provision with Alternate II when copies of the proposal are to be sent to the administrative contracting officer and contract auditor. Use the provision with Alternate III when submission via electronic media is required. Replace the basic provision with Alternate IV when a SF 1411 will not be required because an exception applies, but information other than cost or pricing data is required as described in 15.804-5.** [FAC 90-32, CASE 94-721]

(i) ***Requirements for cost or pricing data or information other than cost or pricing data—modifications.*** **Considering the hierarchy at 15.802, the contracting officer may insert the clause at 52.215-42, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, in solicitations and contracts if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required for modifications. This clause also provides instructions to contractors on how to request an exception. Use the clause with Alternate I to specify a format for cost or pricing data other than the format required by Table 15-2 of 15.804-6(b). Use the clause with Alternate II if copies of the proposal are to be sent to the administrative contracting officer and contract auditor. Use the clause with Alternate III if submission via electronic media is required. Replace the basic clause with Alternate IV if a SF 1411 is not required because an exception may apply, but information other than cost or pricing data is required as described in 15.804-5.** [FAC 90-32, CASE 94-721]

52.215-22 Price Reduction for Defective Cost or Pricing Data.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 15.804-8(a), insert the following clause: PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (~~JAN 1991~~)	As prescribed in 15.804-8(a), insert the following clause: PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (**OCT 1995**) [FAC 90-32, CASE 94-721]
* * * * *	* * * * *
(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—	(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—
* * * * *	* * * * *
(2) ~~For Department of Defense contracts only,~~ a penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent. (End of clause)	(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent. [FAC 90-32, CASE 94-721] (End of clause)

52.215-23 Price Reduction for Defective Cost or Pricing Data—Modifications.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 15.804-8(b), insert the following clause: PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS (~~NOV 1994~~)	As prescribed in 15.804-8(b), insert the following clause: PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS (**OCT 1995**) [FAC 90-32, CASE 94-721]
(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), except that this clause does not apply to any modification ~~for which the price is— [FAC 90-22] (1) Based on adequate price competition; (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or (3) Set by law or regulation.~~	(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), except that this clause does not apply to any modification **if an exception under FAR 15.804-1 applies.** [FAC 90-32, CASE 94-721]
* * * * *	* * * * *
(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modifica-	(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modifica-

tion reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid— * * * * * (2) ~~For Department of Defense contracts only,~~ a penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent. (End of clause)	tion reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid— * * * * * (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent. [FAC 90-32, CASE 94-721] (End of clause)

52.215-24 Subcontractor Cost or Pricing Data.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 15.804-8(c), insert the following clause: SUBCONTRACTOR COST OR PRICING DATA (~~NOV 1994~~) (a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), ~~when entered into~~, or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless ~~the price is— [FAC 90-22]~~ ~~(1) Based on adequate price competition;~~ ~~(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or~~ ~~(3) Set by law or regulation.~~ * * * * * (End of clause)	As prescribed in 15.804-8(c), insert the following clause: SUBCONTRACTOR COST OR PRICING DATA (**OCT 1995**) [FAC 90-32, CASE 94-721] (a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), **on the date of agreement on price or the date of award, whichever is later;** or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless **an exception under FAR 15.804-1 applies.** [FAC 90-32, CASE 94-721] * * * * * (End of clause)

52.215-25 Subcontractor Cost or Pricing Data— Modifications. [FAC 90-22]

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 15.804-8(d), insert the following clause: SUBCONTRACTOR COST OR PRICING DATA— MODIFICATIONS ~~(NOV 1994)~~	As prescribed in 15.804-8(d), insert the following clause: SUBCONTRACTOR COST OR PRICING DATA— MODIFICATIONS **(OCT 1995)** [FAC 90-32, CASE 94-721]

* * * * *

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) ~~when entered into,~~ or pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless ~~the price is—~~

~~(1) Based on adequate price competition;~~

~~(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or~~

~~(3) Set by law or regulation.~~

* * * * *

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), when entered into.

(End of clause)

* * * * *

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), **on the date of agreement on price or the date of award, whichever is later;** or **before** pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless **an exception under FAR 15.804-1 applies.** [FAC 90-32, CASE 94-721]

* * * * *

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) on the date of agreement on price or the date of award, whichever is later. [FAC 90-32, CASE 94-721]

(End of clause)

52.215-41 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data. [FAC 90-32, CASE 94-721]

As prescribed in 15.804-8(h), insert the following provision:

REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1995)

(a) *Exceptions from cost or pricing data*. (1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) Information relative to an exception granted for prior or repetitive acquisitions.

(ii) Catalog price information as follows:

(A) Attach a copy of or identify the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which this proposal is being made.

(B) Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, and reseller.

(C) Additionally, for each catalog item that exceeds __*__ (extended value not unit price), provide evidence of substantial sales to the general public. This may include sales order, contract, shipment, invoice, actual recorded sales or other records that are verifiable. In addition, if the basis of the price proposal

is sales of essentially the same commercial item by affiliates, other manufacturers or vendors, those sales may be included. The offeror shall explain the basis of each offered price and its relationship to the established catalog price. When substantial general public sales have also been made at prices other than catalog or price list prices, the offeror shall indicate how the proposed price relates to the price of such recent sales in quantities similar to the proposed quantities.

(iii) *Market price information*. Include the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. The nature of the market should be described. The supply or service being purchased should be the same as or similar to the market price supply or service. Data supporting substantial sales to the general public is also required.

(iv) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(v) For a commercial item exception, information on prices at which the same item or similar items have been sold in the commercial market.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data*. If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The offeror shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in accordance with Table 15-2 of FAR 15.804-6(b)(2).

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.804-4.

(c) By submitting information to qualify for an exception, an offeror is not representing that this is the only exception that may apply.

(End of provision)

*** Insert dollar amount for sampling (see 15.804-1(c)(1))**

***Alternate I* (OCT 1995). As prescribed in 15.804-8(h), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision:**

(b)(1) The offeror shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in the following format:

***Alternate II* (OCT 1995). As prescribed in 15.804-8(h), add the following paragraph (d) to the basic provision:**

(d) When the proposal is submitted, also submit one copy each, including the SF 1411 and supporting attachments, to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

***Alternate III* (OCT 1995). As prescribed in 15.804-8(h), add the following paragraph (d) to the basic provision (if Alternate II is also used, redesignate as paragraph (e)):**

(c) Submit the cost portion of the proposal via the following electronic media: (*Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.)*.

***Alternate IV* (OCT 1995). As prescribed in 15.804-8(h), replace the text of the basic provision with the following:**

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: (*Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.804-6(a)(5). Standard Form 1448, Proposal Cover Sheet (Cost or Pricing Data Not Required), may be used for information other than cost or pricing data.*)

52.215-42 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications. [FAC 90-32, CASE 94-721]

As prescribed in 15.804-8(i), insert the following clause:

REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA—MODIFICATIONS
(OCT 1995)

(a) *Exceptions from cost or pricing data*. (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.804-2(a)(1) on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

(i) Information relative to an exception granted for prior or repetitive acquisitions.

(ii) Catalog price information as follows:

(A) Attach a copy of or identify the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which this proposal is being made.

(B) Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, and reseller.

(C) Additionally, for each catalog item that exceeds ___*___ (extended value not unit price), provide evidence of substantial sales to the general public. This may include sales order, contract, shipment, invoice, actual recorded sales or other records that are verifiable. In addition, if the basis of the price proposal is sales of essentially the same commercial item by affiliates, other manufacturers or vendors, those sales may be included. The offeror shall explain the basis of each offered price and its relationship to the established catalog price. When substantial general public sales have also been made at prices other than catalog or price list prices, the offeror shall indicate how the proposed price relates to the price of such recent sales in quantities similar to the proposed quantities.

(iii) *Market price information*. Include the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. The nature of the market should be described. The supply or service being purchased should be the same as or similar to the market price supply or service. Data supporting substantial sales to the general public is also required.

(iv) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(v) Information on modifications of contracts or subcontracts for commercial items.

(A) If (1) the original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, catalog or market prices of commercial items, or prices set by law or regulation; and (2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor may provide information on prices at which the same item or similar items have been sold in the commercial market.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. Access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(3) By submitting information to qualify for an exception, an offeror is not representing that this is the only exception that may apply.

(b) *Requirements for cost or pricing data*. If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in accordance with Table 15-2 of FAR 15.804-6(b)(2).

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.804-4.

(End of clause)

*** Insert dollar amount for sampling (see 15.804-1(c)(1))**

***Alternate I* (OCT 1995). As prescribed in 15.804-8(i), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic clause.**

(b)(1) The Contractor shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in the following format:

***Alternate II* (OCT 1995). As prescribed in 15.804-8(i), add the following paragraph (c) to the basic clause:**

(c) When the proposal is submitted, also submit one copy each, including the SF 1411 and supporting attachments, to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

***Alternate III* (OCT 1995). As prescribed in 15.804-8(i), add the following paragraph (c) to the basic clause (if Alternate II is also used, redesignate as paragraph (d)):**

(c) Submit the cost portion of the proposal via the following electronic media: (*Insert media format).*

***Alternate IV* (OCT 1995). As prescribed in 15.804-8(i), replace the text of the basic clause with the following:**

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: (*Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.804-6(a)(5). Standard Form 1448, Proposal Cover Sheet (Cost or Pricing Data Not Required), may be used for information other than cost or pricing data.)*

15.805-1 General.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
[from old 15.804-1] (b) The Armed Services ~~Procurement Manual for Contract Pricing (ASPM No. 1)~~ was issued by the Department of Defense to guide pricing and negotiating personnel. ~~It~~ provides detailed discussions and examples applying pricing policies to pricing problems. ~~ASPM No. 1~~ is available for use for instruction and professional guidance. However, it is not directive, and its references to Department of Defense forms and regulations should be considered informational only. Copies of ASPM ~~No.~~ 1 (Stock No. 008-000-~~00221-5~~) may be purchased from the Superintendent of Documents, ~~Attn: Mail List Section~~, U.S. Government Printing Office, Washington, DC 20402.	(d) The Armed Services **Pricing Manual (ASPM Volume I, "Contract Pricing," and Volume 2, "Price Analysis")** was issued by the Department of Defense to guide pricing and negotiating personnel. **The ASPM** provides detailed discussion and examples applying pricing policies to pricing problems. **The ASPM** is available for use for instruction and professional guidance. However, it is not directive and its references to Department of Defense forms and regulations should be considered informational only. Copies of ASPM **Vol.** 1 (Stock No. 008-000-**00457-9**) **and Vol. 2 (Stock No. 008-000-00467-6)** may be purchased from the Superintendent of Documents, U.S. Government Printing Office, **by telephone (202) 512-1800 or facsimile (202) 512-2250, or by mail order from the Superintendent of Documents, P. O. Box 371954, Pittsburgh, PA 15250-7954.** [FAC 90-32, CASE 94-721]

15.805-2 Price analysis.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * * **(f) Comparison of proposed prices with prices for the same or similar items obtained through market research.** [FAC 90-32, CASE 94-721]

15.805-5 Field pricing support. [FAC 90-31, Case 94-740]

FAR as of FAC 90-25	*FAR as revised*
(a)(1) When cost or pricing data are required, contracting officers shall request a field pricing report (which may include an audit review by the cognizant contract audit activity) before negotiating any contract or modification resulting from a proposal in excess of $500,000, except as otherwise authorized under agency procedures, unless information available to the contracting officer is considered adequate to determine the reasonableness of the proposed cost or price. Requests for field pricing support should be tailored to ask for minimum essential information needed to ensure a fair and reasonable price. Information of the type described in subdivisions (a)(1)(i) through (a)(1)(vi) of this subsection, which is often available to the contracting officer from the Administrative Contracting Officer or from the cognizant auditor, may be useful in determining the extent of any field pricing support that is needed— * * * *	(a)(1) When cost or pricing data are required, contracting officers shall request a field pricing report (which may include an audit review by the cognizant contract audit activity) before negotiating any contract or modification resulting from a proposal in excess of $500,000, except as otherwise authorized under agency procedures, unless information available to the contracting officer is considered adequate to determine the reasonableness of the proposed cost or price. **The contracting officer should contact the cognizant audit office to determine the existence of audits addressing proposed indirect costs. In accordance with 41 U.S.C. 254d and 10 U.S.C. 2313, the contracting officer shall not request a preaward audit of such indirect costs unless the information available from any existing audit completed within the preceding 12 months is considered inadequate for determining the reasonableness of the proposed indirect costs.** Requests for field pricing support should be tailored to ask for minimum essential information needed to ensure a fair and reasonable price. Information of the type described in subdivisions (a)(1)(i) through (a)(1)(vi) of this subsection, which is often available to the contracting officer from the Administrative Contracting Officer or from the cognizant auditor, may be useful in determining the extent of any field pricing support that is needed— * * * *

15.806-1 General.

FAR as of FAC 90-25	*FAR as revised*
(a)(1) * * * * * (2) Subcontractors must submit to the contractor or higher tier subcontractor, cost or pricing data or ~~claims~~ for exemption from the requirement to submit them. * * * * *	(a)(1) * * * * *. (2) Subcontractors must submit to the contractor or higher tier subcontractor, cost or pricing data or **requests** for exemption from the requirement to submit them. * * * * * [FAC 90-32, CASE 94-721]

(b) ~~Except when the subcontract prices are based on adequate price competition, on established catalog or market prices of commercial items sold in substantial quantities to the general public, or are set by law or regulation,~~ any contractor required to submit ~~certified~~ cost or pricing data also shall obtain ~~certified~~ cost or pricing data before awarding any subcontract or purchase order expected to exceed the ~~pertinent threshold set forth at 15.804-2(a)(1)(iii),~~ or issuing any modification involving a price adjustment expected to exceed the ~~pertinent threshold set forth at 15.804-2(a)(1)(iv) (see example of pricing adjustment at 15.804-2(a)(1)(ii)). To waive subcontractor cost or pricing data, follow the procedures at 15.804-3(i).~~

* * * * *

(b) **Unless the subcontract qualifies for an exception under 15.804-1**, any contractor required to submit cost or pricing data also shall obtain cost or pricing data before awarding any subcontract or purchase order expected to exceed the **cost or pricing data threshold**, or issuing any modification involving a price adjustment expected to exceed the **cost or pricing data threshold**. [FAC 90-32, CASE 94-721]

* * * * *

15.806-2 Prospective subcontractor cost or pricing data.

FAR as of FAC 90-25	*FAR as revised*
(a) The contracting officer shall require a contractor that is required to submit ~~certified~~ cost or pricing data also to submit to the Government (or cause the submission of) accurate, complete, and current cost or pricing data from prospective subcontractors in support of each subcontract cost estimate that is (1) $1,000,000 or more, (2) both more than the ~~pertinent threshold set forth at 15.804-2(a)(1)(iii) and (iv)~~ and more than 10 percent of the prime contractor's proposed price, or (3) considered to be necessary for adequately pricing the prime contract. These subcontract cost or pricing data may be submitted using a Standard Form 1411 (SF ~~1411~~), Contract Pricing Proposal Cover Sheet.	(a) The contracting officer shall require a contractor that is required to submit cost or pricing data also to submit to the Government (or cause submission of) accurate, complete, and current cost or pricing data from prospective subcontractors in support of each subcontract cost estimate that is (1) $1,000,000 or more, (2) both more than the **cost or pricing data threshold** and more than 10 percent of the prime contractor's proposed price, or (3) considered to be necessary for adequately pricing the prime contract. These subcontract cost or pricing data may be submitted using a Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet **(Cost or Pricing Data Required).** [FAC 90-32, CASE 94-721]
* * * * *	* * * * *
(c) If the prospective contractor satisfies the contracting officer that a subcontract will be priced on the basis of one of the ~~exemptions in 15.804-3~~, the contracting officer ~~normally~~ shall not require submission of ~~subcontractor~~ cost or pricing data to the Government in that case. If the subcontract estimate is based upon the cost or pricing data of the prospective subcontractor most likely to be awarded the subcontract, the contracting officer shall not require submission to the Government of data from more than one proposed subcontractor for that subcontract.	(c) If the prospective contractor satisfies the contracting officer that a subcontract will be priced on the basis of one of the **exceptions**, the contracting officer shall not require submission of cost or pricing data to the Government in that case. If the subcontract estimate is based upon the cost or pricing data of the prospective subcontractor most likely to be awarded the subcontract, the contracting officer shall not require submission to the Government of data from more than one proposed subcontractor for that subcontract. [FAC 90-32, CASE 94-721]

(d) Subcontractor cost or pricing data shall be accurate, complete, and current as of the date of ~~final~~ price agreement given on the contractor's Certificate of Current Cost or Pricing Data. The prospective contractor shall be responsible for updating a prospective subcontractor's data. * * * * *	(d) Subcontractor cost or pricing data shall be accurate, complete, and current as of the date of price agreement **or, if applicable, another date agreed upon between the parties,** given on the contractor's Certificate of Current Cost or Pricing Data. The prospective contractor shall be responsible for updating a prospective subcontractor's data. [FAC 90-32, CASE 94-721] * * * * *

15.808 Price negotiation memorandum.

FAR as of FAC 90-25	*FAR as revised*
(a) At the conclusion of each negotiation of an initial or revised price, the contracting officer shall promptly prepare a memorandum of the principal elements of the price negotiation. The memorandum shall be included in the contract file and shall contain the following minimum information: * * * * *	(a) At the conclusion of each negotiation of an initial or revised price, the contracting officer shall promptly prepare a memorandum of the principal elements of the price negotiation. The memorandum shall be included in the contract file and shall contain the following minimum information: * * * * *
(5) If ~~certified~~ cost or pricing data were required, the extent to which the contracting officer— * * * * *	(5) If cost or pricing data were required, the extent to which the contracting officer— * * * * *
(6) If cost or pricing data were not required in the case of any price negotiation exceeding the ~~thresholds set forth at 15.804-2(a)(1),~~ the ~~exemption or waiver~~ used and the basis for ~~claiming or granting~~ it. ~~(7) If certified cost or pricing data were required by the contracting officer under 15.804-2(a)(2), the rationale for such requirement.~~	(6) If cost or pricing data were not required in the case of any price negotiation exceeding the **cost or pricing data threshold**, the **exception** used and the basis for it. [FAC 90-32, CASE 94-721]
~~(8)~~ * * * * * ~~(9)~~ * * * * * ~~(10)~~ * * * * * (b) * * * * *	**(7)** * * * * * [FAC 90-32, CASE 94-721] **(8)** * * * * * [FAC 90-32, CASE 94-721] **(9)** * * * * * [FAC 90-32, CASE 94-721] (b) * * * * *

15.812-1 General.

FAR as of FAC 90-25	*FAR as revised*
(a) * * * * * (b) However, the policy in paragraph (a) of this subsection does not apply to any contract or subcontract item of supply for which the price is, or is based on, an established catalog or market price of a	(a) * * * * * (b) However, the policy in paragraph (a) of this subsection does not apply to any contract or subcontract item of supply for which the price is, or is based on, an established catalog or market price of a

commercial item sold in substantial quantities to the general public. ~~A price is "based on" a catalog or market price only if the item is sufficiently similar to the catalog or market price commercial item to ensure that any difference in price can be identified and justified without resort to cost analysis.~~

commercial item sold in substantial quantities to the general public **under 15.804-1(b)(2) or a commercial item exception under15.804-1(b)(4).** [FAC 90-32, CASE 94-721]

(c) In addition, when contracting by negotiation without full and open competition, contracting officers shall require that offerors identify in their proposals those items of supply which they will not manufacture or to which they will not contribute significant value. The contracting officer shall require similar information when contracting by negotiation with full and open competition if adequate price competition is not expected ~~(see 15.804-3(b)).~~ The information need not be requested in connection with the award of contracts under the General Services Administration's competitive Multiple Award Schedule Program. The information shall not be requested for commercial items sold in substantial quantities to the general public when the prices are, or are based on, established catalog or market prices. Such information shall be used to determine whether the intrinsic value of an item has been distorted through application of overhead and whether such items should be considered for breakout. The contracting officer may require such information in any other negotiated contracts when appropriate.

(c) In addition, when contracting by negotiation without full and open competition, contracting officers shall require that offerors identify in their proposals those items of supply which they will not manufacture or to which they will not contribute significant value. The contracting officer shall require similar information when contracting by negotiation with full and open competition if adequate price competition is not expected **(see 15.804-1(b)(1)).** The information need not be requested in connection with the award of contracts under the General Services Administration's competitive Multiple Award Schedule Program. The information shall not be requested for commercial items sold in substantial quantities to the general public when the prices are, or are based on, established catalog or market prices. Such information shall be used to determine whether the intrinsic value of an item has been distorted through application of overhead and whether such items should be considered for breakout. The contracting officer may require such information in any other negotiated contracts when appropriate. [FAC 90-32, CASE 94-721]

15.905 Profit-analysis factors.

15.905-1 Common factors.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(c) *Federal socioeconomic programs.* This factor measures the degree of support given by the prospective contractor to Federal socioeconomic programs, such as those involving small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, handicapped sheltered workshops, ~~labor surplus areas,~~ and energy conservation. Greater profit opportunity should be provided contractors who have displayed unusual initiative in these programs.	(c) *Federal socioeconomic programs.* This factor measures the degree of support given by the prospective contractor to Federal socioeconomic programs, such as those involving small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, **women-owned small businesses,** handicapped sheltered workshops, and energy conservation. Greater profit opportunity should be provided contractors who have displayed unusual initiative in

* * * * *	these programs. [FAC 90-32, CASE 94-780] * * * * *

SUBPART 15.10—PREAWARD, AWARD, AND POSTAWARD NOTIFICATIONS, PROTESTS, AND MISTAKES (FAC 90-31, Case 94-701)

FAR as of FAC 90-25	*FAR as revised*
	15.1001 General. This subpart applies to the use of competitive proposals, as described in 6.102(b), and a combination of competitive procedures, as described in 6.102(c). To the extent practicable, however, the procedures and intent of this subpart, with reasonable modification, should be followed for acquisitions described in 6.102(d): broad agency announcements, small business innovation research contracts and architect-engineer contracts. However, they do not apply to multiple award schedules, as described in 6.102(d)(3).

15.1002 Notifications to unsuccessful offerors. (FAC 90-31, Case 94-701)

FAR as of FAC 90-25	*FAR as revised*
(a) *General.* The contracting officer shall ~~promptly~~ notify each offeror whose proposal is determined to be unacceptable or whose offer is not selected for award, ~~unless disclosure might prejudice the Government's interest~~.	(a) *General.* **Within three days after the date of contract award**, the contracting officer shall notify, **in writing or electronically**, each offeror whose proposal is determined to be unacceptable or whose offer is not selected for award. **"Day", for purposes of the notification process, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday**.
(b) *Preaward notices.* (1) When the proposal evaluation period for a solicitation **not using simplified acquisition procedures in Part** 13 is expected to exceed 30 days, or when a limited number of offerors have been selected as being within the competitive range (see 15.609), the contracting officer, upon determining that a proposal is unacceptable, shall promptly notify the offeror. The notice shall at least state (i) in general terms the basis for the determination and (ii) that a revision of the proposal will not be considered. [FAC 90- 29]	(b) *Preaward notices.* (1) When the proposal evaluation period for a solicitation ~~estimated to exceed the small purchase limitation in part~~ 13 is expected to exceed 30 days, or when a limited number of offerors have been selected as being within the competitive range (see 15.609), the contracting officer, upon determining that a proposal is unacceptable, shall promptly notify the offeror. The notice shall at least state (i) in general terms the basis for the determination and (ii) that a revision of the proposal will not be considered.

(2) In a small business set-aside (see Subpart 19.5), upon completion of negotiations and determinations of responsibility, but prior to award, the contracting officer shall inform each unsuccessful offeror in writing of the name and location of the apparent successful offeror. The notice shall also state that (i) the Government will not consider subsequent revisions of the unsuccessful proposal and (ii) no response is required unless a basis exists to challenge the small business size status of the apparently successful offeror. The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay.

(c) *Postaward notices*. (1) **After** award of contracts resulting from solicitations **not using simplified acquisition procedures,** the contracting officer shall notify unsuccessful offerors in **writing or electronically,** unless preaward notice was given under paragraph (b) of this section. The notice shall include—

(i) The number of offerors solicited;
(ii) The number of proposals received;
(iii) The name and address of each offeror receiving an award;
(iv) The items, quantities, and unit prices of each award (if the number of items or other factors makes listing unit prices impracticable, only the total contract price need be furnished); and
(v) In general terms, the reason the offeror's proposal was not accepted, unless the price information
in (iv) above readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(2) For acquisitions subject to the Trade Agreements Act or the North American Free Trade Agreement (NAFTA) Implementation Act (see 25.405(e)), the information in paragraph (c)(1) of this section shall be provided to unsuccessful offerors from designated or NAFTA countries promptly, but in no event later than seven working days after contract award.

(3) Upon request, the contracting officer shall furnish the information described in 15.1001(c)(1) (i) through (v) to unsuccessful offerors in solicitations **using simplified acquisition procedures** in Part 13.

(2) In a small business set-aside (see Subpart 19.5), upon completion of negotiations and determinations of responsibility, but prior to award, the contracting officer shall notify each unsuccessful offeror in writing **or electronically** of the name and location of the apparent successful offeror. The notice shall also state that (i) the Government will not consider subsequent revisions of the unsuccessful proposal and (ii) no response is required unless a basis exists to challenge the small business size status of the apparently successful offeror. The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay.

(c) *Postaward notices*. (1) ~~Promptly after~~ award of contracts resulting from solicitations ~~exceeding the small purchase limitation in Part 13,~~ the contracting officer shall notify unsuccessful offerors in ~~writing,~~ unless preaward notice was given under paragraph (b) of this section. The notice shall include—

(i) The number of offerors solicited
(ii) The number of proposals received;
(iii) The name and address of each offeror receiving an award;
(iv) The items, quantities, and unit prices of each award (if the number of items or other factors makes listing unit prices impracticable, only the total contract price need be furnished); and
(v) In general terms, the reason the offeror's proposal was not accepted, unless the price information
in (iv) above readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(2) For acquisitions subject to the Trade Agreements Act or the North American Free Trade Agreement (NAFTA) Implementation Act (see 25.405(e)), the information in paragraph (c)(1) of this section shall be provided to unsuccessful offerors from designated or NAFTA countries promptly, but in no event later than seven working days after contract award.

(3) Upon request, the contracting officer shall furnish the information described in 15.1001(c)(1)(i) through (v) to unsuccessful offerors in solicitations ~~not exceeding the small purchase limitation~~ in Part 13.

15.1003 Notification to successful offerors. (FAC 90-31, Case 94-701)

FAR as of FAC 90-25	*FAR as revised*
The contracting officer shall award a contract with reasonable promptness to the successful offeror (selected in accordance with 15.611(d)) by transmitting written of the award to that offeror (but see 15.608(b)). * * * * *	The contracting officer shall award a contract with reasonable promptness to the successful offeror (selected in accordance with 15.611(d)) by transmitting written **or electronic notice** of the award to that offeror (but see 15.608(b)). * * * * *

15.1004 Debriefing of unsuccessful offerors (FAC 90-31, Case 94-701)

FAR as of FAC 90-25	*FAR as revised*
(a) When a contract is awarded on the basis of ~~other than price alone (see Subpart 15.6)~~, ~~unsuccessful~~ offeror~~s~~, upon their written request, shall be debriefed ~~as soon as possible~~ and furnished the basis for the selection decision and contract award.	(a) When a contract is awarded on the basis of **competitive proposals**, **an** offeror, upon **its** written request **received by the agency within three days after the date the unsuccessful offeror receives notice of contract award**, shall be debriefed and furnished the basis for the selection decision and contract award. **When practicable, debriefing requests received more than three days after the offeror receives notice of contract award shall be accommodated. However, accommodating such untimely debriefing requests does not extend the time within which suspension of performance can be required, as this accommodation is not a "required debriefing" as described in FAR Part 33. To the maximum extent practicable, the debriefing should occur within five days after receipt of the written request.** "Day", for purposes of the debriefing process, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday. (b) **Debriefings of successful and unsuccessful offerors may be done orally, in writing, by electronic means, or any other method acceptable to the contracting officer.** **(c) The contracting officer should chair any debriefing session held. Individuals actually responsible for the evaluations shall provide support. If the contracting officer is unavailable, another agency representative may be designated**

by the contracting officer on a case-by-case basis, with the approval of an individual a level above the contracting officer.

(b) Debriefing information shall include the Government's evaluation of the significant weak or deficient factors in the proposal; ~~however,~~ point-by-point comparisons with other offerors' proposals shall not be made. ~~Debriefing shall not reveal the relative merits or technical standing of competitors or the evaluation scoring~~ Moreover, debriefing shall not reveal any information ~~that is not releasable~~ under the Freedom of Information Act; ~~for example—~~

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques; ~~and~~

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and

(c) The contracting officer shall include a summary of the debriefing in the contract file.

(d) **At a minimum**, the debriefing information shall include—

(1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, **if applicable**;

(2) **The overall evaluated cost or price and technical rating, if applicable, of the successful offeror and debriefed offeror**;

(3) **The overall ranking of all offerors when any ranking was developed by the agency during the source selection**;

(4) **A summary of the rationale for award**;

(5) **For** acquisitions of commercial end items, the make and model of the item **to be delivered by the successful offeror; and**

(6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

(e) The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, debriefing shall not reveal any information exempt from release under the Freedom of Information Act including—

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques;

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; **and**

(4) **The names of individuals providing reference information about an offeror's past performance**. [FAC 90-26]

(f) The contracting officer shall include **an official** summary of the debriefing in the contract file.

(g) If, within one year of contract award, a protest causes the agency to issue either a new solicitation or a new request for best and final offers on the protested contract award, the agency shall make available to all offerors—

(1) Information provided in any debriefings conducted on the original award

	about the successful offeror's proposal; and **(2) Other nonproprietary information that would have been provided to the original offerors**.

52.215-16 Contract Award. (FAC 90-31, Case 94-701)

FAR as of FAC 90-25	*FAR as revised*
* * * *	**(h) The Government may disclose the following information in post-award debriefings to other offerors: (1) the overall evaluated cost and technical rating of the successful offeror; (2) the overall ranking of all offerors, when any ranking was developed by the agency during source selection; (3) a summary of the rationale for award; and (4) for acquisitions of commercial end items, the make and model or commercial item description of the item to be delivered by the successful offeror.**

52.215-26 Integrity of Unit Prices.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 15.812-2, insert the following clause: INTEGRITY OF UNIT PRICES (~~APR 1991~~)	As prescribed in 15.812-2, insert the following clause: INTEGRITY OF UNIT PRICES (**OCT 1995**) [FAC 90-32, CASE 94-721]
* * * * *	* * * * *
(b) The requirement in paragraph (a) of this clause does not apply to any contract or subcontract item of supply for which the unit price is, or is based on, an established catalog or market price for a commercial item sold in substantial quantities to the general public. A price is based on a catalog or market price only if the item being purchased is sufficiently similar to the catalog or market ~~price~~ commercial item to ensure that any difference in ~~price~~ can be identified and justified without resort to cost analysis.	(b) The requirement in paragraph (a) of this clause does not apply to any contract or subcontract item of supply for which the unit price is, or is based on, an established catalog or market price for a commercial item sold in substantial quantities to the general public **or to an item qualifying for a commercial item exception to cost or pricing data.** A price is based on an established catalog or market price only if the item being purchased is sufficiently similar to the catalog or market **priced** commercial item to ensure that any difference in **prices** can be identified and justified without resort to cost analysis. [FAC 90-32, CASE 94-721]
* * * * *	* * * * *

PART 16

TYPES OF CONTRACTS

☛ The FAR at 16.301-3, 16.403, 16.403-1, and 16.403-2 has been amended to delete the requirement for D&Fs for cost reimbursable contracts or fixed price incentive contracts. [FAC 90-24]

16.103 Negotiating contract type.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(d) Each contract file shall include documentation to show why the particular contract type was selected. Exceptions to this requirement are (1) ~~small purchases under Part 13,~~ (2) contracts on a firm fixed-price basis other than those for major systems or research and development, and (3) awards on the set-aside portion of sealed bid partial set-asides for small business ~~or labor surplus area concerns~~.	(d) Each contract file shall include documentation to show why the particular contract type was selected. Exceptions to this requirement are (1) **acquisitions made under simplified acquisition procedures in Part 13, unless otherwise required under agency procedures,** (2) contracts on a firm fixed-price basis other than those for major systems or research and development, and (3) awards on the set-aside portion of sealed bid partial set-asides for small business. [FACs 90-29 & 90-32, CASE 94-780]

16.201 General.

FAR as of FAC 90-25	*FAR as revised*
Fixed-price types of contracts provide for a firm price or, in appropriate cases, an adjustable price. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price is subject to adjustment only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.	Fixed-price types of contracts provide for a firm price or, in appropriate cases, an adjustable price. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price is subject to adjustment only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances. **The contracting officer shall use firm-fixed-price or fixed-price with economic price adjustment contracts when acquiring commercial items.** [FAC 90-32, CASE 94-790]

16.202-2 Application.

FAR as of FAC 90-25	*FAR as revised*
A firm-fixed-price contract is suitable for acquiring commercial ~~products or commercial-type products (see 11.001)~~ or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications ~~(see 10.001)~~ when the contracting officer can establish fair and reasonable prices at the outset, such as when— * * * * *	A firm-fixed-price contract is suitable for acquiring commercial **items (see Parts 2 and 12)** or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications **(see Part 11)** when the contracting officer can establish fair and reasonable prices at the outset, such as when— [FAC 90-32, CASE 94-790] * * * * * *

16.203-4 Contract clauses.

FAR as of FAC 90-25	*FAR as revised*
(a) *Adjustment based on established prices—standard supplies.* (1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-2, Economic Price Adjustment—Standard Supplies, or an agency-prescribed clause as authorized in subparagraph (2) below, in solicitations and contracts when all of the following conditions apply: * * * * * (ii) The requirement is for standard supplies that have an established catalog or market price, verified using the criteria in ~~15.804-3.~~ * * * * *	(a) *Adjustment based on established prices—standard supplies.* (1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-2, Economic Price Adjustment—Standard Supplies, or an agency-prescribed clause as authorized in subparagraph (2) below, in solicitations and contracts when all of the following conditions apply: * * * * * (ii) The requirement is for standard supplies that have an established catalog or market price, verified using the criteria in **15.804-1.** [FAC 90-32, CASE 94-721] * * * * *
(b) *Adjustment based on established prices—semistandard supplies*. (1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-3, Economic Price Adjustment—Semistandard Supplies, or an agency-prescribed clause as authorized in subparagraph (2) below, in solicitations and contracts when all of the following conditions apply: * * * * * (ii) The requirement is for semistandard supplies for which the prices can be reasonably related to the prices of nearly equivalent standard supplies that	(b) *Adjustment based on established prices—semistandard supplies*. (1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-3, Economic Price Adjustment—Semistandard Supplies, or an agency-prescribed clause as authorized in subparagraph (2) below, in solicitations and contracts when all of the following conditions apply: * * * * * (ii) The requirement is for semistandard supplies for which the prices can be reasonably related to the prices of nearly equivalent standard supplies that

have an established catalog or market price, verified using the criteria in ~~15.804-3.~~ * * * * *	have an established catalog or market price, verified using the criteria in **15.804-1.** [FAC 90-32, CASE 94-721] * * * * *

16.301-3 Limitations.

FAR as of FAC 90-25	*FAR as revised*
A cost-reimbursement contract may be used only when— ~~(a)~~ The contractor's accounting system is adequate for determining costs applicable to the contract; and ~~(b)~~ Appropriate Government surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used. ~~(c)~~ See 15.903(d) for statutory limitations on price or fee. [FAC 90-24]	**(a)** A cost-reimbursement contract may be used only when— **(1)** The contractor's accounting system is adequate for determining costs applicable to the contract; and **(2)** Appropriate Government surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used. **(3)** See 15.903(d) for statutory limitations on price or fee. [FAC 90-24] [FAC 90-32, CASE 94-790] **(b) The use of cost-reimbursement contracts is prohibited for the acquisition of commercial items (see Parts 2 and 12).** [FAC 90-32, CASE 94-790]

16.306 Cost-plus-fixed-fee contracts.

FAR as of FAC 90-25	*FAR as revised*
* * * * * (c) *Limitations*. No cost-plus-fixed-fee contract shall be awarded unless— (1) All limitations in 16.301-3 are complied with; and (2) The agency head or designee has signed a determination and findings establishing the basis for application of the statutory price or fee limitation (see 15.903(d)).	* * * * * (c) *Limitations*. No cost-plus-fixed-fee contract shall be awarded unless— (1) All limitations in 16.301-3 are complied with; and (2) **The contracting officer has signed a determination and findings establishing the basis for application of the statutory price or fee limitation (see 15.903(d))**. [FAC 90-30, 94-700]

16.500 Scope of subpart. [FAC 90-33, CASE 94-711]

This subpart prescribes policies and procedures for making awards of indefinite delivery contracts and establishes a preference scheme for making multiple awards of delivery order contracts and task order contracts. This subpart does not limit the use of other than competitive procedures authorized by Part 6. Nothing in this subpart shall be construed to limit, impair, or restrict the authority of the General Services Administration (GSA) to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law. Therefore, GSA regulations and the coverage in subpart 8.4, Part 38, or Part 39 for the Federal Supply Schedule program (including contracts for Federal Information Processing resources), take precedence over this subpart. This subpart may be used to acquire (1) architect-engineer services provided the selection of contractors and placement of orders is consistent with Subpart 36.6, and (2) Federal Information Processing resource requirements that are not satisfied under the Federal Supply Schedule Program, provided the selection of contractors and placement of orders is consistent with Part 39.

16.501-1 Definitions. [FAC 90-33, CASE 94-711]

As used in this subpart—

"Advisory and assistance services" has the same meaning as set forth in 37.201.

"Delivery order contract" means a contract for supplies that does not procure or specify a firm quantity of supplies (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of supplies during the period of the contract.

"Task order contract" means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

16.501-2 General. [FAC 90-33, CASE 94-711]

~~**16.501 General.**~~

FAR as of FAC 90-25	*FAR as revised*
(a) There are three types of indefinite-delivery contracts—definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used when the exact times and/or quantities of future deliveries are not known at the time of contract award. * * * * *	(a) There are three types of indefinite-delivery contracts—definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used **to acquire supplies and/or services** when the exact times and/or exact quantities of future deliveries are not known at the time of contract award. **Pursuant to 10 U.S.C. 2304d and section 303K of the Federal Property and Administrative Services Act of 1949,**

	requirements contracts and indefinite-quantity contracts are also known as delivery order contracts or task order contracts. [FAC 90-33, CASE 94-711] * * * * *
(c) Indefinite-delivery contracts may provide for ~~firm fixed prices (see 16.202), fixed prices with economic price adjustment (see 16.203), fixed prices with prospective redetermination (see 16.205), or prices based on catalog or market prices (see 15.804-3(c)). When prices are based on catalog or market prices, the price to be paid may be determined by establishing an adjustment factor and applying it to the price in industrywide pricing guides or manufacturers' price catalogs. Normally, the adjustment factor will be a fixed percentage discount to be applied to the price in effect on the date of each order. When fast payment procedures are included in indefinite-delivery contracts, the contracting officer shall include in the contract the special data required by 13.303(b).~~	(c) Indefinite-delivery contracts may provide for **any appropriate cost or pricing arrangement under Part 16. Cost or pricing arrangements that provide for an estimated quantity of supplies or services (e.g., estimated number of labor hours) must comply with the appropriate procedures of this subpart.** [FAC 90-33, CASE 94-711]

16.502 Definite-quantity contracts.

FAR as of FAC 90-25	*FAR as revised*
(a) *Description.* A definite-quantity contract provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries to be scheduled at designated locations upon order. * * * * *	(a) *Description.* A definite-quantity contract provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries **or performance** to be scheduled at designated locations upon order. [FAC 90-33, CASE 94-711] * * * * *

16.503 Requirements contracts.

FAR as of FAC 90-25	*FAR as revised*
(a) *Description.* A requirements contract provides for filling all actual purchase requirements of designated Government activities for ~~specific~~ supplies or services during a specified contract period, with deliveries to be scheduled by placing orders with the contractor.	(a) *Description*. A requirements contract provides for filling all actual purchase requirements of designated Government activities for supplies or services during a specified contract period, with deliveries **or performance** to be scheduled by placing orders with the contractor. [FAC 90-33, CASE 94-711]

FAR as of FAC 90-25	FAR as revised
* * * * *	* * * * *
(2) The contract shall state, if feasible, the maximum limit of the contractor's obligation to deliver and the Government's obligation to order. The contract may also specify maximum or minimum quantities that the Government may order under each individual order and the maximum that it may order during a specified period of time.	(2) The contract shall state, if feasible, the maximum limit of the contractor's obligation to deliver and the Government's obligation to order. The contract may also specify maximum or minimum quantities that the Government may order under each individual order and the maximum that it may order during a specified period of time.
(b) *Application.* A requirements contract may be appropriate for acquiring any ~~items~~ or services when the Government anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated Government activities will need during a definite period. ~~Funds are obligated by each delivery order, not by the contract itself.~~	(b) *Application*. A requirements contract may be appropriate for acquiring any **supplies** or services when the Government anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated Government activities will need during a definite period. [FAC 90-33, CASE 94-711]
(c) *Government property furnished for repair.* When a requirements contract is used to acquire work (e.g., repair, modification, or overhaul) on existing items of Government property, the contracting officer shall specify in the Schedule that failure of the Government to furnish such items in the amounts or quantities described in the Schedule as "estimated" or "maximum" will not entitle the contractor to any equitable adjustment in price under the Government Property clause of the contract.	(c) *Government property furnished for repair*. When a requirements contract is used to acquire work (*e.g*., repair, modification, or overhaul) on existing items of Government property, the contracting officer shall specify in the Schedule that failure of the Government to furnish such items in the amounts or quantities described in the Schedule as "estimated" or "maximum" will not entitle the contractor to any equitable adjustment in price under the Government Property clause of the contract.

(d) *Limitations on use of requirements contracts for advisory and assistance services*. (1) Except as provided in paragraph (d)(2) of this section, no solicitation for a requirements contract for advisory and assistance services in excess of three years and $10,000,000 (including all options) may be issued unless the contracting officer or other official designated by the head of the agency determines in writing that the services required are so unique or highly specialized that it is not practicable to make multiple awards using the procedures in 16.504.

(2) The limitation in paragraph (d)(2) of this section is not applicable to an acquisition of supplies or services that includes the acquisition of advisory and assistance services if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are necessarily incident to, and not a significant component of, the contract.
[FAC 90-33, CASE 94-711]

16.504 Indefinite-quantity contracts.

FAR as of FAC 90-25	FAR as revised
(a) *Description.* An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of ~~specific~~ supplies or services to be	(a) *Description*. An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services to be furnished during

furnished during a fixed period, with deliveries to be scheduled by placing orders with the contractor.

* * * * *

(3) The contract may also specify maximum or minimum quantities that the Government may order under each delivery order and the maximum that it may order during a specific period of time.

a fixed period, with deliveries **or performance** to be scheduled by placing orders with the contractor. [FAC 90-33, CASE 94-711]

* * * * *

(3) The contract may also specify maximum or minimum quantities that the Government may order under each **task or** delivery order and the maximum that it may order during a specific period of time.

(4) In addition to other required provisions and clauses, a solicitation and contract for an indefinite-quantity shall—

(i) Specify the period of the contract including the number of options and the period for which the contract may be extended under each option, if any;

(ii) Specify the total minimum and maximum quantity or dollar value of supplies or services to be acquired under the contract;

(iii) Include a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services to be acquired under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

(iv) State the procedures that will be used in issuing orders and, if multiple awards may be made, state the procedures and selection criteria that will be used to provide awardees a fair opportunity to be considered for each order (see 16.505(b)(1));

(v) If multiple awards may be made, include the provision at 52.216-27, Single or Multiple Awards, to notify offerors that more than one contract may be awarded; and

(vi) If an award of a task order contract for advisory and assistance services in excess of three years and $10,000,000 (including all options) is anticipated, include the provision at 52.216-28, Multiple Awards for Advisory and Assistance Services, unless a determination to make a single award is made under paragraph (c)(2)(i)(A) of this section.

[FAC 90-33, CASE 94-711]

(b) *Application.* An indefinite-quantity contract may be used when the Government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that will be required during the contract period, and it is inadvisable for the Government to commit itself for more than a minimum quantity. An indefinite-quantity contract should be used only when a recurring need is anticipated. ~~Funds for other than the stated minimum quantity are obligated by each delivery order, not by the contract itself.~~

(b) *Application.* An indefinite-quantity contract may be used when the Government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that will be required during the contract period, and it is inadvisable for the Government to commit itself for more than a minimum quantity. An indefinite-quantity contract should be used only when a recurring need is anticipated. [FAC 90-33, CASE 94-711]

(c) *Multiple award preference.* (1) *General preference.* Except for indefinite-quantity contracts for advisory and assistance services as provided in paragraph (c)(2) of this section, the contracting officer shall, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources. In making a determination as to whether multiple awards are appropriate, the contracting officer shall exercise sound business judgment as part of acquisition planning. No separate written determination to make a single award is necessary when the determination is contained in a written acquisition plan. Multiple awards should not be made if—

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

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

(iii) The cost of administration of multiple contracts may outweigh any potential benefits from making multiple awards;

(iv) Tasks likely to be ordered are so integrally related that only a single contractor can reasonably perform the work;

(v) The total estimated value of the contract is less than the simplified acquisition threshold in Part 13; or

(vi) The contracting officer determines that multiple awards would not be in the best interests of the Government.

(2) *Contracts for advisory and assistance services.* (i) Except as provided in paragraph (c)(2)(ii) of this section, if an indefinite quantity contract for advisory and assistance services will not exceed three years and $10,000,000, including all options, a contracting officer may, but is not required to, give preference to making multiple awards. If an indefinite quantity contract for advisory and assistance services exceeds three years and $10,000,000, including all options, multiple awards shall be made unless—

(A) The contracting officer or other official designated by the head of the agency determines in writing, prior to the issuance of the solicitation, that the services required under the task order contract are so unique or highly specialized that it is not practicable to award more than one contract. This determination may also be appropriate when the tasks likely to be issued are so integrally related that only a single contractor can reasonably perform the work;

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

(C) Only one offer is received.

(ii) The requirements of paragraph (c)(2)(i) of this section are not applicable to an acquisition of supplies or services that includes the acquisition of advisory and assistance services if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are necessarily incident to, and not a significant component of, the contract.
[FAC 90-33, CASE 94-711]

16.505 Ordering. [FAC 90-33, CASE 94-711]

~~**16.506 Ordering.**~~

FAR as of FAC 90-25	*FAR as revised*
	(a) *General*. (1) When placing orders under this subpart, a separate notice under 5.201 is not required. **(2) The contracting officer or duly appointed ordering officer shall ensure that individual orders clearly describe all services to be performed or supplies to be delivered. Such officer shall also ensure that orders are within the scope, period, and maximum value of the contract.**
~~(a)~~ The contracting officer shall include in the Schedule ~~of indefinite-delivery contracts~~ the names of the activity or activities authorized to issue orders ~~under indefinite-delivery contracts~~.	(3) The contracting officer shall include in the **contract** Schedule the names of the activity or activities authorized to issue orders.
~~(b)~~ If appropriate, authorization for placing oral orders may be included in the contract Schedule; *provided*, that procedures have been established for obligating funds and that oral orders are confirmed in writing.	**(4)** If appropriate, authorization for placing oral orders may be included in the contract Schedule; provided, that procedures have been established for obligating funds and that oral orders are confirmed in writing.
~~(c)~~ Orders may be placed by ~~written telecommunication,~~ if provided for in the contract Schedule.	**(5)** Orders may be placed by **facsimile or by electronic commerce methods,** if provided for in the contract.
~~(d)~~ Orders placed under indefinite-delivery contracts shall contain the following information: ~~(1)~~ Date of order. ~~(2)~~ Contract number and order number. ~~(3)~~ Item number and description, quantity, and unit price. ~~(4)~~ Delivery or performance date. ~~(5)~~ Place of delivery or performance (including consignee). ~~(6)~~ Packaging, packing, and shipping instructions, if any. ~~(7)~~ Accounting and appropriation data. ~~(8)~~ Any other pertinent information.	**(6)** Orders placed under indefinite-delivery contracts shall contain the following information: **(i)** Date of order. **(ii)** Contract number and order number. **(iii)** Item number and description, quantity, and unit price **or estimated cost or fee**. **(iv)** Delivery or performance date. **(v)** Place of delivery or performance (including consignee). **(vi)** Packaging, packing, and shipping instructions, if any. **(vii)** Accounting and appropriation data. **(viii)** Any other pertinent information.

(7) No protest under Subpart 33.1 is authorized in connection with the issuance or proposed issuance of an order under a task order contract or delivery order contract except for a protest on the grounds that the order increases the scope, period, or maximum value of the contract.

(b) *Orders under multiple award contracts*. (1) Except as provided for in paragraph (b)(2) of this section, for orders issued under multiple delivery order contracts or multiple task order contracts, each awardee shall be provided a fair opportunity to be considered for each order in excess of $2,500. In determining the procedures for providing awardees a fair opportunity to be considered for each order, contracting officers shall exercise broad discretion and may consider factors such as past performance, quality of deliverables, cost control, price, cost, or other factors that the contracting officer, in the exercise of sound business judgment, believes are relevant to the placement of orders. The procedures and selection criteria that will be used to provide multiple awardees a fair opportunity to be considered for each order must be set forth in the solicitation and contract. The procedures for selecting awardees for the placement of particular orders need not comply with the competition requirements of Part 6. However, agencies shall not use any method (such as allocation) that would not result in fair consideration being given to all awardees prior to placing each order. Formal evaluation plans or scoring of quotes or offers are not required. Agencies may use oral proposals and streamlined procedures when selecting an order awardee. In addition, the contracting officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order.

(2) Awardees need not be given an opportunity to be considered for a particular order in excess of $2,500 under multiple delivery order contracts or multiple task order contracts if the contracting officer determines that—

(i) The agency need for such supplies or services is of such urgency that providing such opportunity would result in unacceptable delays;

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

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

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

(3) The "competing independently" requirement of 15.804-1(b)(1) is satisfied for orders placed under multiple delivery order contracts or multiple task order contracts when—

(i) The price for the supplies or services is established in the contract at the time of contract award; or

(ii) The contracting officer solicits offers from two or more awardees for order placement when the price for the supplies or services is not established in the contract at the time of contract award.

(4) The head of the agency shall designate a task order contract and delivery order contract ombudsman who shall be responsible for reviewing complaints from

contractors on task order contracts and delivery order contracts. The ombudsman shall review complaints from the contractors and ensure that all contractors are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman shall be a senior agency official who is independent of the contracting officer and may be the agency's competition advocate.

(c) *Limitation on ordering period for task order contracts for advisory and assistance services*. (1) Except as provided for in paragraph (c)(2) of this section**, the ordering period of a task order contract for advisory and assistance services, including all options or modifications, may not exceed five years, unless a longer period is specifically authorized by a statute that is applicable to such a contract. Notwithstanding the five-year limitation or the requirements of Part 6, a task order contract for advisory and assistance services may be extended on a sole-source basis only once for a period not to exceed six months if the contracting officer or other official designated by the head of the agency determines that—**

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

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

(2) The limitation on ordering period contained in paragraph (c)(1) of this section is not applicable to acquisition of supplies or services that includes the acquisition of advisory and assistance services if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

16.506 Solicitation provisions and contract clauses. [FAC 90-33, CASE 94-711]

~~16.505 Contract clauses.~~

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(b) The contracting officer shall insert a clause substantially the same as the clause at 52.216-19, ~~Delivery-~~Order Limitations, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.	(b) The contracting officer shall insert a clause substantially the same as the clause at 52.216-19, Order Limitations, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.
* * * * *	* * * * *
(d) (1) The contracting officer shall insert the clause at 52.216-21, Requirements, in solicitations and contracts when a requirements contract is contemplated.	(d) (1) The contracting officer shall insert the clause at 52.216-21, Requirements, in solicitations and contracts when a requirements contract is contemplated.
(2) If the contract is for nonpersonal services and related supplies and covers estimated requirements that exceed a specific Government activity's internal capability to produce or perform, the contracting officer shall use the clause with its Alternate I.	(2) If the contract is for nonpersonal services and related supplies and covers estimated requirements that exceed a specific Government activity's internal capability to produce or perform, the contracting officer shall use the clause with its Alternate I.
(3) If the contract includes subsistence for both Government use and resale in the same Schedule, and similar products may be acquired on a brand-name basis, the contracting officer shall use the	(3) If the contract includes subsistence for both Government use and resale in the same Schedule, and similar products may be acquired on a brand-name basis, the contracting officer shall use the

clause with its Alternate II (but see ~~sub~~paragraph (5) ~~below~~).	clause with its Alternate II (but see paragraph **(d)**(5) **of this section**).
(4) If the contract involves a partial small business ~~or labor surplus area~~ set-aside, the contracting officer shall use the clause with its Alternate III (but see subparagraph (5) below).	(4) If the contract involves a partial small business set-aside, the contracting officer shall use the clause with its Alternate III (but see subparagraph (5) below). [FAC 90-32, CASE 94-780]
(5) If the contract (i) includes subsistence for both Government use and resale in the same Schedule and similar products may be acquired on a brand-name basis and (ii) involves a partial small business ~~or labor surplus area~~ set-aside, the contracting officer shall use the clause with its Alternate IV.	(5) If the contract (i) includes subsistence for both Government use and resale in the same Schedule and similar products may be acquired on a brand-name basis and (ii) involves a partial small business set-aside, the contracting officer shall use the clause with its Alternate IV. [FAC 90-32, CASE 94-780]
* * * * *	* * * * *
	(f) The contracting officer shall insert the provision at 52.216-27, Single or Multiple Awards, in solicitations for indefinite quantity contracts that may result in multiple contract awards. This provision shall not be used for advisory and assistance services contracts that exceed three years and $10,000,000 (including all options). Contracting officers may modify the provision to specify the number of awards the Government reasonably estimates that it may make. [FAC 90-33, CASE 94-711]
	(g) In accordance with 16.504(a)(4)(vi), the contracting officer shall insert the provision at 52.216-28, Multiple Awards for Advisory and Assistance Services, in solicitations for task order contracts for advisory and assistance services that exceed three years and $10,000,000 (including all options) unless a determination has been made under 16.504(c)(2)(i)(A). Contracting officers may modify the provision to specify the number of awards the Government reasonably estimates that it may make. [FAC 90-33, CASE 94-711]

16.603-2 Application.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(e) The contracting officer shall assign a priority rating to the letter contract if it is appropriate under ~~12.304~~.	(e) The contracting officer shall assign a priority rating to the letter contract if it is appropriate under **11.604**. [FAC 90-32, CASE 94-790]

16.603-4 Contract clauses.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(b) In addition, the contracting officer shall insert the following clauses in solicitations and contracts when a letter contract is contemplated:	(b) In addition, the contracting officer shall insert the following clauses in solicitations and contracts when a letter contract is contemplated:
* * * * *	* * * * *
(3) The clause at 52.216-25, Contract Definitization, with its paragraph (b) completed in a manner consistent with 16.603-2(c). If the letter contract is being awarded on the basis of price competition, the contracting officer shall use the clause with its Alternate I.	(3) The clause at 52.216-25, Contract Definitization, with its paragraph (b) completed in a manner consistent with 16.603-2(c). **If, at the time of entering into the letter contract, the contracting officer knows that the definitive contract will be based on adequate price competition or will otherwise meet the criteria of 15.804-1 for not requiring submission of cost or pricing data, the words "and cost or pricing data supporting its proposal" may be deleted from paragraph (a) of the clause.** If the letter contract is being awarded on the basis of price competition, the contracting officer shall use the clause with its Alternate I. [FAC 90-32, CASE 94-721]
* * * * *	* * * * *

52.216-2 Economic Price Adjustment—Standard Supplies.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
ECONOMIC PRICE ADJUSTMENT—STANDARD SUPPLIES ~~(APR 1984)~~	ECONOMIC PRICE ADJUSTMENT—STANDARD SUPPLIES **(OCT 1995)** [FAC 90-32, CASE 94-721]
(a) The Contractor warrants that the unit price stated in the Schedule for _____ [*offeror insert Schedule line tem number*] is not in excess of the Contractor's applicable established price in effect on the contract date for like quantities of the same item. The term "unit price" excludes any part of the price directly resulting from requirements for preservation, packaging, or packing beyond standard commercial practice. The term "established price" means a price	(a) The Contractor warrants that the unit price stated in the Schedule for _____ [*offeror insert Schedule line tem number*] is not in excess of the Contractor's applicable established price in effect on the contract date for like quantities of the same item. The term "unit price" excludes any part of the price directly resulting from requirements for preservation, packaging, or packing beyond standard commercial

that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, (2) meets the criteria of subsection ~~15.804-3~~ of the Federal Acquisition Regulation (FAR), and (3) is the net price after applying any standard trade discounts offered by the Contractor.	practice. The term "established price" means a price that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, (2) meets the criteria of subsection **15.804-1** of the Federal Acquisition Regulation (FAR), and (3) is the net price after applying any standard trade discounts offered by the Contractor. [FAC 90-32, CASE 94-721]
* * * * *	* * * * *
(End of clause)	(End of clause)
~~(AV 7-106.3 1978 AUG)~~	[FAC 90-32, CASE 94-721]

52.216-3 Economic Price Adjustment—Semistandard Supplies.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
ECONOMIC PRICE ADJUSTMENT—SEMISTANDARD SUPPLIES (~~APR 1984~~)	ECONOMIC PRICE ADJUSTMENT—SEMISTANDARD SUPPLIES (**OCT 1995**) [FAC 90-32, CASE 94-721]
(a) The Contractor warrants that the supplies identified as line items _____ [*offeror insert Schedule line item number*] in the Schedule are, except for modifications required by the contract specifications, supplies for which it has an established price. The term "established price" means a price that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, (2) meets the criteria of subsection ~~15.804-3~~ of the Federal Acquisition Regulation (FAR), and (3) is the net price applying any standard trade discounts offered by the Contractor. The Contractor further warrants that, as of the date of this contract, any difference between the unit prices stated in the contract for these line items and the Contractor's established prices for like quantities of the nearest commercial equivalents are due to compliance with contract specifications and with any contract requirements for preservation, packaging, and packing beyond standard commercial practice.	(a) The Contractor warrants that the supplies identified as line items _____ [*offeror insert Schedule line item number*] in the Schedule are, except for modifications required by the contract specifications, supplies for which it has an established price. The term "established price" means a price that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, (2) meets the criteria of subsection **15.804-1** of the Federal Acquisition Regulation (FAR), and (3) is the net price applying any standard trade discounts offered by the Contractor. The Contractor further warrants that, as of the date of this contract, any difference between the unit prices stated in the contract for these line items and the Contractor's established prices for like quantities of the nearest commercial equivalents are due to compliance with contract specifications and with any contract requirements for preservation, packaging, and packing beyond standard commercial practice. [FAC 90-32, CASE 94-721]
* * * * *	* * * * *
(End of clause)	(End of clause)
~~(AV 7-106.4 1978 AUG)~~	[FAC 90-32, CASE 94-721]

52.216-5 Price Redetermination—Prospective.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 16.205-4, when contracting by negotiation, insert the following clause in solicitations and contracts when a fixed-price contract is contemplated and the conditions specified in 16.205-2 and 16.205-3(a) through (d) apply: PRICE REDETERMINATION—PROSPECTIVE (~~APR 1984~~)	As prescribed in 16.205-4, when contracting by negotiation, insert the following clause in solicitations and contracts when a fixed-price contract is contemplated and the conditions specified in 16.205-2 and 16.205-3(a) through (d) apply: PRICE REDETERMINATION—PROSPECTIVE (**OCT 1995**) [FAC 90-32, CASE 94-721]
* * * * *	* * * * *
(d) *Data submission.* (1) Not more than _____ nor less than _____ [see Note (2)] days before the end of each redetermination period, except the last, the Contractor shall submit—	(d) *Data submission.* (1) Not more than _____ nor less than _____ [see Note (2)] days before the end of each redetermination period, except the last, the Contractor shall submit—
(i) * * * * *	(i) * * * * *
(A) An estimate and breakdown of the costs of these supplies or services on Standard Form 1411, Contract Pricing Proposal Cover Sheet (or in any other form on which the parties may agree);	(A) An estimate and breakdown of the costs of these supplies or services on Standard Form 1411, Contract Pricing Proposal Cover Sheet **(Cost or Pricing Data Required),** or in any other form on which the parties may agree; [FAC 90-32, CASE 94-721]
* * * * *	* * * * *
(End of clause)	(End of clause)
~~(AV 7-109.2(b) 1980 FEB)~~	[FAC 90-32, CASE 94-721]
* * * * *	* * * * *

52.216-6 Price Redetermination—Retroactive. As prescribed in 16.206-4, insert the following clause:

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
PRICE REDETERMINATION—RETROACTIVE ~~(APR 1984)~~	PRICE REDETERMINATION—RETROACTIVE **(OCT 1995)** [FAC 90-32, CASE 94-721]
* * * * *	* * * * *
(c) *Data submission.* (1) Within . . . . . [*Contracting Officer insert number of days*] days after delivery of all supplies to be delivered and completion of all services to be performed under this contract, the Contractor shall submit—	(c) *Data submission.* (1) Within . . . . . [*Contracting Officer insert number of days*] days after delivery of all supplies to be delivered and completion of all services to be performed under this contract, the Contractor shall submit—
(i) Proposed prices;	(i) Proposed prices;
(ii) A statement on Standard Form 1411,	(ii) A statement on Standard Form 1411,

Contract Pricing Proposal Cover Sheet, or in any other form on which the parties agree, of all costs incurred in performing this contract; and * * * * *	Contract Pricing Proposal Cover Sheet **(Cost or Pricing Data Required),** or in any other form on which the parties may agree, of all costs incurred in performing the contract; and [FAC 90-32, CASE 94-721] * * * * *
(End of clause) ~~(AV 7-109.3(b) 1980 FEB)~~	(End of clause) [FAC 90-32, CASE 94-721]

52.216-18 Ordering. [FAC 90-33, CASE 94-711]

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 16.505(a), insert the following clause ~~in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated~~: ORDERING (~~APR 1984~~)	As prescribed in 16.506(a), insert the following clause: ORDERING (**OCT 1995**)
(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders by the individuals or activities designated in the Schedule. Such orders may be issued from . . . . . through . . . . . [*insert dates*].	(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders **or task orders** by the individuals or activities designated in the Schedule. Such orders may be issued from _____ through _____ [insert dates].
(b) All delivery orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order and this contract, the contract shall control.	(b) All delivery orders **or task orders** are subject to the terms and conditions of this contract. In the event of conflict between a delivery order **or task order** and this contract, the contract shall control.
(c) If mailed, a delivery order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally ~~or by written telecommunications~~ only if authorized in the Schedule. (End of clause) ~~(R 7-1101 1968 JUN)~~	(c) If mailed, a delivery order **or task order** is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, **by facsimile, or by electronic commerce methods** only if authorized in the Schedule. (End of clause)

52.216-19 Order Limitations. [FAC 90-33, CASE 94-711]

~~**52.216-19 Delivery-Order Limitations.**~~

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 16.505(b), insert a clause substantially the same as follows ~~in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated:~~ ~~DELIVERY-~~ORDER LIMITATIONS (~~APR 1984~~) * * * * * (End of clause) ~~(R 7-1102.1(a) 1965 AUG)~~ ~~(R 7-1102.2(a))~~ ~~(R 7-1102.3(a))~~	As prescribed in 16.506(b), insert a clause substantially the same as follows: [FAC 90-33, CASE 94-711] ORDER LIMITATIONS (**OCT 1995**) [FAC 90-33, CASE 94-711] * * * * * (End of clause)

52.216-20 Definite Quantity.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 16.505(c), insert the following clause ~~in solicitations and contracts when a definite-quantity contract is contemplated~~: DEFINITE QUANTITY (~~APR 1984~~) * * * * * (c) Except for any limitations on quantities in the ~~Delivery-~~Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations. * * * * * (End of clause) ~~(R 7-1102.1(b) 1965 AUG)~~	As prescribed in 16.506(c), insert the following clause: [FAC 90-33, CASE 94-711] DEFINITE QUANTITY (**OCT 1995**) [FAC 90-33, CASE 94-711] * * * * * (c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations. [FAC 90-33, CASE 94-711] * * * * * (End of clause)

52.216-21 Requirements.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 16.505(d), insert the following clause ~~in solicitations and contracts when a requirements contract is contemplated~~:	As prescribed in 16.506(d), insert the following clause: [FAC 90-33, CASE 94-711] REQUIREMENTS (**OCT 1995**) [FAC 90-32,

REQUIREMENTS (~~APR 1984~~)
* * * * *

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the ~~Delivery-~~Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.
* * * * *

Alternate III (~~APR 1984~~). If the requirements contract involves a partial small business ~~or labor surplus area~~ set-aside, substitute the following paragraph (c) for paragraph (c) of the basic clause: (c) The Government's requirements for each item or subitem of supplies or services described in the Schedule are being purchased through one non-set-aside contract and one set-aside contract. Therefore, the Government shall order from each Contractor approximately one-half of the total supplies or services specified in the Schedule that are required to be purchased by the specified Government activity or activities. The Government may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government shall allocate successive orders, in accordance with its delivery requirements, to maintain as close a ratio as is reasonably practicable between the total quantities ordered from the two Contractors.
~~(R 7-1102.2(b)(4) 1966 OCT)~~

Alternate IV (~~APR 1984~~). If the contract includes subsistence for both Government use and resale in the same Schedule and similar products may be acquired on a brand—name basis and the contract also involves a partial small business ~~or labor surplus area~~ set-aside, substitute the following paragraph (c) for paragraph (c) of the basic clause and add the following paragraph (g) to the basic clause:
* * * * *
~~(R 7-1102.2(b) 1966 OCT)~~

CASE 94-780 & FAC 90-33, CASE 94-711]
* * * * *

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.
[FAC 90-33, CASE 94-711]
* * * * *

Alternate III (**OCT 1995**). If the requirements contract involves a partial small business set-aside, substitute the following paragraph (c) for paragraph (c) of the basic clause: (c) The Government's requirements for each item or subitem of supplies or services described in the Schedule are being purchased through one non-set-aside contract and one set-aside contract. Therefore, the Government shall order from each Contractor approximately one-half of the total supplies or services specified in the Schedule that are required to be purchased by the specified Government activity or activities. The Government may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government shall allocate successive orders, in accordance with its delivery requirements, to maintain as close a ratio as is reasonably practicable between the total quantities ordered from the two Contractors.
[FAC 90-32, CASE 94-780 & FAC 90-33, CASE 94-711]

Alternate IV (**OCT 1995**). If the contract includes subsistence for both Government use and resale in the same Schedule and similar products may be acquired on a brand—name basis and the contract also involves a partial small business set-aside, substitute the following paragraph (c) for paragraph (c) of the basic clause and add the following paragraph (g) to the basic clause:
* * * * *
[FAC 90-32, CASE 94-780 & FAC 90-33, CASE 94-711]

52.216-22 Indefinite Quantity.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 16.505(e), insert the following clause ~~in solicitations and contracts when an indefinite-quantity contract is contemplated~~: INDEFINITE QUANTITY (~~APR 1984~~)	As prescribed in 16.506(e), insert the following clause: [FAC 90-33, CASE 94-711] INDEFINITE QUANTITY (**OCT 1995**) [FAC 90-33, CASE 94-711]
* * * * *	* * * * *
(c) Except for any limitations on quantities in the ~~Delivery-~~Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.	(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations. [FAC 90-33, CASE 94-711]
* * * * *	* * * * *
(End of clause) ~~(R 7-1102.3(b) 1965 AUG)~~	(End of clause) [FAC 90-33, CASE 94-711]

52.216-25 Contract Definitization.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 16.603-4(b)(3), insert the following clause ~~in solicitations and contracts when a letter contract is contemplated. If, at the time of entering into the letter contract, the Contracting Officer knows that the definitive contract will be based on adequate price competition or will otherwise meet the criteria of 15.804-3 for not requiring submission of cost or pricing data, the words "and cost or pricing data" may be deleted from paragraph (a) of the clause.~~ CONTRACT DEFINITIZATION (APR 1984)	As prescribed in 16.603-4(b)(3), insert the following clause: [FAC 90-32, CASE 94-721] CONTRACT DEFINITIZATION (APR 1984)
* * * * *	* * * * *
(End of clause) ~~(R 7-802.5(a) 1969 DEC)~~	(End of clause) [FAC 90-32, CASE 94-721]
Alternate I (APR 1984). * * * * * ~~(R 7-802.5(b) 1969 DEC)~~	*Alternate I* (APR 1984). * * * * * [FAC 90-32, CASE 94-721]

52.216-27 Single or Multiple Awards. [FAC 90-33, CASE 94-711]

As prescribed in 16.506(f), insert the following provision:

SINGLE OR MULTIPLE AWARDS (OCT 1995)

The Government may elect to award a single delivery order contract or task order contract or to award multiple delivery order contracts or task order contracts for the same or similar supplies or services to two or more sources under this solicitation.

(End of provision)

52.216-28 Multiple Awards for Advisory and Assistance Services. [FAC 90-33, CASE 94-711]

As prescribed in 16.506(g), insert the following provision:

MULTIPLE AWARDS FOR ADVISORY AND ASSISTANCE SERVICES (OCT 1995)

The Government intends to award multiple contracts for the same or similar advisory and assistance services to two or more sources under this solicitation unless the Government determines, after evaluation of offers, that only one offeror is capable of providing the services at the level of quality required.

(End of provision)

PART 17

SPECIAL CONTRACTING METHODS

17.104 Related areas.

17.104-1 Set-asides.

FAR as of FAC 90-25	*FAR as revised*
(a) Total small business ~~or labor surplus area~~ set-asides and multiyear contracting are compatible and may be used together.	(a) Total small business set-asides and multiyear contracting are compatible and may be used together. [FAC 90-32, CASE 94-780]
(b) Partial set-asides for small business ~~or labor surplus area~~ concerns generally are not compatible with multiyear contracting when high startup costs are involved because of the potential duplication of costs by the set-aside and non-set-aside contractors. However—	(b) Partial set-asides for small business concerns generally are not compatible with multiyear contracting when high startup costs are involved because of the potential duplication of costs by the set-aside and non-set-aside contractors. However— [FAC 90-32, CASE 94-780]
* * * * *	* * * * *
(2) Partial set-asides are compatible with multiyear contracting when the multiyear procedure is based on cost savings from anticipated production over longer periods of time. ~~(Partial labor surplus area set-asides are only authorized for DOD activities at this time.)~~	(2) Partial set-asides are compatible with multiyear contracting when the multiyear procedure is based on cost savings from anticipated production over longer periods of time. [FAC 90-32, CASE 94-780]
* * * * *	* * * * *

17.202 Use of options. (FAC 90-31, 94-701)

(a) Subject to the limitations of paragraphs (b) and (c) below, the contracting officer may include options in contracts when it is in the Government's interest. (See 17.207(f) with regard to the exercise of options.)	(a) Subject to the limitations of paragraphs (b) and (c) of this section, **for both sealed bidding and contracting by negotiation**, the contracting officer may include options in contracts when it is in the Government's interest. **When using sealed bidding, the contracting officer shall make a written determination that there is a reasonable likelihood that the options will be exercised before including the provision at 52.217-5, Evaluation of Options, in the solicitation**. (See 17.207(f) with regard to the exercise of options.)

(b) Inclusion of an option is normally not in the Government's interest when, in the judgment of the contracting officer—

(1) The foreseeable requirements involve—

(i) Minimum economic quantities (i.e., quantities large enough to permit the recovery of startup costs and the production of the required supplies at a reasonable price); and

(ii) Delivery requirements far enough into the future to permit competitive acquisition, production, and delivery~~; or~~

(2) An indefinite quantity or requirements contract would be more appropriate than a contract with options. However, this does not preclude the use of an indefinite quantity contract or requirements contract with options.

(b) Inclusion of an option is normally not in the Government's interest when, in the judgment of the contracting officer—

(1) The foreseeable requirements involve—

(i) Minimum economic quantities (i.e., quantities large enough to permit the recovery of startup costs and the production of the required supplies at a reasonable price); and

(ii) Delivery requirements far enough into the future to permit competitive acquisition, production, and delivery.

(2) An indefinite quantity or requirements contract would be more appropriate than a contract with options. However, this does not preclude the use of an indefinite quantity contract or requirements contract with options.

17.208 Solicitation provisions and contract clauses. (FAC 90-31, 94-701)

(a) The contracting officer shall insert a provision substantially the same as the provision at 52.217-3, Evaluation Exclusive of Options, in solicitations when the solicitation includes an option clause and does not include one of the provisions prescribed in paragraph (b) or (c) below.

(b) The contracting officer shall insert a provision substantially the same as the provision at 52.217-4, Evaluation of Options Exercised at Time of Contract Award, in solicitations when the solicitation includes an option clause, a determination has been made that there is a reasonable likelihood that the option will be exercised, and the option may be exercised at the time of contract award.

(c) The contracting officer shall insert a provision substantially the same as the provision at 52.217-5, Evaluation of Options, in solicitations when—

(1) The solicitation contains an option clause;

(2) An option is not to be exercised at the time of contract award;

(3) A firm-fixed-price contract, a fixed-price contract with economic price adjustment, or other type of contract approved under agency procedures is contemplated; and

(4) A determination has been made that there is a reasonable likelihood that the option will be exercised.

(a) The contracting officer shall insert a provision substantially the same as the provision at 52.217-3, Evaluation Exclusive of Options, in solicitations when the solicitation includes an option clause and does not include one of the provisions prescribed in paragraph (b) or (c) below.

(b) The contracting officer shall insert a provision substantially the same as the provision at 52.217-4, Evaluation of Options Exercised at Time of Contract Award, in solicitations when the solicitation includes an option clause, **the contracting officer has determined that there is a reasonable likelihood that the option will be exercised**, and the option may be exercised at the time of contract award

(c) The contracting officer shall insert a provision substantially the same as the provision at 52.217-5, Evaluation of Options, in solicitations when—

(1) The solicitation contains an option clause;

(2) An option is not to be exercised at the time of contract award;

(3) A firm-fixed-price contract, a fixed-price contract with economic price adjustment, or other type of contract approved under agency procedures is contemplated; and

(4) **The contracting officer has determined that there is a reasonable likelihood that the option will be exercised. For sealed bids, the determination shall be in writing.**

SUBPART 17.5—INTERAGENCY ACQUISITIONS UNDER THE ECONOMY ACT
[FAC 90-33, CASE 94-710]

Sec.

17.500 Scope of subpart.
17.501 Definition.
17.502 General.
17.503 Determinations and findings requirements.
17.504 Ordering procedures.
17.505 Payment.

17.500 Scope of subpart. [FAC 90-33, CASE 94-710]

FAR as of FAC 90-25	*FAR as revised*
This subpart prescribes policies and procedures applicable to interagency acquisitions under the Economy Act (31 U.S.C. 1535). ~~Policies and procedures for~~ acquisitions from required sources of supplies ~~are~~ prescribed in Part 8.	**(a)** This subpart prescribes policies and procedures applicable to interagency acquisitions under the Economy Act (31 U.S.C. 1535). **The Economy Act also provides authority for placement of orders between major organizational units within an agency; procedures for such intra-agency transactions are addressed in agency regulations.** **(b) The Economy Act applies when more specific statutory authority does not exist. Examples of interagency acquisitions to which the Economy Act does not apply include** acquisitions from required sources of supplies prescribed in Part 8**, which have separate statutory authority.**

17.502 General. [FAC 90-33, CASE 94-710]

FAR as of FAC 90-25	*FAR as revised*
~~Under the Economy Act, an agency may place orders with any other agency for supplies or services that the servicing agency may be in a position or equipped to supply, render, or obtain by contract if it is determined by the head of the requesting agency, or designee, that it is~~ in the Government's interest ~~to do so.~~	**(a) The Economy Act authorizes agencies to enter into mutual agreements to obtain supplies or services by interagency acquisition.** **(b) The Economy Act may not be used by an agency to circumvent conditions and limitations imposed on the use of funds.** **(c) Acquisitions under the Economy Act are not exempt from the** requirements of

	Subpart 7.3, Contractor Versus Government Performance**.**
[from 17.503(a)(2): ~~The action does not conflict~~ with any other agency's authority or responsibility~~; e.g.,~~ that of the Administrator of General Services under the Federal Property and Administrative Services Act ~~(see 40 U.S.C. 481, 486, and 41 CFR 101-25.2).~~]	**(d) The Economy Act may not be used to make acquisitions conflicting** with any other agency's authority or responsibility **(for example,** that of the Administrator of General Services under the Federal Property and Administrative Services Act).

17.503 Determinations and findings requirements. [FAC 90-33, CASE 94-710]

~~**17.503 Determination requirements.**~~

FAR as of FAC 90-25	*FAR as revised*
~~(a) The determination prescribed in 17.502 shall include a finding that—~~ ~~(1) Legal authority for the acquisition otherwise exists; and~~ (2) [see 17.502] ~~(b) If the acquisition involves the use of a commercial or industrial activity operated by the servicing agency, the determination shall also include a finding that the acquisition conforms to the~~ requirements of Subpart 7.3, Contractor Versus Government Performance.	**(a) Each Economy Act order shall be supported by a Determination and Finding (D&F). The D&F shall state that—** **(1) Use of an interagency acquisition is** in the best interest of the Government**, and** **(2) The supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source.** **(b) If the Economy Act order requires contracting action by the servicing agency, the D&F shall also include a statement that at least one of the following circumstances is applicable—** **(1) The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services;** **(2) The servicing agency has capabilities or expertise to enter into a contract for such supplies or services which is not available within the requesting agency; or** **(3) The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.** **(c) The D&F shall be approved by a contracting officer of the requesting agency with authority to contract for the supplies or services to be ordered, or by another official designated by the agency**

head, except that, if the servicing agency is not covered by the Federal Acquisition Regulation, approval of the D&F may not be delegated below the senior procurement executive of the requesting agency.

17.504 Ordering procedures. [FAC 90-33, CASE 94-710]

FAR as of FAC 90-25	*FAR as revised*
(a) ~~When~~ placing an order for supplies or services ~~from~~ another Government agency, ~~the contracting officer shall first obtain the determination required in 17.502.~~	(a) **Before** placing an **Economy Act** order for supplies or services **with** another Government agency, **the requesting agency shall make the D&F required in 17.503. The servicing agency may require a copy of the D&F to be furnished with the order.**
* * * * *	* * * * *
(d) When an interagency acquisition requires the servicing agency to award a contract, the following procedures apply:	(d) When an interagency acquisition requires the servicing agency to award a contract, the following procedures also apply:
(1) If a justification and approval or a ~~determination and findings~~ (D&F) is required by law or regulation, the servicing agency shall execute and issue the justification and approval or D&F. The requesting agency shall furnish the servicing agency any information needed to make the justification and approval and ~~the~~ D&F.	(1) If a justification and approval or a D&F **(other than the requesting agency's D&F required in 17.503)** is required by law or regulation, the servicing agency shall execute and issue the justification and approval or D&F. The requesting agency shall furnish the servicing agency any information needed to make the justification and approval or D&F.
(2) The requesting agency shall also be responsible for furnishing other assistance that may be necessary, such as providing special contract terms ~~or other requirements that must~~ comply with any condition or limitation applicable to the funds of the requesting agency.	(2) The requesting agency shall also be responsible for furnishing other assistance that may be necessary, such as providing **information or** special contract terms **needed to** comply with any condition or limitation applicable to the funds of the requesting agency.
(3) The servicing agency is responsible for compliance with all other legal or regulatory requirements applicable to the contract, including (i) having adequate statutory authority for the contractual action and (ii) complying fully with the competition requirements of Part 6 (see 6.002).	(3) The servicing agency is responsible for compliance with all other legal or regulatory requirements applicable to the contract, including (i) having adequate statutory authority for the contractual action, and (ii) complying fully with the competition requirements of Part 6 (see 6.002). **However, if the servicing agency is not subject to the Federal Acquisition Regulation, the requesting agency shall verify that contracts utilized to meet its requirements contain provisions protecting the Government from**
* * * * *	

	inappropriate charges (for example, provisions mandated for FAR agencies by Part 31), and that adequate contract administration will be provided.
	* * * * *

17.505 Payment. [FAC 90-33, CASE 94-710]

FAR as of FAC 90-25	*FAR as revised*
(a) ~~Under the Economy Act—~~	(a) The servicing agency may **ask** the requesting agency, in writing, for advance payment for all or part of the estimated cost of furnishing the supplies or services. **Adjustment on the basis of actual costs shall be made as agreed to by the agencies.**
~~(1)~~ The servicing agency may ~~request~~ the requesting agency, in writing, for advance payment ~~by check~~ for all or part of the estimated cost of furnishing the supplies or services~~; or~~	
~~(2)~~ If approved by the servicing agency, payment ~~by check~~ for actual costs may be made by the requesting agency after the supplies or services have been furnished.	**(b)** If approved by the servicing agency, payment for actual costs may be made by the requesting agency after the supplies or services have been furnished.
~~(b) If advance payment is made, adjustments on the basis of actual costs shall be made as agreed by the agencies.~~	
(c) Bills rendered or requests for advance payment shall not be subject to audit or certification in advance of payment.	(c) Bills rendered or requests for advance payment shall not be subject to audit or certification in advance of payment.
	(d) If the Economy Act order requires use of a contract by the servicing agency, then in no event shall the servicing agency require, or the requiring agency pay, any fee or charge in excess of the actual cost (or estimated cost if the actual cost is not known) of entering into and administering the contract or other agreement under which the order is filled.

PART 19

SMALL BUSINESS PROGRAMS*

19.001 Definitions.

* * * * *

"Labor surplus area" means a geographical area identified by the Department of Labor in accordance with 20 CFR Part 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

"Labor surplus area concern" means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

* * * * *

"Women-owned small business concern" means a small business concern—

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

(b) Whose management and daily business operations are controlled by one or more women. [FAC 90-32]

19.102 Size standards.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(f) Any concern which submits a bid or 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 deemed to be a small business when it has no more than 500 employees, and—	(f) Any concern which submits a bid or 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 deemed to be a small business when it has no more than 500 employees, and—
* * * * *	* * * * *
~~(3) If the acquisition is subject to and is actually procured under "small purchase procedures", such nonmanufacturer may furnish any domestically produced or manufactured product.~~	**(3)** For the purpose of receiving a Certificate of Competency on an unrestricted acquisition, a small business nonmanufacturer may furnish any domestically produced or manufactured product.
~~(4)~~ For the purpose of receiving a Certificate of Competency on an unrestricted acquisition, a small business nonmanufacturer may furnish any domestically produced or manufactured product.	**(4)** In the case of acquisitions set aside for small business or awarded under section 8(a) of the Small Business Act, when the acquisition is for a specific product (or a product in a class of products) for which the SBA has determined that there are no small business manufacturers or processors in the Federal market, then—* * * * *
~~(5)~~ In the case of acquisitions set aside for small business or awarded under section 8(a) of the Small Business Act, when the acquisition is for a specific	

* NOTE: Heading changed from "Small Business and Small Disadvantaged Business Concerns"

product (or a product in a class of products) for which the SBA has determined that there are no small business manufacturers or processors in the Federal market, then—

* * * * *

~~(6)~~ For a specific solicitation, a contracting officer may request a waiver of that part of the nonmanufacturer rule which requires that the actual manufacturer or processor be a small business concern if no known domestic small business manufacturers or processors can reasonably be expected to offer a product meeting the requirements of the solicitation.

~~(7)~~ Requests for waivers shall be sent to the Chairman of the Associate Administrator for Procurement Assistance, United States Small Business Administration, Mail Code 6250, 409 Third Street, SW, Washington, DC 20416.

(5) For a specific solicitation, a contracting officer may request a waiver of that part of the nonmanufacturer rule which requires that the actual manufacturer or processor be a small business concern if no known domestic small business manufacturers or processors can reasonably be expected to offer a product meeting the requirements of the solicitation.

(6) Requests for waivers shall be sent to the Chairman of the Associate Administrator for Procurement Assistance, United States Small Business Administration, Mail Code 6250, 409 Third Street, SW, Washington, DC 20416. [FAC 90-29]

19.201 General policy.

FAR as of FAC 90-25	*FAR as revised*
(a) It is the policy of the Government to ~~place a fair proportion of its acquisitions, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems, with small business concerns and small disadvantaged business concerns.~~ Such concerns shall also have the maximum practicable opportunity to participate as subcontractors in the contracts awarded by any executive agency, consistent with efficient contract performance. The Small Business Administration (SBA) counsels and assists small business concerns and assists contracting personnel to ensure that a fair proportion of contracts for supplies and services is placed with small business.	(a) It is the policy of the Government to **provide maximum practicable opportunities in its acquisitions to small business concerns, small disadvantaged business concerns, and women-owned small business concerns.** Such concerns shall also have the maximum practicable opportunity to participate as subcontractors in the contracts awarded by any executive agency, consistent with efficient contract performance. The Small Business Administration (SBA) counsels and assists small business concerns and assists contracting personnel to ensure that a fair proportion of contracts for supplies and services is placed with small business. [FAC 90-32]
(b) Heads of contracting activities are responsible for effectively implementing the ~~Small Business and Small Disadvantaged Business Utilization Programs~~ within their activities, including achieving program	(b) Heads of contracting activities are responsible for effectively implementing the **small business programs** within their activities, including achieving program goals. They are to ensure that

goals. They are to ensure that contracting and technical personnel maintain knowledge of small ~~and~~ small disadvantaged business program requirements and take all reasonable action to increase ~~small business~~ participation in their activities' contracting processes.	contracting and technical personnel maintain knowledge of small**,** small disadvantaged**, and women-owned small** business program requirements and take all reasonable action to increase participation in their activities' contracting processes **by these businesses**. [FAC 90-32]
(c) * * * * *	(c) * * * * *
(9) Make recommendations in accord with agency regulations as to whether a particular acquisition should be awarded under Subpart 19.5 as a set-aside ~~(including those involving Labor Surplus Areas)~~, under Subpart 19.8 as a section 8(a) award~~, or under a procedure authorized by section 1207 of Pub. L. 99-661, if applicable~~.	(9) Make recommendations in accord with agency regulations as to whether a particular acquisition should be awarded under Subpart 19.5 as a set-aside, **or** under Subpart 19.8 as a Section 8(a) award. [FAC 90-32]
(d) Small ~~and Disadvantaged~~ Business ~~Utilization~~ Specialists shall be appointed and act in accord with agency regulations.	(d) **Small Business Specialists** shall be appointed and act in accord**ance** with agency regulations. [FAC 90-32]

19.202 Specific policies.

FAR as of FAC 90-25	*FAR as revised*
In order to further the policy in 19.201(a), contracting officers shall comply with the specific policies listed ~~below~~ and shall consider recommendations of the agency Director of Small and Disadvantaged Business Utilization, or the Director's designee, as to whether a particular acquisition should be awarded under Subparts 19.5, 19.8~~, or under a procedure authorized by sec. 1207 of Pub. L. 99-661~~. The contracting officer shall document the contract file whenever the Director's recommendations are not accepted.	In order to further the policy in 19.201(a), contracting officers shall comply with the specific policies listed **in this section** and shall consider recommendations of the agency Director of Small and Disadvantaged Business Utilization, or the Director's designee, as to whether a particular acquisition should be awarded under Subpart 19.5 **or** 19.8. The contracting officer shall document the contract file whenever the Director's recommendations are not accepted. [FAC 90-32]

19.202-3 Equal low bids.

FAR as of FAC 90-25	*FAR as revised*
In the event of equal low bids, awards shall be made first to small business concerns which are also labor surplus area concerns, and second to small business concerns which are not also labor surplus area concerns.	In the event of equal low bids **(see 14.408-6)**, awards shall be made first to small business concerns which are also labor surplus area concerns, and second to small business concerns which are not also labor surplus area concerns. [FAC 90-32]

19.202-5 Data collection and reporting requirements.

FAR as of FAC 90-25	*FAR as revised*
Agencies shall measure the extent of small business participation in their acquisition programs by taking the following actions:	Agencies shall measure the extent of small business participation in their acquisition programs by taking the following actions:
(a) Require each prospective contractor to represent whether it is a small business, small disadvantaged business ~~concern,~~ or women-owned small business (see the provision~~s~~ at 52.219-1~~,~~ Small Business ~~Concern~~ Representation~~, 52.219-2, Small Disadvantaged Business Concern Representation, and 52.219-3, Women-Owned Small Business Representation~~).	(a) Require each prospective contractor to represent whether it is a small business, small disadvantaged business, or women-owned small business (see the provision at 52.219-1, Small Business **Program** Representation**s**).
(b) Accurately measure the extent of participation by small ~~business concerns~~, small disadvantaged ~~business concerns~~, and women-owned small businesses in Government acquisitions in terms of the total value of contracts placed ~~with small business concerns~~ during each fiscal year, and report data to the SBA at the end of each fiscal year (see Sbpt 4.6).	(b) Accurately measure the extent of participation by small, small disadvantaged, and women-owned small businesses in Government acquisitions in terms of the total value of contracts placed during each fiscal year, and report data to the SBA at the end of each fiscal year (see Subpart 4.6). [FAC 90-32]

19.301 Representation by the offeror.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(d) If the SBA determines that the status of a concern as a “small business” ~~or~~ a “small disadvantaged business” has been misrepresented in order to obtain a set-aside contract, an 8(a) subcontract, a subcontract that is to be included as part or all of a goal contained in a subcontracting plan, or a prime or subcontract to be awarded as a result, or in furtherance of any other provision of Federal law that specifically references section 8(d) of the Small Business Act for a definition of program eligibility, the SBA may take action as specified in section 16(d) of the Act. If the SBA declines to take action, the agency may initiate the process. The SBA's regulations on penalties for misrepresentations and false statements are contained in 13 CFR 124.6.	(d) If the SBA determines that the status of a concern as a "small business", a "small disadvantaged business" **or a "women-owned small business"** has been misrepresented in order to obtain a set-aside contract, an 8(a) subcontract, a subcontract that is to be included as part or all of a goal contained in a subcontracting plan, or a prime or subcontract to be awarded as a result, or in furtherance of any other provision of Federal law that specifically references Section 8(d) of the Small Busi-ness Act for a definition of program eligibility, the SBA may take action as specified in section 16(d) of the Act. If the SBA declines to take action, the agency may initiate the process. The SBA's regulations on penalties for misrepresentations and false statements are contained in 13 CFR 124.6. [FAC 90-32]

19.303 Determining product or service classifications.

FAR as of FAC 90-25	*FAR as revised*
(a) The contracting officer shall determine the	(a) The contracting officer shall determine the

appropriate standard industrial classification code and related small business size standard and include them in solicitations~~, except when small purchase procedures are used.~~	appropriate standard industrial classification code and related small business size standard and include them in solicitations **above the micro-purchase threshold in 13.101.** [FAC 90-29]

19.304 Solicitation provisions and contract clause.

FAR as of FAC 90-25	*FAR as revised*
(a) The contracting officer shall insert the provision at 52.219-1, Small Business ~~Concern~~ Representation, in solicitations when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. ~~(b) The contracting officer shall insert the provision at 52.219-2, Small Disadvantaged Business Concern Representation, in solicitations (other than those for small purchases), when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.~~ ~~(c) The contracting officer shall insert the provision at 52.219-3, Women-Owned Small Business Representation, in solicitations (other than those for small purchases), when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.~~ ~~(d) The contracting officer shall insert the provision at 52.219-22, SIC Code and Small Business Size Standard, in solicitations (other than those for small purchases), when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.~~	(a) The contracting officer shall insert the provision at 52.219-1, Small Business **Program** Representation**s**, in solicitations **exceeding the micro-purchase threshold** when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. **(b) When contracting by sealed bidding, the contracting officer shall insert the provision at 52.219-2, Equal Low Bids, in solicitations and contracts when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.** [F AC 9 0-32]

19.401 General.

FAR as of FAC 90-25	*FAR as revised*
(a) The Small Business Act is the authority under which the Small Business Administration (SBA) and agencies consult and cooperate with each other in formulating policies to ensure that small business ~~and small disadvantaged business~~ interests will be recognized and protected. * * * * *	(a) The Small Business Act is the authority under which the Small Business Administration (SBA) and agencies consult and cooperate with each other in formulating policies to ensure that small business interests will be recognized and protected. [FAC 90-32] * * * * *

19.402 Small Business Administration procurement center representatives.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(c) The duties assigned by SBA to its procurement center representatives include the following:	(c) The duties assigned by SBA to its procurement center representatives include the following:
(1) Reviewing proposed acquisitions to recommend (i) the setting aside of selected acquisitions not unilaterally set aside by the contracting officer, (ii) new qualified small ~~and~~ small disadvantaged business sources, and (iii) breakout of components for competitive acquisitions.	(1) Reviewing proposed acquisitions to recommend (i) the setting aside of selected acquisitions not unilaterally set aside by the contracting officer, (ii) new qualified small, small disadvantaged **and women-owned small** business sources, and (iii) breakout of components for competitive acquisitions. [FAC 90-32]
* * * * *	* * * * *

19.501 General.

FAR as of FAC 90-25	*FAR as revised*
(a) The purpose of small business set-asides is to award certain acquisitions exclusively to small business concerns. A "set-aside for small business" is the reserving of an acquisition exclusively for participation by small business concerns. A set-aside may be open to all small businesses ~~or, except for the Department of Defense, restricted to small businesses located in labor surplus areas~~. A set-aside of a single acquisition or a class of acquisitions may be total or partial.	(a) The purpose of small business set-asides is to award certain acquisitions exclusively to small business concerns. A "set-aside for small business" is the reserving of an acquisition exclusively for participation by small business concerns. A set-aside may be open to all small businesses. A set-aside of a single acquisition or a class of acquisitions may be total or partial. [FAC 90-32
* * * * *	* * * * *
(c) The contracting officer shall review acquisitions to determine if they can be set aside for small business, giving consideration to the recommendations of agency personnel having cognizance of the agency's small and disadvantaged business utilization program and documenting why a set-aside is inappropriate when the acquisition is not set aside. If the acquisition is set aside based on this review, it is a unilateral set-aside by the contracting officer. Agencies may establish threshold levels for this review depending upon their needs. ~~In automated contracting systems, all proposed acquisitions which are not small business-small purchase set-asides will be considered for small business set-asides in accordance with 19.502-2(a). If necessary, the screening for set-asides will be accomplished before entering such requirements into the system.~~	(c) The contracting officer shall review acquisitions to determine if they can be set aside for small business, giving consideration to the recommendations of agency personnel having cognizance of the agency's small and disadvantaged business utilization program and documenting why a set-aside is inappropriate when the acquisition is not set aside. If the acquisition is set aside based on this review, it is a unilateral set-aside by the contracting officer. Agencies may establish threshold levels for this review depending upon their needs. [FAC 90-29]

(d) At the request of an SBA procurement center representative, the contracting officer shall make available for review at the contracting office (to the extent of the SBA representative's security clearance) all proposed acquisitions in excess of the ~~small purchase limitation in 13.000~~ that have not been unilaterally set aside for small business.

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

~~(f)(1) Consistent with the requirements of Pub. L. 95-507, a special category of set-asides, identified as small business-small purchase set-asides, has been established for acquisitions of supplies or services that have an antici- pated dollar value of $25,000 or less and are subject to small purchase procedures (see 13.105 and 19.508).~~

~~(2) A small nonmanufacturer responding to a small business-small purchase set-aside may furnish any domestically produced or manufactured product.~~

~~(g) Once a product or service has been acquired successfully by a contracting office on the basis of a small business set-aside, all future requirements of that office for that particular product or service not subject to simplified small purchase procedures shall, if required by agency regula-tions, be acquired on the basis of a repetitive set-aside. This procedure will be followed unless the contracting officer determines that there is not a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns and (2) awards will be made at fair market prices. Withdrawal of a repetitive set-aside will be in accordance with 19.506.~~

(d) At the request of an SBA procurement center representative, the contracting officer shall make available for review at the contracting office (to the extent of the SBA representative's security clearance) all proposed acquisitions in excess of the **micro-purchase threshold in 13.101** that have not been unilaterally set aside for small business.

(e) To the extent practicable, unilateral determinations initiated by a contracting officer shall be used as the basis for small business set-asides rather than joint determinations by an SBA procurement center representative and a contracting officer. [FAC 90-29]

* * * *

19.502-1 Requirements for setting aside acquisitions.

FAR as of FAC 90-25	*FAR as revised*
Using the order of precedence in 19.504, the contracting officer shall set aside an individual acquisition or class of acquisitions when it is determined to be in the interest of (a) maintaining or mobilizing the Nation's full productive capacity, (b) war or national defense programs, or (c) assuring that a fair proportion of Government contracts in each industry category is placed with small business concerns, and when the circumstances described in 19.502-2 or 19.502-3(a) exist.	Using the order of precedence in 19.504, the contracting officer shall set aside an individual acquisition or class of acquisitions when it is determined to be in the interest of (a) maintaining or mobilizing the Nation's full productive capacity, (b) war or national defense programs, or (c) assuring that a fair proportion of Government contracts in each industry category is placed with small business concerns, and when the circumstances described in 19.502-2 or 19.502-3(a) exist. **This requirement**

does not apply to purchases of $2,500 or less, purchases from required sources of supply under Part 8 (e.g., Federal Prison Industries, Committee for Purchase from People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts), or orders under Federal Information Processing (FIP) Multiple Award Schedule contracts. [FAC 90-29]

19.502-2 Total set-asides.

FAR as of FAC 90-25	*FAR as revised*
~~(a) The entire amount of an individual acquisition or class of acquisitions, including contracts for architect-engineer services, research, development, test and evaluation, maintenance repair, and construction except small business-small purchase set-asides, shall be set aside for exclusive small business participation if the contracting officer determines that there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns (but see paragraph (b) of this subsection); and (2) awards will be made at fair market prices. Total set-asides shall not be made unless such a reasonable expectation exists (but see 19.502-3 as to partial set-asides). Although past acquisition history of the item or similar items is always important, it is not the only factor to be considered in determining whether a reasonable expectation exists. In making R&D small business set-asides, there must also be a reasonable expectation of obtaining from small business the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances, and schedules.~~ ~~(b) In industries where the SBA finds that there are no small business manufacturers, it may waive the nonmanufacturers rule for regular dealers (see 19.102(f)(5)). This would permit small business regular dealers to provide any domestically produced product. In these cases, the contracting officer's determination in subparagraph (a)(1) of this subsection will be based on offers from at least two responsible small business regular dealers offering the products of different domestic concerns.~~	**(a) Each acquisition of supplies or services that has an anticipated dollar value exceeding $2,500, but not over $100,000, is automatically reserved exclusively for small business concerns, unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and with regard to the quality and delivery of the goods or services being purchased. This requirement does not preclude the award of a contract with a value not greater than $100,000 under 19.8, Contracting with the Small Business Administration, or under 19.1006(c), Emerging small business set-aside.** **(b) The contracting officer shall set aside any acquisition over $100,000 for small business participation when there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns (but see paragraph (c) of this subsection); and (2) awards will be made at fair market prices. Total small business set-asides shall not be made unless such a reasonable expectation exists (but see 19.502-3 as to partial set-asides). Although past acquisition history of the item or similar items is always important, it is not the only factor to be considered in determining whether a reasonable expectation exists. In making R&D small business set-asides, there must also be a reasonable expectation of obtaining from small businesses the best scientific and technological sources**

consistent with the demands of the proposed acquisition for the best mix of cost, performances, and schedules.

(c) For set-asides other than for construction or services, any concern proposing to furnish the product which it did not itself manufacture must furnish the product of a small business manufacturer unless the Small Business Administration has granted a waiver (see 19.102(f)). In industries where the SBA finds that there are no small business manufacturers, it may waive the nonmanufacturers rule for regular dealers (see 19.102(f)(4)). This would permit small business regular dealers to provide any firm's product. In these cases, the contracting officer's determination in paragraph (b)(1) of this subsection or the decision not to set-aside a procurement reserved for small business under paragraph (a) of this subsection will be based on the expectation of receiving offers from at least two responsible small business regular dealers offering the products of different concerns.

(d) The requirements of this subsection do not apply to acquisitions over $25,000 during the period when set-asides cannot be considered for the four designated industry groups (see 19.1006(b)). [FAC 90-29

19.502-3 Partial set-asides.

FAR as of FAC 90-25	*FAR as revised*
(a) The contracting officer shall set aside a portion of an acquisition, except for construction, for exclusive small business participation when— * * * * (4) The acquisition is not subject to ~~small purchase~~ procedures; and	(a) The contracting officer shall set aside a portion of an acquisition, except for construction, for exclusive small business participation when— * * * * (4) The acquisition is not subject to **simplified acquisition** procedures; and [FAC 90-29]

19.502-4 Methods of conducting set-asides.

FAR as of FAC 90-25	*FAR as revised*
(a) Total~~ and partial small business~~ set-asides may be conducted by using sealed bids (see Part 14) or competitive proposals (see Part 15). (See Part 6 for competition requirements.) * * * *	(a) Total set-asides may be conducted by using **simplified acquisition procedures (see Part 13),** sealed bids (see Part 14), or competitive proposals (see Part 15). **Partial small business set-asides may be conducted by using sealed bids (see Part 14), or competitive proposals (see Part 15).** (See Part 6 for competition requirements.) * * * * [FAC 90-29]

19.503 Setting aside a class of acquisitions.

FAR as of FAC 90-25	*FAR as revised*
* * * * (b) The determination to set aside a class of acquisitions may be either unilateral or joint. (c) Each class set-aside determination shall be in writing and must— (1) Specifically identify the product(s) and service(s) it covers; (2) Provide that the set-aside does not apply to any acquisition ~~accomplished using small purchase procedures;~~ * * * *	* * * * (b) The determination to set aside a class of acquisitions may be either unilateral or joint. (c) Each class set-aside determination shall be in writing and must— (1) Specifically identify the product(s) and service(s) it covers; (2) Provide that the set-aside does not apply to any acquisition **automatically reserved for small business concerns under 19.502-2(a);** [FAC 90-29] * * * *

19.504 [Reserved] [FAC 90-32]

~~**19.504 Set-aside program order of precedence.**~~
~~(a) In carrying out small business set-aside programs, contracting officers of agencies other than the Department of Defense (DOD) shall award contracts and encourage placement of subcontracts in the following order of precedence (see 15 U.S.C. 644(e) and (f) and Pub. L. 96-302):~~
~~(1) A total set-aside for small business concerns located in labor surplus areas.~~
~~(2) A total set-aside for small business concerns.~~
~~(3) A partial set-aside for small business concerns located in labor surplus areas.~~
~~(4) A partial set-aside for small business concerns.~~
~~(5) Total labor surplus area set-aside for concerns that are not small businesses.~~
~~(b) Set-aside priorities of DOD are different from the above and are set forth in the DOD FAR Supplement.~~

19.505 Rejecting Small Business Administration recommendations.

FAR as of FAC 90-25	*FAR as revised*
(a) If the contracting officer rejects a recommendation of the SBA procurement center representative or breakout procurement center representative, written notice shall be furnished to the appropriate SBA center representative within 5 ~~business~~ days of the contracting officer's receipt of the recommendation.	(a) If the contracting officer rejects a recommendation of the SBA procurement center representative or breakout procurement center representative, written notice shall be furnished to the appropriate SBA center representative within 5 **working** days of the contracting officer's receipt of the recommendation.
(b) The SBA procurement center representative may appeal the contracting officer's rejection to the head of the contracting activity (or designee) within 2 ~~business~~ days after receiving the notice. The head of the contracting activity (or designee) shall render a decision in writing, and provide it to the SBA representative within 7 ~~business~~ days. Pending ~~issuing the~~ decision to the SBA procurement center representative, the contracting officer shall suspend action on the acquisition.	(b) The SBA procurement center representative may appeal the contracting officer's rejection to the head of the contracting activity (or designee) within 2 **working** days after receiving the notice. The head of the contracting activity (or designee) shall render a decision in writing, and provide it to the SBA representative within 7 **working** days. Pending **issuance of a** decision to the SBA procurement center representative, the contracting officer shall suspend action on the acquisition.
(c) If the head of the contracting activity agrees that the contracting officer's rejection was appropriate, the SBA procurement center representative may—	(c) If the head of the contracting activity agrees that the contracting officer's rejection was appropriate, the SBA procurement center representative may—
(1) Within 1 ~~business~~ day, request the contracting officer to suspend action on the acquisition until the SBA Administrator appeals to the agency head (see paragraph (f) below); and	(1) Within 1 **working** day, request the contracting officer to suspend action on the acquisition until the SBA Administrator appeals to the agency head (see paragraph (f) of this section); and
(2) The SBA shall be allowed 15 ~~business~~ days after making such a written request, within which the Administrator of SBA (i) may appeal to the Secretary of the Department concerned, and (ii) shall notify the contracting officer whether the further appeal has, in fact, been taken. If notification is not received by the contracting officer within the 15-day period, it shall be deemed that the SBA request to suspend contracting action has been withdrawn and that an appeal to the Secretary was not taken.	(2) The SBA shall be allowed 15 **working** days after making such a written request, within which the Administrator of SBA (i) may appeal to the Secretary of the Department concerned, and (ii) shall notify the contracting officer whether the further appeal has, in fact, been taken. If notification is not received by the contracting officer within the 15-day period, it shall be deemed that the SBA request to suspend contracting action has been withdrawn and that an appeal to the Secretary was not taken.
* * * * *	* * * * *
(e) The agency head shall reply to the SBA within 30 ~~business~~ days after receiving the appeal. The decision of the agency head shall be final.	(e) The agency head shall reply to the SBA within 30 **working** days after receiving the appeal. The decision of the agency head shall be final.
* * * * *	* * * * * [FAC 90-32]

19.506 Withdrawing or modifying set-asides.

FAR as of FAC 90-25	*FAR as revised*
(a) If, before award of a contract involving a set-aside ~~for small business~~, the contracting officer considers that award ~~to a small business concern~~ would be detrimental to the public interest (e.g., payment of more than a fair market price), the contracting officer may withdraw the set-aside determination whether it was unilateral or joint. The contracting officer shall initiate a withdrawal of an individual set-aside by giving written notice to the agency small ~~and disadvantaged~~ business ~~utilization~~ specialist and the SBA procurement center representative, if one is assigned, stating the reasons. In a similar manner, the contracting officer may modify a unilateral or joint class set-aside to withdraw one or more individual acquisitions.	(a) If, before award of a contract involving a set-aside, the contracting officer considers that award would be detrimental to the public interest, (*e.g.*, payment of more than a fair market price), the contracting officer may withdraw the set-aside determination whether it was unilateral or joint. The contracting officer shall initiate a withdrawal of an individual set-aside by giving written notice to the agency small business specialist and the SBA procurement center representative, if one is assigned, stating the reasons. In a similar manner, the contracting officer may modify a unilateral or joint class set-aside to withdraw one or more individual acquisitions.
(b) If the agency small ~~and disadvantaged~~ business ~~utilization representative~~ does not agree to a withdrawal or modification, the case shall be promptly referred to the SBA representative (if one is assigned) for review. If an SBA representative is not assigned, disagreements between the agency small ~~and disadvantaged~~ business ~~utilization representative~~ and the contracting officer shall be resolved using agency procedures. However, the procedures are not applicable to automatic dissolutions of set-asides (see 19.507) or dissolution of ~~small business-small purchase~~ set-asides (see 13.105). * * * * *	(b) If the agency small business **specialist** does not agree to a withdrawal or modification, the case shall be promptly referred to the SBA representative (if one is assigned) for review. If an SBA representative is not assigned, disagreements between the agency small business **specialist** and the contracting officer shall be resolved using agency procedures. However, the procedures are not applicable to automatic dissolutions of set-asides (see 19.507) or dissolution of set-asides **under $100,000**. [FAC 90-32] * * * * *

19.508 Solicitation provisions and contract clauses.

FAR as of FAC 90-25	*FAR as revised*
a) ~~The contracting officer shall insert the provision at 52.219-4, Notice of Small Business-Small Purchase Set-Aside, in each written solicitation of quotations or offers to provide supplies and/or services when (1) the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands, (2) the contract amount is expected to be $25,000 or less, and (3) the acquisition is subject to small purchase procedures; unless purchase on an unrestricted basis is appropriate, as specified in 13.105(d).~~	(a) **[Reserved]** [FAC 90-29]

(b) ~~(This paragraph (b) does not apply to DOD.) The contracting officer shall insert the clause at 52.219-5, Notice of Total Small Business-Labor Surplus Area Set-Aside, in solicitations and contracts involving total small business-labor surplus area set-asides (see 19.504(a)(1)). The clause at 52.219-5 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2(b).~~

(c) * * * * The clause at 52.219-6 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with ~~19.502-2(b).~~

(d) * * * * The clause at 52.219-7 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with ~~19.502-2(b)~~.

(e) The contracting officer shall insert the clause at 52.219-14, Limitations on Subcontracting, in solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set aside for small business, or if the contract is to be awarded under Subpart 19.8, except those awarded using ~~small purchase~~ procedures in Part 13.

* * * *

(b) **[Reserved]** [FAC 90-32]

* * * * *

(c) * * * * The clause at 52.219-6 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with **19.502-2(c).** [FAC 90-29]

(d) * * * * The clause at 52.219-7 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with **19.502-2(c).** [FAC 90-29]

(e) The contracting officer shall insert the clause at 52.219-14, Limitations on Subcontracting, in solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set aside for small business, or if the contract is to be awarded under Subpart 19.8, except those awarded using **simplified acquisition** procedures in Part 13. [FAC 90-29]

* * * *

SUBPART 19.7—SUBCONTRACTING WITH SMALL BUSINESS, SMALL DISADVANTAGED BUSINESS **AND WOMEN-OWNED SMALL BUSINESS** CONCERNS

SUBPART 19.7—SUBCONTRACTING WITH SMALL BUSINESS ~~AND~~ SMALL DISADVANTAGED BUSINESS CONCERNS [FAC 90-32]

19.702 Statutory requirements.

FAR as of FAC 90-25	*FAR as revised*
Any contractor receiving a contract for more than the ~~small purchase limitation in 13.000~~ shall agree in the contract that small business concerns ~~and~~ small disadvantaged business concerns shall have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns ~~and~~ small business concerns ~~owned and controlled by socially and economically disadvantaged individuals~~. * * * * *	Any contractor receiving a contract for more than the **simplified acquisition threshold in Part 13** shall agree in the contract that small business concerns, small disadvantaged business concerns **and women-owned small business concerns** shall have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small disadvantaged business concerns **and women-owned small business concerns**. * * * * *
(b) Subcontracting plans (see subparagraphs (a)(1) and (2) of this section) are not required— * * * * *	(b) Subcontracting plans (see subparagraphs (a)(1) and (2) of this section) are not required— * * * * *
(4) For modifications to contracts that do not contain the clause at 52.219-8, Utilization of Small ~~Business Concerns and~~ Small Disadvantaged ~~Business~~ Concerns (or equivalent ~~prior DAR, FPR, or NASA~~ clauses~~); e.g., contracts awarded before Pub. L. 95-507 and which are within the scope of the contract~~. * * * * *	(4) For modifications to contracts that do not contain the clause at 52.219-8, Utilization of Small, Small Disadvantaged **and Women-Owned Small Business** Concerns (or equivalent prior clauses). [FAC 90-32] * * * * *

19.703 Eligibility requirements for participating in the program.

FAR as of FAC 90-25	*FAR as revised*
(a) To be eligible as a subcontractor under the program, a concern must represent itself as a small business concern ~~or~~ small disadvantaged business concern.	(a) To be eligible as a subcontractor under the program, a concern must represent itself as a small business concern, small disadvantaged business concern **or a woman-owned small business concern**.

(1) To represent itself as a small business concern, a concern must meet the definition in 19.001.

* * * * *

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status ~~as either a small business concern or a small disadvantaged business concern~~. The contractor, the contracting officer, or any other interested party can challenge a subcontractor's size status representation by filing a protest, in accordance with 13 CFR 121.1601-121.1608. Protests challenging a subcontractor's disadvantaged status representation shall be filed in accordance with 13 CFR 124.601-124.610.

(1) To represent itself as a small business concern **or a women-owned small business concern**, a concern must meet the appropriate definition in 19.001.

* * * * *

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status. The contractor, the contracting officer, or any other interested party can challenge a subcontractor's size status representation by filing a protest, in accordance with 13 CFR 121.1601 **through** 121.1608. Protests challenging a subcontractor's disadvantaged status representation shall be filed in accordance with 13 CFR 124.601 **through** 124.610. **Protests challenging a subcontractor's status as a women-owned small business concern shall be filed in accordance with Small Business Administration procedures.** [FAC 90-32]

19.704 Subcontracting plan requirements.

FAR as of FAC 90-25	*FAR as revised*
(a) Each subcontracting plan required under 19.702(a)(1) and (2) must include—	(a) Each subcontracting plan required under 19.702(a)(1) and (2) must include—
(1) Separate percentage goals for using small business concerns ~~and~~ small disadvantaged business concerns as subcontractors;	(1) Separate percentage goals for using small business concerns, small disadvantaged business concerns **and women-owned small business concerns** as subcontractors;]
* * * * *	* * * * *
(3) A description of the efforts the offeror will make to ensure that small business concerns ~~and~~ small disadvantaged business concerns will have an equitable opportunity to compete for subcontracts;	(3) A description of the efforts the offeror will make to ensure that small business concerns, small disadvantaged business concerns **and women-owned small business concerns** will have an equitable opportunity to compete for subcontracts;
(4) Assurances that the offeror will include the clause at 52.219-8, Utilization of Small Business Concerns ~~and~~ Small Disadvantaged Business Concerns (see 19.708(b)), in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of $500,000 ($1,000,000 for construction) to adopt a plan similar to the plan required by the clause at 52.219-9, Small ~~Business and~~ Small Disadvantaged Business Subcontracting Plan (see 19.708(c));	(4) Assurances that the offeror will include the clause at 52.219-8, Utilization of Small, Small Disadvantaged **and Women-Owned Small Business Concerns** (see 19.708(b)), in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of $500,000 ($1,000,000 for construction) to adopt a plan similar to the plan required by the clause at 52.219-9, Small, Small Disadvantaged **and Women-Owned Small** Business Subcontracting Plan (see 19.708(c));
* * * * *	* * * * *

(6) A recitation of the types of records the offeror will maintain to demonstrate procedures adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small and small disadvantaged business concerns and to award subcontracts to them.	(6) A recitation of the types of records the offeror will maintain to demonstrate procedures adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small, small disadvantaged **and women-owned small** business concerns and to award subcontracts to them.
(b) Contractors may establish, on a plant or division-wide basis, a master subcontracting plan which contains all the elements required by the clause at 52.219-9, Small ~~Business and~~ Small Disadvantaged Business Subcontracting Plan, except goals. Master plans shall be effective for a 1-year period after approval by the contracting officer; however, a master plan when incorporated in an individual plan shall apply to that contract throughout the life of the contract. * * * * *	(b) Contractors may establish, on a plant or division-wide basis, a master subcontracting plan which contains all the elements required by the clause at 52.219-9, Small, Small Disadvantaged **and Women-Owned Small** Business Subcontracting Plan, except goals. Master plans shall be effective for a 1-year period after approval by the contracting officer; however, a master plan when incorporated in an individual plan shall apply to that contract throughout the life of the contract. [FAC 90-32] * * * * *

19.705 Responsibilities of the contracting officer under the subcontracting assistance program

19.705-1 General support of the program.

FAR as of FAC 90-25	*FAR as revised*
The contracting officer may encourage the development of increased subcontracting opportunities in negotiated acquisition by providing monetary incentives such as payments based on actual subcontracting achievement or award fee contracting (see the clause at 52.219-10, Incentive Subcontracting Program ~~for Small and Small Disadvantaged Business Concerns~~, and 19.708(c)). When using any contractual incentive provision based upon rewarding the contractor monetarily for exceeding goals in the subcontracting plan, the contracting officer must ensure that (a) the goals are realistic and (b) any rewards for exceeding the goals are commensurate with the efforts the contractor would not have otherwise expended. Incentive provisions should normally be negotiated after reaching final agreement with the contractor on the subcontracting plan.	The contracting officer may encourage the development of increased subcontracting opportunities in negotiated acquisition by providing monetary incentives such as payments based on actual subcontracting achievement or award fee contracting (see the clause at 52.219-10, Incentive Subcontracting Program, and 19.708(c)). When using any contractual incentive provision based upon rewarding the contractor monetarily for exceeding goals in the subcontracting plan, the contracting officer must ensure that (a) the goals are realistic and (b) any rewards for exceeding the goals are commensurate with the efforts the contractor would not have otherwise expended. Incentive provisions should normally be negotiated after reaching final agreement with the contractor on the subcontracting plan. [FAC 90-32]

19.705-2 Determining the need for a subcontracting plan.

FAR as of FAC 90-25	*FAR as revised*
The contracting officer shall take the following actions to determine whether a proposed contractual action requires a subcontracting plan: * * * * * (d) Due to their unique circumstances, major system acquisition programs, as well as other complex or sensitive acquisitions involving formal source selection procedures, may necessitate negotiating subcontracting plans with all firms in a competitive range in order to afford the maximum practicable opportunity for small ~~business and~~ small disadvantaged business concerns to participate and preserve the integrity of the competitive process. When the simultaneous negotiation of such plans is necessary, the solicitation (1) may require offerors to include proposed subcontracting plans in their initial proposals and (2) may indicate that subcontracting plans will be negotiated concurrently with cost, technical, and management proposals.	The contracting officer shall take the following actions to determine whether a proposed contractual action requires a subcontracting plan: * * * * * (d) Due to their unique circumstances, major system acquisition programs, as well as other complex or sensitive acquisitions involving formal source selection procedures, may necessitate negotiating subcontracting plans with all firms in a competitive range in order to afford the maximum practicable opportunity for small, small disadvantaged **and women-owned small** business concerns to participate and preserve the integrity of the competitive process. When the simultaneous negotiation of such plans is necessary, the solicitation (1) may require offerors to include proposed subcontracting plans in their initial proposals and (2) may indicate that subcontracting plans will be negotiated concurrently with cost, technical, and management proposals. [FAC 90-32]

19.705-4 Reviewing the subcontracting plan.

FAR as of FAC 90-25	*FAR as revised*
* * * * * (b) If, under a sealed bid solicitation, a bidder submits a plan that does not cover each of the six required elements (see 19.704), the contracting officer shall advise the bidder of the deficiency and request submission of a revised plan by a specific date. If the bidder does not submit a plan which incorporates the six required elements within the time allotted, the bidder shall be ineligible for award. If the plan, although responsive, evidences the bidder's intention not to comply with its obligations under the clause at 52.219-8, Utilization of Small ~~Business Concerns and~~ Small Disadvantaged Business Concerns, the contracting officer may find the bidder nonresponsible. (c) In negotiated acquisitions, the contracting officer shall determine whether the plan is acceptable based on the negotiation of each of the six elements of the plan (see 19.704). Subcontracting goals should be set at a level that the parties reasonably expect can result from the offeror expending good faith efforts to use small ~~and~~ small disadvantaged	* * * * * (b) If, under a sealed bid solicitation, a bidder submits a plan that does not cover each of the six required elements (see 19.704), the contracting officer shall advise the bidder of the deficiency and request submission of a revised plan by a specific date. If the bidder does not submit a plan which incorporates the six required elements within the time allotted, the bidder shall be ineligible for award. If the plan, although responsive, evidences the bidder's intention not to comply with its obligations under the clause at 52.219-8, Utilization of Small, Small Disadvantaged **and Women-Owned Small** Business Concerns, the contracting officer may find the bidder nonresponsible. (c) In negotiated acquisitions, the contracting officer shall determine whether the plan is acceptable based on the negotiation of each of the six elements of the plan (see 19.704). Subcontracting goals should be set at a level that the parties reasonably expect can result from the offeror expending good faith efforts to use small, small disadvantaged, and

subcontractors to the maximum practicable extent. Particular attention should be paid to the identification of steps that, if taken, would be considered a good faith effort. No goal should be negotiated upward if it is apparent that a higher goal will significantly increase the Government's cost or seriously impede the attainment of acquisition objectives. An incentive subcontracting clause (see 52.219-10, Incentive Subcontracting Program ~~for Small and Small Disadvantaged Business Concerns~~), may be used when additional and unique contract effort, such as providing technical assistance, could significantly increase subcontract awards to small ~~or~~ small disadvantaged businesses.

women-owned small business subcontractors to the maximum practicable extent. Particular attention should be paid to the identification of steps that, if taken, would be considered a good faith effort. No goal should be negotiated upward if it is apparent that a higher goal will significantly increase the Government's cost or seriously impede the attainment of acquisition objectives. An incentive subcontracting clause (see 52.219-10, Incentive Subcontracting Program), may be used when additional and unique contract effort, such as providing technical assistance, could significantly increase subcontract awards to small, small disadvantaged **or women-owned small** businesses.

(d) In determining the acceptability of a proposed subcontracting plan, the contracting officer should take the following actions:

(1) Evaluate the offeror's past performance in award-ing subcontracts for the same or similar products or services to small ~~and~~ small disadvantaged business concerns. If information is not available on a specific type of product or service, evaluate the offeror's overall past performance.

* * * * *

(d) In determining the acceptability of a proposed subcontracting plan, the contracting officer should take the following actions:

(1) Evaluate the offeror's past performance in awarding subcontracts for the same or similar products or services to small, small disadvantaged **and women-owned small** business concerns. If information is not available on a specific type of product or service, evaluate the offeror's overall past performance.

* * * * *

(4) Evaluate subcontracting potential, considering the offeror's make-or-buy policies or programs, the nature of the products or services to be subcontracted, the known availability of small ~~and~~ small disadvantaged business concerns in the geographical area where the work will be performed, and the potential contractor's longstanding contractual relationship with its suppliers.

(4) Evaluate subcontracting potential, considering the offeror's make-or-buy policies or programs, the nature of the products or services to be subcontracted, the known availability of small, small disadvantaged **and women-owned small** business concerns in the geographical area where the work will be performed, and the potential contractor's long-standing contractual relationship with its suppliers.

(5) Advise the offeror of available sources of information on potential small ~~and~~ small disadvantaged business subcontractors, as well as any specific concerns known to be potential subcontractors. If the offeror's proposed goals are questionable, the contracting officer shall emphasize that the information should be used to develop realistic and acceptable goals.

(5) Advise the offeror of available sources of information on potential small, small disadvantaged **and women-owned small** business subcontractors, as well as any specific concerns known to be potential subcontractors. If the offeror's proposed goals are questionable, the contracting officer shall emphasize that the information should be used to develop realistic and acceptable goals.

(6) Obtain advice and recommendations from the SBA procurement center representative (if any) and the agency small ~~and disadvantaged~~ business ~~utilization representative~~.

(6) Obtain advice and recommendations from the SBA procurement center representative (if any) and the agency small business **specialist**.
[FAC 90-32]

19.705-7 Liquidated damages.

FAR as of FAC 90-25	*FAR as revised*
(a) Maximum practicable utilization of small ~~and~~ small disadvantaged business concerns as subcontractors in Government contracts is a matter of national interest with both social and economic benefits. When a contractor fails to make a good faith effort to comply with a subcontracting plan, these objectives are not achieved, and 15 U.S.C. 637(d)(4)(F) directs that liquidated damages shall be paid by the contractor. * * * * *	(a) Maximum practicable utilization of small, small disadvantaged **and women-owned small** business concerns as subcontractors in Government contracts is a matter of national interest with both social and economic benefits. When a contractor fails to make a good faith effort to comply with a subcontracting plan, these objectives are not achieved, and 15 U.S.C. 637(d)(4)(F) directs that liquidated damages shall be paid by the contractor. * * * * *
(d) In determining whether a contractor failed to make a good faith effort to comply with its subcontracting plan, a contracting officer must look to the totality of the contractor's actions, consistent with the information and assurances provided in its plan. The fact that the contractor failed to meet its subcontracting goals does not, in and of itself, constitute a failure to make a good faith effort. For example, notwithstanding a contractor's diligent effort to identify and solicit offers from small ~~business and~~ small disadvantaged business concerns, factors such as unavailability of anticipated sources or unreasonable prices may frustrate achievement of the contractor's goals. However, when considered in the context of the contractor's total effort in accordance with its plan, the following may be considered as indicia of a failure to make a good faith effort: a failure to attempt to identify, contact, solicit, or consider for contract award small ~~business or~~ small disadvantaged business concerns; a failure to designate a company official to administer the subcontracting program; a failure to maintain records or otherwise demonstrate procedures adopted to comply with the plan; the adoption of company policies or procedures which have as their objectives the frustration of the objectives of the plan. * * * * *	(d) In determining whether a contractor failed to make a good faith effort to comply with its subcontracting plan, a contracting officer must look to the totality of the contractor's actions, consistent with the information and assurances provided in its plan. The fact that the contractor failed to meet its subcontracting goals does not, in and of itself, constitute a failure to make a good faith effort. For example, notwithstanding a contractor's diligent effort to identify and solicit offers from small, small disadvantaged **and women-owned small** business concerns, factors such as unavailability of anticipated sources or unreasonable prices may frustrate achievement of the contractor's goals. However, when considered in the context of the contractor's total effort in accordance with its plan, the following may be considered as indicia of a failure to make a good faith effort: a failure to attempt to identify, contact, solicit, or consider for contract award small, small disadvantaged **or woman-owned small** business concerns; a failure to designate a company official to administer the subcontracting program; a failure to maintain records or otherwise demonstrate procedures adopted to comply with the plan; the adoption of company policies or procedures which have as their objectives the frustration of the objectives of the plan. * * * * *
(f) With respect to commercial products plans; i.e., company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in the contract entitled Small ~~Business an~~d Small Disadvantaged Business Subcontracting Plan, the contracting officer of the agency that originally approved the plan will exercise the functions of the contracting officer under this subsection on behalf of all agencies that awarded contracts covered by that commercial products plan. * * * * *	(f) With respect to commercial products plans; i.e., company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in the contract entitled **Small, Small Disadvantaged and Women-Owned Small** Business Subcontracting Plan, the contracting officer of the agency that originally approved the plan will exercise the functions of the contracting officer under this subsection on behalf of all agencies that awarded contracts covered by that commercial products plan. [FAC 90-32] *** * * * ***

19.706 Responsibilities of the cognizant administrative contracting officer.

FAR as of FAC 90-25	*FAR as revised*
(a) The administrative contracting officer is responsible for assisting in evaluating subcontracting plans, and for monitoring, evaluating, and documenting contractor performance under the clause prescribed in 19.708(b) and any subcontracting plan included in the contract. The contract administration office shall provide the necessary information and advice to support the contracting officer, as appropriate, by furnishing—	(a) The administrative contracting officer is responsible for assisting in evaluating subcontracting plans, and for monitoring, evaluating, and documenting contractor performance under the clause prescribed in 19.708(b) and any subcontracting plan included in the contract. The contract administration office shall provide the necessary information and advice to support the contracting officer, as appropriate, by furnishing—
* * * * *	* * * * *
(2) Information on the extent to which the contractor is meeting the plan's goals for subcontracting with eligible small ~~and~~ small disadvantaged business concerns;	(2) Information on the extent to which the contractor is meeting the plan's goals for subcontracting with eligible small, small disadvantaged **and women-owned small** business concerns;
(3) Information on whether the contractor's efforts to ensure the participation of small ~~and~~ small disadvantaged business concerns are in accordance with its subcontracting plan;	(3) Information on whether the contractor's efforts to ensure the participation of small, small disadvantaged **and women-owned small** business concerns are in accordance with its subcontracting plan; [FAC 90-32]
* * * * *	* * * * *

19.708 Solicitation provisions and contract clauses.

FAR as of FAC 90-25	*FAR as revised*
(a) The contracting officer shall insert the clause at 52.219-8, Utilization of Small ~~Business Concerns and~~ Small Disadvantaged Business Concerns, in solicitations and contracts when the contract amount is expected to be over the ~~small purchase limitation in 13.000~~ unless—	(a) The contracting officer shall insert the clause at 52.219-8, Utilization of Small, Small Disadvantaged **and Women-Owned Small** Business Concerns, in solicitations and contracts when the contract amount is expected to be over the **simplified acquisition threshold in Part 13** unless—
* * * * *	* * * * *
(b)(1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.219-9, Small ~~Business and~~ Small Disadvantaged Business Subcontracting Plan, in solicitations and contracts that (i) offer subcontracting possibilities, (ii) are expected to exceed $500,000 ($1,000,000 for construction of any public facility), and (iii) are required to include the clause at 52.219-8, Utilization of Small ~~Business Concerns and~~ Small Disadvantaged Business Concerns, unless the acquisition has been set aside ~~for small~~	(b)(1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.219-9, Small, Small Disadvantaged **and Women-Owned Small Business** Subcontracting Plan, in solicitations and contracts that (i) offer subcontracting possibilities, (ii) are expected to exceed $500,000 ($1,000,000 for construction of any public facility), and (iii) are required to include the clause at 52.219-8, Utilization of Small, Small Disadvantaged **and Women-Owned Small** Business Concerns,

~~business~~ or is to be accomplished under the 8(a) program. When contracting by sealed bidding rather than by negotiation, the contracting officer shall use the clause with its Alternate I.

(2) The contracting officer shall insert the clause at 52.219-16, Liquidated Damages~~—Small Business~~ Subcontracting Plan, in all solicitations and contracts containing the clause at 52.219-9, Small ~~Business and~~ Small Disadvantaged~~-~~Business Subcontracting Plan, or its Alternate I.

(c)(1) The contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause substantially the same as the clause at 52.219-10, Incentive Subcontracting Program ~~for Small and Small Disadvantaged Business Concerns~~, when a subcontracting plan is required (see 19.702(a)(1)), and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small ~~and~~ disadvantaged business concerns, and is commensurate with the efficient and economical performance of the contract; unless the conditions in (c)(3) below are applicable. The contracting officer may vary the terms of the clause as specified in (c)(2~~) below~~.

(2) Various approaches may be used in the development of small ~~and~~ small disadvantaged business concerns' subcontracting incentives. They can take many forms, from a fully quantified schedule of payments based on actual subcontract achievement to an award fee approach employing subjective evaluation criteria (see (c)(3) ~~below~~). The incentive should not reward the contractor for results other than those that are attributable to the contractor's efforts under the incentive subcontracting program.

(3) As specified in (c)(2) ~~above~~, the contracting officer may include small ~~and~~ small disadvantaged business subcontracting as one of the factors to be considered in determining the award-fee in a cost-plus-award-fee contract; in such cases, however, the contracting officer shall not use the clause at 52.219-10, Incentive Subcontracting Program ~~for Small and Small Disadvantaged Business Concerns~~.

unless the acquisition has been set aside or is to be accomplished under the 8(a) program. When contracting by sealed bidding rather than by negotiation, the contracting officer shall use the clause with its Alternate I.

(2) The contracting officer shall insert the clause at 52.219-16, Liquidated Damages—Subcontracting Plan, in all solicitations and contracts containing the clause at 52.219-9, **Small, Small Disadvantaged and Women-Owned Small Business** Subcontracting Plan, or its Alternate I.

(c)(1) The contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause substantially the same as the clause at 52.219-10, Incentive Subcontracting Program, when a subcontracting plan is required (see 19.702(a)(1)), and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small, small disadvantaged **and women-owned small** business concerns, and is commensurate with the efficient and economical performance of the contract; unless the conditions in paragraph (c)(3) of this section are applicable. The contracting officer may vary the terms of the clause as specified in **paragraph** (c)(2) **of this section**.

(2) Various approaches may be used in the development of small, small disadvantaged **and women-owned small** business concerns' subcontracting incentives. They can take many forms, from a fully quantified schedule of payments based on actual subcontract achievement to an award fee approach employing subjective evaluation criteria (see paragraph (c)(3) **of this section**). The incentive should not reward the contractor for results other than those that are attributable to the contractor's efforts under the incentive subcontracting program.

(3) As specified in paragraph (c)(2) **of this section**, the contracting officer may include small, small disadvantaged **and women-owned small** business subcontracting as one of the factors to be considered in determining the award-fee in a cost-plus-award-fee contract; in such cases, however, the contracting officer shall not use the clause at 52.219-10, Incentive Subcontracting Program. [FAC 90-32]

19.811-3 Contract clauses.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(d) * * * * *	(d) * * * * *
(3) The clause at 52.219-18 with its Alternate III will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2~~(b)~~.	(3) The clause at 52.219-18 with its Alternate III will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2**(c)**. [FAC 90-32]
* * * * *	* * * * *

SUBPART 19.9—[RESERVED] [FAC 90-32]

SUBPART 19.9—~~CONTRACTING OPPORTUNITIES FOR WOMEN-OWNED SMALL BUSINESSES~~

~~19.901 Policy.~~

~~In response to the need to aid and stimulate women's business enterprise, Executive Order 12138, May 18, 1979, directs agencies to take appropriate action to facilitate, preserve, and strengthen women's business enterprise and to ensure full participation by women in the free enterprise system. Appropriate action includes the award of subcontracts under Federal prime contracts.~~

~~19.902 Contract clause.~~

~~To encourage the use of women-owned small businesses in subcontracting, the contracting officer shall insert the clause at 52.219-13, Utilization of Women-Owned Small Businesses, in solicitations and contracts when the contract amount is expected to exceed the small purchase limitation, except—~~

~~(a) Contracts that, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands; or~~

~~(b) Contracts for personal services.~~

52.219-1 Small Business Program Representations.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 19.304(a), insert the following provision:	As prescribed in 19.304(a), insert the following provision:
SMALL BUSINESS ~~CONCERN~~ REPRESENTATION ~~(FEB 1995)~~	SMALL BUSINESS **PROGRAM** REPRESENTATIONS **(OCT 1995)**
	(a)(1) The standard industrial classification (SIC) code for this acquisition is
	_____ (*insert SIC code*).

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

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

~~(a)~~ *Representation*. The offeror represents and certifies as part of its offer that i~~t is: ☐ a small business concern, ☐~~ not a small business concern~~.~~ [FAC 90-23]

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

(2) (Complete only if offeror represented itself as a small business concern in block (b)(1) of this section.) The offeror represents as part of its offer that it ☐ is, ☐ is not a small disadvantaged business concern.

(3) (Complete only if offeror represented itself as a small business concern in block (b)(1) of this section.) The offeror represents as part of its offer that it ☐ is, ☐ is not a women-owned small business concern.

~~(b)~~ *Definition~~.~~* "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standard~~s in this solicitation.~~

(c) *Definitions***.** "Small business concern", as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria i**n 13 CFR Part 121** and size standard **above.**

"Small disadvantaged business concern", as used in this provision, means a small business concern that (1) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and (2) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily busi-

	ness controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR Part 124. **"Women-owned small business concern", as used in this provision, means a small business concern—** **(a) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and** **(b) Whose management and daily business operations are controlled by one or more women.**
~~(c)~~ *Notice*. [Whole section revised by FAC 90-23] * * * * * (2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to sections 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall— * * * * *	**(d)** *Notice.* * * * * * (2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small **or small disadvantaged** business concern in order to obtain a contract to be awarded under the preference programs established pursuant to sections 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall— [FAC 90-32] * * * * *

52.219-2 Equal Low Bids. [Old 52.219-2 now included in 52.219-1. 52.220-1 redesignated and revised by FAC 90-32]

FAR as of FAC 90-25	*FAR as revised*
52.219-2 ~~Preference for Labor Surplus Area Concerns~~	
As prescribed in 19.304(b), insert the following provision: ~~SMALL DISADVANTAGED BUSINESS CONCERN REPRESENTATION (FEB 1990)~~ ~~(a) *Representation.* The offeror represents that it ☐ is, ☐ is not a small disadvantaged business concern.~~ ~~(b) *Definitions.*~~ ~~"Asian Pacific Americans," as used in this provision, means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand,~~	As prescribed in 19.304(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 must identify, below, the LSA in which the costs to be incurred on account of manufacturing or**

~~Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia.~~

~~"Indian tribe," as used in this provision, means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Corporation as defined in 13 CFR 124.100 which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians, or which is recognized as such by the State in which such tribe, band, nation, group, or community resides.~~

~~"Native Americans," as used in this provision, means American Indians, Eskimos, Aleuts, and Native Hawaiians.~~

~~"Native Hawaiian Organization," as used in this provision, means any community service organization serving Native Hawaiians in, and chartered as a not-for-profit organization by, the State of Hawaii, which is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.~~

~~"Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.~~

~~"Small disadvantaged business concern," as used in this provision, means a small business concern that (a) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and (b) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124.~~

~~"Subcontinent Asian Americans," as used in this provision, means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal.~~

production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

_____
_____
_____
_____

(c) Failure to identify the labor surplus areas as specified above will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

(End of provision)

~~(c) *Qualified groups.* The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific American, Subcontinent Asian Americans, and other in divisions to be qualified by SBA under 13 CFR 124. The offeror shall presume that socially and economically disadvantaged individuals include Indian tribes and Native Hawaiian Organizations.~~

~~(End of provision)~~

52.219-3 [Reserved] [FAC 90-32]

~~52.219-3 Women-Owned Small Business Representation.~~

~~As prescribed in 19.304(c), insert the following provision in solicitations (other than those for small purchases), when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia:~~

~~WOMEN-OWNED SMALL BUSINESS~~
~~REPRESENTATION (APR 1984)~~

~~(a) Representation. The offeror represents that it ☐ is, ☐ is not a women-owned small business concern.~~

~~(b) Definitions.~~

~~"Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.~~

~~"Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.~~

~~(End of provision)~~

~~(R FPR Temp. Reg. 48 1978 DEC)~~

52.219-5 [Reserved] [FAC 90-32]

~~52.219-5 Notice of Total Small Business-Labor Surplus Area Set-Aside.~~

~~As prescribed in 19.508(b) and except for the Department of Defense, insert the following clause:~~

~~NOTICE OF TOTAL SMALL BUSINESS-LABOR~~
~~SURPLUS AREA SET-ASIDE (JAN 1991)~~

~~(a) *Definitions.*~~

~~"Labor surplus area," as used in this clause, means a geographical area identified by the Department of Labor as an area of labor surplus.~~

~~"Labor surplus area concern," as used in this clause, means a concern that, together with its first-tier subcontractors, will perform substantially in labor surplus areas.~~

~~"Perform substantially in labor surplus areas," as used in this clause, means that the costs incurred under the contract on account of manufacturing, production, and performance of services in labor surplus areas exceed 50 percent of the contract price.~~

~~"Small business concern," as used in this clause, 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 121.~~

~~(b) *General.* (1) Offers are solicited from small business concerns that are also labor surplus area concerns. Offers received from concerns that are not small business-labor surplus area concerns shall be considered nonresponsive and will be rejected.~~

~~(2) Any award resulting from this solicitation will be made to a small business-labor surplus area concern.~~

~~(c) *Agreement.* (1) The offeror agrees that, if awarded a contract as a small business-labor surplus area concern, it will take the following actions:~~

~~(i) Perform the contract, or cause it to be performed, substantially in areas classified as labor surplus areas at the time of award or performance. However, if an area selected by the offeror is no longer classified as a labor surplus area at the time of performance, the offeror will make an effort to select another area for performance that is classified at the time as a labor surplus area.~~

~~(ii) If the contract exceeds the small purchase limitation, submit a report to the Contracting Officer within 30 days after the date of award (or a longer period of time, if prescribed by the Contracting Officer) that contains the following information:~~

~~(A) The dollar amount of the contract.~~

~~(B) Identification of each labor surplus area in which contract (and first-tier subcontract) performance is taking or will take place.~~

~~(C) The total costs incurred and the total costs to be incurred under the contract on account of manufacturing, production, and performance of services in each of the labor surplus areas by (1) the prime Contractor and (2) first-tier subcontractors.~~

~~(D) The total dollar amount attributable to performance in labor surplus areas.~~

~~(2) A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.~~

~~(End of clause)~~

~~*Alternate I* (JUN 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(b), substitute the following subparagraph (c)(2) for subparagraph (c)(2) of the basic clause:~~

~~(c)(2) A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.~~

52.219-6 Notice of Total Small Business Set-Aside.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
Alternate I (~~JUN 1989~~). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2~~(b), substitute the following~~ paragraph (c)~~ for paragraph (c) of the basic clause:~~ * * * * *	*Alternate I* (**OCT 1995**). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2**(c), delete** paragraph (c). [FAC 90-32] * * * * *

52.219-7 Notice of Partial Small Business Set-Aside..

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 19.508(d), insert the following clause:	As prescribed in 19.508(d), insert the following clause:
NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE (~~JAN 1991~~)	NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE (**OCT 1995**) [FAC 90-32]
(a) *Definitions*. ~~"Labor surplus area," as used in this clause, means a geographical area identified by the Department of Labor as an area of labor surplus.~~ ~~"Labor surplus area concern," as used in this clause, means a concern that, together with its first-tier subcontractors, will perform substantially in labor surplus areas.~~ ~~"Perform substantially in labor surplus areas," as used in this clause, means that the costs incurred under the contract on account of manufacturing, production, and performance of services in labor surplus areas exceed 50 percent of the contract price.~~ * * * * *	(a) *Definitions*. [FAC 90-32] * * * * *
(b) *General*. * * * * * (4)~~(i)~~ The contractor(s) for the set-aside portion will be selected from among the small business concerns that submitted responsive offers on the non-set-aside portion. ~~These concerns fall into two groups:~~ ~~(A) Group 1—Small business concerns that are also labor surplus area concerns.~~ ~~(B) Group 2—Other small business concerns.~~ ~~(ii)~~ Negotiations will be conducted with the concern ~~in Group 1~~ that submitted the lowest responsive offer on the non-set-aside portion. If the negotiations are not successful or if only part of the set-aside portion is awarded to that concern, negotiations will be conducted with the concern that submitted the second-lowest responsive offer on the non-set-aside portion. This process will continue~~, first with concerns in Group 1 and then with concerns in Group 2,~~ until a contract or contracts are awarded for the entire set-aside portion. * * * * *	(b) *General*. * * * * * (4) The contractor(s) for the set-aside portion will be selected from among the small business concerns that submitted responsive offers on the non-set-aside portion. Negotiations will be conducted with the concern that submitted the lowest responsive offer on the non-set-aside portion. If the negotiations are not successful or if only part of the set-aside portion is awarded to that concern, negotiations will be conducted with the concern that submitted the second-lowest responsive offer on the non-set-aside portion. This process will continue until a contract or contracts are awarded for the entire set-aside portion. [FAC 90-32] * * * * *
(c) *Agreement.* ~~(1) The offeror agrees that, if awarded a contract as a small business-labor surplus area concern, it will perform the contract, or cause it to be performed, substantially in areas classified as labor surplus areas at the time of award or performance of this contract. However, if an area selected by the offeror is no longer classified as a~~	(c) *Agreement.* **For the set-aside portion of the acquisition,** a manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico,

~~labor surplus area at the time of performance, the offeror will make an effort to select another area for performance that is classified at the time as a labor surplus area.~~

~~(2) The offeror agrees that, if awarded a contract that exceeds the small purchase limitation, it will submit a report to the Contracting Officer within 30 days after the date of award (or a longer period of time, if prescribed by the Contracting Officer) that contains the following information:~~

~~(i) The dollar amount of the contract.~~

~~(ii) Identification of each labor surplus area in which contract (and subcontract) performance is taking or will take place.~~

~~(iii) The total costs incurred and the total costs to be incurred under the contract on account of manufacturing, production, and performance of services in each of the labor surplus areas by (A) the prime Contractor and (B) first-tier subcontractors.~~

~~(iv) The total dollar amount attributable to performance in labor surplus areas.~~

~~(3)~~ A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)

the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts. [FAC 90-32]

(End of clause)

Alternate I (~~JUN 1989~~). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with ~~19.502-2(b)~~, ~~substitute the following subparagraph (c)(3) for subparagraph (c)(3) of the basic clause:~~

~~(c)(3) A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.~~

Alternate I (**OCT 1995**). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2**(c)**, **delete paragraph (c).** [FAC 90-32]

52.219-8 Utilization of Small, Small Disadvantaged **and Women-Owned Small** Business Concerns.

52.219-8 Utilization of Small ~~**Business Concerns and**~~ Small Disadvantaged Business Concerns.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 19.708(a), insert the following clause:	As prescribed in 19.708(a), insert the following clause:
UTILIZATION OF SMALL ~~BUSINESS CONCERNS AND~~ SMALL DISADVANTAGED BUSINESS CONCERNS ~~(FEB 1990)~~	UTILIZATION OF SMALL, SMALL DISADVANTAGED **AND WOMEN-OWNED SMALL** BUSINESS CONCERNS **(OCT 1995)**
(a) It is the policy of the United States that small business concerns ~~and~~ small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns ~~and~~ small business concerns owned and controlled by socially and economically disadvantaged individuals.	(a) It is the policy of the United States that small business concerns**,** small business concerns owned and controlled by socially and economically disadvantaged individuals **and small business concerns owned and controlled by women** shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns**,** small business concerns owned and controlled by socially and economically disadvantaged individuals **and small business concerns owned and controlled by women**.
* * * * *	* * * * *
	(d) The term "small business concern owned and controlled by women" shall mean a small business concern (i) which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and (ii) whose management and daily business operations are controlled by one or more women; and,
(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as ~~either~~ a small business concern ~~or~~ a small business concern owned and controlled by socially and economically disadvantaged individuals.	(e) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern**,** a small business concern owned and controlled by socially and economically disadvantaged individuals **or a small business concern owned and controlled by women.** [FAC 90-32]
(End of clause)	(End of clause)

52.219-9 Small, Small Disadvantaged **and Women-Owned Small** Business Subcontracting Plan.

52.219-9 Small ~~**Business and**~~ Small Disadvantaged Business Subcontracting Plan~~.~~

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 19.708(b), insert the following clause: SMALL ~~BUSINESS AND~~ SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (~~FEB 1995~~) * * * * *	As prescribed in 19.708(b), insert the following clause: SMALL, SMALL DISADVANTAGED **AND WOMEN-OWNED SMALL** BUSINESS SUBCONTRACTING PLAN (**OCT 1995)** * * * * *
(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns ~~and~~ with small disadvantaged business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns ~~and~~ with small disadvantaged business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.	(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns**,** with small disadvantaged business concerns **and with women-owned small business concerns**. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns**,** small disadvantaged business concerns**, and women-owned small business concerns** with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.
(d) The offeror's subcontracting plan shall include the following: (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns ~~and~~ small disadvantaged business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.	(d) The offeror's subcontracting plan shall include the following: (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns**,** small disadvantaged business concerns **and women-owned small business concerns** as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.
(2) A statement of— (i) Total dollars planned to be subcontracted; (ii) Total dollars planned to be subcontracted to small business concerns; and (iii) Total dollars planned to be subcontracted to small disadvantaged business concerns.	(2) A statement of— (i) Total dollars planned to be subcontracted; (ii) Total dollars planned to be subcontracted to small business concerns; (iii) Total dollars planned to be subcontracted to small disadvantaged business concerns**; and** **(iv) Total dollars planned to be subcontracted to women-owned small business concerns**.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to (i) small business concerns ~~and~~ (ii) small disadvantaged business concerns.

(4) A description of the method used to develop the subcontracting goals in ~~(1) above~~.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small ~~and~~ small disadvantaged business concerns trade associations). A firm may rely on the information contained in PASS as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. A firm may rely on PASS as its small business source list. Use of the PASS as its source list does not relieve a firm of its responsibilities (i.e., outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with (i) small business concerns ~~and~~ (ii) small disadvantaged business concerns.

* * * * *

(8) A description of the efforts the offeror will make to assure that small ~~business concerns and~~ small disadvantaged business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause in this contract entitled “Utilization of Small ~~Business Concerns and~~ Small Disadvantaged Business Concerns” in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess of $500,000 ($1,000,000 for construction of any public facility), to adopt a plan similar to the plan agreed to by the offeror. * * * * *

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to (i) small business concerns**,** (ii) small disadvantaged business concerns **and (iii) women-owned small business concerns**.

(4) A description of the method used to develop the subcontracting goals in **paragraph (d)(1) of this clause**.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small**,** small disadvantaged **and women-owned small** business concerns trade associations). A firm may rely on the information contained in PASS as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. A firm may rely on PASS as its small business source list. Use of the PASS as its source list does not relieve a firm of its responsibilities (i.e., outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with (i) small business concerns**,** (ii) small disadvantaged business concerns**, and (iii) women-owned small business concerns**.

* * * * *

(8) A description of the efforts the offeror will make to assure that small, small disadvantaged **and women-owned small** business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause in this contract entitled "Utilization of Small, Small Disadvantaged **and Women-Owned Small** Business Concerns” in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess of $500,000 ($1,000,000 for construction of any public facility), to adopt a plan similar to the plan agreed to by the offeror. * * * * *

(11) A recitation of the types of records the offeror will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small ~~and~~ small disadvantaged business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists~~,~~ e.g., PASS guides and other data that identify small ~~and~~ small disadvantaged business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small ~~or~~ small disadvantaged business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than $100,000, indicating (A) whether small business concerns were solicited and if not, why not, (B) whether small disadvantaged business concerns were solicited and if not, why not, ~~and~~ (C) if applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate small ~~and~~ small disadvantaged business sources.

* * * * *

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small ~~business and~~ small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small ~~business and~~ small disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(11) A recitation of the types of records the offeror will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small, small disadvantaged **and women-owned small** business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists **(**e.g., PASS**),** guides**,** and other data that identify small, small disadvantaged **and women-owned small** business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small, small disadvantaged **or women-owned small** business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than $100,000, indicating (A) whether small business concerns were solicited and if not, why not, (B) whether small disadvantaged business concerns were solicited and if not, why not, (C) **whether women-owned small business concerns were solicited and if not, why not, and (D)** if applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate small, small disadvantaged **and women-owned small** business sources.

* * * * *

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small, small disadvantaged **and women-owned small** business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the contractor's lists of potential small, small disadvantaged **and women-owned small business** subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small ~~business and~~ small disadvantaged business concerns in all “make-or-buy” decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small ~~and~~ small disadvantaged business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small ~~business or~~ small disadvantaged business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

* * * * *

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled “Utilization of Small ~~Business Concerns and~~ Small Disadvantaged Business Concerns,’’ or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

Alternate I (~~AUG 1989~~). When contracting by sealed bidding rather than by negotiation, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns ~~and~~ with small disadvantaged business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns ~~and~~ with small disadvantaged business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

(2) Provide adequate and timely consideration of the potentialities of small, small disadvantaged **and women-owned small** business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small, small disadvantaged **and women-owned small** business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, small disadvantaged **or women-owned small** business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

* * * * *

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small, Small Disadvantaged **and Women-Owned Small** Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

Alternate I (**OCT 1995**). When contracting by sealed bidding rather than by negotiation, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns, with small disadvantaged business concerns **and with women-owned small business concerns**. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns, with small disadvantaged business concerns **and with women-owned small business concerns** with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract. [FAC 90-32]

52.219-10 Incentive Subcontracting Program.

52.219-10 Incentive Subcontracting Program ~~**for Small and Small Disadvantaged Business Concerns.**~~

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 19.708(c)(1), ~~the contracting officer may, when contracting by negotiation~~, insert ~~in solicitations and contracts a~~ clause~~ substantially as follows when a subcontracting plan is required (see 19.702(a)(2)), and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small and disadvantaged business concerns, and is commensurate with the efficient and economical performance of the contract; unless the condition in 19.708(c)(3) is applicable. The contracting officer may vary the terms of the clause as specified in 19.708(c)(2).~~	As prescribed in 19.708(c)(1), insert **the following** clause**:**
INCENTIVE SUBCONTRACTING PROGRAM ~~FOR SMALL AND SMALL DISADVANTAGED BUSINESS CONCERNS (APR 1984)~~	INCENTIVE SUBCONTRACTING PROGRAM **(OCT 1995)**
(a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its subcontracting plan to try to award a certain percentage to small business concerns ~~and~~ a certain percentage to small disadvantaged business concerns. * * * * *	(a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its subcontracting plan to try to award a certain percentage to small business concerns**,** a certain percentage to small disadvantaged business concerns **and a certain percentage to women-owned small business concerns**. [FAC 90-32] * * * * *

52.219-13 [Reserved] [FAC 90-32]

~~**52.219-13 Utilization of Women-Owned Small Businesses.**~~

~~As prescribed in 19.902, insert the following clause in solicitations and contracts:~~

~~UTILIZATION OF WOMEN-OWNED SMALL BUSINESSES (AUG 1986)~~

~~(a) "Women-owned small businesses," as used in this clause, means small business concerns that are at least 51 percent owned by women who are United States citizens and who also control and operate the business.~~

~~"Control," as used in this clause, means exercising the power to make policy decisions.~~

~~"Operate," as used in this clause, means being actively involved in the day-to-day management of the business.~~

~~"Small business concern," as used in this clause, 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 121.~~

~~(b) It is the policy of the United States that women-owned small businesses shall have the maximum practicable opportunity to participate in performing contracts awarded by any Federal agency.~~

~~(c) The Contractor agrees to use its best efforts to give women-owned small businesses the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with the efficient performance of its contract.~~

~~(d) The Contractor may rely on written representations by its subcontractors regarding their status as women-owned small businesses.~~

~~(End of clause)~~

52.219-16 Liquidated Damages—Subcontracting Plan.

~~**52.219-16 Liquidated Damages—Small Business Subcontracting Plan.**~~

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 19.708(b)(2), insert the following clause: LIQUIDATED DAMAGES—~~SMALL BUSINESS~~ SUBCONTRACTING PLAN (~~AUG 1989~~)	As prescribed in 19.708(b)(2), insert the following clause: LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (**OCT 1995**
(a) "Failure to make a good faith effort to comply with the subcontracting plan," as used in this ~~subpart~~, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small ~~Business and~~ Small Disadvantaged Business Subcontracting Plan," or willful or intentional action to frustrate the plan.	(a) "Failure to make a good faith effort to comply with the subcontracting plan", as used in this **clause**, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small, Small Disadvantaged **and Women-Owned Small** Business Subcontracting Plan," or willful or intentional action to frustrate the plan.
(b) If, at contract completion, or in the case of a commercial products plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled Small ~~and~~ Small Disadvantaged Business Subcontracting Plans, the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply, shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal or, in the case of a commercial products plan, that portion of the dollar amount allocable to Government contracts by which the Contractor failed to achieve each subcontract goal.	(b) If, at contract completion, or in the case of a commercial product plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled Small, Small Disadvantaged **and Women-Owned Small** Business Subcontracting Plans, the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply, shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal or, in the case of a commercial products plan, that portion of the dollar amount allocable to Government contracts by which the Contractor failed to achieve each subcontract goal.
* * * * *	* * * * *

(d) With respect to commercial products plans; i.e., company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in this contract entitled, Small ~~Business and~~ Small Disadvantaged Business Subcontracting Plan, the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Officer under this clause on behalf of all agencies that awarded contracts covered by that commercial products plan. * * * * *	(d) With respect to commercial product plans; *i.e.*, company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in this contract entitled, Small, Small Disadvantaged **and Women-Owned Small** Business Subcontracting Plan, the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Officer under this clause on behalf of all agencies that awarded contracts covered by that commercial product plan. * * * * *
(f) Liquidated damages shall be in addition to any other remedies that Government may have. (End of clause)	(f) Liquidated damages shall be in addition to any other remedies that **the** Government may have. (End of clause) [FAC 90-32]

52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.

FAR as of FAC 90-25	*FAR as revised*
* * * * * *Alternate III* (NOV 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2~~(b)~~, ~~substitute the following~~ paragraph (d)(1) ~~for paragraph (d)(1) of the basic clause~~: ~~(d)(1) *Agreement.* A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territory of the Pacific Islands.~~	* * * * * *Alternate III* **(OCT 1995).** When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers **or processors** in the Federal market in accordance with **19.502-2(c), delete** paragraph (d)(1). [FAC 90-32]

52.219-22 [Reserved] [FAC 90-32]

~~**52.219-22 SIC Code and Small Business Size Standard.**~~

~~As prescribed in 19.304(d), insert the following provision:~~

~~SIC CODE AND SMALL BUSINESS SIZE STANDARD (JAN 1991)~~

~~(a) The standard industrial classification (SIC) code for this acquisition is _____.~~

~~(b)(1) The small business size standard is _____.~~

~~(2) 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.~~

~~(End of provision)~~

PART 20

PART 20—[RESERVED] [FAC 90-32, CASE 94-780]

~~**PART 20—LABOR SURPLUS AREA CONCERNS**~~
~~* * * * *~~

PART 22

APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.305 Contract clause.

FAR as of FAC 90-25	*FAR as revised*
The contracting officer shall insert the clause at 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation, in solicitations and contracts (including, for this purpose, basic ordering ~~and blanket purchase~~ agreements) when the contract may require or involve the employment of laborers or mechanics. However, the contracting officer shall not include the clause in solicitations and contracts if it is contemplated that the contract will be in one of the following categories:	The contracting officer shall insert the clause at 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation, in solicitations and contracts (including, for this purpose, basic ordering agreements) when the contract may require or involve the employment of laborers or mechanics. However, the contracting officer shall not include the clause in solicitations and contracts if it is contemplated that the contract will be in one of the following categories: [FAC 90-29]
(a) ~~Construction contracts of $2,000 or less.~~ ~~(b) Contracts, other than construction contracts, of $2,500 or less. Indefinite quantity or requirements contracts, including basic ordering agreements and blanket purchase agreements are exempt, if it can be determined in advance that the aggregate amount of all orders estimated to be placed thereunder for 1 year after the effective date of the agreement will not exceed $2,500. A determination shall be made annually thereafter if the contract or agreement is extended and the contract or agreement modified if necessary.~~	(a) **Contracts at or below the simplified acquisition threshold.** [FAC 90-29]
~~(c)~~ * * * * *. ~~(d)~~ * * * * * ~~(e)~~ * * * * * ~~(f)~~ * * * * * ~~(g)~~ * * * * *	**(b)** * * * * * **(c)** * * * * * **(d)** * * * * * **(e)** * * * * * **(f)** * * * * *
~~(h)~~ Any other contracts exempt under regulations of the Secretary of Labor (29 CFR 5.15).	**(g) Contracts for commercial items (see Parts 2 and 12).** [FAC 90-32, CASE 94-790] **(h)** Any other contracts exempt under regulations of the Secretary of Labor (29 CFR 5.15). [FAC 90-32, CASE 94-790]

22.604-1 Statutory exemptions.

FAR as of FAC 90-25	*FAR as revised*
Contracts for acquisition of the following supplies are exempt from the Act: (a) Any item in those situations where the contracting officer is authorized by the express language of a statute to purchase "in the open market" generally; or where a specific purchase is made under the conditions described in 6.302-2 in circumstances where immediate delivery is required by the public exigency. * * * * *	Contracts for acquisition of the following supplies are exempt from the Act: (a) Any item in those situations where the contracting officer is authorized by the express language of a statute to purchase "in the open market" generally **(such as commercial items, see Part 12)**; or where a specific purchase is made under the conditions described in 6.302-2 in circumstances where immediate delivery is required by the public exigency. [FAC 90-32, CASE 94-790] * * * * *

52.222-48 Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain ADP, Scientific and Medical, and/or Office and Business Equipment—Contractor Certification.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 22.1006(e)(1), insert the following clause: EXEMPTION FROM APPLICATION OF SERVICE CONTRACT ACT PROVISIONS ~~(MAY 1989)~~	As prescribed in 22.1006(e)(1), insert the following clause: EXEMPTION FROM APPLICATION OF SERVICE CONTRACT ACT PROVISIONS **FOR CONTRACTS FOR MAINTENANCE, CALIBRATION, AND/OR REPAIR OF CERTAIN ADP, SCIENTIFIC AND MEDICAL AND/OR OFFICE BUSINESS EQUIPMENT—CONTRACTOR CERTIFICATION (OCT 1995)** [FAC 90-32, CASE 94-721]
(a) The following certification shall be checked: CERTIFICATION The offeror certifies ☐ /does not certify ☐ that: ~~(i)~~ * * * * * ~~(ii)~~ The contract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, and/or repair of certain ADP, scientific and medical, and/or office and business equipment. An "established catalog price" is a	(a) The following certification shall be checked: CERTIFICATION The offeror certifies ☐ /does not certify ☐ that: **(1)** * * * * * * **(2)** The contract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, and/or repair of certain ADP, scientific and medical and/or office and business equipment. An

price included in a catalog, price list schedule, or other ~~form~~ that is regularly maintained by the manufacturer or the Contractor, is either published or otherwise available for inspection by customers, ~~and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public.~~ An “established market price” is a current price, established in the ~~usual~~ course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or Contractor; and ~~(iii)~~ * * * * *
* * * * *
(End of clause)

"established catalog price" is a price **(including discount price)** recorded in a catalog, price list**,** schedule, or other **verifiable and established record** that is regularly maintained by the manufacturer or the Contractor **and** is either published or otherwise available for inspection by customers. An "established market price" is a current price, established in the course of **ordinary and usual** trade between buyers and sellers free to bargain, which can be substantiated **by data** from sources independent of the manufacturer or Contractor; and **(3)** * * * * * *
* * * * *
(End of clause)

PART 23

ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.104 Exemptions.

FAR as of FAC 90-25	*FAR as revised*
(a) Except as provided in paragraphs (b) and (c) of this section, contracts and subcontracts are not subject to the restriction in 23.103(b) if they are (1) $100,000 or under; ~~or~~ (2) for indefinite quantities and the contracting officerbelieves that the amount ordered in any year under the con-tract will not exceed $100,000. * * * * *	(a) Except as provided in paragraphs (b) and (c) of this section, contracts and subcontracts are not subject to the restriction in 23.103(b) if they are (1) $100,000 or under; (2) for indefinite quantities and the contracting officerbelieves that the amount ordered in any year under the con-tract will not exceed $100,000**; or (3) for commercial items.** [FAC 90-32, CASE 94-790] * * * * *

23.501 Applicability.

FAR as of FAC 90-25	*FAR as revised*
This subpart applies to all contracts including contracts with 8(a) contractors under FAR Subpart 19.8 and modifi-cations which require a justification and approval (see Subpart 6.3) except—	This subpart applies to all contracts including contracts with 8(a) contractors under FAR Subpart 19.8 and modifi-cations which require a justification and approval (see Subpart 6.3) except—
(a) Contracts ~~valued below $25,000~~; however, the requirements of this subpart shall apply to contracts of any dollar value if the contract is awarded to an individual;	(a) Contracts **at or below the simplified acquisition threshold**; however, the requirements of this subpart shall apply to contracts of any value if the contract is awarded to an individual; [FAC 90-29]
	(b) Contracts for the acquisition of commercial items (see Part 12); [FAC 90-32, CASE 94-790]
~~(b)~~ * * * * *;	**(c)** * * * * *; [FAC 90-32, CASE 94-790]
~~(c)~~ * * * * *; or	**(d)** * * * * *; or [FAC 90-32, CASE 94-790]
~~(d)~~ * * * * *.	**(e)** * * * * *. [FAC 90-32, CASE 94-790]

PART 25

FOREIGN ACQUISITION

25.405 Procedures. [FAC 90-31, Case 94-701]

FAR as of FAC 90-25	*FAR as revised*
When the Trade Agreements Act or North American Free Trade Agreement (NAFTA) applies, the following procedures shall be used: * * * * (e) Within 7 working days after a contract award for an eligible product, agencies shall give unsuccessful offerors from designated or NAFTA countries written notice in accordance with 14.408-1(a)(2) and 15.1001(c)(2).	When the Trade Agreements Act or North American Free Trade Agreement (NAFTA) applies, the following procedures shall be used: * * * * (e) Within **three** days after a contract award for an eligible product, agencies shall give unsuccessful offerors from designated or NAFTA countries **notice** in accordance with **14.409-1 and 15.1002**. **"Day," for purposes of the notification process, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday.**

25.000 Scope of part. [FAC 90-31, Case 94-740]

FAR as of FAC 90-25	*FAR as revised*
Except as provided in agency regulations, this part provides policies and procedures to implement the Buy American Act, the Balance of Payments Program, purchases under the Trade Agreements Act of 1979, and other laws and regulations that pertain to acquiring foreign supplies, services, and construction materials. This part also provides policies and procedures for the application to foreign acquisitions of international agreements, customs and duties, ~~the clause at 52.215-1, Examination of Records by Comptroller General~~, and use of local currency for payment.	Except as provided in agency regulations, this part provides policies and procedures to implement the Buy American Act, the Balance of Payments Program, purchases under the Trade Agreements Act of 1979, and other laws and regulations that pertain to acquiring foreign supplies, services, and construction materials. This part also provides policies and procedures pertaining to international agreements, customs and duties, **the clause at 52.215-2, Audit and Records—Negotiation**, and use of local currency for payment**.**

25.105 Evaluating offers.

FAR as of FAC 90-25	*FAR as revised*
(a) Unless the agency head determines otherwise, the offered price of a domestic end product is unreasonable when the lowest acceptable domestic offer exceeds the lowest acceptable foreign offer (see 25.101), inclusive of duty, by—	(a) Unless the agency head determines otherwise, the offered price of a domestic end product is unreasonable when the lowest acceptable domestic offer exceeds the lowest acceptable foreign offer (see 25.101), inclusive of duty, by—
(1) More than 6 percent, if the domestic offer is from a large business ~~that is not a labor surplus area concern~~; or	(1) More than 6 percent, if the domestic offer is from a large business; or [FAC 90-32, CASE 94-780]
(2) More than 12 percent, if the domestic offer is from a small business concern ~~or any labor surplus area concern~~.	(2) More than 12 percent, if the domestic offer is from a small business concern. [FAC 90-32, CASE 94-780]
* * * * *	* * * * *

25.404 Reserved [FAC 90-32, CASE 94-780]

~~**25.404 Labor surplus area set-asides.**~~

~~(a) Except as provided in paragraph (b) of this section, when responsive offers are received for an eligible product, labor surplus area preference shall be accorded only to small business concerns.~~

~~(b) When responsive offers are received for an Israeli end product in an amount of at least $50,000 but less than the dollar threshold described in 25.402(a)(1), preference shall be accorded to all labor surplus area concerns.~~

25.901 Omission of audit clause

FAR as of FAC 90-25	*FAR as revised*
(a) *Definition*. "Foreign contractor," as used in this subpart, means a contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.	(a) *Definition*. "Foreign contractor," as used in this subpart, means a contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.
(b) *Policy*. As required by 10 U.S.C. 2313, 41 U.S.C. 254, and 15.106-1(b)(3), the contracting officer shall consider for use in negotiated contracts with foreign contractors, whenever possible, the clause ~~at 52.215-1,~~ Examination of Records by Comptroller General. ~~Omission of the clause~~ should be approved only after the contracting agency, having considered such factors as alternate	(b) *Policy*. As required by 10 U.S.C. 2313, 41 U.S.C. 254d, and 15.106-1(b), the contracting officer shall consider for use in negotiated contracts with foreign contractors, whenever possible, the **basic** clause at **52.215-2, Audit and Records—Negotiation, which authorizes** examination of records by the Comptroller General. **Use of the clause with Alternate III**

sources of supply, additional cost, and time of delivery, has made all reasonable efforts to include the clause.

should be approved only after the contracting agency, having considered such factors as alternate sources of supply, additional cost, and time of delivery, has made all reasonable efforts to include the **basic** clause.

(c) *Conditions for omission*. (1) The contracting officer may ~~omit the clause at 52.215-1~~, Examination of Records by Comptroller General, from contracts with foreign contractors—

(i) If the agency head determines, with the concurrence of the Comptroller General ~~or a designee~~, ~~the omission of the clause~~ will serve the public interest; or

(ii) If the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its ~~books, documents, papers, or~~ records available for examination, and the agency head determines, after taking into account the price and availability of the property or services from domestic sources, that omission of the clause best serves the public interest.

(2) ~~When a determination under subparagraph (c)(1)(ii) of this section is the basis for omission of the clause at 52.215-1, Examination of Records by Comptroller General, the agency head shall forward a written report to the Congress explaining the reasons for the determination; except that this requirement is not applicable to the Department of Defense~~.

(c) *Conditions for use of Alternate III.* The contracting officer may **use the clause at 52.215-2, Audit and Records—Negotiation, with its Alternate III** in contracts with foreign contractors—

(1) If the agency head, or designee, determines, with the concurrence of the Comptroller General, **that waiver of the right to examination of records by the Comptroller General** will serve the public interest; or

(2) If the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its **records, as defined at 4.703(a**), available for examination, and the agency head, or designee, determines, after taking into account the price and availability of the property or services from United States sources, that waiver of the right to examination of records by the Comptroller General best serves the public interest.

(d) *Determination and findings.* The determination and findings shall—

(1) Identify the contract and its purpose, and whether it is a contract with a foreign contractor or with a foreign government or agency thereof;

(2) Describe the efforts to include the clause;

(3) State the reasons for the contractor's refusal to include the clause;

(4) Describe the price and availability of the property or services from the United States and other sources; and

(5) Determine that it will serve the interest of the United States to ~~omit the clause~~.

(d) *Determination and findings.* The determination and findings shall—

(1) Identify the contract and its purpose, and whether it is a contract with a foreign contractor or with a foreign government or agency thereof;

(2) Describe the efforts to include the **basic** clause;

(3) State the reasons for the contractor's refusal to include the **basic** clause;

(4) Describe the price and availability of the property or services from the United States and other sources; and

(5) Determine that it will serve the interest of the United States to **use the clause with its Alternate III**.

PART 26

OTHER SOCIOECONOMIC PROGRAMS

26.104 Contract clause.

FAR as of FAC 90-25	*FAR as revised*
(a) Contracting officers in the Department of Defense shall insert the clause at 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, in solicitations and contracts that contain the clause at 52.219-9, ~~Small Business and Small Disadvantaged Business~~ Subcontracting Plan.	(a) Contracting officers in the Department of Defense shall insert the clause at 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, in solicitations and contracts that contain the clause at 52.219-9, **Small, Small Disadvantaged and Women-Owned Small Business** Subcontracting Plan. [FAC 90-32, CASE 94-780]
(b) Contracting officers in civilian agencies may insert the clause at 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, in solicitations and contracts that contain the clause at 52.219-9, ~~Small Business and Small Disadvantaged Business~~ Subcontracting Plan, if—	(b) Contracting officers in civilian agencies may insert the clause at 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, in solicitations and contracts that contain the clause at 52.219-9, **Small, Small Disadvantaged and Women-Owned Small Business** Subcontracting Plan, if— [FAC 90-32, CASE 94-780]
(1) In the opinion of the contracting officer, subcontracting possibilities exist for Indian organizations or Indian-owned economic enterprises; and	(1) In the opinion of the contracting officer, subcontracting possibilities exist for Indian organizations or Indian-owned economic enterprises; and
(2) Funds are available for any increased costs as described in paragraph (c)(2) of the clause at 52.226-1.	(2) Funds are available for any increased costs as described in paragraph (c)(2) of the clause at 52.226-1.

PART 28

BONDS AND INSURANCE

28.106-4 Contract clause.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	**(a)** * * * * * [FAC 90-32, CASE 94-762] **(b) In accordance with Section 806(a)(2) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355, the contracting officer shall insert the clause at 52.228-12, Prospective Subcontractor Requests for Bonds, in solicitations and contracts with respect to which a payment bond will be furnished pursuant to the Miller Act (see 28.102-1), except for contracts for the acquisition of commercial items as defined in Subpart 2.1.** [FAC 90-32, CASE 94-762]

28.106-6 Furnishing information.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * * **(d) Section 806(a)(2) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, requires that the Federal Government provide subcontractors information on payment bonds under contracts for other than commercial items as defined in Subpart 2.1. Upon the written or oral request of a subcontractor/supplier, or prospective subcontractor/supplier, under a contract with respect to which a payment bond has been furnished pursuant to the Miller Act, the contracting officer shall promptly provide to the requester, either orally or**

in writing, as appropriate, any of the following:

(1) Name and address of the surety or sureties on the payment bond.

(2) Penal amount of the payment bond.

(3) Copy of the payment bond. The contracting officer may impose reasonable fees to cover the cost of copying and providing a copy of the payment bond. [FAC 90-32, CASE 94-762]

52.228-12 Prospective Subcontractor Requests for Bonds. [FAC 90-32, CASE 94-762]

As prescribed in 28.106-4, use the following clause:

PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS (OCT 1995)

In accordance with section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105, Pub. L. 103-355, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to the Miller Act, the Contractor shall promptly provide a copy of such payment bond to the requester.

(End of clause)

PART 31

CONTRACT COST PRINCIPLES AND PROCEDURES

31.106-3 Contractor's commercial items. [FAC 90-32, CASE 94-790]

~~**31.106-3 Contractor's commercial products.**~~

FAR as of FAC 90-25	*FAR as revised*
If facilities constituting the contractor's usual commercial ~~products~~ (or only minor modifications thereof) are acquired by the Government under the contract, the Government shall not pay any amount in excess of the contractor's most favored customer price or the price of other suppliers for like quantities of the same or substantially the same items, whichever is lower.	If facilities constituting the contractor's usual commercial **items** (or only minor modifications thereof) are acquired by the Government under the contract, the Government shall not pay any amount in excess of the contractor's most favored customer price or the price of other suppliers for like quantities of the same or substantially the same items, whichever is lower. [FAC 90-32, CASE 94-790]

31.110 Indirect cost rate certification and penalties on unallowable costs.

(a) Certain contracts require certification of the indirect cost rates proposed for progress, billing, or final payment purposes. See 42.703-2 for administrative procedures regarding the certification provisions and the related contract clause prescription.

(b) If unallowable costs are included in final indirect cost settlement proposals, penalties may be assessed. See 42.709 for administrative procedures regarding the penalty assessment provisions and the related contract clause prescription. [FAC 90-31, Case 94-751]

31.205-1 Public relations and advertising costs.

FAR as of FAC 90-25	*FAR as revised*
* * * *	* * * *
(f) Unallowable public relations and advertising costs include the following:	(f) Unallowable public relations and advertising costs include the following:
* * * *	* * * *

(3) Costs of sponsoring meetings, symposia, seminars, and other special events when the principal purpose of the event is other than dissemination of technical information or stimulation of production.	(3) Costs of sponsoring meetings, **conventions,** symposia, seminars, and other special events when the principal purpose of the event is other than dissemination of technical information or stimulation of production.
* * * *	* * * * [FAC 90-31, Case 94-751]

31.205-43 Trade, business, technical and professional activity costs. [FAC 90-31, Case 94-751]

FAR as of FAC 90-25	*FAR as revised*
The following types of costs are allowable:	The following types of costs are allowable:
(a) Memberships in trade, business, technical, and professional organizations.	(a) Memberships in trade, business, technical, and professional organizations.
(b) Subscriptions to trade, business, professional, or other technical periodicals.	(b) Subscriptions to trade, business, professional, or other technical periodicals.
(c) When the principal purpose of a meeting, conference, symposium, or seminar is the dissemination of trade, business, technical or professional information or the stimulation of production or improved productivity—	(c) When the principal purpose of a meeting, **convention,** conference, symposium, or seminar is the dissemination of trade, business, technical or professional information or the stimulation of production or improved productivity—
(1) Costs of organizing, setting up, and sponsoring the meetings, symposia, etc., including rental of meeting facilities, transportation, subsistence, and incidental costs;	(1) Costs of organizing, setting up, and sponsoring the meetings, **conventions,** symposia, etc., including rental of meeting facilities, transportation, subsistence, and incidental costs;
(2) Costs of attendance by contractor employees, including travel costs (see 31.205-46); and	(2) Costs of attendance by contractor employees, including travel costs (see 31.205-46); and
(3) Costs of attendance by individuals who are not employees of the contractor, *provided* (i) such costs are not also reimbursed to the individual by the employing company or organization, and (ii) the individuals attendance is essential to achieve the purpose of the conference, meeting, symposium, etc.	(3) Costs of attendance by individuals who are not employees of the contractor, *provided* (i) such costs are not also reimbursed to the individual by the employing company or organization, and (ii) the individuals attendance is essential to achieve the purpose of the conference, meeting, **convention,** symposium, etc.

31.205-6 Compensation for personal services.

FAR as of FAC 90-25	*FAR as revised*
* * * *	* * * *
(g) *Severance pay.* (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages by contractors to workers whose employment is being	(g) *Severance pay.* (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages by contractors to workers whose employment is being

involuntarily terminated. Payments for early retirement incentive plans are covered in subparagraph (j)(6) below.

(2) Severance pay to be allowable must meet the general allowability criteria in subdivision (g)(2)(i) below, and, depending upon whether the severance is normal or abnormal, criteria in subdivision (g)(2)(ii) for normal severance pay or subdivision (g)(2)(iii) for abnormal severance pay also apply.

* * * *

involuntarily terminated. Payments for early retirement incentive plans are covered in subparagraph (j)(6) below.

(2) Severance pay to be allowable must meet the general allowability criteria in subdivision (g)(2)(i) below, and, depending upon whether the severance is normal or abnormal, criteria in subdivision (g)(2)(ii) for normal severance pay or subdivision (g)(2)(iii) for abnormal severance pay also apply. **In addition, paragraph (g)(3) of this subsection applies if the severance cost is for foreign nationals employed outside the United States.** [FAC 90-31, Case 94-754]

* * * *

(3) Notwithstanding the reference to geographical area in 31.205-6(b)(1), under 10 U.S.C. 2324(e)(1)(M) and 41 U.S.C. 256(e)(1)(M), the costs of severance payments to foreign nationals employed under a service contract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States. Further, under 10 U.S.C. 2324(e)(1)(N) and 41 U.S.C. 256(e)(1)(N), all such costs of severance payments which are otherwise allowable are unallowable if the termination of employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States facility in that country at the request of the government of that country; this does not apply if the closing of a facility or curtailment of activities is made pursuant to a status-of-forces or other country-to-country agreement entered into with the government of that country before November 29, 1989. 10 U.S.C. 2324(e)(3) and 41 U.S.C. 256(e)(2) permit the head of the agency, or designee, to waive these cost allowability limitations under certain circumstances (see 37.113 and the solicitation provision at 52.237-8). [FAC 90-31, Case 94-754]

31.205-13 Employee morale, health, welfare, food service, and dormitory costs and credits. [FAC 90-31, Case 94-750]

~~(a) This paragraph (a) applies to costs incurred before the effective date of implementation in FAR of sections 2101 and 2151 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355).~~

~~(1) Aggregate costs incurred on activities designed to improve working conditions, employer-employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, except as limited by paragraph (a)(2) of this section, and to the extent that the net amount is reasonable. Some examples are house publications, health clinics, recreation, employee counseling services, and food and dormitory services, which include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities.~~

~~(2) Losses from operating food and dormitory services may be included as costs only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the above objective are not allowable. A loss may be allowed, however, to the extent that the contractor can demonstrate that unusual circumstances exist (e.g., (i) where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available, or (ii) where charged but unproductive labor costs would be excessive but for the services provided or where cessation or reduction of food or dormitory operations will not otherwise yield net cost savings) such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.~~

~~(3) When the contractor has an arrangement authorizing an employee association to provide or operate a service, such as vending machines in the contractor's plant and retain the profits, such profits shall be treated in the same manner as if the contractor were providing the service (but see paragraph (a)(4) of this section).~~

~~(4) Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, may be included as costs incurred under paragraph (a)(1) of this section only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.~~

~~(b) This paragraph (b) implements section 2192 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355). It applies to costs incurred after the effective date of implementation in FAR of sections 2101 and 2151 of Pub. L. 103-355.~~

FAR as of FAC 90-25	*FAR as revised*
(1) Aggregate costs incurred on activities designed to improve working conditions, employer-employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, except as limited by paragraphs ~~(b)(2), (3), and (4~~) of this section, ~~and to the extent that the net amount per employee is reasonable~~. Some examples of allowable activities are house publications, health clinics, wellness/ fitness centers, employee counseling services, and food and dormitory services, which include operating	(a) Aggregate costs incurred on activities designed to improve working conditions, employer-employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, except as limited by paragraphs **(b), (c), and (d)** of this subsection. Some examples of allowable activities are house publications, health clinics, wellness/fitness centers, employee counseling services, and food and dormitory services, which include operating or furnishing facilities for cafeterias, dining rooms,

or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities.

canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities.

(2) Costs of gifts are unallowable.

(b) Costs of gifts are unallowable. **(Gifts do not include awards for performance made pursuant to 31.205-6(f) or awards made in recognition of employee achievements pursuant to an established contractor plan or policy.)**

(3) Costs of recreation are unallowable, except for the costs of contractor employees' participation in sports teams designed to improve company loyalty, team work, or employee physical fitness, ~~conducted during off duty hours at a nominal cost per participating employee~~.

(c) Costs of recreation are unallowable, except for the costs of employees' participation in company sponsored sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.

(4) Losses from operating food and dormitory services may be included as costs only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the above objective are not allowable. A loss may be allowed, however, to the extent that the contractor can demonstrate that unusual circumstances exist (e.g., ~~(i)~~ where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available, or ~~(ii)~~ where charged but unproductive labor costs would be excessive but for the services provided or where cessation or reduction of food or dormitory operations will not otherwise yield net cost savings) such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(d) Losses from operating food and dormitory services may be included as costs only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the above objective are not allowable. A loss may be allowed, however, to the extent that the contractor can demonstrate that unusual circumstances exist (e.g., where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available; or where charged but unproductive labor costs would be excessive but for the services provided or where cessation or reduction of food or dormitory operations will not otherwise yield net cost savings) such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(5) When the contractor has an arrangement authorizing an employee association to provide or operate a service, such as vending machines in the contractor's plant and retain the profits, such profits shall be treated in the same manner as if the contractor were providing the

(e) When the contractor has an arrangement authorizing an employee association to provide or operate a service, such as vending machines in the contractor's plant, and retain the profits, such profits shall be treated in the same manner as if the contractor were providing the service (but see

service (but see paragraph ~~(b)(6)~~ of this section).

(6) Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, may be included as costs incurred under paragraph ~~(b)(1)~~ of this section only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

paragraph (f) of this subsection).

(f) Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, may be included as costs incurred under paragraph (a) of this subsection only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

31.205-14 Entertainment costs [FAC 90-31, Case 94-750]

FAR as of FAC 90-25	*FAR as revised*
~~(a) This paragraph (a) applies to costs incurred before the effective date of implementation in FAR of sections 2101 and 2151 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355). Costs of amusement, diversion, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable (but see 31.205-1 and 31.205-13). Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees~~.	
~~(b) This paragraph (b) implements section 2192 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355). It applies to costs incurred after the effective date of implementation in FAR of sections 2101 and 2151 of Pub. L. 103-355~~. Costs of amusement, diversion, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable. Costs made specifically unallowable under this cost principle are not allowable under any other cost principle. Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees.	Costs of amusement, diversions, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable. Costs made specifically unallowable under this cost principle are not allowable under any other cost principle. Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees.

31.205-22 Legislative lobbying costs. [FAC 90-31, Case 94-754]

FAR as of FAC 90-25	*FAR as revised*
(a) Costs associated with the following activities are unallowable: * * * * * (3) Any attempt to influence (i) the introduction of Federal or state legislation, or (ii) the enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation; (4) Any attempt to influence (i) the introduction of Federal or state legislation, or (ii) the enactment or modification of any pending Federal or state legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or * * * * *	(a) Costs associated with the following activities are unallowable: * * * * * (3) Any attempt to influence (i) the introduction of Federal, state, **or local** legislation, or (ii) the enactment or modification of any pending Federal, state, **or local** legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation; (4) Any attempt to influence (i) the introduction of Federal, state, **or local** legislation, or (ii) the enactment or modification of any pending Federal, state, **or local** legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or * * * * *

31.205-26 Material costs.

FAR as of FAC 90-25	*FAR as revised*
* * * * * (e) Allowance for all materials, supplies, and services that are sold or transferred between any divisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart. However, allowance may be at a price when it is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control, and when~~ the price— ~~(1) Is or is based on an "established catalog or market price of commercial items sold in substantial quantities to the general public" in accordance with~~	* * * * * (e) Allowance for all materials, supplies, and services that are sold or transferred between any divisions, **subdivisions,** subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart. However, allowance may be at price when it is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control, and when **the item being transferred qualifies for an exception under 15.804-1 and** the contracting officer has not determined the price to be

~~15.804; or~~

~~(2) Is the result of "adequate price competition" in accordance with 15.804 and is the price at which an award was made to the affiliated organization after obtaining quotations on an equal basis from such organization and one or more outside sources that produce the item or its equivalent in significant quantity.~~

~~(3) Provided, that either subparagraph (1) or (2) above—~~

~~(i) The price is not in excess of the transferor's current sales price to its most favored customer (including any division, subsidiary or affiliate of the contractor under a common control) for a like quantity under comparable conditions; and~~

~~(ii)~~ The contracting officer has not determined the price to be unreasonable.

unreasonable. [FAC 90-32, CASE 94-721]

(f) The price ~~determined in accordance with subparagraph (e)(1) above~~ should be adjusted to reflect the quantities being acquired and may be adjusted to reflect actual cost of any modifications necessary because of contract requirements.

(f) **When a catalog or market price exception under 15.804-1(a)(1)(ii) applies under paragraph (e) of this subsection,** the price should be adjusted to reflect the quantities being acquired and may be adjusted to reflect the actual cost of any modifications necessary because of contract requirements. [FAC 90-32, CASE 94-721]

31.603 Requirements. [FAC 90-31, Case 94-754]

FAR as of FAC 90-25	*FAR as revised*
(a) Contracts that refer to this Subpart 31.6 for determining allowable costs under contracts with State, local and Indian tribal governments shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-87 which is in effect on the date of the contract.	(a) Contracts that refer to this Subpart 31.6 for determining allowable costs under contracts with State, local and Indian tribal governments shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-87 which is in effect on the date of the contract.
(b) Agencies are not expected to place additional restrictions on individual items of cost.	(b) Agencies are not expected to place additional restrictions on individual items of cost. **However, under 10 U.S.C. 2324(e) and 41 U.S.C. 256(e), the following costs are unallowable:**

(1) Costs of entertainment, including amusement, diversion, and social activities, and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, state, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations in the FAR or an executive agency supplement to the FAR.

(5) Costs of any membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

(11) Costs incurred in making any payment (commonly known as a "golden parachute payment") which is—

(i) In an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and

(ii) Is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

(12) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.

(13) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of the severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined by regulations in the FAR or in an executive agency supplement to the FAR.

(14) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or curtailment of activities at, a United States facility in that country at the request of the government of that country.

(15) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceedings commenced by the United States or a State, to the extent provided in 10 U.S.C. 2324(k) or 41 U.S.C. 256(k).

31.703 Requirements. [FAC 90-31, Case 94-754]

FAR as of FAC 90-25	*FAR as revised*
(a) Contracts which refer to this Subpart 31.7 for deter- mining allowable costs shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-122 in effect on the date of the contract.	(a) Contracts which refer to this Subpart 31.7 for deter- mining allowable costs shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-122 in effect on the date of the contract.
(b) Agencies are not expected to place additional restrictions on individual items of cost.	(b) Agencies are not expected to place additional restrictions on individual items of cost. **However, under 10 U.S.C. 2324(e) and 41 U.S.C. 256(e), the costs cited in 31.603(b) are unallowable.**

PART 32

CONTRACT FINANCING

32.000 Scope of part.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(e) * * * * *; ~~and~~	(e) * * * * *;
(f) * * * * * ~~.~~	(f) * * * * * **;**
	(g) Financing of purchases of commercial items; and [FAC 90-33, CASE 94-764]
	(h) Performance-based payments. [FAC 90-33, CASE 94-764]

32.001 Definitions.

~~**32.001 Definition.**~~

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
	Customary contract financing **means that financing deemed by an agency to be available for routine use by contracting officers. Most customary contract financing arrangements should be usable by contracting officers without specific reviews or approvals by higher management.** [FAC 90-33, CASE 94-764]
	Unusual contract financing **means any financing not deemed customary contract financing by the agency. Unusual contract financing is financing that is legal and proper under applicable laws, but that the agency has not authorized contracting officers to use without specific reviews or approvals by higher management.** [FAC 90-33, CASE 94-764]

32.002 Applicability of subparts. [FAC 90-33, CASE 94-764]

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

(1) Sections 32.000 through 32.005.

(2) Subpart 32.3, Loan Guarantees for Defense Production.

(3) Subpart 32.6, Contract Debts.

(4) Subpart 32.7, Contract Funding.

(5) Subpart 32.8, Assignment of Claims.

(6) Subpart 32.9, Prompt Payment.

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

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

(1) Subpart 32.1, Non-Commercial Item Purchase Financing.

(2) Subpart 32.4, Advance Payments For Non-Commercial Items.

(3) Subpart 32.5, Progress Payments Based on Costs.

(4) Subpart 32.10, Performance-Based Payments.

32.003 Simplified acquisition procedures financing. [FAC 90-33, CASE 94-764]

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

32.004 Contract performance in foreign countries. [FAC 90-33, CASE 94-764]

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

32.005 Consideration for contract financing. [FAC 90-33, CASE 94-764]

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

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

(1) The value to the contractor of the anticipated amount and duration of the contract financing at the imputed financial costs of the equivalent working capital.

(2) The estimated profit rate to be earned through contract performance.

(c) *Interest*. Except as provided in Subpart 32.4, Advance Payments for Non-Commercial Items, the contract shall not provide for any other type of specific charges, such as interest, for contract financing.

32.006 Reduction or suspension of contract payments [Section added by FAC 90-33, CASE 94-765]

upon finding of fraud.
32.006-1 General.
32.006-2 Definitions.
32.006-3 Responsibilities.
32.006-4 Procedures.
32.006-5 Reporting.

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

32.006-1 General.

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

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

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

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

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

32.006-2 Definitions.

As used in this section—

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

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

32.006-3 Responsibilities.

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

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

32.006-4 Procedures.

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

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

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

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

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

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

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

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

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

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

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

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

(f) When more than one agency has contracts affected by the fraud, the agencies shall consider designating one agency as the lead agency for making the determination and decision.

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

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

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

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

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

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

32.006-5 Reporting.

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

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

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

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

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

SUBPART 32.1—NON-COMMERCIAL ITEM PURCHASE FINANCING [FAC 90-33, CASE 94-764]

~~**SUBPART 32.1—GENERAL**~~

32.100 Scope of subpart.

FAR as of FAC 90-25	*FAR as revised*
This subpart provides policies and procedures applicable to ~~the general subject of~~ contract financing and payment.	This subpart provides policies and procedures applicable to contract financing and payment **for any purchases other than purchases of**

commercial items in accordance with Part 12. [FAC 90-33, CASE 94-764]

32.101 Authority.

FAR as of FAC 90-25	*FAR as revised*
The basic authority for the contract financing described in this part is contained in section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255), section 2307 of the Armed Services Procurement Act (10 U.S.C. 2307), and Title III of the Defense Production Act of l950 (50 U.S.C. App. 2091).	The basic authority for the contract financing described in this part is contained in section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255), section 2307 of the Armed Services Procurement Act (10 U.S.C. 2307), and Title III of the Defense Production Act of l950 (50 U.S.C. App. 2091) **, as amended.** [FAC 90-33, CASE 94-764]

32.102 Description of contract financing methods.

FAR as of FAC 90-25	*FAR as revised*
(a) Advance payments are advances of money by the Government to a prime contractor before, in anticipation of, and for the purpose of complete performance under one or more contracts. They are expected to be liquidated from payments due to the contractor incident to performance of the contracts. Since they are not measured by performance, they differ from partial, progress, or other payments based on the performance or partial performance of a contract. Advance payments may be made to prime contractors for the purpose of making ~~subadvances~~ to subcontractors.	(a) Advance payments are advances of money by the Government to a prime contractor before, in anticipation of, and for the purpose of complete performance under one or more contracts. They are expected to be liquidated from payments due to the contractor incident to performance of the contracts. Since they are not measured by performance, they differ from partial, progress, or other payments based on the performance or partial performance of a contract. Advance payments may be made to prime contractors for the purpose of making **advances** to subcontractors. [FAC 90-33, CASE 94-764]
(b) Progress payments based on costs are made on the basis of costs incurred by the contractor as work progresses under the contract. This form of contract financing does not include— (1) * * * * * ; (2) * * * * * ;~~ or~~ (3) * * * * *~~.~~	(b) Progress payments based on costs are made on the basis of costs incurred by the contractor as work progresses under the contract. This form of contract financing does not include— (1) * * * * * ; (2) * * * * * ; (3) * * * * * **; or** **(4) Performance-based payments.** [FAC 90-33, CASE 94-764]
* * * * *	* * * * *
(d) Partial payments for accepted supplies and	(d) Partial payments for accepted supplies and

services that are only a part of the contract requirements are authorized under section 305 of the Federal Property and Administrative Services Act (41 U.S.C. 255). Although partial payments are generally treated as a method of payment and not as a method of contract financing, using partial payments can assist contractors to participate in Government contracts without, or with minimal, contract financing. When appropriate, agencies shall use this payment method. * * * * *	services that are only a part of the contract requirements are authorized under section 305 of the Federal Property and Administrative Services Act (41 U.S.C. 255) **and 10 U.S.C. 2307**. Although partial payments are generally treated as a method of payment and not as a method of contract financing, using partial payments can assist contractors to participate in Government contracts without, or with minimal, contract financing. When appropriate, agencies shall use this payment method. [FAC 90-33, CASE 94-764] * * * * * **(f) Performance-based payments are contract financing payments made on the basis of—** **(1) Performance measured by objective, quantifiable methods;** **(2) Accomplishment of defined events; or** **(3) Other quantifiable measures of results.** [FAC 90-33, CASE 94-764]

32.103 Progress payments under construction contracts. [FAC 90-33, CASE 94-764]

~~**32.103 Progress payments construction contracts.**~~

FAR as of FAC 90-25	*FAR as revised*
* * * * Retainage should not be used as a substitute for good contract management, and the contracting officer~~s~~ should not withhold funds without cause. * * * *	* * * * Retainage should not be used as a substitute for good contract management, and the contracting officer should not withhold funds without cause. * * * * [FAC 90-33, CASE 94-764]

32.104 Providing contract financing.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * * **(c) Subject to specific agency regulations, the contracting officer may provided customary contract financing in accordance with 32.113, Unusual contract financing shall not be provided except as authorized in 32.114.** [FAC 90-33, CASE 94-764] **(d) Unless otherwise authorized by agency regulation, contract financing may be provided for contracts with:**

(1) Small business concerns, when the contract price will be greater than the simplified acquisition threshold.

(2) Other than small business concerns, when the contract price will be $1 million or more, or for a group of contracts, whose prices are greater than the simplified acquisition threshold, that total $1 million or more.
[FAC 90-33, CASE 94-764]

32.106 Order of preference.

FAR as of FAC 90-25	*FAR as revised*
The contracting officer shall consider the following order of preference when a contractor requests contract financing, unless an exception would be in the Government's interest in a specific case:	The contracting officer shall consider the following order of preference when a contractor requests contract financing, unless an exception would be in the Government's **best** interest in a specific case: [FAC 90-33, CASE 94-764]
(a) * * * * *	(a) * * * * *
(b) ~~Progress payments based on costs at customary rates (see 32.501-1).~~	(b) **Customary contract financing (see 32.113).** [FAC 90-33, CASE 94-764]
(c) * * * * *	(c) * * * * *
(d) ~~Progress payments based on costs with unusual terms (see 32.501).~~	(d) **Unusual contract financing (see 32.114).** [FAC 90-33, CASE 94-764]
(e) * * * * *	(e) * * * * *

32.110 [Reserved] [FAC 90-33, CASE 94-764]

~~**32.110 Contract performance in foreign countries.**~~

~~(a) In applying the coverage of Part 32 to a contract performed partly or completely in a foreign country, the contracting officer shall give due consideration to the sovereignty, laws, and procedures of the country concerned and shall obtain legal advice as necessary. The legal advice may indicate a need for additional protective arrangements within the foreign jurisdiction or for deviations from the contract clauses prescribed in this part.~~

~~(b) The contracting officer shall act as necessary to comply with applicable foreign laws, while providing the most effective protection of the Government's interest.~~

32.111 Contract clauses for non-commercial purchases. [FAC 90-33, CASE 94-764]
* * * * *

~~**32.111 Contract clauses.**~~
* * * * *

32.112 Payment of subcontractors under contracts for non-commercial items. [FAC 90-32, CASE 94-762]

32.112-1 Subcontractor assertions of nonpayment. [FAC 90-32, CASE 94-762]

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

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

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

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

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

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

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

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

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

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

32.112-2 Subcontractor requests for information. [FAC 90-32, CASE 94-762]

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

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

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

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

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

(2) Properly classified pursuant to such Executive order.

32.113 Customary contract financing. [FAC 90-33, CASE 94-764]

The following contract financing arrangements are customary contract financing when provided in accordance with this part and agency regulations:

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

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

(c) Financing of contracts for supplies or services awarded under the sealed bid method of procurement in accordance with Part 14, or under the competitive negotiation method of procurement in accordance with Part 15, through progress payments based on costs in accordance with Subpart 32.5;

(d) Financing of contracts for supplies or services awarded under a sole-source acquisition as defined in Part 6 and using the procedures of Part 15, through either progress payments based on costs in accordance with Subpart 32.5, or performance-based payments in accordance with Subpart 32.10 (but not both). Performance-based payments are the preferred method when the contracting officer finds them practical, and the contractor agrees to their use.

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

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

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

32.114 Unusual contract financing. [FAC 90-33, CASE 94-764]

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

~~SUBPART 32.2—RESERVED~~

SUBPART 32.2—COMMERCIAL ITEM PURCHASE FINANCING [subpart added by FAC 90-33, CASE 94-764]

Sec.

32.200 Scope of subpart.
32.201 Statutory authority.
32.202 General.
32.202-1 Policy.
32.202-2 Types of payments for commercial item purchases.
32.202-3 Conducting market research about financing terms.
32.202-4 Security for Government financing.
32.203 Determining contract financing terms.
32.204 Procedures for contracting officer-specified commercial contract financing.
32.205 Procedures for offeror-proposed commercial contract financing.
32.206 Solicitation provisions and contract clauses.
32.207 Administration and payment of commercial financing payments.

32.200 Scope of subpart.

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

32.201 Statutory authority.

10 U.S.C. 2307(f) and 41 U.S.C. 255(f) provide that payment for commercial items may be made under such terms and conditions as the head of the agency determines are appropriate or customary in the commercial marketplace and are in the best interest of the United States.

32.202 General.

32.202-1 Policy.

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

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

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

(2) The contract price exceeds the simplified acquisition threshold at Part 13;

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

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

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

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

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

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

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

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

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

32.202-2 Types of payments for commercial item purchases.

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

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

***Commercial interim payment* means any payment that is not a commercial advance payment or a delivery payment. These payments are contract financing payments for prompt payment purposes (i.e., not subject to the interest penalty provisions of the Prompt Payment Act in accordance with Subpart 32.9). A commercial interim payment is given to the contractor after some work has been**

done, whereas a commercial advance payment is given to the contractor when no work has been done.

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

32.202-3 Conducting market research about financing terms.

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

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

(b) The overall level of financing normally provided;

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

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

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

32.202-4 Security for Government financing.

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

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

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

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

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

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

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

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

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

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

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

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

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

32.203 Determining contract financing terms.

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

32.204 Procedures for contracting-officer-specified commercial contract financing.

The financing terms shall be included in the solicitation. Contract financing shall not be a factor in the evaluation of resulting proposals, and proposals of alternative financing terms shall not be accepted (but see 14.208 and 15.606 concerning amendments of solicitations). However, an offer stating that the contracting officer-specified contract financing terms will not be used by the offeror does not alter the evaluation of the offer, nor does it render the offer nonresponsive or otherwise unacceptable. In the event of award to an offeror who declined the proposed contract financing, the contract financing provisions shall not be included in the resulting contract. Contract financing shall not be a basis for adjusting offerors' proposed prices because the effect of contract financing is reflected in each offeror's proposed prices.

32.205 Procedures for offeror-proposed commercial contract financing.

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

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

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

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

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

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

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

(4) The time value of proposal-specified contract financing arrangements shall be calculated using as the interest rate the Nominal Discount Rate specified in Appendix C of OMB Circular A-94, "Benefit-Cost Analysis of Federal Programs; Guidelines and Discounts", appropriate to the period of contract financing. Where the period of proposed financing does not match the periods

in the OMB Circular, the interest rate for the period closest to the finance period shall be used. Appendix C is updated yearly, and is available from the Office of Economic Policy in the Office of Management and Budget (OMB).

32.206 Solicitation provisions and contract clauses.

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

(b) Each contract financing clause shall include:

(1) A description of the—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32.207 Administration and payment of commercial financing payments.

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

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

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

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

(c) ***Management of security*****. After contract award, the contracting officer responsible for approving requests for financing payments shall be responsible for determining that the security**

continues to be adequate. If the contractor's financial condition is the Government's security, this contracting officer is also responsible for monitoring the contractor's financial condition.

SUBPART 32.4—ADVANCE PAYMENTS FOR NON-COMMERCIAL ITEMS [FAC 90-33, CASE 94-764]

~~**SUBPART 32.4—ADVANCE PAYMENTS**~~

32.400 Scope of subpart.

FAR as of FAC 90-25	*FAR as revised*
This subpart provides policies and procedures for advance payments on prime contracts and subcontracts. It does not include policies and procedures for advance payments for the types of transactions listed in 32.404.	This subpart provides policies and procedures for advance payments on prime contracts and subcontracts. It does not include policies and procedures for advance payments for the types of transactions listed in 32.404. **This subpart does not apply to commercial advance payments, which are subject to Subpart 32.2.** [FAC 90-33, CASE 94-764]

32.501-1 Customary progress payment rates.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(d) In accordance with the Defense Procurement Improvement Act of 1986 (Pub. L. 99-145) and, for civilian agencies, ~~as a matter of policy~~, progress payments are limited to 80 percent on work accomplished under undefinitized contract actions. A higher rate is not authorized under unusual progress payments or ~~flexible~~ progress payments for the undefinitized actions.	(d) In accordance with the Defense Procurement Improvement Act of 1986 (Pub. L. 99-145), **as amended,** and for civilian agencies, **in accordance with 41 U.S.C. 255, as amended**, progress payments are limited to 80 percent on work accomplished under undefinitized contract actions. A higher rate is not authorized under unusual progress payments or **other customary** progress payments for the undefinitized actions. [FAC 90-33, CASE 94-764]

32.501-4 [Reserved] [FAC 90-33, CASE 94-764]

~~**32.501-4 Consideration for progress payments.**~~

~~(a) There is no requirement for a separate consideration for providing progress payments or changing progress payment or liquidation rates, if coverage is included in the terms of the contract when awarded.~~

~~(b) Occasionally, unanticipated circumstances arise during contract performance which, under the policies of this subpart, result in the contract being amended to provide progress payments. In such a case, adequate new consideration is required.~~

~~(c) The contractor may provide the new consideration by monetary or nonmonetary means. A monetary consideration could be a reduction in the contract price. A nonmonetary consideration could be the incorporation of terms in the contract modification giving the Government a new and substantial benefit.~~

~~(d) The fair and reasonable consideration should approximate as nearly as practicably ascertainable the amount by which the price would have been smaller had the Progress Payments clause been contained in the initial contract. In the absence of definite information on this point, the contracting officer should apply the following criteria in evaluating whether the proposed new consideration is adequate:~~

~~(1) The value to the contractor of the anticipated amount and duration of unliquidated progress payments at the imputed financial costs of the equivalent working capital.~~

~~(2) The estimated profit rate to be earned through contract performance.~~

~~(e) The contracting officer shall not provide for any other type of specific charges, such as interest, for progress payments.~~

32.502-1 Use of customary progress payments.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(a) Subject to ~~paragraphs (b) and (c) below~~, the contracting officer may provide for customary progress payments if the contractor (1) will not be able to bill for the first delivery of products, or other performance milestones, for a substantial time after work must begin (normally 4 months or more for small business concerns; 6 months or more for others), and (2) will make expenditures for contract performance during the predelivery period that have a significant impact on the contractor's working capital. Progress payments may also be authorized, particularly for small suppliers, if the contractor demonstrates actual financial need or the unavailability of private financing (see 32.106(a)).	(a) Subject to **paragraph (b) of this subsection**, the contracting officer may provide for customary progress payments if the contractor (1) will not be able to bill for the first delivery of products, or other performance milestones, for a substantial time after work must begin (normally 4 months or more for small business concerns; 6 months or more for others), and (2) will make expenditures for contract performance during the predelivery period that have a significant impact on the contractor's working capital. Progress payments may also be authorized, particularly for small suppliers, if the contractor demonstrates actual financial need or the unavailability of private financing (see 32.106(a)). [FAC 90-33, CASE 94-764]
(b) To reduce undue administrative effort and expense, the contracting officer ~~generally should~~ not provide for progress payments on contracts of less than $1,000,000 unless—	(b) To reduce undue administrative effort and expense, **unless otherwise provided in agency regulations,** the contracting officer **shall** not provide for progress payments on contracts of less than $1 million unless— [FAC 90-33, CASE 94-764]
(1) The contractor is a small business concern and the contract will ~~involve approximately $100,000 or more; or~~	(1) The contractor is a small business concern and the contract will **be equal to or greater than the simplified acquisition threshold; or** [FAC 90-33, CASE 94-764]
* * * * *	* * * * *

~~(c) The contracting officer shall not provide for progress payments if the contract items are quick turnover types for which progress payments are not a customary commercial practice. Examples of items customarily not subject to progress payments include (1) subsistence, (2) clothing, (3) medical and dental supplies, and (4) standard commercial items not requiring a substantial accumulation of predelivery expenditures by the contractor.~~

~~(d)~~(1) In considering whether to provide for progress payments in circumstances under which a series of orders are awarded (e.g., indefinite delivery contracts or basic ordering agreements contemplating requisitions, task orders, etc., or their equivalent), the contracting officer shall apply the standards in paragraphs (a) ~~through (c) above~~, based on—

* * * * *

(c)(1) In considering whether to provide for progress payments in circumstances under which a series of orders are awarded (e.g., indefinite delivery contracts or basic ordering agreements contemplating requisitions, task orders, etc., or their equivalent), the contracting officer shall apply the standards in paragraphs (a) **and (b) of this subsection**, based on— [FAC 90-33, CASE 94-764]

* * * * *

32.602 General.

FAR as of FAC 90-25	*FAR as revised*
The contract debts covered in this subpart arise in various ways. The following are some examples: * * * * *	The contract debts covered in this subpart arise in various ways. The following are some examples: * * * * * **(h) Reimbursement of costs, as provided in 33.102(b), 33.104(h)(1), and 33.105(g)(1), paid by the Government where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification.** [FAC 90-32, CASE 94-731]

32.603 Applicability.

FAR as of FAC 90-25	*FAR as revised*
Except as otherwise specified, this subpart applies to all debts to the Government arising in connection with contracts and subcontracts for the acquisition of supplies or services.	Except as otherwise specified, this subpart applies to all debts to the Government arising in connection with contracts and subcontracts for the acquisition of supplies or services**, and debts arising from the Government's payment of costs,**

as provided in 33.102(b), 33.104(h)(1), and 33.105(g)(1), where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification. [FAC 90-32, CASE 94-731]

32.605 Responsibilities and cooperation among Government officials.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(b) For most kinds of contract debts, the contracting officer has the primary responsibility for determining the amounts of and collecting contract debt. Under some agency procedures, however, the individual who is responsible for payment under the contract; e.g., the disbursing officer, may have this primary responsibility.	(b) For most kinds of contract debts, **including reimbursement of protest costs** the contracting officer has the primary responsibility for determining the amounts of and collecting contract debt. Under some agency procedures, however, the individual who is responsible for payment under the contract; e.g., the disbursing officer, may have this primary responsibility. [FAC 90-32, CASE 94-731]

32.703-3 Contracts crossing fiscal years. [FAC 90-30, Case 94-766]

FAR as of FAC 90-25	*FAR as revised*
A contract that is funded by annual appropriations may not cross fiscal years, except in accordance with statutory authorization (see 41 U.S.C. 11a, 31 U.S.C. 1308, and 42 U.S.C. 2459a), or when the contract calls for an end product that cannot feasibly be subdivided for separate performance in each fiscal year (e.g., contracts for expert or consultant services).	**(a)** A contract that is funded by annual appropriations may not cross fiscal years, except in accordance with statutory authorization (see 41 U.S.C. 11a, 31 U.S.C. 1308, 42 U.S.C. 2459a and 41 U.S.C. 253*I* (see paragraph (b) of this section)), or when the contract calls for an end product that cannot feasibly be subdivided for separate performance in each fiscal year (*e.g.*, contracts for expert or consultant services).
	(b) 41 U.S.C. 253*I*, as amended by Section 1073 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355), authorizes heads of executive agencies other than the Department of Defense, United States Coast Guard, and the National Aeronautics and Space Administration (41 U.S.C. 252(a)(1)), to enter into a basic contract, options, or orders under that contract for procurement of severable services for a period that begins in one fiscal year and ends in

the next fiscal year if the period of the basic contract, options or orders under that contract does not exceed one year each. Funds made available for a fiscal year may be obligated for the total amount of an action entered into under this authority (see 37.106(b)). Consult agency supplements for similar authorities that may exist for the Department of Defense, United States Coast Guard, or the National Aeronautics and Space Administration.

32.801 Definitions. [FAC 90-33, Case 94-761]

FAR as of FAC 90-25

* * * *

"Designated agency," as used in this subpart, means any agency authorized to include a no-setoff commitment in its contracts. The designated agencies are the Department of Defense, the General Services Administration, the National Aeronautics and Space Administration, the Federal Aviation Administration, and any other agency authorized by statute or designated by the President.

* * * *

FAR as revised

* * * *

"Designated agency," as used in this subpart, means **any department or agency of the executive branch of the United States Government (see 32.803(d))**

* * * *

32.803 Policies. [FAC 90-33, Case 94-761]

FAR as of FAC 90-25

* * * *

(d) ~~Each~~ designated agency (see 32.801) may include a no-setoff commitment only ~~in time of war or national emergency in any contract permitting the assignment of claims. In such times there should be special considerations to justify a determination that exclusion of a no-setoff commitment is in the Government's interest~~.

* * * *

FAR as revised

* * * *

(d) **Any contract of a** designated agency (see 32.801), **except a contract under which full payment has been made**, may include a no-setoff commitment only **when a determination of need is made by the President and after such determination has been published in the *Federal Register***.

* * * *

32.806 Contract clauses. [FAC 90-33, Case 94-761]

FAR as of FAC 90-25

(a)(1) The contracting officer shall insert the clause at 52.232-23, Assignment of Claims, in

FAR as revised

(a)(1) The contracting officer shall insert the clause at 52.232-23, Assignment of Claims, in

solicitations and contracts ~~when the contract amount is expected to be $1,000 or more~~, unless the contract will prohibit the assignment of claims (see 32.803(b)). The use of this clause is not required for purchase orders. However, the clause may be used in purchase orders ~~for $1,000 or more~~ that are accepted in writing by the contractor, if such use is consistent with agency policies and regulations.

(2) If a no-setoff commitment ~~is to be included in the contract (see 32.801 and 32.803(d)) and the contract is expected to be for $1,000 or more~~, the contracting officer shall use the clause with its Alternate I.

* * * *

solicitations and contracts **expected to exceed the micro-purchase threshold**, unless the contract will prohibit the assignment of claims (see 32.803(b)). The use of the clause is not required for purchase orders. However, the clause may be used in purchase orders **expected to exceed the micro-purchase threshold**, that are accepted in writing by the contractor, if such use is consistent with agency policies and regulations.

(2) If a no-setoff commitment has been **authorized by the President (see 32.801 and 32.803(d))**, the contracting officer shall use the clause with its Alternate I.

* * * *

SUBPART 32.10—PERFORMANCE-BASED PAYMENTS

[subpart added by FAC 90-33, CASE 94-764]

Sec.

32.1000 Scope of subpart.
32.1001 Policy.
32.1002 Bases for performance-based payments.
32.1003 Criteria for use.
32.1004 Procedure.
32.1005 Solicitation provisions and contract clause.
32.1006 Agency approvals.
32.1007 Administration of performance-based payments.
32.1008 Suspension or reduction of performance-based payments.
32.1009 Title.
32.1010 Risk of loss.

32.1000 Scope of subpart.

This subpart provides policy and procedures for performance-based payments under non-commercial purchases pursuant to Subpart 32.1. This subpart does not apply to—

(a) Payments under cost-reimbursement contracts;

(b) Contracts for architect-engineer services or construction, or for shipbuilding or ship conversion, alteration, or repair, when the contracts provide for progress payments based upon a percentage or stage of completion;

(c) Contracts for research or development; or

(d) Contracts awarded through sealed bid or competitive negotiation procedures.

32.1001 Policy.

(a) Performance-based payments are contract financing payments that are not payment for accepted items.

(b) Performance-based payments are fully recoverable, in the same manner as progress payments, in the event of default. Except as provided in 32.1003(c), performance-based payments shall not be used when other forms of contract financing are provided.

(c) For Government accounting purposes, performance-based payments should be treated like progress payments based on costs under Subpart 32.5.

(d) Performance-based payments are contract financing payments and, therefore, are not subject to the interest-penalty provisions of prompt payment (see Subpart 32.9). However, these payments shall be made in accordance with the agency's policy for prompt payment of contract financing payments.

(e) Performance-based payments are the preferred financing method when the contracting officer finds them practical, and the contractor agrees to their use.

32.1002 Bases for performance-based payments.

Performance-based payments may be made on any of the following bases:

(a) Performance measured by objective, quantifiable methods,

(b) Accomplishment of defined events, or

(c) Other quantifiable measures of results.

32.1003 Criteria for use.

Performance-based payments shall be used only if the following conditions are met:

(a) The contracting officer and offeror are able to agree on the performance-based payment terms,

(b) The contract is a definitized fixed-price type contract (but see 32.1005(b)), and

(c) The contract does not provide for other methods of contract financing, except that advance payments in accordance with Subpart 32.4, or guaranteed loans in accordance with Subpart 32.3 may be used.

32.1004 Procedure.

Performance-based payments may be made either on a whole contract or on a deliverable item basis, unless otherwise prescribed by agency regulations. Financing payments to be made on a whole contract basis are applicable to the entire contract, and not to specific deliverable items. Financing payments to be made on a deliverable item basis are applicable to a specific individual deliverable item. (A deliverable item for these purposes is a separate item with a distinct unit price. Thus, a contract line item for 10 airplanes with a unit price of $1,000,000 each, has ten deliverable items—the separate planes. A contract line item for 1 lot of 10 airplanes with a lot price of $10,000,000, has only one deliverable item—the lot.)

(a) *Establishing performance bases*. (1) The basis for performance-based payments may be either specifically described events (*e.g.*, milestones), or some measurable criterion of performance. Each event or performance criterion that will trigger a finance payment shall be an integral and necessary part of contract performance and shall be identified in the contract, along with a description of what constitutes successful performance of the event or attainment of the performance criterion. The signing of contracts or modifications, the exercise of options, orother such actions shall not be events or critera for performance-based payments. An event need not be a critical event in order to trigger a payment, but successful performance of each such event or performance criterion shall be readily verifiable.

(2) Events or criteria may be either severable or cumulative. The successful completion of a severable event or criterion is independent of the accomplishment of any other event or criterion. Conversely, the successful accomplishment of a cumulative event or criterion is dependent upon the previous accomplishment of another event. A contract may provide for more than one series of severable and/or cumulative performance events or criteria performed in parallel. The following shall be included in the contract:

(i) The contract shall not permit payment for a cumulative event or criterion until the dependent event or criterion has been successfully completed.

(ii) Severable events or criteria shall be specifically identified in the contract.

(iii) The contract shall identify which events or criteria are preconditions for the successful achievement of each cumulative event or criterion.

(iv) If payment of performance-based finance amounts is on a deliverable item basis, each event or performance criterion shall be part of the performance necessary for that deliverable item and shall be identified to a specific contract line item or subline item.

(b) *Establishing performance-based finance payment amounts*. (1) The contracting officer shall establish a complete, fully defined schedule of events or performance criteria and payment amounts when negotiating contract terms. If a contract action significantly affects the price, or event or performance criterion, the contracting officer responsible for pricing the contract modification shall adjust the performance-based payment schedule appropriately.

(2) Total performance-based payments shall not exceed 90 percent of the contract price if on a whole contract basis, or 90 percent of the delivery item price if on a delivery item basis. The amount of each performance-based payment shall be specifically stated either as a dollar amount or as a percentage of a specifically identified price (e.g., contract price, or unit price of the deliverable item). The payment of contract financing has a cost to the Government in terms of interest paid by the Treasury to borrow funds to make the payment. Because the contracting officer has wide discretion as to the timing and amount of the performance-based payments, the contracting officer must ensure that the total contract price is fair and reasonable, all factors (including the financing costs to the Treasury of the performance-based payments) considered. Performance-based payment amounts may be established on any rational basis determined by the contracting officer, or agency procedures, which may include (but are not limited to) --

(i) Engineering estimates of stages of completion;

(ii) Engineering estimates of hours or other measures of effort to be expended in performance of an event, or achievement of a performance criterion; or

(iii) The estimated projected cost of performance of particular events.

(3) When subsequent contract modifications are issued, the performance-based payment schedule shall be adjusted as necessary to reflect the actions required by those contract modifications.

(c) *Instructions for multiple appropriations*. If there is more than one appropriation account (or subaccount) funding payments on the contract, the contracting officer shall provide instructions to the Government payment office for distribution of financing payments to the respective funds accounts. Distribution instructions must be consistent with the contract's liquidation provisions.

(d) *Liquidating performance-based finance payments*. Performance-based amounts shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payments. The contracting officer shall specify the liquidation rate or designated dollar amount in the contract. The method of liquidation shall ensure complete liquidation no later than final payment.

(1) If the performance-based payments are established on a delivery item basis, the liquidation amount for each line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount.

(2) If the performance-based finance payments are on a whole contract basis, liquidation shall be by predesignated liquidation amounts or liquidation percentages.

32.1005 Contract clauses.

(a) If performance-based contract financing will be provided, the contracting officer shall insert the clause at 52.232-32, Performance-Based Payments, in the solicitation and contract with the description of the basis for payment and liquidation as required in 32.1004.

(b) In solicitations for undefinitized contracts, the contracting officer may include the clause at 52.232-32, Performance-Based Payments, with a provision that the clause is not effective until the contract is definitized and the performance-based payment schedule include din the contract.

32.1006 Agency approvals.

The contracting officer shall obtain such approvals as are required by agency regulations.

32.1007 Administration and payment of performance-based payments.

(a) *Responsibility*. The contracting officer responsible for administration of the contract shall be responsible for review and approval of performance-based payments.

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

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

(2) Each approval shall specify the amount to be paid, necessary contractual information, and the appropriation account(s) (see 32.1004(c)) to be charged for the payment.

(c) *Reviews*. The contracting officer is responsible for determining what reviews are required for protection of the Government's interests. The contracting officer should consider the contractor's experience, performance record, reliability, financial strength, and the adequacy of controls established by the contractor for the administration of performance-based payments. Based upon the risk to the Government, post-payment reviews and verifications should normally be arranged as considered appropriate by the contracting officer. If considered necessary by the contracting officer, pre-payment reviews may be required.

(d) *Incomplete performance*. The contracting officer shall not approve a performance-based payment until the specified event or performance criterion has been successfully accomplished in accordance with the contract. If an event is cumulative, the contracting officer shall not approve the performance-based payment unless all identified preceding events or criteria are accomplished.

(e) *Government-caused delay*. Entitlement to a performance-based payment is solely on the basis of successful performance of the specified events or performance criteria. However, if there is a Government-caused delay, the contracting officer may renegotiate the performance-based payment schedule, to facilitate contractor billings for any successfully accomplished portions of the delayed event or criterion.

32.1008 Suspension or reduction of performance-based payments.

The contracting officer shall apply the policy and procedures in paragraphs (a), (b), (c), and (e) of 32.503-6, Suspension or reduction of payments, whenever exercising the Government's rights to suspend or reduce performance-based payments in accordance with paragraph (e) of the clause at 52.232-32, Performance-Based Payments.

32.1009 Title.

(a) Since the clause at 52.232-32, Performance-Based Payments, gives the Government title to the property described in paragraph (f) of the clause, the contracting officer must ensure that the Government title is not compromised by other encumbrances. Ordinarily, the contracting officer, in the absence of reason to believe otherwise, may rely upon the contractor's certification contained in the payment request.

(b) If the contracting officer becomes aware of any arrangement or condition that would impair the Government's title to the property affected by the Performance-Based Payments clause, the contracting officer shall require additional protective provisions.

(c) The existence of any such encumbrance is a violation of the contractor's obligations under the contract, and the contracting officer may, if necessary, suspend or reduce payments under the terms of the Performance-Based Payments clause covering failure to comply with a material requirement of the contract. In addition, if the contractor fails to disclose an existing encumbrance in the certification, the contracting officer should consult with legal counsel concerning possible violation of 31 U.S.C. 3729, the False Claims Act.

32.1010 Risk of loss.

(a) Under the clause at 52.232-32, Performance-Based Payments, and except for normal spoilage, the contractor bears the risk for loss, theft, destruction, or damage to property affected by the clause, even though title is vested in the Government, unless the Government has expressly assumed this risk. The clauses prescribed in this regulation related to performance-based payments, default, and terminations do not constitute a Government assumption of risk.

(b) If a loss occurs in connection with property for which the contractor bears the risk and the property is needed for performance, the contractor is obligated to repay the Government the performance-based payments related to the property.

(c) The contractor is not obligated to pay for the loss of property for which the Government has assumed the risk of loss. However, a serious loss may impede the satisfactory progress of contract performance, so that the contracting officer may need to act under paragraph (e)(2) of the Performance-Based Payments clause. In addition, while the contractor is not required to repay previous performance-based payments in the event of a loss for which the Government has assumed the risk, such a loss may prevent the contractor from making the certification required by the Performance-Based Payments clause.

52.232-29 Terms for Financing of Purchases of Commercial Items. [FAC 90-33, CASE 94-764]

As prescribed in 32.206(b)(2), insert the following clause:

TERMS FOR FINANCING OF PURCHASES OF COMMERCIAL ITEMS
(OCT 1995)

(a) *Contractor entitlement to financing payments*. The contractor may request, and the Government shall pay, a contract financing payment as specified elsewhere in this contract when: the payment requested is properly due in accordance with this contract; the supplies deliverable or services due under the contract, will be delivered or performed in accordance with the contract; and there has been no impairment or diminution of the Government's security under this contract.

(b) *Special terms regarding termination for cause.* If this contract is terminated for cause, the Contractor shall, on demand, repay to the Government the amount of unliquidated contract financing payments. The Government shall be liable for no payment except as provided by the Termination for Cause paragraph of the clause at 52.212-4. , Contract Terms and Conditions—Commercial Items.

(c) *Security for Government financing.* In the event the Contractor fails to provide adequate security, as required in this contract, no financing payment shall be made under this contract. Upon receipt of adequate security, financing payments shall be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the provisions for contract financing. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided and suspend further payments to the Contractor; and the Contractor shall repay to the Government the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

(d) *Reservation of rights.* (1) No payment or other action by the Government under this clause shall (i) excuse the Contractor from performance of obligations under this contract, or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause (i) shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(e) *Content of Contractor's request for financing payment term*. The Contractor's request for financing payment shall contain the following:

(1) The name and address of the Contractor;

(2) The date of the request for financing payment;

(3) The contract number and/or other identifier of the contract or order under which the request is made; and

(4) An appropriately itemized and totaled statement of the financing payments requested and such other information as is necessary for computation of the payment, prepared in accordance with the direction of the Contracting Officer.

(f) ***Limitation on frequency of financing payments*. Contractor financing payments shall be provided no more frequently than monthly.**

(g) In the event of any conflict between the terms proposed by the offeror in response to an invitation to propose financing terms (52.232-31) and the terms in this clause, the terms of this clause shall govern.

(End of clause)

52.232-30 Installment Payments for Commercial Items. [FAC 90-33, CASE 94-764]

As prescribed in 32.206(g), insert the following clause:

INSTALLMENT PAYMENTS FOR COMMERCIAL ITEMS (OCT 1995)

***(a) Contractor entitlement to financing payments*. The contractor may request, and the Government shall pay, a contract financing installment payment as specified in this contract when: the payment requested is properly due in accordance with this contract; the supplies deliverable or services due under the contract, will be delivered or performed in accordance with the contract; and there has been no impairment or diminution of the Government's security under this contract.**

(b) ***Computation of amounts*. Installment payment financing shall be paid to the Contractor when requested for each separately priced unit of supply (but not for services) of each contract line item in amounts approved by the Contracting Officer pursuant to this clause.**

(1) ***Number of installment payments for each contract line item.* Each separately priced unit of each contract line item is authorized a fixed number of monthly installment payments. The number of installment payments authorized for each unit of a contract line item is equal to the number of months from the date of contract award to the date one month before the first delivery of the first separately priced unit of the contract line item. For example, if the first scheduled delivery of any separately priced unit of a contract line item is 9 months after award of the contract, all separately priced units of that contract line item are authorized 8 installment payments.**

(2) ***Amount of each installment payment.* The amount of each installment payment for each separately priced unit of each contract line item is equal to 70 percent of the unit price divided by the number of installment payments authorized for that unit.**

(3) ***Date of each installment payment*. Installment payments for any particular separately priced unit of a contract line item begin the number of months prior to the delivery of that unit that are equal to the number of installment payments authorized for that unit. For example, if 8 installment payments are authorized for each separately priced unit of a contract line item, the first installment payment for any particular unit of that contract line item would be 8 months before the scheduled delivery date for that unit. The last installment payment would be 1 month before scheduled delivery of a unit.**

(4) ***Limitation on payment.* Prior to the delivery payment for a separately priced unit of a contract line item, the sum of all installment payments for that unit shall not exceed 70 percent of the price of that unit.**

(c) ***Contractor request for installment payment.* The Contractor may submit requests for payment of installment payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all installment payments in any month for which payment is being requested shall be included in a single request, appropriately itemized and totaled.**

(d) ***Dates for payment.* An installment payment under this clause is a contract financing payment under the Prompt Payment clause of this contract, and except as provided in paragraph(e) of this clause, approved requests shall be paid within 30 days of submittal of a proper request for payment.**

(e) ***Liquidation of installment payments*. Installment payments shall be liquidated by deducting from the delivery payment of each item the total unliquidated amount of installment payments made for that separately priced unit of that contract line item. The liquidation amounts for each unit of each line item shall be clearly delineated in each request for delivery payment submitted by the Contractor.**

(f) ***Security for installment payment financing.* In the event the Contractor fails to provide adequate security as required in this contract, no financing payment shall be made under this**

contract. Upon receipt of adequate security, financing payments shall be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the contract. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided, and suspend further payments to the contractor; the Contractor shall repay to the Government the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

(g) *Special terms regarding termination for cause.* If this contract is terminated for cause, the Contractor shall, on demand, repay to the Government the amount of unliquidated installment payments. The Government shall be liable for no payment except as provided by the Termination for Cause paragraph of the clause at 52.212-4, Contract Terms and Conditions—Commercial Items**.**

(h) *Reservation of rights.* (1) No payment, vesting of title under this clause, or other action taken by the Government under this clause shall **under this clause shall (i) excuse the Contractor from performance of obligations under this contract, or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.**

(2) The Government's rights and remedies under this clause (i) shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract, and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(i) *Content of Contractor's request for installment payment.* The Contractor's request for installment payment shall contain the following:

(1) The name and address of the Contractor;

(2) The date of the request for installment payment;

(3) The contract number and/or other identifier of the contract or order under which the request is made; and

(4) An itemized and totaled statement of the items, installment payment amount, and month for which payment is being requested, for each separately priced unit of each contract line item.

(End of clause)

52.232-31 Invitation to Propose Financing Terms. [FAC 90-33, CASE 94-764]

As prescribed in 32.205(b) and 32.206, insert the following provision:

INVITATION TO PROPOSE FINANCING TERMS (OCT 1995)

(a) The offeror is invited to propose terms under which the Government shall make contract financing payments during contract performance. The financing terms proposed by the offeror shall be a factor in the evaluation of the offeror's proposal. The financing terms of the successful offeror and the clause, Terms for Financing of Purchases of Commercial Items, at 52.232-29, shall be incorporated in any resulting contract.

(b) The offeror agrees that in the event of any conflict between the terms proposed by the offeror and the terms in the clause at 52.232-29, Terms for Financing of Purchases of Commercial Items, the terms of the clause at 52.232-29 shall govern.

(c) Because of statutory limitations (10 U.S.C. 2307(f) and 41 U.S.C. 255(f)), the offeror's proposed financing shall not be acceptable if it does not conform to the following limitations:

(1) Delivery payments shall be made only for supplies delivered and accepted, or services rendered and accepted in accordance with the payment terms of this contract;

(2) Contract financing payments shall not exceed 15 percent of the contract price in advance of any performance of work under the contract,

(3) The terms and conditions of the contract financing must be appropriate or customary in the commercial marketplace; and

(4) The terms and conditions of the contract financing must be in the best interests of the United States.

(d) The offeror's proposal of financing terms shall include the following:

(1) The proposed contractual language describing the contract financing (see FAR 32.202-2 for appropriate definitions of types of payments); and

(2) A listing of the earliest date and greatest amount at which each contract financing payment may be payable and the amount of each delivery payment. Any resulting contract shall provide that no contract financing payment shall be made at any earlier date or in a greater amount than shown in the offeror's listing.

(e) The offeror's proposed prices and financing terms shall be evaluated to determine the cost to the United States of the proposal using the interest rate and delivery schedule specified elsewhere in this solicitation.

(End of provision)

52.232-32 Performance-Based Payments. [FAC 90-33, CASE 94-764]

As prescribed in 32.1005, insert the following clause:

PERFORMANCE-BASED PAYMENTS (OCT 1995)

(a) ***Amount of payments and limitations on payments.*** **Subject to such other limitations and conditions as are specified in this contract and this clause, the amount of payments and limitations on payments shall be specified in the contract's description of the basis for payment.**

(b) ***Contractor request for performance-based payment.*** **The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled. The Contractor's request shall contain the information and certification detailed in paragraphs (l) and (m) of this clause.**

(c) ***Approval and payment of requests.*** **(1) The Contractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contracting Officer shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contracting Officer may, at any time, require the Contractor to substantiate the** successful performance of any **event or performance criterion which has been or is represented as being payable.**

(2) A payment under this performance-based payment clause is a contract financing payment under the Prompt Payment clause of this contract, and approved requests shall be paid in accordance with the prompt payment period and provisions specified for contract financing payments by that clause. However, if the Contracting Officer requires substantiation as provided in paragraph (c)(1) of this clause, or inquires into the status of an event or performance criterion, or into any of the conditions listed in paragraph (e) of this clause, or into the Contractor certification, payment is not required, and the prompt payment period shall not begin until the Contracting Officer approves the request.

(3) The approval by the Contracting Officer of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the Contractor from performance of obligations under this contract.

(d) ***Liquidation of performance-based payments.*** **(1) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole contract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage.**

(2) If at any time the amount of payments under this contract exceeds any limitation in this contract, the Contractor shall repay to the Government the excess. Unless otherwise determined

by the Contracting Officer, such excess shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

(e) ***Reduction or suspension of performance-based payments.*** **The Contracting Officer may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the contract, or take a combination of these actions after finding upon substantial evidence any of the following conditions:**

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (h) and (i) of this clause).

(2) Performance of this contract is endangered by the Contractor's (i) failure to make progress, or (ii) unsatisfactory financial condition.

(3) The Contractor is delinquent in payment of any subcontractor or supplier under this contract in the ordinary course of business.

(f)(1) ***Title*****. Title to the property described in this paragraph (f) shall vest in the Government. Vestiture shall be immediately upon the date of the first performance-based payment under this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.**

(2) ***Property*****, as used in this clause, includes all of the following described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices:**

(i) Parts, materials, inventories, and work in process,

(ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract,

(iii) Nondurable (*i.e.*, noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (f)(2)(ii) of this clause, and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract, (e.g., the termination or special tooling clauses), shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract, without requesting the Contracting Officer's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to the Contracting Officer.

(5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(g) ***Risk of loss.*** **Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. If any property is damaged, lost, stolen, or destroyed, the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.**

(h) ***Records and controls.*** **The Contractor shall maintain records and controls adequate for administration of this clause. The contractor shall have no entitlement to performance-based payments during any time the Contractor's records or controls are determined by the Contracting Officer to be inadequate for administration of this clause.**

(i) ***Reports and Government access*****. The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the Contracting Officer for the administration of this clause and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's records and to examine and verify the Contractor's performance of this contract for administration of this clause.**

(j) ***Special terms regarding default.*** **If this contract is terminated under the Default clause, (1) the Contractor shall, on demand, repay to the Government the amount of unliquidated performance-based payments, and (2) title shall vest in the Contractor, on full liquidation of all performance-based payments, for all property for which the Government elects not to require delivery under the Default clause of this contract. The Government shall be liable for no payment except as provided by the Default clause.**

(k) ***Reservation of rights.*** **(1) No payment or vesting of title under this clause shall (i) excuse the Contractor from performance of obligations under this contract, or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.**

(2) The Government's rights and remedies under this clause (i) shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract, and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(l) ***Content of Contractor's request for performance-based payment.*** **The Contractor's request for performance-based payment shall contain the following:**

(1) The name and address of the Contractor,

(2) The date of the request for performance-based payment,

(3) The contract number and/or other identifier of the contract or order under which the request is made,

(4) Such information and documentation as is required by the contract's description of the basis for payment, and

(5) A certification by a Contractor official authorized to bind the Contractor, as specified in paragraph (m).

(m) ***Content of Contractor's certification.*** **As required in paragraph (l)(5) of this clause, the Contractor shall make the following certification in each request for performance-based payment:**

I certify to the best of my knowledge and belief that—

(1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Contractor, in accordance with the contract, and the instructions of the Contracting Officer;

(2) (Except as reported in writing on _____), all payments to subcontractors and suppliers under this contract have been paid, or will be paid, currently, when due in the ordinary course of business;

(3) There are no encumbrances (except as reported in writing on _____) against the property acquired or produced for, and allocated or properly chargeable to the contract which would affect or impair the Government's title;

(4) There has been no materially adverse change in the financial condition of the Contractor since the submission by the Contractor to the Government of the most recent written information dated _____ ; and

(5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitation in the contract, and the amount of all payments under the contract will not exceed any limitation in the contract.

(End of clause)

PART 33

PROTESTS, DISPUTES, AND APPEALS

33.101 Definitions.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	***Day*, for the purpose of this subpart means a calendar day, unless otherwise specified. In the computation of any period—** **(a) The day of the act, event, or default from which the designated period of time begins to run is not included; and** **(b) The last day after the act, event, or default is included unless—** **(1) The last day is a Saturday, a Sunday, or a legal holiday; or** **(2) In the case of a filing of a paper at any appropriate administrative forum, the last day is a day on which weather or other conditions causes the closing of the forum for all or part of the day, in which event the next day on which the appropriate administrative forum is open is included.** **(c) In the case of the 5-day period after a debriefing date and the 10-day period after contract award for filing a protest resulting in a suspension (as described at 33.104(c)), Saturdays, Sundays, and legal holidays shall be counted.** [FAC 90-32, CASE 94-730] ***Filed* means the complete receipt of any document by an agency before its close of business. Documents received after close of business are considered filed as of the next day. Unless otherwise stated, the agency close of business is presumed to be 4:30 p.m. local time.** [FAC 90-32, CASE 94-730] * * * * *
"Protest," as used in this subpart, means a written objection by an interested party to a solicitation by an agency for offers for a ~~proposed~~	*Protest*, as used in this subpart, means a written objection by an interested party to **any of the following**:

contract for the ~~acquisition of supplies or services or a written objection by an interested party to a proposed award or the award of such a contract.~~	**(a)** A solicitation **or other request** by an agency for offers for a contract for the **procurement of property or services.** **(b) The cancellation of the solicitation or other request.** **(c) An award or proposed award of the contract.** **(d) A termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.** [FAC 90-32, CASE 94-730]

33.102 General.

FAR as of FAC 90-25	*FAR as revised*
(a) Contracting officers shall consider all protests, whether submitted before or after award and whether filed directly with the agency, the General Accounting Office (GAO), or for automatic data processing acquisitions under 40 U.S.C. 759 (~~hereinafter cited as "~~ADP contracts~~"~~), the General Services Board of Contract appeals (GSBCA). ~~The protestor shall be notified in writing of the final decision of the protest.~~ (See 19.302 for protests of small business status and 22.608-3 for protests involving eligibility under the Walsh-Healey Public Contracts Act.)	(a) Contracting officers shall consider all protests **and seek legal advice**, whether **protests are** submitted before or after award and whether filed directly with the agency, the General Accounting Office (GAO), or for automatic data processing acquisitions under 40 U.S.C. 759 (ADP contracts), the General Services Board of Contract Appeals (GSBCA **or the Board**). (See 19.302 for protests of small business status and 22.608-3 for protests involving eligibility under the Walsh-Healey Public Contracts Act.) [FAC 90-32, CASE 94-730]

(b) If in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency may—

(1) Take any action that could have been recommended by the Comptroller General in the event of a GAO protest; and

(2) Pay appropriate costs as stated in 33.104(h).

[FAC 90-32, CASE 94-730]

(3) Require the awardee to reimburse the Government's costs, as provided in this paragraph, where a postaward protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

(i) When a protest is sustained by GAO or GSBCA under circumstances that may allow the Government to seek reimbursement for protest costs, the contracting officer will determine whether the protest was sustained based on the awardee's negligent or intentional misrepresentation. If the protest was sustained on several issues, protest costs shall be apportioned according to the costs attributable to the awardee's actions.

(ii) The contracting officer shall review the amount of the debt, degree of the awardee's fault, and costs of collection, to determine whether a demand for reimbursement ought to be made. If it is in the best interests of the Government to seek reimbursement, the contracting officer shall notify the contractor in writing of the nature and amount of the debt, and the intention to collect by offset if necessary. Prior to issuing a final decision, the contracting officer shall afford the contractor an opportunity to inspect and copy agency records pertaining to the debt to the extent permitted by statute and regulation, and to request review of the matter by the Head of the Contracting Activity.

(iii) When appropriate, the contracting officer shall also refer the matter to the agency debarment official for consideration under Subpart 9.4.
[FAC 90-32, CASE 94-731]

~~(b)~~ * * * * *

(c) * * * * * [FAC 90-32, CASE 94-730]

(d) ***Protest likely after award*. The contracting officer may stay performance of a contract within the time period contained in subparagraph 33.104(c)(1) if the contracting officer makes a written determination that—** [FAC 90-32, CASE 94-730]

(1) A protest is likely to be filed; and

(2) Delay of performance is, under the circumstances, in the best interests of the United States.

~~(c)~~ * * * * *

(1) * * * * *

(2) May protest to the GAO in accordance with GAO regulations (4 CFR Part 21). An interested party who has filed a protest regarding an ADP contract with the GAO may not file a protest with the GSBCA with respect to that ~~contract~~;

(3) May protest to the GSBCA regarding an award of an ADP contract in accordance with GSBCA Rules of Procedure (48 CFR Chapter 61). An interested party who has filed a protest regarding an ADP ~~contract~~ with GSBCA (40 U.S.C. 759(~~h~~)) may not file a protest with the GAO with respect to that ~~contract~~.

(e) * * * * * [FAC 90-32, CASE 94-730]

(1) * * * * *

(2) May protest to the GAO in accordance with GAO regulations (4 CFR Part 21). An interested party who has filed a protest regarding an ADP procurement with the GAO may not file a protest with the GSBCA with respect to that **procurement**. [FAC 90-32, CASE 94-730]

(3) May protest to the GSBCA regarding an award of an ADP contract in accordance with GSBCA Rules of Procedure (48 CFR Chapter 61). An interested party who has filed a protest regarding an ADP **procurement** with GSBCA (40 U.S.C. 759(**f**)) may not file a protest with the GAO with respect to that **procurement**. [FAC 90-32, CASE 94-730]

33.103 Protests to the agency.

FAR as of FAC 90-25	*FAR as revised*
(a) * * * * *	(a) * * * * *
(b) (1) Agency protests may be submitted by interested parties to the individual ~~or~~ location designated in the provision at 52.233-2, Service of Protest. The designated person is normally the contracting officer.	(b) (1) Agency protests may be submitted by interested parties to the individual **and** location designated in the provision at 52.233-2, Service of Protest. The designated person is normally the contracting officer. [FAC 90-32, CASE 94-730]
(2) Protests based on alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of proposals shall be filed prior to bid opening or the closing date for receipt of proposals. In all other cases, protests shall be filed not later than ~~10 working~~ days after the basis of protest is known or should have been known, whichever is earlier. The agency for good cause shown, or where it determines that a protest raises issues significant to the agency's acquisition system, may consider any protest which is not filed timely.	(2) Protests based on alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of proposals shall be filed prior to bid opening or the closing date for receipt of proposals. In all other cases, protests shall be filed not later than **14** days after the basis of protest is known or should have been known, whichever is earlier. The agency for good cause shown, or where it determines that a protest raises issues significant to the agency's acquisition system, may consider **the merits of** any protest which is not filed timely. [FAC 90-32, CASE 94-730]
(3) * * * * *	(3) * * * * *
(4) Protests shall be concise, and logically presented to facilitate review by the agency. Failure to comply with any of the above requirements may be grounds for dismissal of the protest.	(4) Protests shall be concise, and logically presented to facilitate review by the agency. Failure to **substantially** comply with any of the above requirements may be grounds for dismissal of the protest. [FAC 90-32, CASE 94-730]
	(5) The agency should furnish a copy of the written protest ruling to the protester by certified mail return receipt requested, or by any other method that provides evidence of receipt. [FAC 90-32, CASE 94-730]

33.104 Protests to GAO.

FAR as of FAC 90-25	*FAR as revised*
~~This section implements the GAO's Bid Protest Regulations set forth at 4 CFR Part 21.~~	**Procedures for protests at the GAO are found at 4 CFR Part 21 (GAO Bid Protest Regulations). In the event guidance concerning GAO procedure in this section conflicts with 4 CFR Part 21, 4 CFR Part**

21 governs. [FAC 90-32, CASE 94-730]

(a) *General procedures.* (1) A ~~protestor~~ is required to furnish a copy of its complete protest to the official ~~or~~ location designated in the solicitation ~~or~~, in the absence of such a designation, to the contracting officer, so it is received no later than 1 ~~work~~ day after the protest is filed with the GAO. The GAO may dismiss the protest if the ~~protestor~~ fails to furnish a complete copy of the protest within 1 ~~work~~ day.

(a) *General procedures.* (1) A **protester** is required to furnish a copy of its complete protest to the official **and** location designated in the solicitation **and**, in the absence of such a designation, to the contracting officer, so it is received no later than 1 day after the protest is filed with the GAO. The GAO may dismiss the protest if the **protester** fails to furnish a complete copy of the protest within 1 day. [FAC 90-32, CASE 94-730]

(2) Immediately after receipt of the GAO's written notice that a protest has been filed, the agency shall give notice of the protest to the contractor if the award has been made, or, if no award has been made, to all parties who appear to have a ~~substantial and~~ reasonable prospect of receiving award if the protest is denied. * * * * * (i) * * * * * (ii) * * * * *

(2) Immediately after receipt of the GAO's written notice that a protest has been filed, the agency shall give notice of the protest to the contractor if the award has been made, or, if no award has been made, to all parties who appear to have a reasonable prospect of receiving award if the protest is denied. * * * * * (i) * * * * * (ii) * * * * * **However, if the protester has identified sensitive information and requests a protective order, then the contracting officer shall obtain a redacted version from the protester to furnish to other interested parties if one has not already been provided.** [FAC 90-32, CASE 94-730]

(3)(i) Upon notice that a protest has been filed with the GAO, the contracting officer shall immediately begin compiling the information necessary for a report to the GAO. The agency shall submit a complete report to the GAO within ~~25 work~~ days after the GAO notifies the agency by telephone that a protest has been filed, or within ~~10 work~~ days after receipt from the GAO of a determination to use the express option, unless the GAO—

(3)(i) Upon notice that a protest has been filed with the GAO, the contracting officer shall immediately begin compiling the information necessary for a report to the GAO. The agency shall submit a complete report to the GAO within **35** days after the GAO notifies the agency by telephone that a protest has been filed, or within **20** days after receipt from the GAO of a determination to use the express option, unless the GAO—

(A) * * * * *

(B) Authorizes a longer period in response to an agency's ~~written~~ request for an extension. Any new date ~~shall be~~ documented in the agency's ~~protest~~ file.

(A) * * * * *

(B) Authorizes a longer period in response to an agency's request for an extension. Any new date **is** documented in the agency's file.

(ii) When a protest is filed with the GAO, and an actual or prospective offeror so requests, the procuring agency shall, in accordance with any applicable protective orders, provide actual or prospective offerors reasonable access to the protest file. However, if the GAO dismisses the protest before the documents are submitted to the GAO, then no protest file need be made available. Information

exempt from disclosure under 5 U.S.C. 552 may be redacted from the protest file. The protest file shall be made available to non-intervening actual or prospective offerors within a reasonable time after submittal of an agency report to the GAO. The protest file shall include an index and as appropriate—

(A) The protest;
(B) The offer submitted by the ~~protesting offeror~~;
(C) The offer ~~which is~~ being considered for award or ~~which is~~ being protested;
(D) All evaluation documents;
(E) The solicitation, including the specifications or portions relevant to the protest;
(F) The abstract of offers or relevant portions;
(G) Any other documents that the agency determines are relevant to the protest;

(A) The protest;
(B) The offer submitted by the **protester**;
(C) The offer being considered for award or being protested;
(D) All **relevant** evaluation documents;
(E) The solicitation, including the specifications or portions relevant to the protest;
(F) The abstract of offers or relevant portions;
(G) Any other documents that the agency determines are relevant to the protest**, including documents specifically requested by the protester**;

~~(ii)~~ The agency report to the GAO shall include~~, as appropriate, a copy of—~~

(iii) The agency report to the GAO shall include—
(A) A copy of the documents described in 33.104(a)(3)(ii);

~~(H)~~ The contracting officer's signed statement ~~setting~~ forth findings, actions, and recommendations and any additional evidence or information ~~deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegation of the protest. If the contract action or contract performance continues after receipt of the protest, the report will include the determination(s) prescribed in paragraphs (b) or (c) of this section;~~

(B) The contracting officer's signed statement **of relevant facts and a memorandum of law. The contracting officer's statement shall set** forth findings, actions, and recommendations, and any additional evidence or information **not provided in the protest file that may be necessary to determine the merits of the protest.**

~~(J)~~ A list of the documents withheld from the ~~protestor and other interested parties,~~ and the reasons for withholding them. The lis~~t shall identify~~ any documents specifically requested by, and withheld from, the ~~protestor~~.

(C) A list of the documents withheld from the **protester, or intervenors,** and the reasons for withholding them. The list **identifies** any documents specifically requested by, and withheld from, the **protester; and**

~~(I)~~ A list ~~identifying the other~~ parties ~~who are~~ being provided ~~copies of the report; and~~
~~(iii) In addition to the documents contained in the report, the agency shall make available to the GAO any documents specifically requested by the protestor.~~

(D) A list **of** parties being provided **the documents.**
[FAC 90-32, CASE 94-730]

(4)(i) At the same time the agency submits its report to the GAO, the agency shall furnish copies of its report to the protestor and ~~other interested parties who have responded to the notice given under~~

(4)(i) At the same time the agency submits its report to the GAO, the agency shall furnish copies of its report to the protester **and any**

~~subparagraph (a)(2) of this section~~. A party shall receive all relevant documents, except—

(A) * * * * *

(B) ~~Protestor's~~ documents which the agency determines, pursuant to law or regulation, to withhold from any interested party.

intervenors. A party shall receive all relevant documents, except— [FAC 90-32, CASE 94-730]

(A) * * * * *

(B) **Protester's** documents which the agency determines, pursuant to law or regulation, to withhold from any interested party. [FAC 90-32, CASE 94-730]

(ii)(A) If, within 2 ~~work~~ days~~ after receipt of the agency report~~, the ~~protestor~~ requests additional documents, the agency shall provide the requested documents to the GAO within 5 ~~work~~ days of receipt of the request.

(ii)(A) If the **protester** requests additional documents **within 2 days after the protester knew the existence or relevance of additional documents, or should have known,** the agency shall provide the requested documents to the GAO within 5 days of receipt of the request. [FAC 90-32, CASE 94-730]

(B) The additional documents shall also be provided to the ~~protestor~~ and other interested parties within this 5-~~work~~ day period unless the agency has decided to withhold them for any reason (see subdivision (a)(4)(i) of this section). This includes any documents covered by a protective order issued by the GAO. Documents covered by a protective order shall be provided only in accordance with the terms of the order. ~~A request for a protective order to cover the additional documents shall be made in accordance with 33.104(a)(5) within this 5-work day period.~~

(B) The additional documents shall also be provided to the **protester** and other interested parties within this 5-day period unless the agency has decided to withhold them for any reason (see subdivision (a)(4)(i) of this section). This includes any documents covered by a protective order issued by the GAO. Documents covered by a protective order shall be provided only in accordance with the terms of the order. [FAC 90-32, CASE 94-730]

(C) The agency shall notify the GAO of any documents withheld from the ~~protestor~~ and other interested parties and shall state the reasons for withholding them.

(C) The agency shall notify the GAO of any documents withheld from the **protester** and other interested parties and shall state the reasons for withholding them. [FAC 90-32, CASE 94-730]

(5) The GAO may issue ~~a~~ protective ~~order to limit the release of particular documents to counsel for the protestor and to counsel for the other interested parties entitled to receive the documents if the documents contain information that is privileged, or if their release would create a competitive advantage.~~

(5) The GAO may issue protective **orders which establish terms, conditions, and restrictions for the provision of any document to an interested party. Protective orders prohibit or restrict the disclosure by the party of procurement sensitive information, trade secrets or other proprietary or confidential research, development or commercial information that is contained in such document. Protective orders do not authorize withholding any documents or information from the United States Congress or an executive agency.** [FAC 90-32, CASE 94-730]

(i) *Requests for protective orders*. Any party seeking issuance of a protective order shall file its request with the GAO as soon as practicable after the

(i) *Requests for protective orders*. Any party seeking issuance of a protective order shall file its request with the GAO as soon as practicable after the

protest is filed, ~~but not more than 20 work days after the protest filing date,~~ with copies furnished simultaneously to all parties.

(ii) *Exclusions and rebuttals*. Within 2 ~~work~~ days after receipt of a copy of the protective order request, any party may file with the GAO a request that particular documents be excluded from the coverage of the protective order, or that particular parties or individuals be included in or excluded from the protective order. Copies of the request shall be furnished simultaneously to all parties. ~~Within 1 work day after receipt of a copy of the request, any rebuttal shall be filed with the GAO, with copies furnished simultaneously to all parties.~~

(iii) *Additional documents*. If the existence or relevance of additional documents first becomes evident after a protective order has been issued, any party may request that these additional documents be covered by the protective order. Any party to the protective order also may request that individuals not already covered by the protective order be included in the order. Requests shall be filed with the GAO, with copies furnished simultaneously to all parties. ~~Any rebuttal to such a request must be filed within 1 work day after receipt of a copy of the request.~~

(iv) * * * * *

(6) The ~~protestor~~ and other interested parties are required to furnish a copy of any comments on the agency report directly to the GAO within ~~10 work~~ days, ~~5 work~~ days if express option is used, after receipt of the report, with copies provided to the contracting officer and to other participating interested parties. If a hearing is held, these comments are due within 7 ~~work~~ days after the hearing.

* * * * *

(b)(1)(ii) Award is likely to occur within 30 ~~calendar~~ days of the written finding.

* * * * *

(c) *Protests after award*. (1) When the agency receives notice of a protest from the GAO after ~~award of a contract, but within 10 calendar days after award,~~ the contracting officer shall immediately suspend performance or terminate the awarded contract, except as provided in paragraphs (c)(2) and (3) of this section.

protest is filed, with copies furnished simultaneously to all parties. [FAC 90-32, CASE 94-730]

(ii) *Exclusions and rebuttals*. With 2 days after receipt of a copy of the protective order request, any party may file with the GAO a request that particular documents be excluded from the coverage of the protective order, or that particular parties or individuals be included in or excluded from the protective order. Copies of the request shall be furnished simultaneously to all parties. [FAC 90-32, CASE 94-730]

(iii) *Additional documents*. If the existence or relevance of additional documents first becomes evident after a protective order has been issued, any party may request that these additional documents be covered by the protective order. Any party to the protective order also may request that individuals not already covered by the protective order be included in the order. Requests shall be filed with the GAO, with copies furnished simultaneously to all parties. [FAC 90-32, CASE 94-730]

(iv) * * * * *

(6) The **protester** and other interested parties are required to furnish a copy of any comments on the agency report directly to the GAO within **14** days, **7** days if express option is used, after receipt of the report, with copies provided to the contracting officer and to other participating interested parties. If a hearing is held, these comments are due within 7 days after the hearing. [FAC 90-32, CASE 94-730]

* * * * *

(b)(1)(ii) Award is likely to occur within 30 days of the written finding. [FAC 90-32, CASE 94-730]

* * * * *

(c) *Protests after award*. (1) When the agency receives notice of a protest from the GAO **within 10 days** after **contract award or within 5 days after a debriefing date offered to the protester for any debriefing that is required by 15.1004, whichever is later,** the contracting officer shall immediately suspend

performance or terminate the awarded contract, except as provided in **sub**paragraphs (c)(2) and (3) of this section. [FAC 90-32, CASE 94-730]

* * * * *

(5) When the agency receives notice of a protest filed with the GAO ~~more than 10 calendar days after award of the protested acquisition,~~ the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest.

(d) *Findings and notice*. If the decision is to proceed with contract award, or continue contract performance under paragraphs (b) or (c) of this section, the contracting officer shall include the written findings or other required documentation in the file. The contracting officer also shall give written notice of the decision to the ~~protestor~~ and other interested parties.

(e) *Hearings*. The GAO may hold a hearing at the request of the agency, a ~~protestor~~, or other interested party who has responded to the notice in ~~33.104~~(a)(2). ~~The GAO may designate representatives of the parties to attend the hearing. The attending parties and the hearing official may question representatives of the parties at the hearing.~~ A recording or transcription of the hearing will normally be made, and copies may be obtained from the GAO ~~for a fee~~. All parties may file comments on the hearing and report within 7 ~~work~~ days of the hearing.

(f) *GAO decision time*. GAO ~~will issue~~ its recommendation on a protest within ~~90 work~~ days from the date of filing of the protest with the GAO, or within ~~45 calendar~~ days under the express option~~, unless GAO establishes a longer period of time.~~

(g) *Notice to GAO*. ~~The head of the agency or a designee (not below the level of the head of the~~

* * * * *

(5) When the agency receives notice of a protest filed with the GAO **after the dates contained in subparagraph (c)(1),** the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest. [FAC 90-32, CASE 94-730]

(d) *Findings and notice*. If the decision is to proceed with contract award, or continue contract performance under paragraphs (b) or (c) of this section, the contracting officer shall include the written findings or other required documentation in the file. The contracting officer also shall give written notice of the decision to the **protester** and other interested parties. [FAC 90-32, CASE 94-730]

(e) *Hearings*. The GAO may hold a hearing at the request of the agency, a **protester**, or other interested party who has responded to the notice in paragraph (a)(2) **of this section**. A recording or transcription of the hearing will normally be made, and copies may be obtained from the GAO. All parties may file comments on the hearing and report within 7 days of the hearing. [FAC 90-32, CASE 94-730]

(f) *GAO decision time*. GAO **issues** its recommendation on a protest within **125** days from the date of filing of the protest with the GAO, or within **65** days under the express option. **The GAO attempts to issue its recommendation on an amended protest that adds a new ground of protest within the time limit of the initial protest. If an amended protest cannot be resolved within the initial time limit, the GAO may resolve the amended protest through an express option.** [FAC 90-32, CASE 94-730]

(g) *Notice to GAO*. **If the agency has not fully implemented the GAO**

~~contracting activity) responsible for the solicitation, proposed award, or award of the contract shall report to the Comptroller General within 60 calendar days of receipt of the GAO's recommendation if the agency has decided not to comply with the recommendation.~~ The report shall explain the reasons why the GAO's recommendation, ~~including any recommendation concerning the award of protest costs (i.e., the costs of filing and pursuing the protest, including reasonable attorneys' fees and bid and proposal preparation), will not be~~ followed by the agency.

recommendations with respect to a solicitation for a contract or an award or a proposed award of a contract within 60 days of receiving the GAO recommendations, the head of the contracting activity responsible for that contract shall report the failure to the GAO not later than 5 days after the expiration of the 60 day period. The report shall explain the reasons why the GAO's recommendation **exclusive of costs, has not been** followed by the agency. [FAC 90-32, CASE 94-730]

(h) *Award of protest costs.* ~~Pending a final, nonappealable judicial determination of the constitutionality of 31 U.S.C. section 3554(c), a recommended award of protest costs (as defined under paragraph (g)of this section) may be paid by the agency out of funds available to or for the use of the agency for the acquisition of supplies or services, but such payments may be subject to recoupment by the agency if 31 U.S.C. section 3554(c) is judicially determined not to be constitutional. Before paying a recommended award of protest costs (as defined under paragraph (g)of this section), agency personnel should consult the General Counsel's office of the agency. This paragraph (h) applies to all recommended awards of protest costs (as defined under paragraph (g)of this section) which have not yet been paid.~~

(h) *Award of costs.* **(1) If the GAO determines that a solicitation for a contract or a proposed award or an award of a contract does not comply with a statute or regulation, the GAO may recommend that the agency pay to an appropriate protester the cost, exclusive of profit, of filing and pursuing the protest, including reasonable attorney, consultant and expert witness fees, and bid and proposal preparation costs. The agency shall use funds available for the procurement to pay the costs awarded.**

(2) If the GAO recommends the award of costs to an interested party, the agency shall attempt to reach an agreement on the amount of the cost to be paid. If the agency and the interested party are unable to agree on the amount to be paid, GAO may, upon request of the interested party, recommend to the agency the amount of cost that the agency should pay.

(3) No agency shall pay a party, other than a small business concern within the meaning of section 3(a) of the Small Business Act (see 19.001, "Small business concern"), costs under paragraph (h)(2) of this section—

(i) For consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Government pursuant to 5 U.S.C. 3109 and Expert and Consultant Appointments, 60 FR 45649, September 1, 1995 (304.105); or

(ii) For attorneys' fees that exceed $150 per hour unless the agency determines, based on the recommendation of the Comptroller General on a case by case

basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. The cap placed on attorneys' fees for businesses, other than small businesses, constitutes a benchmark as to a "reasonable" level for attorneys' fees for small businesses.

(4) A recommended award of costs may be paid by the agency out of funds available to or for the use of the agency for the acquisition of supplies or services. Before paying a recommended award of costs, agency personnel should consult legal counsel. Section 33.104(h) applies to all recommended awards of costs which have not yet been paid.

(5) If the GAO recommends the agency pay costs (as defined under paragraph (h)(1) of this section) and the agency does not promptly pay the costs, the agency shall promptly report to GAO the reasons for the failure to follow the GAO recommendation.

(6) Any costs the contractor receives under this section shall not be the subject of subsequent proposals, billings, or claims against the Government and those exclusions should be reflected in the cost agreement.
[FAC 90-32, CASE 94-730]

(7) If the Government pays costs, as provided in paragraph (h)(1) of this section, where a postaward protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification, the Government may require the awardee to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government. [FAC 90-32, CASE 94-731]

33.105 Protests to GSBCA.

FAR as of FAC 90-25	*FAR as revised*
	Procedures for protests at the GSBCA, are found at 48 CFR Chapter 61 (GSBCA Rules). In the event guidance concerning GSBCA procedure in this subpart conflicts with 48 CFR Chapter 61, 48 CFR Chapter 61 governs. [FAC 90-32, CASE 94-730]
(a)(1) ~~An interested party may protest an ADP acquisition subject to Section 111 of the Federal Property and Administrative Services Act (40 U.S.C. 759) by filing a protest with the GSBCA~~. ADP acquisition protests not covered under this statute may not be heard by the GSBCA, but may be heard by the agency, the courts, or GAO. A ~~protestor~~ shall furnish a copy of its complete protest to the official or location designated in the solicitation, or in the absence of such a designation to the contracting officer, on the same day the protest is filed with the GSBCA. Any request for a hearing on either a suspension of procurement authority or on the merits shall be in the protest.	(a)(1) **Upon request of an interested party in connection with any procurement that is subject to Section 111 of the Federal Property and Administrative Services Act (40 U.S.C. 759), the GSBCA reviews any decision by the contracting officer that is alleged to violate a statute, a regulation, or the conditions of a delegation of procurement authority.** ADP acquisition protests not covered under this section may not be heard by the GSBCA, but may be heard by the agency, the courts, or GAO. A **protester** shall furnish a copy of its complete protest to the official and location designated in the solicitation, or in the absence of such a designation, to the contracting officer on the same day the protest is filed with the GSBCA. Any request for a hearing on either a suspension of procurement authority or on the merits shall be in the protest. [FAC 90-32, CASE 94-730]
(2) The GSBCA procedures state that—	(2) The GSBCA procedures state that—
(i) Within one ~~working~~ day after receipt of a copy of the protest, the agency shall give either oral or written notice of the protest to all parties who were solicited or, if the solicitation has closed, only to those who submitted a sealed bid or offer; and	(i) Within one **work** day after receipt of a copy of the protest, the agency shall give either oral or written notice of the protest to all parties who were solicited or, if the solicitation has closed, only to those who submitted a sealed bid or offer; and [FAC 90-32, CASE 94-730]
(ii) Written confirmation of notice and a listing of all persons and agencies receiving notice should be given to the Board within ~~5 working~~ days after receipt of the protest.	(ii) Written confirmation of notice and a listing of all persons and agencies receiving notice should be given to the Board within **3 work** days after receipt of the protest. [FAC 90-32, CASE 94-730]
* * * * *	* * * * *
(b)(6) A copy of the solicitation, the ~~protestor's~~ bid or proposal and, if bid opening has occurred and no contract has been awarded, a copy of any relevant bids and the bid abstract.	(b)(6) A copy of the solicitation, the **protester's** bid or proposal and, if bid opening has occurred and no contract has been awarded, a copy of any relevant bids and the bid abstract. [FAC 90-32, CASE 94-730]
* * * * *	

	* * * * *
(c) The GSBCA procedures state that within ~~15~~ work days after the filing of the protest, or such longer time as the Board may establish, the agency shall submit its answer to the Board setting forth its defenses to the protest and its findings, actions, and recommendations in the matter.	(c) The GSBCA procedures state that within **10** work days after the filing of the protest, or such longer time as the Board may establish, the agency shall submit its answer to the Board setting forth its defenses to the protest and its findings, actions, and recommendations in the matter. [FAC 90-32, CASE 94-730]
(d)(1) If a protest contains a timely request for a suspension of procurement authority, ~~a hearing will be held whenever practicable but not later than 10 calendar days after the filing of the protest.~~ The Board ~~shall suspend~~ the procurement authority unless the agency establishes that—	(d)(1) If a protest contains a timely request for a suspension of procurement authority, **the Board will hold a hearing, unless the agency does not contest an order suspending its procurement authority. A timely request for suspension of procurement authority is one that is filed before award, within 10 days of award, or within five days of the offered debriefing, when the debriefing is required by 15.1004, whichever applies.** The Board **suspends** the procurement authority unless the agency establishes that— [FAC 90-32, CASE 94-730]
(i) Absent suspension, the contract award is likely within 30 ~~calendar~~ days; and	(i) Absent suspension, the contract award is likely within 30 days; and [FAC 90-32, CASE 94-730]
* * * * *	* * * * *
	(4) A suspension shall not preclude the agency concerned from continuing the procurement process up to but not including the award of the contract unless the Board determines the action is not in the best interests of the United States. [FAC 90-32, CASE 94-730]
(e) A hearing on the merits, if requested, will be heldwithin ~~25 work~~ days after the filing of the protest and a GSBCA decision on the merits will be issued within ~~45 work~~ days, unless the Board's chairman determines a longer period is required.	(e) A hearing on the merits, if requested, will be held within **35** days after the filing of the protest and a GSBCA decision on the merits will be issued within **65** days, unless the Board's chairman determines a longer period is required. [FAC 90-32, CASE 94-730]
	(f) Any agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure of appropriated funds shall be made part of the public record (subject to any protective order considered appropriate by the Board) before dismissal of the protest. If an agency is party to a settlement agreement, the submission of the

agreement to the Board shall include a memorandum, signed by the contracting officer concerned, that describes in detail the procurement, the grounds for protest, the Government's position regarding the grounds for protest, the terms of the settlement, and the agency's position regarding the propriety of the award or proposed award of the contract at issue in the protest. [FAC 90-32, CASE 94-730]

~~(f)~~(1) The GSBCA may declare an appropriate ~~interested~~ party to be entitled to the ~~costs~~ of—

(i) Filing and pursuing the protest, including reasonable ~~attorney's~~ fees; and

(ii) Bid and proposal preparation.

(g)(1) The GSBCA may declare an appropriate **prevailing** party to be entitled to the **cost, exclusive of profit,** of—

(i) Filing and pursuing the protest, including reasonable **attorney, consultant and expert witness** fees; and

(ii) Bid and proposal preparation.

(2) Costs awarded under subparagraph ~~(f)(1)~~ of this section shall be paid out in accordance with the procedures provided in 31 U.S.C. 1304 (the Permanent Indefinite Judgment Fund).

(2) Costs awarded under subparagraph **(g)(1)** of this section**, or payments of amounts due under settlement agreements,** shall be paid out in accordance with the procedures provided in 31 U.S.C. 1304 (the Permanent Indefinite Judgment Fund). **The agency concerned shall reimburse that fund out of funds available for the procurement.**

(3) No agency shall pay a party, other than a small business concern within the meaning of section 3(a) of the Small Business Act (see 19.001, "Small business concern"), costs under subparagraph (g)(1) of this section for—

(i) Consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Government pursuant to 5 U.S.C. 3109 and Expert and Consultant Appointments, 60 FR 45649, September 1, 1995 (CFR 304.105)**; or**

(ii) Attorneys' fees that exceed $150 per hour unless the Board determines, on a case by case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. The cap placed on attorneys' fees for businesses, other than small businesses, constitutes a benchmark as to a "reasonable" level for attorneys' fees for small businesses.

(4) Within 30 days after receipt by the

	agency of an application for costs, the agency may file an answer. [FAC 90-32, CASE 94-730]
	(5) If the Government pays costs, as provided in paragraph (g)(1) of this section, where a postaward protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification, the Government may require the awardee to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government. [FAC 90-32, CASE 94-731]
~~(g)~~ The GSBCA's final decision may be appealed by the agency or by any interested party, including any intervening interested parties, as set forth in ~~Subpart 33.2~~.	**(h)** The GSBCA's final decision may be appealed by the agency or by any interested party, including any intervening interested parties, as set forth in **the Contract Disputes Act of 1978 (41 U.S.C. 601-613).** [FAC 90-32, CASE 94-730]

33.201 Definitions.

FAR as of FAC 90-25	*FAR as revised*
	Accrual of a claim occurs on the date when all events, which fix the alleged liability of either the Government or the contractor and permit assertion of the claim, were known or should have been known. For liability to be fixed, some injury must have occurred. However, monetary damages need not have been incurred. [FAC 90-32, CASE 94-730]
"Alternative ~~means of~~ dispute resolution (ADR)" means any procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation. These procedures include, but are not limited to, assisted settlement negotiations, conciliation, facilitation, mediation, fact finding, minitrials, and arbitration.	*Alternative dispute resolution* (ADR) means any procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation. These procedures **may** include, but are not limited to, assisted settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration. [FAC 90-32, CASE 94-730]
"Claim," as used in this part, means a written demand or written assertion by one of the	*Claim* as used in this part, means a written demand or written assertion by one of the

contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the contractor seeking the payment of money exceeding ~~$50,000~~ is not a claim under the Contract Disputes Act of 1978 until certified as required by the Act and 33.207. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in 33.206(a), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

* * * * *

contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the contractor seeking the payment of money exceeding **$100,000** is not a claim under the Contract Disputes Act of 1978 until certified as required by the Act and 33.207. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in 33.206(a), if it is disputed either as to liability or amount or is not acted upon in a reasonable time. [FAC 90-32, CASE 94-730]

* * * * *

33.206 Initiation of a claim.

FAR as of FAC 90-25	*FAR as revised*
(a) Contractor claims shall be submitted in writing to the contracting officer for a decision. The contracting officer shall document the contract file with evidence of the date of receipt of any submission from the contractor deemed to be a claim by the contracting officer.	(a) Contractor claims shall be submitted, in writing, to the contracting officer for a decision **within 6 years after accrual of a claim, unless the contracting parties agreed to a shorter time period. This 6-year time period does not apply to contracts awarded prior to October 1, 1995.** The contracting officer shall document the contract file with evidence of the date of receipt of any submission from the contractor deemed to be a claim by the contracting officer. [FAC 90-32, CASE 94-730]
(b) The contracting officer shall issue a written decision on any Government claim initiated against a contractor.	(b) The contracting officer shall issue a written decision on any Government claim initiated against a contractor **within 6 years after accrual of the claim, unless the contracting parties agreed to a shorter time period. The 6-year period shall not apply to contracts awarded prior to October 1, 1995, or to a Government claim based on a contractor claim involving fraud.** [FAC 90-32, CASE 94-730]

33.207 Contractor certification.

FAR as of FAC 90-25	*FAR as revised*
(a) Contractors shall provide the certification specified in 33.207(c) when submitting any claim—	(a) Contractors shall provide the certification specified in 33.207(c) when submitting any claim—
(1) Exceeding ~~$50,000~~; or	(1) Exceeding **$100,000**; or [FAC 90-32, CASE 94-730]
* * * * *	* * * * *
(d) The aggregate amount of both ~~the~~ increased and decreased costs shall be used in determining when the dollar thresholds requiring certification are met (see example in ~~15.804-2(a)(1)(ii)~~ regarding cost or pricing data).	(d) The aggregate amount of both increased and decreased costs shall be used in determining when the dollar thresholds requiring certification are met (see example in **15.804-2(a)(1)(iii)** regarding cost or pricing data). [FAC 90-32, CASE 94-721]

33.208 Interest on claims.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(c) With regard to claims having defective certifications~~, as defined in 33.201~~, interest shall be paid from either the date that the contracting officer initially receives the claim or October 29, 1992, whichever is later. However, if a contractor has provided a proper certificate prior to October 29, 1992, after submission of a defective certificate, interest shall be paid from the date of receipt by the Government of a proper certificate.	(c) With regard to claims having defective certifications interest shall be paid from either the date that the contracting officer initially receives the claim or October 29, 1992, whichever is later. However, if a contractor has provided a proper certificate prior to October 29, 1992, after submission of a defective certificate, interest shall be paid from the date of receipt by the Government of a proper certificate. [FAC 90-32, CASE 94-730]

33.211 Contracting officer's decision.

FAR as of FAC 90-25	*FAR as revised*
(a) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the contracting officer shall—	(a) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the contracting officer shall—
* * * * *	* * * * * *
(4) Prepare a written decision that shall include a—	(4) Prepare a written decision that shall include a—
* * * * *	* * * * *
(v) Paragraph substantially as follows:	(v) Paragraph substantially as follows:

"This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. With regard to appeals to the agency board of contract appeals, you may, solely at your election, proceed under the board's small claim procedure for claims of ~~$10,000~~ or less or its accelerated procedure for claims of ~~$50,000~~ or less. Instead of appealing to the agency board of contract appeals, you may bring an action directly in the United States Court of Federal Claims (except as provided in the Contract Disputes Act of 1978, 41 U.S.C. 603, regarding Maritime Contracts) within 12 months of the date you receive this decision"; and

* * * * *

(c) The contracting officer shall issue the decision within the following statutory time limitations:

(1) For claims of ~~$50,000~~ or less, 60 days after receiving a written request from the contractor that a decision be rendered within that period, or within a reasonable time after receipt of the claim if the contractor does not make such a request.

(2) For claims over ~~$50,000~~, 60 days after receiving a certified claim; *provided, however,* that if a decision will not be issued within 60 days, the contracting officer shall notify the contractor, within that period, of the time within which a decision will be issued.

* * * * *

(e) The contracting officer shall have no obligation to render a final decision on any claim exceeding ~~$50,000~~ which contains a defective certification, if within 60 days after receipt of the claim, the contracting officer notifies the contractor, in writing, of the reasons why any attempted certification was found to be defective.

(f) In the event of undue delay by the contracting officer in rendering a decision on a claim, the contractor may request the ~~agency BCA~~ to direct the contracting officer to issue a decision in a specified

"This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. With regard to appeals to the agency board of contract appeals, you may, solely at your election, proceed under the board's small claim procedure for claims of **$50,000** or less or its accelerated procedure for claims of **$100,000** or less. Instead of appealing to the agency board of contract appeals, you may bring an action directly in the United States Court of Federal Claims (except as provided in the Contract Disputes Act of 1978, 41 U.S.C. 603, regarding Maritime Contracts) within 12 months of the date you receive this decision"; and [FAC 90-32, CASE 94-730]

* * * * *

(c) The contracting officer shall issue the decision within the following statutory time limitations:

(1) For claims of **$100,000** or less, 60 days after receiving a written request from the contractor that a decision be rendered within that period, or within a reasonable time after receipt of the claim if the contractor does not make such a request. [FAC 90-32, CASE 94-730]

(2) For claims over **$100,000**, 60 days after receiving a certified claim; *provided, however,* that if a decision will not be issued within 60 days, the contracting officer shall notify the contractor, within that period, of the time within which a decision will be issued. [FAC 90-32, CASE 94-730]

* * * * *

(e) The contracting officer shall have no obligation to render a final decision on any claim exceeding **$100,000** which contains a defective certification, if within 60 days after receipt of the claim, the contracting officer notifies the contractor, in writing, of the reasons why any attempted certification was found to be defective. [FAC 90-32, CASE 94-730]

(f) In the event of undue delay by the contracting officer in rendering a decision on a claim, the contractor may request the **tribunal concerned** to direct the contracting officer to issue a decision in a

time period determined by the ~~BCA~~.	specified time period determined by the **tribunal**. [FAC 90-32, CASE 94-730]
* * * * *	* * * * *

33.214 Alternative dispute resolution (ADR).

FAR as of FAC 90-25	*FAR as revised*
(a) * * * * *	(a) * * * * *
	(b) If the contracting officer rejects a request for ADR from a small business contractor, the contracting officer shall provide the contractor written explanation citing one or more of the conditions in 5 U.S.C. 572(b) or such other specific reasons that ADR procedures are inappropriate for the resolution of the dispute. In any case where a contractor rejects a request of an agency for ADR proceedings, the contractor shall inform the agency in writing of the contractor's specific reasons for rejecting the request. [FAC 90-32, CASE 94-730]
~~(b)~~ * * * * *	**(c)** * * * * *
~~(c)~~ * * * * *	**(d)** * * * * *
~~(d)~~ * * * * *	**(e)** * * * * * [FAC 90-32, CASE 94-730]

52.233-1 Disputes.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 33.215, insert the following clause: DISPUTES (~~MAR 1994~~) * * * * *	As prescribed in 33.215, insert the following clause: DISPUTES (**OCT 1995**) [FAC 90-32, CASE 94-730] * * * * *
(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a	(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a

contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding ~~$50,000~~ is not a claim under the Act until certified as required by subparagraph (d)(2) ~~below~~. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) Contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim—

(A) Exceeding ~~$50,000~~; or

* * * * *

(e) For Contractor claims of ~~$50,000~~ or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over ~~$50,000~~, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

* * * * *

(g) ~~At the time a claim~~ by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use ADR. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph (d)(2)(iii) of this clause, and executed in accordance with subparagraph (d)(3) of this clause.

* * * * *

contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding **$100,000** is not a claim under the Act until certified as required by subparagraph (d)(2) **of this clause**. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time. [FAC 90-32, CASE 94-730]

(d)(1) A claim by the Contractor shall be made in writing and**, unless otherwise stated in this contract,** submitted **within 6 years after accrual of the claim** to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer. [FAC 90-32, CASE 94-730]

(2)(i) Contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim—

(A) Exceeding **$100,000**; or [FAC 90-32, CASE 94-730]

* * * * *

(e) For Contractor claims of **$100,000** or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over **$100,000**, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made. [FAC 90-32, CASE 94-730]

* * * * *

(g) **If the claim** by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use ADR. **If the Contractor refuses an offer for alternative disputes resolution, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request.** When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of

amount, shall be accompanied by the certification described in subparagraph (d)(2)(iii) of this clause, and executed in accordance with subparagraph (d)(3) of this clause. [FAC 90-32, CASE 94-730]
* * * * *

52.233-2 Service of Protest.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 33.106, insert the following provision: SERVICE OF PROTEST (~~NOV 1988~~) * * * * *	As prescribed in 33.106, insert the following provision: SERVICE OF PROTEST (**OCT 1995**) [FAC 90-32, CASE 94-730] * * * * *
(End of provision)	**(c) In this procurement, you may not protest to the GSBCA because of the nature of the supplies or services being procured. (*Contracting Officer shall strike the word "not" where the GSBCA is a correct forum.)*** [FAC 90-32, CASE 94-730] (End of provision)

52.233-3 Protest after Award.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 33.106(b), insert the following clause: PROTEST AFTER AWARD (~~AUG 1989~~)	As prescribed in 33.106(b), insert the following clause: PROTEST AFTER AWARD (**OCT 1995**) [FAC 90-32, CASE 94-730 and CASE 94-731]
(a) Upon receipt of a notice of protest (as defined in 33.101~~ of the FAR~~) the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either—	(a) Upon receipt of a notice of protest (as defined in **FAR** 33.101) **or a determination that a protest is likely (see FAR 33.102(d)),** the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the

* * * * *	Contracting Officer shall either— [FAC 90-32, CASE 94-730] * * * * *
	(f) If as the result of the awardee's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this solicitation is sustained, and the Government pays costs, as provided in 33.102(b)(2), 33.104(h)(1), or 33.105(g)(1), the Government may require the awardee to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government. [FAC 90-32, CASE 94-731]

PART 36

CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.202 Specifications.

FAR as of FAC 90-25	*FAR as revised*
(a) Construction specifications shall conform to therequirements in ~~Part 10~~ of this regulation. * * * * *	(a) Construction specifications shall conform to therequirements in **Part 11** of this regulation. [FAC 90-32, CASE 94-790] * * * * *

36.206 Liquidated damages.

FAR as of FAC 90-25	*FAR as revised*
The contracting officer shall evaluate the need for liquidated damages in a construction contract in accordance with ~~12.202~~ and agency regulations.	The contracting officer shall evaluate the need for liquidated damages in a construction contract in accordance with **11.502** and agency regulations. [FAC 90-32, CASE 94-790]

36.303 Invitations for bids.

FAR as of FAC 90-25	*FAR as revised*
* * * * * (c) Contracting officers should assure that each invitation for bids includes the following information, when applicable: * * * * * (4) The period of performance (~~see Subpart 12.1~~). * * * * *	* * * * * (c) Contracting officers should assure that each invitation for bids includes the following information, when applicable: * * * * * (4) The period of performance (**see Subpart 11.4**). [FAC 90-32, CASE 94-790] * * * * *

36.306 Notice of award. (FAC 90-31, Case 94-701)

FAR as of FAC 90-25	*FAR as revised*
When a notice of award is issued, it shall contain information required by 14.40~~7~~ and shall— * * * *	When a notice of award is issued, **it shall be done in writing or electronically,** shall contain information required by 14.40**8** and shall— * * * *

36.402 Price negotiation.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(b) The contracting officer shall evaluate proposals and associated cost or pricing data and shall compare them to the Government estimate.	(b) The contracting officer shall evaluate proposals and associated cost or pricing data **or information other than cost or pricing data** and shall compare them to the Government estimate. [FAC 90-32, CASE 94-721]
(1) When the submission of ~~certified~~ cost or pricing data is not required (see ~~15.804-2 and 15.804-3~~), and any element of ~~a proposal~~ differs significantly from the Government estimate, the contracting officer should request the offeror to submit cost ~~data~~ concerning that element (e.g., wage rates or fringe benefits, significant materials, equipment allowances, and subcontractor costs).	(1) When submission of cost or pricing data is not required (see **15.804-1 and 15.804-2**), and any element of **proposed cost** differs significantly from the Government estimate, the contracting officer should request the offeror to submit cost **information** concerning that element (e.g., wage rates or fringe benefits, significant materials, equipment allowances, and subcontractor costs). [FAC 90-32, CASE 94-721]
* * * * *	* * * * *

36.607 Release of information on firm selection. (FAC 90-31, Case 94-701)

FAR as of FAC 90-25	*FAR as revised*
After final selection has taken place, the contracting officer may release information identifying only the architect-engineer firm with which a contract will be negotiated for certain work. The work should be described in any release only in	**(a)** After final selection has taken place, the contracting officer may release information identifying only the architect-engineer firm with which a contract will be negotiated for certain work. The work should be described in any release only in

general terms, unless information relating to the work is classified. If negotiations are terminated without awarding a contract to the highest rated firm, the contracting officer may release that information and state that negotiations will be undertaken with another (named) architect-engineer firm. When an award has been made, the contracting officer may release award information (see 5.401).

general terms, unless information relating to the work is classified. If negotiations are terminated without awarding a contract to the highest rated firm, the contracting officer may release that information and state that negotiations will be undertaken with another (named) architect-engineer firm. When an award has been made, the contracting officer may release award information (see 5.401)

(b) Debriefings of successful and unsuccessful firms will be held after final selection has taken place and will be conducted, to the extent practicable, in accordance with 15.1004(b) through (g). Note that 15.1004(d)(2) through (d)(5) does not apply to architect-engineer contracts.

PART 37

SERVICE CONTRACTING

37.106 Funding and term of service contracts. [FAC 90-30, Case 94-766]

FAR as of FAC 90-25	*FAR as revised*
When contracts for services are funded by annual appropriations, the term of contracts so funded shall not extend beyond the end of the fiscal year of the appropriation except when authorized by law (see 32.703-2 for contracts conditioned upon availability of funds and 32.703-3 for contracts crossing fiscal years).	(a) When contracts for services are funded by annual appropriations, the term of contracts so funded shall not extend beyond the end of the fiscal year of the appropriation except when authorized by law (see **paragraph (b) of this section for certain service contracts**, 32.703-2 for contracts conditioned upon availability of funds, and 32.703-3 for contracts crossing fiscal years). **(b) 41 U.S.C. 253*l*, as amended by Section 1073 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355), authorizes the head of any executive agency except the Department of Defense, United States Coast Guard, and the National Aeronautics and Space Administration (41 U.S.C. 252(a)(1)), to enter into a basic contract, options, or orders under that contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the basic contract, options or orders under that contract does not exceed one year each. Funds made available for a fiscal year may be obligated for the total amount of an action entered into under this authority (see 32.703-3(b)). Consult agency supplements for similar authorities that may exist for the Department of Defense, United States Coast Guard, or the National Aeronautics and Space Administration.**

37.113 Severance payments to foreign nationals. [FAC 90-31, Case 94-754]

[Section added by FAC 90-31]

37.113 Severance payments to foreign nationals.

37.113-1 Waiver of cost allowability limitations.

(a) The head of any agency, or designee, may waive the 31.205-6(g)(3) cost allowability limitations on severance payments to foreign nationals for contracts that—

(1) Provide significant support services for (i) members of the armed forces stationed or deployed outside the United States, or (ii) employees of an executive agency posted outside the United States; and

(2) Will be performed in whole or in part outside the United States.

(b) Waivers can be granted only before contract award.

(c) Waivers cannot be granted for—

(1) Military banking contracts, which are covered by 10 U.S.C. 2324(e)(2); or

(2) Severance payments made by a contractor to a foreign national employed by the contractor under a DOD service contract in the Republic of the Philippines, if the discontinuation of the foreign national is the result of the termination of basing rights of the United States military in the Republic of the Philippines (section 1351(b) of Public Law 102-484, 10 U.S.C. 1592, note).

37.113-2 Solicitation provision and contract clause.

(a) Use the provision at 52.237-8, Restriction on Severance Payments to Foreign Nationals, in all solicitations that meet the criteria in 37.113-1(a), except for those excluded by 37.113-1(c).

(b) When the head of an agency, or designee, has granted a waiver pursuant to 37.113-1, use the clause at 52.237-9, Waiver of Limitation on Severance Payments to Foreign Nationals.

52.237-8 Restriction on Severance Payments to Foreign Nationals.

As prescribed in 37.113-2(a), use the following provision:

RESTRICTION ON SEVERANCE PAYMENTS TO FOREIGN NATIONALS (OCT 1995)

(a) The Federal Acquisition Regulation (FAR), at 31.205-6(g)(3), limits the cost allowability of severance payments to foreign nationals employed under a service contract performed outside the United States unless the head of the agency, or designee, grants a waiver pursuant to FAR 37.113-1 before contract award.

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

(1) The application of the severance pay limitations to the contract would adversely affect the continuation of a program, project, or activity that provides significant support services for (i) members of the armed forces stationed or deployed outside the United States, or (ii) employees of an executive agency posted outside the United States;

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

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

(End of provision)

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

As prescribed in 37.113-2(b), use the following clause:

WAIVER OF LIMITATION ON SEVERANCE PAYMENTS TO FOREIGN NATIONALS (OCT 1995)

(a) Pursuant to 10 U.S.C. 2324(e)(3)(A) or 41 U.S.C. 256(e)(2)(A), as applicable, the cost allowability limitations in FAR 31.205-6(g)(3) are waived.

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

SUBPART 37.2—ADVISORY AND ASSISTANCE SERVICES [FAC 90-33, CASE 94-710]

Sec.

37.200 Scope of subpart.
37.201 Definitions.
37.202 Exclusions.
37.203 Policy.
37.204 Guidelines for determining availability of personnel.
37.205 Contracting officer responsibilities.

37.200 Scope of subpart. [FAC 90-33, CASE 94-710]

FAR as of FAC 90-25	*FAR as revised*
This subpart prescribes policies and procedures for acquiring advisory and assistance services by contract. The subpart ~~regulates these contracts~~ with individuals ~~and~~ organizations ~~for both~~ personal and nonpersonal services.	This subpart prescribes policies and procedures for acquiring advisory and assistance services by contract. The subpart **applies to contracts whether made** with individuals **or** organizations **that involve either** personal or nonpersonal services.

37.201 Definitions. [FAC 90-33, CASE 94-710]

FAR as of FAC 90-25	*FAR as revised*
"Advisory and assistance services" means services~~, other than those excluded or exempted in~~	*Advisory and assistance services* means **those** services **provided under contract by**

~~this subpart,~~ to support or improve ~~agency~~ policy development, decision-making, management, and administration~~, or to support or improve the operation of management systems.~~

nongovernmental sources to support or improve**: organizational** policy development; decision-making; management and administration**; program and/or project management and administration; or R&D activities.**

~~Advisory and assistance services may take the form of information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance. These services consist of—~~

~~(a) *Individual experts and consultants.* Individual experts and consultants are persons possessing special, current knowledge or skill that may be combined with exten-sive operational experience. This enables them to provide information, opinions, advice, or recommendations to enhance understanding of complex issues or to improve the quality and timeliness of policy development or decision-making.~~

It can also mean the furnishing of professional advice or assistance rendered to improve the effectiveness of Federal management processes or procedures (including those of an engineering and technical nature). In rendering the foregoing services, outputs may take the form of information, advice, opinions, alternatives, **analyses, evaluations,** recommendations, training **and the day-to-day aid of support personnel needed for the successful performance of ongoing Federal operations. All advisory and assistance services are to be classified in one of the following definitional subdivisions:**

~~(c)~~ *Management and professional support services.* ~~Management and professional support services take the form of~~ advice, training, or ~~direct~~ assistance ~~for organiza-tions to ensure more efficient or effective operations of managerial, administrative, or related systems. This summary description is operationally defined in terms of the following criteria:~~

~~(1) *Objective.* To ensure more efficient or effective operation of management support or related systems by providing advice, training, or direct assistance associated with the design or operation of such systems.~~

~~(2) *Areas of application.* Management support or related systems such as~~ program management, project monitoring and reporting, data collection, logistics ~~management,~~ budgeting, accounting, auditing~~, personnel management, paperwork management, records management, space management, and public relations.~~

~~(3) *Outputs.* Services in the form of information, opinions, advice, training, or direct assistance that lead to the improved design or operation of managerial, administrative, or related systems. This does not include training which maintains skills necessary for normal operations. Written reports are normally incidental to the performance of the service.~~

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

~~(b) *Studies, analyses, and evaluations.* Studies, analyses, and evaluations are organized, analytic assessments needed to provide the insights necessary for understanding complex issues or improving~~

(b) Studies, analyses and evaluations, ***i.e.*, contracted services that provide organized, analytical assessments/ evaluations in support of policy development, decision-**

policy development or decision-making. ~~These analytic efforts result in formal, structured documents containing data or leading to conclusions and/or recommendations. This summary description is operationally defined by the following criteria:~~

~~(1) *Objective*. To enhance understanding of complex issues or to improve the quality and timeliness of agency policy development or decision-making by providing new insights into, understanding of, alternative solutions to, or recommendations on agency policy and program issues, through the applications of fact finding, analysis, and evaluation.~~

~~(2) *Areas of application*. All subjects, issues, or problems involving policy development of decision-making in the agency. These may involve concepts, organization, programs and other systems, and the application of such systems.~~

~~(3) *Outputs*. Outputs are formal structured documents containing or leading to conclusions and/or recommendations. Data bases, models, methodologies, and related software created in support of a study, analysis,or evaluation are to be considered part of the overall study effort.~~

making, management, or administration. Included are studies in support of R&D activities. Also included are acquisitions of models, methodologies, and related software supporting studies, analyses or evaluations; or

~~(d) *Engineering and technical service*. Engineering and technical services (technical representative) take the form of advice, training, or, under unusual circumstances, direct assistance to ensure more efficient or effective operation or maintenance of existing platforms, weapon systems, related systems, and associated software. All engineering and technical services provided prior to final Government acceptance of a complete hardware system are part of the normal development, production, and procurement processes and do not fall in this category. Engineering and technical services provided after final Government acceptance of a complete hardware system are in this category except where they are procured to increase the original design performance capabilities of existing or new systems or where they are integral to the operational support of a deployed system and have been formally reviewed and approved in the acquisition planning process.~~

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

***Covered personnel*, as used in this subpart, means—**

(a) An officer or an individual who is appointed in the civil service by one of the following acting in an official capacity; (1) the President; (2) a Member of Congress; (3) a member of the

uniformed services; (4) an individual who is an employee under 5 U.S.C. 2105; (5) the head of a Government-controlled corporation; or (6) an adjutant general appointed by the Secretary concerned under 32 U.S.C. 709(c).

(b) A member of the Armed Services of the United States.

(c) A person assigned to a Federal agency who has been transferred to another position in the competitive service in another agency.

37.202 Exclusions. [FAC 90-33, CASE 94-710]

~~**37.204 Exclusions.**~~

FAR as of FAC 90-25	*FAR as revised*
The following activities and programs are excluded or exempted from the definition of advisory or assistance services:	The following activities and programs are excluded or exempted from the definition of advisory or assistance services:
~~(c) ADP/Telecommunications functions and related services that are controlled in accordance with 41 CFR Part 201, the Federal Information Resources Management Regulation.~~	**(a) Routine Federal information processing services unless they are an integral part of a contract for the acquisition of advisory and assistance services.**
~~(a) Activities that are reviewed in accordance with the OMB Circular A-76, Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government.~~	
(b) Architectural and engineering services as defined in ~~Part 36~~.	(b) Architectural and engineering services as defined in **the Brooks Architect-Engineers Act (Section 901 of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 541).**
~~(d)~~ Research on theoretical mathematics and basic medical, biological, physical, social, psychological, or other phenomena.	**(c)** Research on theoretical mathematics and basic research involving medical, biological, physical, social, psychological, or other phenomena.
~~(e) Engineering studies related to specific physical~~	

~~or performance characteristics of existing or proposed systems.~~

~~(f) The day-to-day operation of facilities (e.g., the Johnson Space Center and related facilities) and functions (e.g., ADP operations and building maintenance).~~

~~(g) Government-owned, contractor-operated (GOCO) facilities. However, any contract for advisory and assistance services other than the basic contract for operation and management of a GOCO shall come under the definition of advisory or assistance services.~~

~~(h) Clinical medicine.~~

~~(i) Those support services of a managerial or administrative nature performed as a simultaneous part of, and nonseparable from specific development, production, or operational support activities. In this context, nonseparable means that the managerial or administrative systems in question (e.g., subcontractor monitoring or configuration control) cannot reasonably be operated by anyone other than the designer or producer of the end-item hardware.~~

~~(j) Contracts entered into in furtherance of statutorily mandated advisory committees.~~

~~(k) Initial training, training aids, and technical documentation acquired as an integral part of the lease or purchase of equipment.~~

~~(l) Routine maintenance of equipment, routine administrative services (e.g., mail, reproduction, telephone), printing services, and direct advertising (media) costs.~~

~~(m) Auctioneers, realty-brokers, appraisers, and surveyors.~~

~~(n) The National Foreign Intelligence Program (NFIP).~~

~~(o) The General Defense Intelligence Program (GDIP).~~

~~(p) Tactical Intelligence and Related Activities (TIARA).~~

~~(q) Foreign Military Sales.~~

~~(r) Engineering and technical services as set forth in 37.203(d).~~

~~37.203 Types of advisory and assistance services.~~ [FAC 90-33, CASE 94-710]

[contents merged with the definition in 37.201]

37.203 Policy. [FAC 90-33, CASE 94-710]

~~**37.202 Policy.**~~

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
	(d) *Limitation on payment for advisory and assistance services.* Contractors may not be paid for services to conduct evaluations or analyses of any aspect of a proposal submitted for an initial contract award unless—
	(1) Neither covered personnel from the requesting agency, nor from another agency, with adequate training and capabilities to perform the required proposal evaluation, are readily available and a written determination is made in accordance with 37.204;
	(2) The contractor is a Federally-Funded Research and Development Center (FFRDC) as authorized in Section 23 of the Office of Federal Procurement Policy (OFPP) Act as amended (41 U.S.C. 419) and the work placed under the FFRDC's contract meets the criteria of 35.017-3; or
	(3) Such functions are otherwise authorized by law.

37.204 Guidelines for determining availability of personnel. [FAC 90-33, CASE 94-710]

(a) The head of an agency shall determine, for each evaluation or analysis of proposals, if sufficient personnel with the requisite training and capabilities are available within the agency to perform the evaluation or analysis of proposals submitted for the acquisition.

(b) If, for a specific evaluation or analysis, such personnel are not available within the agency, the head of the agency shall—

(1) Determine which Federal agencies may have personnel with the required training and capabilities; and

(2) Consider the administrative cost and time associated with conducting the search, the dollar value of the procurement, other costs, such as travel costs involved in the use of such personnel, and the needs of the Federal agencies to make management decisions on the best use of available personnel in performing the agency's mission.

(c) If the supporting agency agrees to make the required personnel available, the agencies shall execute an agreement for the detail of the supporting agency's personnel to the requesting agency.

(d) If the requesting agency, after reasonable attempts to obtain personnel with the required training and capabilities, is unable to identify such personnel, the head of the agency may make the determination required by 37.203.

(e) An agency may make a determination regarding the availability of covered personnel for a class of proposals for which evaluation and analysis would require expertise so unique or specialized that it is not reasonable to expect such personnel to be available.

~~**37.205 Management controls.**~~ [FAC 90-33, CASE 94-710]

~~OMB Circular A-120 requires each agency to establish procedures for a written evaluation at the conclusion of the contract to assess the utility of the deliverables to the agency and the performance of the contractor.~~

37.205 Contracting officer responsibilities. [FAC 90-33, CASE 94-710]

~~**37.207 Contracting officer responsibilities.**~~

FAR as of FAC 90-25	*FAR as revised*
The contracting officer~~ is responsible for determining whether any requested contractual action, regardless of dollar value, constitutes advisory and assistance services as described in this subpart. The contracting officer's determination shall be final. Before processing any contractual action for advisory and assistance services, the contracting officer shall verify that— (a) Action is taken to avoid conflicts of interest in accordance with Subpart 9.5; (b) The applicable requirements of this subpart and 37.103 and 37.104 are met; (c) The services being contracted for consist only of the types of services defined at 37.203; (d) The request includes a statement of need and certification by the requesting official (see 37.206(a) and (b)); and (e) Written approval for the requirement, including requests for contract modifications beyond the scope of the acquisition originally approved, has been obtained from the appropriate level(s) (see 37.206(c)).~~	The contracting officer **shall ensure that the determination required in accordance with the guidelines at 37.204 has been made prior to issuing a solicitation.**

~~**37.206 Requesting activity responsibilities.**~~ [FAC 90-33, CASE 94-710]

~~Requests for advisory and assistance services shall include—~~

~~(a) A statement certifying that the requirement is for advisory and assistance services as defined in this subpart.~~

~~(b) Written justification of need and certification that such services do not unnecessarily duplicate any previously performed work or services.~~

~~(c) Written approval for such services by an official at a level above the requesting office. However, in the case of requirements received by the contracting officer during the fourth quarter of the fiscal year, for award during the same fiscal year, the approval at the second level, or higher level if required by agency procedures, above the requesting office shall accompany the request for contract action.~~

~~(d) Properly chargeable funds certified by the cognizant fiscal/budget office.~~

PART 42

CONTRACT ADMINISTRATION

☛ When authorized by the contracting office, Contract Administration Offices evaluate contractor performance per Subpart 42.15.

42.302 Contract administration functions.

FAR as of FAC 90-25	*FAR as revised*
(a) * * * * *	(a) * * * * *
(12) Review and approve or disapprove the contractor's requests for payments under the progress payments clause.	(12) Review and approve or disapprove the contractor's requests for payments under the progress payments **or performance-based payments** clauses. [FAC 90-33, CASE 94-764]
* * * * *	* * * * *
(52) Review, evaluate, and approve plant or division-wide ~~small and small disadvantaged~~ business master subcontracting plans.	(52) Review, evaluate, and approve plant or division-wide **small, small disadvantaged and women-owned small** business master subcontracting plans. [FAC 90-32, CASE 94-780]
(53) Obtain the contractor's currently approved company- or division-wide plans for ~~small business and small disadvantaged business~~ subcontracting for its commercial ~~products~~, or, if there is no currently approved plan, assist the contracting officer in evaluating the plans for those products.	(53) Obtain the contractor's currently approved company- or division-wide plans for **small, small disadvantaged and women-owned small business** subcontracting for its commercial **items**, or, if there is no currently approved plan, assist the contracting officer in evaluating the plans for those products. [FAC 90-32, CASE 94-780]
(54) Assist the contracting officer, upon request, in evaluating an offeror's proposed ~~small business and small disadvantaged business~~ subcontracting plans, including documentation of compliance with similar plans under prior contracts.	(54) Assist the contracting officer, upon request, in evaluating an offeror's proposed **small, small disadvantaged and women-owned small business** subcontracting plans, including documentation of compliance with similar plans under prior contracts. [FAC 90-32, CASE 94-780]
(55) By periodic surveillance, ensure the contractor's compliance with ~~small business and small disadvantaged business~~ subcontracting plans and any labor surplus area contractual requirements; maintain documentation of the contractor's performance under and compliance with these plans and requirements; and provide advice and assistance to the firms involved, as appropriate.	(55) By periodic surveillance, ensure the contractor's compliance with **small, small disadvantaged and women-owned small business** subcontracting plans and any labor surplus area contractual requirements; maintain documentation of the contractor's performance under and compliance with these plans and requirements; and provide advice and assistance to the firms involved, as appropriate. [FAC 90-32, CASE 94-
* * * * *	

	780] * * * * *
* * * * *	**(68) Monitor the contractor's compliance with the requirements of environmental laws including the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901, et seq.) and other environmental requirements as specified in the contract (see Part 23). Responsibilities of the contracting officer shall include—** **(i) Verification of contractor compliance with specifications requiring the use of environmentally preferable and energy-efficient materials and the use of materials or delivery of end items with the specified recovered material content. This shall occur as part of the quality assurance procedures set forth in Part 46.** **(ii) As required in the contract, ensuring that the contractor complies with the reporting requirements relating to recovered material content utilized in contract performance.** [FAC 90-27] **(69) Administer commercial financing provisions and monitor contractor security to ensure its continued adequacy to cover outstanding payments, when on-site review is required.** [FAC 90-33, CASE 94-764]
(b) The CAO shall perform the following functions only when and to the extent specifically authorized by the contracting office: * * * * *	(b) The CAO shall perform the following functions only when and to the extent specifically authorized by the contracting office: * * * * * **(11) Prepare evaluations of contractor performance in accordance with Subpart 42.15** [FAC 90-26]

42.501 General.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(b) Postaward orientation is encouraged to assist ~~small business and small disadvantaged business~~ concerns (see Part 19). * * * * *	(b) Postaward orientation is encouraged to assist **small business, small disadvantaged and women-owned small business** concerns (see Part 19). [FAC 90-32, CASE 94-780]

* * * * *

42.502 Selecting contracts for postaward orientation.

FAR as of FAC 90-25	*FAR as revised*
When deciding whether postaward orientation is necessary and, if so, what form it shall take, the contracting officer shall consider, as a minimum, the—	When deciding whether postaward orientation is necessary and, if so, what form it shall take, the contracting officer shall consider, as a minimum, the—
* * * * *	* * * * *
(i) Contractor's status, if any, as a ~~small business or small disadvantaged business~~ concern;	(i) Contractor's status, if any, as a **small business, small disadvantaged or women-owned small business** concern; [FAC 90-32, CASE 94-780]
(j) Contractor's performance history with ~~small business and small disadvantaged business~~ subcontracting programs;	(j) Contractor's performance history with **small, small disadvantaged and women-owned small business** subcontracting programs; [FAC 90-32, CASE 94-780]
* * * * *	* * * * *

☛ Past performance information is information that is relevant to future source selections on a contractor's actions under previously awarded contracts. Record information on such matters as the contractor's

- Record of conforming to contract requirements and to standards of good workmanship
- Record of forecasting and controlling costs.
- Adherence to contract schedules, including the administrative aspects of performance.
- History of reasonable and cooperative behavior and commitment to customer satisfaction.

Business-like concern in general for the interest of the customer. (FAR subpart 42.15, FAC 90-26)

☛ When work on the contract is completed, prepare an evaluation of contractor performance for each contract in excess of:

- $1,000,000 beginning July 1, 1995,
- $500,000 beginning July 1, 1996, and
- $100,000 beginning January 1, 1998

Also prepare interim evaluations for multiple year contracts as specified by the agency.

Exceptions:

- Contracts awarded under Subparts 8.6 and 8.7
- Construction and A&E contracts (see §36.201 and 36.604 for policies on recording performance under such contracts).

(FAR subpart 42.15, FAC 90-26)

☛ Generally solicit input for the evaluations from the technical office, contracting office, and, where appropriate, end users of the product or service. (FAR subpart 42.15, FAC 90-26)

☛ Provide copies of the agency evaluation of the contractor's performance to the contractor as soon as practicable after completing the evaluation. Give the contractor at least 30 days to comment on the evaluation. If the parties disagree about the evaluation, refer the evaluation to a level above the contracting officer. However, the contracting agency makes the final decision. (FAR subpart 42.15, FAC 90-26)

☛ Retain copies of the evaluation, contractor response, and review comments (if any) and mark this information with the legend "Source Selection Information." Only release the evaluation to other Government personnel and the contractor whose performance is being evaluated. (FAR subpart 42.15, FAC 90-26)

☛ Destroy the evaluation within three years after completion of contract performance. (FAR subpart 42.15, FAC 90-26)

SUBPART 42.15—CONTRACTOR PERFORMANCE INFORMATION [added by FAC 90-26]

Sec.

42.1500 Scope of subpart.
42.1501 General.
42.1502 Policy.
42.1503 Procedures.

42.1500 Scope of subpart.

This subpart provides policies and establishes responsibilities for recording and maintaining contractor performance information. It implements Office of Federal Procurement Policy Letter 92-5, Past Performance Information. This subpart does not apply to procedures used by agencies in determining fees under award or incentive fee contracts. However, the fee amount paid to contractors should be reflective of the contractor's performance and the past performance evaluation should closely parallel the fee determinations.

42.1501 General.

Past performance information is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. It includes, for example, the contractor's record of conforming to contract requirements and to standards of good workmanship; the contractor's record of forecasting and controlling costs; the contractor's adherence to contract schedules, including the

administrative aspects of performance; the contractor's history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the contractor's business-like concern for the interest of the customer.

42.1502 Policy.

(a) Except as provided in paragraph (b) of this section, agencies shall prepare an evaluation of contractor performance for each contract in excess of $1,000,000 beginning July 1, 1995, $500,000 beginning July 1, 1996, and $100,000 beginning January 1, 1998, (regardless of the date of contract award) at the time the work under the contract is completed. In addition, interim evaluations should be prepared as specified by the agencies to provide current information for source selection purposes, for contracts with a period of performance, including options, exceeding one year. This evaluation is generally for the entity, division, or unit that performed the contract. The content and format of performance evaluations shall be established in accordance with agency procedures and should be tailored to the size, content, and complexity of the contractual requirements.

(b) Agencies shall not evaluate performance for contracts awarded under Subparts 8.6 and 8.7. Agencies shall evaluate construction contractor performance and architect/
engineer contractor performance in accordance with 36.201 and 36.604, respectively.

42.1503 Procedures.

(a) Agency procedures for the past performance evaluation system shall generally provide for input to the evaluations from the technical office, contracting office and, where appropriate, end users of the product or service.

(b) Agency evaluations of contractor performance prepared under this subpart shall be provided to the contractor as soon as practicable after completion of the evaluation. Contractors shall be given a minimum of 30 days to submit comments, rebutting statements, or additional information. Agencies shall provide for review at a level above the contracting officer to consider disagreements between the parties regarding the evaluation. The ultimate conclusion on the performance evaluation is a decision of the contracting agency. Copies of the evaluation, contractor response, and review comments, if any, shall be retained as part of the evaluation. These evaluations may be used to support future award decisions, and should therefore be marked "Source Selection Information". The completed evaluation shall not be released to other than Government personnel and the contractor whose performance is being evaluated during the period the information may be used to provide source selection information. Disclosure of such information could cause harm both to the commercial interest of the Government and to the competitive position of the contractor being evaluated as well as impede the efficiency of Government operations. Evaluations used in determining award or incentive fee payments may also be used to satisfy the requirements of this subpart.

(c) Departments and agencies shall share past performance information with other departments and agencies when requested to support future award decisions. The information may be provided through interview and/or by sending the evaluation and comment documents to the requesting source selection official.

(d) Any past performance information systems, including automated systems, used for maintaining contractor performance information and/or evaluations should include appropriate management and technical controls to ensure that only authorized personnel have access to the data.

(e) The past performance information shall not be retained to provide source selection information for longer than three years after completion of contract performance.

☛ The FAR now requires that contracting officers use, not merely take into consideration, established final indirect cost rates in negotiating the final price of fixed-price incentive and fixed-price redeterminable contracts and in other situations requiring that indirect costs be settled before contract prices are established. [§42.703-1, FAC 90-31, Case 94-754]

42.703-1 Policy.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(c) Contracting officers shall—	(c) Contracting officers shall—
(1) Unless the quick-closeout procedure in 42.708 is used, use final indirect cost rates of a business unit for a given period, which shall be binding for all the cost-reimbursement contracts of the business unit for that period, subject to any specific limitation in a contract or advance agreement (when contracts of more than one agency are involved, see 42.101(c)); and	(1) Unless the quick-closeout procedure in 42.708 is used, use final indirect cost rates of a business unit for a given period, which shall be binding for all the cost-reimbursement contracts of the business unit for that period, subject to any specific limitation in a contract or advance agreement (when contracts of more than one agency are involved, see 42.101(c)); and
(2) ~~Take into consideration~~ established final indirect cost rates in negotiating the final price of fixed-price incentive and fixed-price redeterminable contracts and in other situations requiring that indirect costs be settled before contract prices are established ~~(see 31.103(b))~~.	(2) **To ensure compliance with 10 U.S.C. 2324(a) and 41 U.S.C. 256(a)**, **use** established final indirect cost rates in negotiating the final price of fixed-price incentive and fixed-price redeterminable contracts and in other situations requiring that indirect costs be settled before contract prices are established.

☛ Section 42.703-2 extends requirements for contractor certification of indirect cost rates (both billing and final) to the civilian agencies. Pursuant to 10 U.S.C. 2324(h), the Department of Defense already determines or negotiates contractor indirect cost rates on the basis of a certified proposal. Basically, contracting officers may not agree to billing or final indirect cost rates unless the contractor has certified (using the clause at 52.242-4, Certification of Indirect Costs) that:

- All proposed costs are allowable
- None are unallowable, AND
- All costs included in the proposal are properly allocable to Government contracts on the basis of a beneficial or causal relationship between the expenses incurred and the contracts to which they are allocated in accordance with applicable acquisition regulations.

[§42.703-1 and 52.242-4, FAC 90-31, Case 94-752]

☛ The head of the agency or designee may waive the certification when in the interest of the United States. However, they must put the reasons for the waiver in writing and make those reasons available to the public. For example, waivers might be appropriate for contracts with foreign governments, international organizations, State or local governments subject to OMB circular A-87, educational institutions subject to OMB circular A-21, and non-profit organizations subject to OMB circular A-122. [§42.703-1, FAC 90-31, Case 94-752]

☛ If necessary for continuation of the contract, contracting officers can unilaterally establish the rates if the contractor fails to certify its proposal for billing or indirect cost rates. [§42.703-1, FAC 90-31, Case 94-752]

42.703-2 Certificate of indirect costs. [Added by FAC 90-31]

(a) *General*. In accordance with 10 U.S.C. 2324(h) and 41 U.S.C. 256(h), a proposal shall not be accepted and no agreement shall be made to establish billing rates or final indirect cost rates unless the costs have been certified by the contractor.

(b) *Waiver of certification*. (1) The agency head, or designee, may waive the certification requirement when—

(i) It is determined to be in the interest of the United States; and

(ii) The reasons for the determination are put in writing and made available to the public.

(2) A waiver may be appropriate for a contract with—

(i) A foreign government or international organization, such as a subsidiary body of the North Atlantic Treaty Organization;

(ii) A state or local government subject to OMB Circular A-87;

(iii) An educational institution subject to OMB Circular A-21; and

(iv) A nonprofit organization subject to OMB Circular A-122.

(c) *Failure to certify*. (1) If the contractor has not certified its proposal for billing rates or indirect cost rates and a waiver is not appropriate, the contracting officer shall unilaterally establish the rates if they are necessary for continuation of the contract.

(2) Rates established unilaterally should be—

(i) Based on audited historical data or other available data as long as unallowable costs are excluded; and

(ii) Set low enough to ensure that potentially unallowable costs will not be reimbursed.

(d) *False certification*. The contracting officer should consult with legal counsel to determine appropriate action when a contractor certificate of indirect costs is thought to be false.

(e) *Penalties for unallowable costs*. 10 U.S.C. 2324(a) through (d) and 41 U.S.C. 256(a) through (d) prescribe penalties for submission of unallowable costs in final indirect cost rate proposals (see 42.709 for penalties and contracting officer responsibilities).

(f) *Contract clause*. (1) Except as provided in paragraph (f)(2) of this subsection, the clause at 52.242-4, Certification of Indirect Costs, shall be incorporated into all solicitations and contracts which provide for—

(i) Interim reimbursement of indirect costs;

(ii) Establishment of final indirect cost rates; or

(iii) Contract financing that includes interim payment of indirect costs, *e.g.*, progress payments based on cost (Subpart 32.5) or progress payments based on percentage or stage of completion.

(2) The Department of Energy may provide an alternate clause in its agency supplement for its Management and Operating contracts.

52.242-4 Certification of Indirect Costs.

As prescribed in 42.703-2(f), insert the following clause:

CERTIFICATION OF INDIRECT COSTS (OCT 1995)

(a) The Contractor shall—

(1) Certify any proposal to establish or modify billing rates or to establish final indirect cost rates;

(2) Use the format in paragraph (c) of this clause to certify; and

(3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.

(b) Failure by the Contractor to submit a signed certificate, as described in this clause, shall result in payment of indirect costs at rates unilaterally established by the Government.

(c) The certificate of indirect costs shall read as follows:

CERTIFICATE OF INDIRECT COSTS

This is to certify that to the best of my knowledge and belief:

1. I have reviewed this indirect cost proposal;

2. All costs included in this proposal (*identify proposal and date*) to establish billing or final indirect cost rates for (*identify period covered by rate*) are allowable in accordance with the requirements of contracts to which they apply and with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to those contracts;

3. This proposal does not include any costs which are unallowable under applicable cost principles of the FAR or its supplements, including, but not limited to: advertising and public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, defense of fraud proceedings, and goodwill; and

4. All costs included in this proposal are properly allocable to Government contracts on the basis of a beneficial or causal relationship between the expenses incurred and the contracts to which they are allocated in accordance with applicable acquisition regulations.

I declare under penalty of perjury that the foregoing is true and correct.

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

(End of clause)

☛ If the contracting officer is responsible for determining final indirect cost rates, the FAR prohibits the contracting officer from resolving any questioned costs until obtaining—

- Adequate documentation on the costs; and
- The contract auditor's opinion on the allowability of the costs.

The FAR further advises contracting officers, whenever possible, to invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor's final indirect cost rates.

Finally, the FAR adds a specific requirement that the contracting officer notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance. [§42.705-1, FAC 90-31, Case 94-754]

42.705-1 Contracting officer determination procedure.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(b) *Procedures.* (1) In accordance with the Allowable Cost and Payment clause at 52.216-7 or 52.216-13, the contractor shall submit to the contracting officer and, if required by agency procedures, to the cognizant auditor a final indirect cost rate proposal reflecting actual cost experience during the covered period, together with supporting cost or pricing data.	(b) *Procedures.* (1) In accordance with the Allowable Cost and Payment clause at 52.216-7 or 52.216-13, the contractor shall submit to the contracting officer and, if required by agency procedures, to the cognizant auditor a final indirect cost rate proposal reflecting actual cost experience during the covered period, together with supporting cost or pricing data.
(2) The auditor shall submit to the contracting officer an advisory audit report (i) identifying any relevant advance agreements or restrictive terms of specific contracts and (ii) including the information required by 15.805-5(e).	(2) The auditor shall submit to the contracting officer an advisory audit report (i) identifying any relevant advance agreements or restrictive terms of specific contracts and (ii) including the information required by 15.805-5(e).
(3) The contracting officer shall head the Government negotiating team, which includes the cognizant auditor and technical or functional personnel as required. Contracting offices having significant dollar interest shall be invited to participate in the negotiation and in the preliminary discussion of critical issues. Individuals or offices that have provided a significant input to the Government position should be invited to attend.	(3) The contracting officer shall head the Government negotiating team, which includes the cognizant auditor and technical or functional personnel as required. Contracting offices having significant dollar interest shall be invited to participate in the negotiation and in the preliminary discussion of critical issues. Individuals or offices that have provided a significant input to the Government position should be invited to attend.
(4) The Government negotiating team shall develop a negotiation position.	(4) The Government negotiating team shall develop a negotiation position. **Pursuant to 10 U.S.C. 2324(f) and 41 U.S.C. 256(f), the contracting officer shall—**
(5) The cognizant contracting officer shall—	**(i) Not resolve any questioned costs until obtaining—**
(i) Conduct negotiations;	
(ii) Prepare a written indirect cost rate agreement conforming to the requirements of the contracts;	

(iii) Prepare, sign, and place in the contractor general file (see 4.801(c)(3)) a negotiation memorandum covering (A) the disposition of significant matters in the advisory audit report, (B) reconciliation of all costs questioned, with identification of items and amounts allowed or disallowed in the final settlement as well as the disposition of period costing or allocability issues, (C) reasons why any recommendations of the auditor or other Government advisors were not followed, and (D) identification of cost or pricing data submitted during the negotiations and relied upon in reaching a settlement; and

(iv) Distribute resulting documents in accordance with 42.706.

(A) Adequate documentation on the costs; and

(B) The contract auditor's opinion on the allowability of the costs.

(ii) Whenever possible, invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor's final indirect cost rates.

(5) The cognizant contracting officer shall—

(i) Conduct negotiations;

(ii) Prepare a written indirect cost rate agreement conforming to the requirements of the contracts;

(iii) Prepare, sign, and place in the contractor general file (see 4.801(c)(3)) a negotiation memorandum covering (A) the disposition of significant matters in the advisory audit report, (B) reconciliation of all costs questioned, with identification of items and amounts allowed or disallowed in the final settlement as well as the disposition of period costing or allocability issues, (C) reasons why any recommendations of the auditor or other Government advisors were not followed, and (D) identification of cost or pricing data submitted during the negotiations and relied upon in reaching a settlement; and

(iv) Distribute resulting documents in accordance with 42.70.

(v) Notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance.

☛ Sections 2101 and 2151 of the Federal Acquisition Streamlining Act of 1994 change the contract value threshold for assessment of penalties on unallowable costs from $100,000 to $500,000 and expand the coverage from the Department of Defense to all executive agencies. With the exception of the threshold value, the penalty provisions in the new law are the same as those implemented in the current Defense Federal Acquisition Regulation Supplement. [§42.709 and 52.242-3, FAC 90-31, Case 94-751]

☛ Contracting officers may assess penalties against contractors for including unallowable indirect costs in—

- Final indirect cost rate proposals; or
- The final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract.

However, this policy only applies to contracts in excess of $500,000 — and does NOT apply to fixed-price contracts without cost incentives or any firm-fixed-price contracts for the purchase of commercial items. [§42.709 and 52.242-3, FAC 90-31, Case 94-751]

☛ The penalty is equal to the amount of the disallowed costs plus interest on the paid portion, if any, of the disallowance. However, if the indirect cost was determined to be unallowable for that contractor before proposal submission, the penalty is double that amount. Any of the following may constitute evidence of prior determinations of unallowability:

- A DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved (see 48 CFR 242.705-2), or any similar notice which the contractor elected not to appeal and was not withdrawn by the cognizant Government agency.
- A contracting officer final decision which was not appealed.
- A prior executive agency Board of Contract Appeals or court decision involving the contractor, which upheld the cost disallowance.
- A determination or agreement of unallowability under 31.201-6.

[§42.709 and 52.242-3, FAC 90-31, Case 94-751]

☛ Determinations of penalty amounts under paragraphs (d) and (e) of the clause at 52.242-3 are final decisions within the meaning of the Contract Disputes Act of 1978. The FAR contains precise instructions for determining the amount of the interest, issuing assessments, and waiving the penalty. [§42.709 and 52.242-3, FAC 90-31, Case 94-751]

42.709 Scope.

(a) This section implements 10 U.S.C. 2324(a) through (d) and 41 U.S.C. 256(a) through (d). It covers the assessment of penalties against contractors which include unallowable indirect costs in—

(1) Final indirect cost rate proposals; or

(2) The final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract.

(b) This section applies to all contracts in excess of $500,000, except fixed-price contracts without cost incentives or any firm-fixed-price contracts for the purchase of commercial items.

42.709-1 General.

(a) The following penalties apply to contracts covered by this section:

(1) If the indirect cost is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the penalty is equal to—

(i) The amount of the disallowed costs allocated to contracts that are subject to this section for which an indirect cost proposal has been submitted; plus

(ii) Interest on the paid portion, if any, of the disallowance.

(2) If the indirect cost was determined to be unallowable for that contractor before proposal submission, the penalty is two times the amount in paragraph (a)(1)(i) of this section.

(b) These penalties are in addition to other administrative, civil, and criminal penalties provided by law.

(c) It is not necessary for unallowable costs to have been paid to the contractor in order to assess a penalty.

42.709-2 Responsibilities.

(a) The cognizant contracting officer is responsible for—

(1) Determining whether the penalties in 42.709-1(a) should be assessed;

(2) Determining whether such penalties should be waived pursuant to 42.709-5; and

(3) Referring the matter to the appropriate criminal investigative organization for review and for appropriate coordination of remedies, if there is evidence that the contractor knowingly submitted unallowable costs.

(b) The contract auditor, in the review and/or the determination of final indirect cost proposals for contracts subject to this section, is responsible for—

(1) Recommending to the contracting officer which costs may be unallowable and subject to the penalties in 42.709-1(a);

(2) Providing rationale and supporting documentation for any recommendation; and

(3) Referring the matter to the appropriate criminal investigative organization for review and for appropriate coordination of remedies, if there is evidence that the contractor knowingly submitted unallowable costs.

42.709-3 Assessing the penalty.

Unless a waiver is granted pursuant to 42.709-5, the cognizant contracting officer shall—

(a) Assess the penalty in 42.709-1(a)(1), when the submitted cost is expressly unallowable under a cost principle in the FAR or an executive agency supplement that defines the allowability of specific selected costs; or

(b) Assess the penalty in 42.709-1(a)(2), when the submitted cost was determined to be unallowable for that contractor prior to submission of the proposal. Prior determinations of unallowability may be evidenced by—

(1) A DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved (see 48 CFR 242.705-2), or any similar notice which the contractor elected not to appeal and was not withdrawn by the cognizant Government agency;

(2) A contracting officer final decision which was not appealed;

(3) A prior executive agency Board of Contract Appeals or court decision involving the contractor, which upheld the cost disallowance; or

(4) A determination or agreement of unallowability under 31.201-6.

(c) Issue a final decision (see 33.211) which includes a demand for payment of any penalty assessed under paragraph (a) or (b) of this section. The letter shall state that the determination is a final decision under the Disputes clause of the contract. (Demanding payment of the penalty is separate from demanding repayment of any paid portion of the disallowed cost.)

42.709-4 Computing interest.

For 42.709-1(a)(1)(ii), compute interest on any paid portion of the disallowed cost as follows:

(a) Consider the overpayment to have occurred, and interest to have begun accumulating, from the midpoint of the contractor's fiscal year. Use an alternate equitable method if the cost was not paid evenly over the fiscal year.

(b) Use the interest rate specified by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

(c) Compute interest from the date of overpayment to the date of the demand letter for payment of the penalty.

(d) Determine the paid portion of the disallowed costs in consultation with the contract auditor.

42.709-5 Waiver of the penalty.

The cognizant contracting officer shall waive the penalties at 42.709-1(a) when—

(a) The contractor withdraws the proposal before the Government formally initiates an audit of the proposal and the contractor submits a revised proposal (an audit will be deemed to be formally initiated when the Government provides the contractor with written notice, or holds an entrance conference, indicating that audit work on a specific final indirect cost proposal has begun);

(b) The amount of the unallowable costs under the proposal which are subject to the penalty is $10,000 or less (i.e., if the amount of expressly or previously determined unallowable costs which would be

allocated to the contracts specified in 42.709(b) is $10,000 or less); or

(c) The contractor demonstrates, to the cognizant contracting officer's satisfaction, that—

(1) It has established policies and personnel training and an internal control and review system that provide assurance that unallowable costs subject to penalties are precluded from being included in the contractor's final indirect cost rate proposals (e.g., the types of controls required for satisfactory participation in the Department of Defense sponsored self-governance programs, specific accounting controls over indirect costs, compliance tests which demonstrate that the controls are effective, and Government audits which have not disclosed recurring instances of expressly unallowable costs); and

(2) The unallowable costs subject to the penalty were inadvertently incorporated into the proposal; i.e., their inclusion resulted from an unintentional error, notwithstanding the exercise of due care.

42.709-6 Contract clause.

Use the clause at 52.242-3, Penalties for Unallowable Costs, in all solicitations and contracts over $500,000 except fixed-price contracts without cost incentives or any firm-fixed-price contract for the purchase of commercial items. Generally, covered contracts are those which contain one of the clauses at 52.216-7, 52.216-13, 52.216-16, or 52.216-17, or a similar clause from an executive agency's supplement to the FAR.

52.242-3 Penalties for Unallowable Costs.

As prescribed in 42.709-6, use the following clause:

PENALTIES FOR UNALLOWABLE COSTS (OCT 1995)

(a) *Definition*. *Proposal*, as used in this clause, means either—

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which—

(i) Relates to any payment made on the basis of billing rates; or

(ii) Will be used in negotiating the final contract price; or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. 256, as applicable, which is implemented in Section 42.709 of the Federal Acquisition Regulation (FAR).

(c) The Contractor shall not include in any proposal any cost which is unallowable, as defined in Part 31 of the FAR, or an executive agency supplement to Part 31 of the FAR.

d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to—

(1) The amount of the disallowed cost allocated to this contract; plus

(2) Simple interest, to be computed—

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and

(ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, et seq.).

(g) Pursuant to the criteria in FAR 42.709-5, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.

(h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

42.1105 Assignment of criticality designator.

FAR as of FAC 90-25	*FAR as revised*
Contracting officers shall assign a criticality designator to each contract in the space for designating the contract administration office, as follows:	Contracting officers shall assign a criticality designator to each contract in the space for designating the contract administration office, as follows:
Criticality Designator *Criterion*	*Criticality Designator* *Criterion*
A Critical contracts, including DX-rated contracts (~~see Subpart 12.3~~), contracts citing the authority in 6.302-2 (unusual and compelling urgency), and contracts for major systems.	A Critical contracts, including DX-rated contracts (**see Subpart 11.6**), contracts citing the authority in 6.302-2 (unusual and compelling urgency), and contracts for major systems. [FAC 90-32, CASE 94-790]
* * * * *	* * * * *

~~SUBPART 42.13 [Reserved]~~

SUBPART 42.13—SUSPENSION OF WORK, STOP-WORK ORDERS, AND GOVERNMENT DELAY OF WORK [redesignated from Subpart 12.5 by FAC 90-32, CASE 94-790 with one minor revision and updated references]

SUBPART 42.16—SMALL BUSINESS CONTRACT ADMINISTRATION (NEW)

42.1601 General.

The contracting officer shall make every reasonable effort to respond in writing within 30 days to any written request to the contracting officer from a small business concern with respect to a contract administration matter. In the event the contracting officer cannot respond to the request within the 30 day period, the contracting officer shall, within the period, transmit to the contractor a written notification of the specific date the contracting officer expects to respond. This provision shall not apply to a request for a contracting officer decision under the Contract Disputes Act of 1978 (41 U.S.C. 601-613). [FAC 90-32, CASE 94-730]

PART 52.242-14 THROUGH PART 52.242-17

[REDESIGNATED FROM 52.212-12 THROUGH 52.212-15 BY FAC 90-32, CASE 94-790 WITH UPDATED REFERENCES]

PART 44

SUBCONTRACTING POLICIES AND PROCEDURES

44.202-2 Considerations.

FAR as of FAC 90-25	*FAR as revised*
(a) The contracting officer responsible for consent shall review the request and supporting data and consider the following: * * * * * (4) Has the contractor complied with the prime contract requirements regarding ~~labor surplus area or~~ small business subcontracting, including, if applicable, its plan for subcontracting with ~~small business concerns and small disadvantaged business concerns~~ (see Part 19)? * * * * *	(a) The contracting officer responsible for consent shall review the request and supporting data and consider the following: * * * * * (4) Has the contractor complied with the prime contract requirements regarding small business subcontracting, including, if applicable, its plan for subcontracting with **small, small disadvantaged and women-owned small business concerns** (see Part 19)? [FAC 90-32, CASE 94-780] * * * * *
(13) Is the proposed subcontractor on the ~~Consolidated List of Debarred, Suspended, and Ineligible Contractors~~ (see Subpart 9.4)? * * * * *	(13) Is the proposed subcontractor on the **List of Parties Excluded from Federal Procurement and Nonprocurement Programs** (see Subpart 9.4)? [FAC 90-28] * * * * *

44.303 Extent of review.

FAR as of FAC 90-25	*FAR as revised*
A CPSR requires a complete evaluation of the contractor's purchasing system. The considerations listed in 44.202-2 for consent evaluations of particular subcontracts shall also be used to evaluate the contractor's purchasing system, including the contractor's policies, procedures, and performance under that system. Special attention shall be given to— * * * * * (c) Methods of evaluating subcontractor	A CPSR requires a complete evaluation of the contractor's purchasing system. The considerations listed in 44.202-2 for consent evaluations of particular subcontracts shall also be used to evaluate the contractor's purchasing system, including the contractor's policies, procedures, and performance under that system. Special attention shall be given to— * * * * * (c) Methods of evaluating subcontractor

responsibility, including the contractor's use of the ~~list of Parties Excluded from Procurement Programs~~ (see 9.404) and, if the contractor has subcontracts with parties on the list, the documentation, systems, and procedures the contractor has established to protect the Government's interests (see 9.405-2);

responsibility, including the contractor's use of the **List of Parties Excluded from Federal Procurement and Nonprocurement Programs** (see 9.404) and, if the contractor has subcontracts with parties on the list, the documentation, systems, and procedures the contractor has established to protect the Government's interests (see 9.405-2); [FAC 90-28]

* * * * *

(e) Policies and procedures pertaining to ~~labor surplus area concerns and~~ small business concerns, including small disadvantaged business concerns;

(e) Policies and procedures pertaining to small business concerns, including small disadvantaged **and women-owned small** business concerns; [FAC 90-32, CASE 94-780]

* * * * *

SUBPART 44.4—SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS [entire subpart added by FAC 90-32, CASE 94-790]

44.400 Scope of Subpart.

This subpart prescribes the policies limiting the contract clauses a prime contractor may be required to apply to any subcontractors that are furnishing commercial items or commercial components in accordance with Section 8002(b)(2) (Pub. L. 103-355).

44.401 Applicability.

This subpart applies to all contracts and subcontracts. For the purpose of this subpart, the term "subcontract" has the same meaning as defined in Part 12.

44.402 Policy requirements.

(a) Contractors and subcontractors at all tiers shall, to the maximum extent practicable:

(1) Be required to incorporate commercial items or nondevelopmental items as components of items delivered to the Government; and

(2) Not be required to apply to any of its divisions, subsidiaries, affiliates, subcontractors or suppliers that are furnishing commercial items or commercial components any clause, except those—

(i) Required to implement provisions of law or executive orders applicable to subcontractors furnishing commercial items or commercial components; or

(ii) Determined to be consistent with customary commercial practice for the item being acquired.

(b) The clause at 52.244-6, Subcontracts for Commercial Items and Commercial Components, implements the policy in paragraph (a) of this section. Notwithstanding any other clause in the prime contract, only those clauses identified in the clause at 52.244-6 are required to be in subcontracts for commercial items or commercial components.

(c) Agencies may supplement the clause at 52.244-6 only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items.

44.403 Contract clause.

The contracting officer shall insert the clause at 52.244-6, Subcontracts for Commercial Items and Commercial Components, in solicitations and contracts for supplies or services other than commercial items.

52.244-6 Subcontracts for Commercial Items and Commercial Components [FAC 90-32, CASE 94-790]

As prescribed in 44.403, insert the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1995)

(a) Definition.

***Commercial item*, as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.**

***Subcontract*, as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.**

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

(1) 52.222-26, Equal Opportunity (E.O. 11246);

(2) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 2012(a));

(3) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793); and

(4) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

PART 44

SUBCONTRACTING POLICIES AND PROCEDURES

44.202-2 Considerations.

FAR as of FAC 90-25	*FAR as revised*
(a) The contracting officer responsible for consent shall review the request and supporting data and consider the following: * * * * * (4) Has the contractor complied with the prime contract requirements regarding ~~labor surplus area or~~ small business subcontracting, including, if applicable, its plan for subcontracting with ~~small business concerns and small disadvantaged business concerns~~ (see Part 19)? * * * * *	(a) The contracting officer responsible for consent shall review the request and supporting data and consider the following: * * * * * (4) Has the contractor complied with the prime contract requirements regarding small business subcontracting, including, if applicable, its plan for subcontracting with **small, small disadvantaged and women-owned small business concerns** (see Part 19)? [FAC 90-32, CASE 94-780] * * * * *
(13) Is the proposed subcontractor on the ~~Consolidated List of Debarred, Suspended, and Ineligible Contractors~~ (see Subpart 9.4)? * * * * *	(13) Is the proposed subcontractor on the **List of Parties Excluded from Federal Procurement and Nonprocurement Programs** (see Subpart 9.4)? [FAC 90-28] * * * * *

44.303 Extent of review.

FAR as of FAC 90-25	*FAR as revised*
A CPSR requires a complete evaluation of the contractor's purchasing system. The considerations listed in 44.202-2 for consent evaluations of particular subcontracts shall also be used to evaluate the contractor's purchasing system, including the contractor's policies, procedures, and performance under that system. Special attention shall be given to— * * * * * (c) Methods of evaluating subcontractor	A CPSR requires a complete evaluation of the contractor's purchasing system. The considerations listed in 44.202-2 for consent evaluations of particular subcontracts shall also be used to evaluate the contractor's purchasing system, including the contractor's policies, procedures, and performance under that system. Special attention shall be given to— * * * * * (c) Methods of evaluating subcontractor

responsibility, including the contractor's use of the ~~list of Parties Excluded from Procurement Programs~~ (see 9.404) and, if the contractor has subcontracts with parties on the list, the documentation, systems, and procedures the contractor has established to protect the Government's interests (see 9.405-2);

responsibility, including the contractor's use of the **List of Parties Excluded from Federal Procurement and Nonprocurement Programs** (see 9.404) and, if the contractor has subcontracts with parties on the list, the documentation, systems, and procedures the contractor has established to protect the Government's interests (see 9.405-2); [FAC 90-28]

* * * * *

(e) Policies and procedures pertaining to ~~labor surplus area concerns and~~ small business concerns, including small disadvantaged business concerns;

(e) Policies and procedures pertaining to small business concerns, including small disadvantaged **and women-owned small** business concerns; [FAC 90-32, CASE 94-780]

* * * * *

SUBPART 44.4—SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS [entire subpart added by FAC 90-32, CASE 94-790]

44.400 Scope of Subpart.

This subpart prescribes the policies limiting the contract clauses a prime contractor may be required to apply to any subcontractors that are furnishing commercial items or commercial components in accordance with Section 8002(b)(2) (Pub. L. 103-355).

44.401 Applicability.

This subpart applies to all contracts and subcontracts. For the purpose of this subpart, the term "subcontract" has the same meaning as defined in Part 12.

44.402 Policy requirements.

(a) Contractors and subcontractors at all tiers shall, to the maximum extent practicable:

(1) Be required to incorporate commercial items or nondevelopmental items as components of items delivered to the Government; and

(2) Not be required to apply to any of its divisions, subsidiaries, affiliates, subcontractors or suppliers that are furnishing commercial items or commercial components any clause, except those—

(i) Required to implement provisions of law or executive orders applicable to subcontractors furnishing commercial items or commercial components; or

(ii) Determined to be consistent with customary commercial practice for the item being acquired.

(b) The clause at 52.244-6, Subcontracts for Commercial Items and Commercial Components, implements the policy in paragraph (a) of this section. Notwithstanding any other clause in the prime contract, only those clauses identified in the clause at 52.244-6 are required to be in subcontracts for commercial items or commercial components.

(c) Agencies may supplement the clause at 52.244-6 only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items.

44.403 Contract clause.

The contracting officer shall insert the clause at 52.244-6, Subcontracts for Commercial Items and Commercial Components, in solicitations and contracts for supplies or services other than commercial items.

52.244-6 Subcontracts for Commercial Items and Commercial Components [FAC 90-32, CASE 94-790]

As prescribed in 44.403, insert the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1995)

(a) Definition.

***Commercial item*, as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.**

***Subcontract*, as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.**

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

(1) 52.222-26, Equal Opportunity (E.O. 11246);

(2) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 2012(a));

(3) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793); and

(4) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

45.103 Responsibility and liability for Government property.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(b) Generally, Government contracts do not hold contractors liable for loss of or damage to Government property when the property is provided under—	(b) Generally, Government contracts do not hold contractors liable for loss of or damage to Government property when the property is provided under—
(1) Negotiated fixed-price contracts for which the contract price is not based upon ~~(i) adequate price competition, (ii) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (iii) prices set by law or regulation;~~	(1) Negotiated fixed-price contracts for which the contract price is not based upon **an exception at 15.804-1;** [FAC 90-32, CASE 94-721]
* * * * *	* * * * *

45.106 Government property clauses.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(b)(1) * * * * *	(b)(1) * * * * *
(2) If the contract is (i) a negotiated fixed-price contract for which prices are not based on ~~adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation~~, or (ii) a fixed-price service contract which is performed primarily on a Government installation, provided the contracting officer determines it to be in the best interest of the Government (see subpart 45.103(b)(4)), the contracting officer shall use the clause with its Alternate I.	(2) If the contract is—
	(i) A negotiated fixed-price contract for which prices are not based on **an exception at 15.804-1**; or
	(ii) A fixed-price service contract which is performed primarily on a Government installation, provided the contracting officer determines it to be in the best interest of the Government (see 45.103(b)(4)), the contracting officer shall use the clause with its Alternate I.
	[FAC 90-32, CASE 94-721]
* * * * *	* * * * *

☛ Contractors may electronically reproduce standard inventory schedule forms, as long as they make no change to the name, content, or sequence of the data elements. Check to ensure that the electronic reproduction includes all essential elements of data and is signed. (§45.606-5, FAC 90-29, 91-104)

45.606-5 Instructions for preparing and submitting schedules of contractor inventory.

* * * * *

(b) *Submission.*

(1) Contractors shall report contractor inventory promptly after determining it to be excess, unless a later date is authorized by the contract or the plant clearance officer.

(2) Unless contract provisions or agency regulations prescribe otherwise, 12 copies of inventory schedules listing serviceable or salvable items and 6 copies of inventory schedules listing scrap items shall be presented to the plant clearance officer at the cognizant contract administration office.

(3) The standard inventory schedule forms may be reproduced by contractors, provided no change is made ~~in size or format. Machine listings may be submitted if~~ all essential elements of data ~~are~~ included and the ~~appropriate signed standard~~ form ~~is submitted as a cover sheet~~.

(4) The appropriate continuation sheet shall be used when more ~~than one page~~ is needed.

(5) Partial schedules may be submitted when they cover substantial portions of a particular property classification of contractor inventory. The first page of each schedule submitted shall be identified as partial or final in the title block of the schedule.

(6) The contractor should consult with the plant clearance officer when in doubt as to item descriptions or other inventory schedule requirements.

* * * * *

(b) *Submission.*

(1) Contractors shall report contractor inventory promptly after determining it to be excess, unless a later date is authorized by the contract or the plant clearance officer.

(2) Unless contract provisions or agency regulations prescribe otherwise, 12 copies of inventory schedules listing serviceable or salvable items and 6 copies of inventory schedules listing scrap items shall be presented to the plant clearance officer at the cognizant contract administration office.

(3) The standard inventory schedule forms may be **electronically** reproduced by contractors **pursuant to 53.105**, provided no change is made **to the name, content or sequence of the data elements**. **All** essential elements of data **must be** included and the **form must be signed**. [FAC 90-29]

(4) The appropriate continuation sheet shall be used when more **space** is needed. [FAC 90-29]

(5) Partial schedules may be submitted when they cover substantial portions of a particular property classification of contractor inventory. The first page of each schedule submitted shall be identified as partial or final in the title block of the schedule.

(6) The contractor should consult with the plant clearance officer when in doubt as to item descriptions or other inventory schedule requirements.

PART 46

QUALITY ASSURANCE

46.101 Definitions.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * * **"Commercial item" (see 2.101).** [FAC 90-32, CASE 94-790] * * * * *

46.102 Policy.

FAR as of FAC 90-25	*FAR as revised*
Agencies shall ensure that— * * * * * (e) Nonconforming supplies or services are rejected, except as otherwise provided in 46.407; ~~and~~	Agencies shall ensure that— * * * * * (e) Nonconforming supplies or services are rejected, except as otherwise provided in 46.407; **(f) Contracts for commercial items shall rely on a contractor's existing quality assurance system as a substitute for compliance with Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired permit in-process inspection (Section 8002 of Pub. L. 103-355). Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice; and** [FAC 90-32, CASE 94-790]
~~(f)~~ The quality assurance and acceptance services of other agencies are used when this will be effective, economical, or otherwise in the Government's interest (see Subpart 42.1).	**(g)** The quality assurance and acceptance services of other agencies are used when this will be effective, economical, or otherwise in the Government's interest (see Subpart 42.1). [FAC 90-32, CASE 94-790]

46.202 Types of contract quality requirements.

FAR as of FAC 90-25	*FAR as revised*
Contract quality requirements fall into ~~three~~ general categories, depending on the extent of quality assurance needed by the Government for the acquisition involved.	Contract quality requirements fall into **four** general categories, depending on the extent of quality assurance needed by the Government for the acquisition involved. [FAC 90-32, CASE 94-790]

46.202-1 Contracts for commercial items.

When acquiring commercial items (see Part 12), the Government shall rely on contractors' existing quality assurance systems as a substitute for Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired include in-process inspection. Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice. [FAC 90-32, CASE 94-790]

46.202-2 Government reliance on inspection by contractor. [FAC 90-32, CASE 94-790]

~~**46.202-1 Government reliance on inspection by contractor.**~~

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(b) The Government shall not rely on inspection by the contractor if the contracting officer determines that the Government has a need to test the supplies or services in advance of their tender for acceptance, or to pass judgment upon the adequacy of the contractor's internal work processes. In making the determination, the contracting officer shall consider—	(b) The Government shall not rely on inspection by the contractor if the contracting officer determines that the Government has a need to test the supplies or services in advance of their tender for acceptance, or to pass judgment upon the adequacy of the contractor's internal work processes. In making the determination, the contracting officer shall consider—
(1) The nature of the supplies and services being purchased and their intended use ~~(see 46.204 and Table 46-1)~~;	(1) The nature of the supplies and services being purchased and their intended use; [FAC 90-32, CASE 94-790]
* * * * *	* * * * *

46.202-3 Standard inspection requirements. [FAC 90-32, CASE 94-790]

~~**46.202-2 Standard inspection requirements.**~~

46.202-4 Higher-level contract quality requirements. [FAC 90-32, CASE 94-790]

~~**46.202-3 Higher-level contract quality requirements.**~~

FAR as of FAC 90-25	*FAR as revised*
(a) Higher-level contract quality requirements are contained in the clause prescribed in 46.311. Such requirements are appropriate in solicitations and contracts for complex and critical items (see 46.203(b) and (c)) or when the technical requirements of the contract are such as to require—	(a) Higher-level contract quality requirements are contained in the clause prescribed in 46.311. Such requirements are appropriate in solicitations and contracts for complex and critical items (see 46.203(b) and (c)) or when the technical requirements of the contract are such as to require—
(1) Control of such things as work operations, in-process controls, and inspection ~~(see 46.204 and Table 46-1)~~; or	(1) Control of such things as work operations, in-process controls, and inspection; or [FAC 90-32, CASE 94-790]
* * * * *	* * * * *

46.203 Criteria for use of contract quality requirements.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
(a) *Technical description.* Contract items may be technically classified as—	(a) *Technical description.* Contract items may be technically classified as—
(1) Commercial (described in commercial catalogs, drawings, or industrial standards);	(1) Commercial (described in commercial catalogs, drawings, or industrial standards; **see Part 2);** or [FAC 90-32, CASE 94-790]
(2) Military-Federal (described in Government drawings and specifications)~~; or~~	(2) Military-Federal (described in Government drawings and specifications)**.** [FAC 90-32, CASE 94-790]
~~(3) Off-the-shelf (see 46.101).~~	
* * * * *	* * * * *

46.204 [Reserved] [FAC 90-32, CASE 94-790]

~~46.204 Application of criteria.~~

~~Subject to mandatory limitations contained in the clause prescriptions (see Subpart 46.3), Table 46-1 may be used as a guide in selecting the appropriate contract quality requirements. Where circumstances warrant, the contracting officer may specify a requirement different from that arrived at through use of the table, except for off-the-shelf items.~~

~~Technical Description~~	~~Complexity~~	~~Application~~	~~Quality Requirements~~
~~Commercial inspection~~	~~Noncomplex~~	~~Noncritical Common~~	~~Contractor (46.202-1)~~
~~Commercial inspection~~	~~Noncomplex~~	~~Noncritical Peculiar~~	~~Contractor (46.202-1)~~
~~Commercial inspection~~	~~Noncomplex Complex~~	~~Critical Noncritical Common~~	~~Standard (46.202-2)~~
~~Commercial inspection~~	~~Complex~~	~~Noncritical Peculiar~~	~~Standard (46.202-2)~~
~~Commercial inspection~~	~~Complex Noncomplex~~	~~Critical Noncritical Common~~	~~Higher-level (46.202-3) Standard (46.202-2)~~
~~Military-Federal inspection~~	~~Noncomplex~~	~~Noncritical Peculiar~~	~~Standard (46.202-2)~~
~~Military-Federal~~	~~Noncomplex~~	~~Critical~~	~~Higher-level (46.202-3)~~
~~Military-Federal inspection~~	~~Complex~~	~~Noncritical Common~~	~~Standard (46.202-2)~~
~~Military-Federal~~	~~Complex~~	~~Noncritical Peculiar~~	~~Higher-level (46.202-3)~~
~~Military-Federal~~	~~Complex~~	~~Critical~~	~~Higher-level (46.202-3)~~
~~Off-the-shelf inspection~~	~~All~~	~~Noncritical~~	~~Contractor (46.202-1)~~
~~Off-the-shelf inspection~~	~~All~~	~~Critical~~	~~Standard (46.202-2)~~
~~Noncomplex~~			

46.301 Contractor inspection requirements.

FAR as of FAC 90-25	*FAR as revised*
The contracting officer shall insert the clause at 52.246-1, Contractor Inspection Requirements, in solicitations and contracts for supplies or services when the contract amount is expected to be ~~within the small purchase limitation~~ and (a) inclusion of the clause is necessary to ensure an explicit understanding of the contractor's inspection responsibilities, or (b) inclusion of the clause is required under agency procedures. The clause shall not be used if the contracting officer has made the determination specified in ~~46.202-1(b).~~	The contracting officer shall insert the clause at 52.246-1, Contractor Inspection Requirements, in solicitations and contracts for supplies or services when the contract amount is expected to be **at or below the simplified acquisition threshold** and (a) inclusion of the clause is necessary to ensure an explicit understanding of the contractor's inspection responsibilities, or (b) inclusion of the clause is required under agency procedures. The clause shall not be used if the contracting officer has made the determination specified in **46.202-2(b).** [FAC 90-29 & FAC 90-32, CASE 94-790]

46.311 Higher-level contract quality requirement.

FAR as of FAC 90-25	*FAR as revised*
The contracting officer shall insert the clause at 52.246-11, Higher-Level Contract Quality Requirement (Government Specification), in solicitations and contracts when the inclusion of a higher-level contract quality requirement is appropriate ~~(see 46.202-3).~~	The contracting officer shall insert the clause at 52.246-11, Higher-Level Contract Quality Requirement (Government Specification), in solicitations and contracts when the inclusion of a higher-level contract quality requirement is appropriate **(see 46.202-4).** [FAC 90-32, CASE 94-790]

46.402 Government contract quality assurance at source.

FAR as of FAC 90-25	*FAR as revised*
Agencies shall perform contract quality assurance, including inspection, at source if— * * * * * (e) A higher-level contract quality requirement is included in the contract ~~(see 46.202-3);~~ * * * * *	Agencies shall perform contract quality assurance, including inspection, at source if— * * * * * (e) A higher-level contract quality requirement is included in the contract **(see 46.202-4);** [FAC 90-32, CASE 94-790] * * * * *

46.404 Government contract quality assurance for acquisitions at or below the simplified acquisition threshold.

FAR as of FAC 90-25	*FAR as revised*
(a) In determining the type and extent of Government contract quality assurance to be required for ~~small purchases~~, the contracting officer shall consider the criticality of application of the supplies or services, the amount of possible losses, and the likelihood of uncontested replacement of defective work ~~(see 46.202-1).~~	(a) In determining the type and extent of Government contract quality assurance to be required for **contracts at or below the simplified acquisition threshold**, the contracting officer shall consider the criticality of application of the supplies or services, the amount of possible losses, and the likelihood of uncontested replacement of defective work **(see 46.202-2)**. [FAC 90-29 & FAC 90-32, CASE 94-790]
(b) When the conditions in ~~46.202-1(b)~~ apply, the following policies shall govern:	(b) When the conditions in **46.202-2(b)** apply, the following policies shall govern: [FAC 90-32, CASE 94-790]
(1) Unless a special situation exists, the Government shall inspect ~~small purchases~~ at destination and only for type and kind; quantity; damage; operability (if readily determinable); and preservation, packaging, packing, and marking, if applicable.	(1) Unless a special situation exists, the Government shall inspect **contracts at or below the simplified acquisition threshold** at destination and only for type and kind; quantity; damage; operability (if readily determinable); and preservation, packaging, packing, and marking, if applicable. [FAC 90-29]
(2) Special situations may require more detailed quality assurance and the use of a standard inspection or higher-level contract quality requirement. These situa-tions include those listed in 46.402 and contracts for items having critical applications. See Table 46-1 at 46.204 for other possible situations.	(2) Special situations may require more detailed quality assurance and the use of a standard inspection or higher-level contract quality requirement. These situa-tions include those listed in 46.402 and contracts for items having critical applications. [FAC 90-32, CASE 94-790]
* * * * *	* * * * *

46.709 Warranties of commercial items.

FAR as of FAC 90-25	*FAR as revised*
~~If a warranty of commercial items is appropriate, the contracting officer may include a warranty of supplies clause modified for commercial items (see the clause at 52.246-17, Warranty of Supplies of a Noncomplex Nature, Alternate I, and 52.246-18,~~	**The contracting officer should take advantage of commercial warranties, including extended warranties, where appropriate and in the Government's best interests, offered by the contractor for the**

~~Warranty of Supplies of a Complex Nature, Alternate I). More appropriate warranty language may be included if the contracting officer determines that the Government's planned usage of the item is inconsistent with the item's normal usage, or that Government specifications have substantially altered the item. The Government may adopt the contractor's standard commercial warranty if the contracting officer determines it is not inconsistent with the rights that would be afforded the Government under a warranty of supplies clause (see the clauses at 52.246-17, Warranty of Supplies of a Noncomplex Nature, and 52.246-18, Warranty of Supplies of a Complex Nature) or other terms of the contract.~~

repair and replacement of commercial items (see Part 12). [FAC 90-32, CASE 94-790]

46.710 Contract clauses.

FAR as of FAC 90-25	*FAR as revised*
The clauses and alternates prescribed in this section may be used in solicitations and contracts in which inclusion of ~~warranty coverage~~ is appropriate. However, because of the many situations that may influence the warranty terms and conditions appropriate to a particular acquisition, the contracting officer may vary the terms and conditions of the clauses and alternates to the extent necessary. The alternates prescribed in this section address the clauses; however, the conditions pertaining to each alternate must be considered if the terms and conditions are varied to meet a particular need.	The clauses and alternates prescribed in this section may be used in solicitations and contracts in which inclusion of **a warranty** is appropriate **(see 46.709 for warranties for commercial items)**. However, because of the many situations that may influence the warranty terms and conditions appropriate to a particular acquisition, the contracting officer may vary the terms and conditions of the clauses and alternates to the extent necessary. The alternates prescribed in this section address the clauses; however, the conditions pertaining to each alternate must be considered if the terms and conditions are varied to meet a particular need. [FAC 90-32, CASE 94-790]
(a)(1) * * * * *	(a)(1) * * * * *
~~(2) If commercial items are to be acquired, the contracting officer may use the clause with its Alternate I.~~	
~~(3)~~ * * * * *	**(2)** * * * * * [FAC 90-32, CASE 94-790]
~~(4)~~ * * * * *	**(3)** * * * * * [FAC 90-32, CASE 94-790]
~~(5)~~ * * * * *	**(4)** * * * * * [FAC 90-32, CASE 94-790]
~~(6)~~ * * * * *	**(5)** * * * * * [FAC 90-32, CASE 94-790]
(b)(1) * * * * *	(b)(1) * * * * *
~~(2) If commercial items are to be acquired, the contracting officer may use the clause with its Alternate I.~~	

~~(3)~~ * * * * *	**(2)** * * * * * [FAC 90-32, CASE 94-790]
~~(4)~~ * * * * *	**(3)** * * * * * [FAC 90-32, CASE 94-790]
~~(5)~~ * * * * *	**(4)** * * * * * [FAC 90-32, CASE 94-790]
* * * * *	* * * * *

46.804 Items priced at or based on catalog or market prices.

FAR as of FAC 90-25	*FAR as revised*
Contractors generally (a) carry product liability or similar insurance, or maintain a reserve for self-insurance, covering liability arising from defective items and (b) reflect its cost in catalog or market prices. Therefore, for items being priced at or based on catalog or market prices ~~(see 15.804-3(c)),~~ contracting officers should not provide relief under the policy in 46.803 by including a clause prescribed in 46.805, unless they obtain an appropriate reduction from the catalog or market price to reflect reduced contractor liability.	Contractors generally (a) carry product liability or similar insurance, or maintain a reserve for self-insurance, covering liability arising from defective items and (b) reflect its cost in catalog or market prices. Therefore, for items being priced at or based on catalog or market prices **(see 15.804-1(b)(2)),** contracting officers should not provide relief under the policy in 46.803 by including a clause prescribed in 46.805, unless they obtain an appropriate reduction from the catalog or market price to reflect reduced contractor liability. [FAC 90-32, CASE 94-721]

52.246-11 Higher-Level Contract Quality Requirement (Government Specification).

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 46.311, insert the following clause in solicitations and contracts when the inclusion of a higher-level contract quality requirement is appropriate (~~see 46.202-3~~):	As prescribed in 46.311, insert the following clause in solicitations and contracts when the inclusion of a higher-level contract quality requirement is appropriate (**see 46.202-4**): [FAC 90-32, CASE 94-790]
* * * * *	* * * * *

52.246-17 Warranty of Supplies of a Noncomplex Nature.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
Alternate I ~~(APR 1984). If commercial items are to be acquired, delete paragraph (b)(4), and substitute a paragraph substantially the same as the following paragraph (b)(1) for paragraph (b)(1) of the basic~~	*Alternate I* [RESERVED] [FAC 90-32, CASE 94-790]
	* * * * *

~~clause:~~
~~(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for . . . . . [*Contracting Officer shall state the specific period of time after delivery, or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combinations of any applicable events or periods of time*] all supplies furnished—~~
~~(i) Are of a quality to pass without objection in the trade under the contract description;~~
~~(ii) Are fit for the ordinary purposes for which the supplies are used;~~
~~(iii) Are within the variations permitted by the contract, and are of an even kind, quality, and quantity within each unit and among all units;~~
~~(iv) Are adequately contained, packaged, and marked as the contract may require; and~~
~~(v) Conform to the promises or affirmations of fact made on the container.~~
~~(R 7-105.7(d)(2) 1976 JUL)~~
* * * * *

52.246-18 Warranty of Supplies of a Complex Nature.

FAR as of FAC 90-25	*FAR as revised*
* * * * *	* * * * *
Alternate I ~~(APR 1984). If commercial items are to be acquired, delete paragraph (b)(6), and substitute a paragraph substantially the same as the following paragraph (b)(1) for paragraph (b)(1) of the basic clause:~~	*Alternate I* [RESERVED] [FAC 90-32, CASE 94-790]
~~(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under the contract or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that, at the time of delivery, all supplies—~~	* * * * *
~~(i) Are of a quality to pass without objection in the trade under the contract description;~~	
~~(ii) Are fit for the ordinary purposes for which the supplies are used;~~	
~~(iii) Are, within the variations permitted by the contract, if any, of an even kind, quality, and quantity within each unit and among all units;~~	
~~(iv) Are adequately contained, packaged, and marked as the contract may require; and~~	
~~(v) Conform to the promises or affirmations of fact made on the container.~~	

~~(R 7-105.7(d)(2) 1976 JUL)~~
* * * * *

PART 47

TRANSPORTATION

47.405 Contract clause.

FAR as of FAC 90-25	*FAR as revised*
The contracting officer shall insert the clause at 52.247-63, Preference for U.S.-Flag Air Carriers, in solicitations and contracts whenever it is possible that U.S. Government-financed international air transportation of personnel (and their personal effects) or property will occur in the performance of the contract. This clause does not apply to ~~small purchases made under~~ Part 13.	The contracting officer shall insert the clause at 52.247-63, Preference for U.S.-Flag Air Carriers, in solicitations and contracts whenever it is possible that U.S. Government-financed international air transportation of personnel (and their personal effects) or property will occur in the performance of the contract. This clause does not apply to **contracts awarded using the simplified acquisition procedures in** Part 13 **or contracts for commercial items (see Part 12).** [FAC 90-29 & FAC 90-32, CASE 94-790]

47.504 Exceptions.

FAR as of FAC 90-25	*FAR as revised*
The policy and procedures in this subpart do not apply to the following: * * * * * (d) ~~Small purchases under~~ Part 13.	The policy and procedures in this subpart do not apply to the following: * * * * * (d) **Contracts awarded using the simplified procedures in** Part 13. [FAC 90-29] **(e) Beginning May 1, 1996, subcontracts for the acquisition of commercial items or commercial components (see 12.504(a)(13)). This exception does not apply to grants-in-aid shipments, such as agricultural and food-aid shipments, to shipments covered under Export-Import Bank loans or guarantees, and to subcontracts under Government contracts or agreements for ocean transportation services.** [FAC 90-32, CASE 94-790]

PART 49

TERMINATION OF CONTRACTS

49.208 Equitable adjustment after partial termination.

FAR as of FAC 90-25	*FAR as revised*
Under the termination clause, after partial termination, a contractor may request an equitable adjustment in the price or prices of the continued portion of a fixed-price contract. The TCO shall forward the proposal to the contracting officer except when negotiation authority is delegated to the TCO. The contractor shall submit the proposal on SF 1411, Contract Pricing Proposal Cover Sheet. * * * * *	Under the termination clause, after partial termination, a contractor may request an equitable adjustment in the price or prices of the continued portion of a fixed-price contract. The TCO shall forward the proposal to the contracting officer except when negotiation authority is delegated to the TCO. The contractor shall submit the proposal on SF 1411, Contract Pricing Proposal Cover Sheet **(Cost or Pricing Data Required).** [FAC 90-32, CASE 94-721] * * * * *

49.402-7 Other damages.

FAR as of FAC 90-25	*FAR as revised*
(a) If a contract is terminated for default or if a course of action in lieu of termination for default is followed (see 49.402-4), the contracting officer shall promptly ascertain and make demand for any liquidated damages to which the Government is entitled under the contract. Under the contract clauses for liquidated damages at ~~52.212-4,~~ these damages are in addition to any excess repurchase costs. * * * * *	(a) If a contract is terminated for default or if a course of action in lieu of termination for default is followed (see 49.402-4), the contracting officer shall promptly ascertain and make demand for any liquidated damages to which the Government is entitled under the contract. Under the contract clauses for liquidated damages at **52.211-11**, these damages are in addition to any excess repurchase costs. [FAC 90-32, CASE 94-790] * * * * *

49.501 General.

FAR as of FAC 90-25	*FAR as revised*
This subpart prescribes the principal contract termination clauses. In appropriate cases, agencies	This subpart prescribes the principal contract termination clauses. **For contracts for the**

may authorize the use of special purpose clauses, if consistent with this regulation.	**acquisition of commercial items, this part provides administrative guidance which may be followed when it is consistent with the requirements and procedures in the clause at 52.212-4, Contract Terms and Conditions - Commercial Items.** In appropriate cases, agencies may authorize the use of special purpose clauses, if consistent with this chapter. [FAC 90-32, CASE 94-790]

49.603-1 Fixed price contracts—complete termination.

FAR as of FAC 90-25	*FAR as revised*
[Insert the following in Block 14 of SF 30 for settlements of fixed-price contracts completely terminated.]	*[Insert the following in Block 14 of SF 30 for settlements of fixed-price contracts completely terminated.*]
* * * * *	* * * * *
(b) * * * * *	(b) * * * * *
(7) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved:	(7) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved:
* * * * *	* * * * *
(i) All rights and liabilities, if any, of the parties, as to matters covered by~~, and regulations made implementing 10 U.S.C. 2382, as amended, and any other~~ renegotiation authority.	(i) All rights and liabilities, if any, of the parties, as to matters covered by **any** renegotiation authority. [FAC 90-33, CASE 94-710]
* * * * *	* * * * *
(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, employment of aliens, ~~and "officials not to benefit."~~ *[If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.]*	(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, **and** employment of aliens. *[If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.]* [FAC 90-30]
* * * * *	* * * * *

49.603-2 Fixed-price contracts—partial termination.

FAR as of FAC 90-25	*FAR as revised*
[Insert the following in Block 14 of SF 30 for settlements of fixed-price contracts partially terminated.] * * * * * (b) * * * * * (8) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: * * * * * (i) All rights and liabilities, if any, of the parties, as to matters covered by~~, and regulations made implementing 10 U.S.C. 2382, as amended, and any other~~ renegotiation authority. * * * * *	*[Insert the following in Block 14 of SF 30 for settlements of fixed-price contracts partially terminated.]* * * * * * (b) * * * * * (8) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: * * * * * (i) All rights and liabilities, if any, of the parties, as to matters covered by **any** renegotiation authority. [FAC 90-33, CASE 94-710] * * * * *
(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, employment of aliens, ~~and "officials not to benefit."~~ *[If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.]* * * * * *	(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, **and** employment of aliens. *[If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.]* [FAC 90-30] * * * * *

49.603-3 Cost reimbursement contracts—complete termination, if settlement includes cost.

FAR as of FAC 90-25	*FAR as revised*
[Insert the following in Block 14 of SF 30 for settlement of cost-reimbursement contracts that are completely terminated, if settlement includes costs.] * * * * * (b) * * * * * (7) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: * * * * * (i) All rights and liabilities, if any, of the parties, as to matters covered by~~, and regulations made implementing 10 U.S.C. 2382, as amended, and any other~~ renegotiation authority. * * * * *	*[Insert the following in Block 14 of SF 30 for settlement of cost-reimbursement contracts that are completely terminated, if settlement includes costs.]* * * * * * (b) * * * * * (7) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: * * * * * * (i) All rights and liabilities, if any, of the parties, as to matters covered by **any** renegotiation authority. [FAC 90-33, CASE 94-710] * * * * *

(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, employment of aliens, and "officials not to benefit." [*If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.]*
* * * * *

(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, and employment of aliens. [*If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.]* [FAC 90-30]
* * * * *

49.603-4 Cost-reimbursement contracts—complete termination, with settlement limited to fee.

FAR as of FAC 90-25	*FAR as revised*
[*Insert the following in Block 14 of SF 30 for settlement of cost-reimbursement contracts that are completely terminated, if settlement is limited to fee.*]	[*Insert the following in Block 14 of SF 30 for settlement of cost-reimbursement contracts that are completely terminated, if settlement is limited to fee.*]
* * * * *	* * * * *
(b) * * * * *	(b) * * * * *
(4) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: * * * * *	(4) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: * * * * *
(i) All rights and liabilities, if any, of the parties, as to matters covered by~~, and regulations made implementing 10 U.S.C. 2382, as amended, and any other~~ renegotiation authority.	(i) All rights and liabilities, if any, of the parties, as to matters covered by **any** renegotiation authority. [FAC 90-33, CASE 94-710]
(ii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, employment of aliens~~, and "officials not to benefit."~~ [*If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.*]	(ii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, **and** employment of aliens. [*If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.*] [FAC 90-30]
* * * * *	* * * * *

49.607 Delinquency notices.

FAR as of FAC 90-25	*FAR as revised*
The formats of the delinquency notices in this section may be used to satisfy the requirements of 49.402-3. All notices will be sent with proof of delivery requested. (See ~~Subpart 12.5~~ for stop-work orders.) * * * * *	The formats of the delinquency notices in this section may be used to satisfy the requirements of 49.402-3. All notices will be sent with proof of delivery requested. (See **Subpart 42.13** for stop-work orders.) [FAC 90-32, CASE 94-790] * * * * *

PART 50

EXTRAORDINARY CONTRACTUAL ACTIONS

50.303 Contract adjustment. [FAC 90-32, CASE 94-730]

FAR as of FAC 90-25	*FAR as revised*
~~50.303~~ Contractor requests. * * * * *	**50.303-1** Contractor requests. * * * * * **50.303-2 Contractor certification.** **A contractor seeking a contract adjustment that exceeds the simplified acquisition threshold shall, at the time the request is submitted, submit a certification by a person authorized to certify the request on behalf of the contractor that (a) the request is made in good faith and (b) the supporting data are accurate and complete to the best of that person's knowledge and belief.**

50.304 Facts and evidence.

FAR as of FAC 90-25	*FAR as revised*
(a) *General.* When it is appropriate, the contracting officer or other agency official shall request the contractor to support any request made under ~~50.303~~ with any of the following information:	(a) *General.* When it is appropriate, the contracting officer or other agency official shall request the contractor to support any request made under **50.303-1** with any of the following information: [FAC 90-32, CASE 94-730]

50.305 Processing cases.

FAR as of FAC 90-25	*FAR as revised*
(a) In response to a contractor request made in accordance with ~~50.303~~, the contracting officer or an	(a) In response to a contractor request made in accordance with **50.303-1**, the contracting officer

authorized representative shall make a thorough investigation to establish the facts necessary to decide a given case. Facts and evidence, including signed statements of material facts within the knowledge of individuals when documentary evidence is lacking, and audits if considered necessary to establish financial or cost facts, shall be obtained from contractor and Government personnel.

* * * * *

or an authorized representative shall make a thorough investigation to establish the facts necessary to decide a given case. Facts and evidence, including signed statements of material facts within the knowledge of individuals when documentary evidence is lacking, and audits if considered necessary to establish financial or cost facts, shall be obtained from contractor and Government personnel. [FAC 90-32, CASE 94-730]

* * * * *

50.306 Disposition.

FAR as of FAC 90-25	*FAR as revised*
When approving or denying a contractor's request made in accordance with ~~50.303~~, the approving authority shall sign and date a Memorandum of Decision containing—	When approving or denying a contractor's request made in accordance with **50.303-1**, the approving authority shall sign and date a Memorandum of Decision containing— [FAC 90-32, CASE 94-730]
* * * * *	* * * * *

PART 51

USE OF GOVERNMENT SOURCES BY CONTRACTORS

☛ Nonprofit agencies for the blind or severely disabled may use Government supply sources in performing contracts under the Javits-Wagner-O'Day Act, if:

- The nonprofit agency requesting use of the supplies and services is providing a commodity or service to the Federal Government, and
- The supplies or services received are directly used in making or providing a commodity or service approved by the Committee for Purchase From People Who Are Blind or Severely Disabled to the Federal Government (FAC 90-31, 94-701).

51.101 Policy.

FAR as of FAC 90-25	*FAR as revised*
(a) If it is in the Government's interest, and if supplies or services required in the performance of a Government contract are available from Government supply sources, contracting officers may authorize contractors to use these sources in performing—	(a) If it is in the Government's interest, and if supplies or services required in the performance of a Government contract are available from Government supply sources, contracting officers may authorize contractors to use these sources in performing—
(1) Government cost-reimbursement contracts; ~~or~~	(1) Government cost-reimbursement contracts;
(2) Other types of negotiated contracts when the agency determines that a substantial dollar portion of the contractor's contracts are of a Government cost-reimbursement nature.	(2) Other types of negotiated contracts when the agency determines that a substantial dollar portion of the contractor's contracts are of a Government cost-reimbursement nature; **or**
	(3) A contract under the Javits-Wagner-O'Day Act (41 U.S.C. 46 *et seq.)* if:
	(i) the nonprofit agency requesting use of the supplies and services is providing a commodity or service to the Federal Government, and
	(ii) the supplies or services received are directly used in making or providing a commodity or service approved by the Committee for Purchase From People Who Are Blind or Severely Disabled to the Federal Government (See Subpart 8.7).

51.102 Authorization to use Government supply sources.

(a) Before issuing an authorization to a contractor to use Government supply sources, the contracting officer shall place in the contract file a written finding supporting issuance of the authorization. The determination shall be based on, but not limited to, considerations of the following factors:

(1) The administrative cost of placing orders with Government supply sources and the program impact of delay factors, if any.

(2) The lower cost of items available through Government supply sources.

(3) Suitability of items available through Government supply sources.

(4) Delivery factors such as cost and time.

(5) Recommendations of the contractor.

(a) Before issuing an authorization to a contractor to use Government supply sources, the contracting officer shall place in the contract file a written finding supporting issuance of the authorization. **Except for findings under 51.101(a)(3),** the determination shall be based on, but not limited to, considerations of the following factors:

(1) The administrative cost of placing orders with Government supply sources and the program impact of delay factors, if any.

(2) The lower cost of items available through Government supply sources.

(3) Suitability of items available through Government supply sources.

(4) Delivery factors such as cost and time.

(5) Recommendations of the contractor

PART 53

☞ Agencies and the public may both computer generate standard and optional forms prescribed by the FAR if:

- The form is in an electronic format that complies with Federal Information Processing Standard Number 161, or
- There is no change to the name, content, or sequence of the data elements, and the form carries the Standard or Optional Form number and edition date. (¶52.105, FAC 90-29, 91-104).

53.105 Computer generation.

(a) Agencies may computer-generate the standard and optional forms prescribed in the FAR without exception approval (see 53.103), providing there is no change to the name, content, or sequence of the data elements, and the form carries the standard or optional form number and edition date. ~~Agencies shall notify the FAR Secretariat of their decisions to computer-generate forms prescribed by the FAR~~.

(b) The forms prescribed by this regulation may be computer generated by the public. Unless prohibited by agency regulations, forms prescribed by agency FAR supplements may also be computer generated by the public. Computer generated forms shall not change the name, content, or sequence of the data elements, and shall carry the Standard or Optional Form or agency number and edition date (see 53.111).

(a) Agencies may computer-generate the Standard and Optional Forms prescribed in the FAR without exception approval (see 53.103), provided**— (1) the form is in an electronic format that complies with Federal Information Processing Standard Number 161;** or (2) there is no change to the name, content, or sequence of the data elements, and the form carries the Standard or Optional Form number and edition date.

(b) The forms prescribed by this Part may be computer generated by the public. Unless prohibited by agency regulations, forms prescribed by agency FAR supplements may also be computer generated by the public. Computer generated forms shall **either comply with Federal Information Processing Standard Number 161** or shall retain the name, content, or sequence of the data elements, and shall carry the Standard or Optional Form or agency number and edition date (see 53.111).

53.212 Acquisition of commercial items. [FAC 90-32, CASE 94-790]

SF 1449 (OCT 1995), Solicitation/Contract/Order for Commercial Items. **SF 1449 is prescribed for use in solicitations and contracts for commercial items. Agencies may prescribe additional detailed instructions for use of the form.**

53.215-2 Price negotiation (SF's 1411 and 1448). [FAC 90-32, CASE 94-721]

~~**53.215-2 Price negotiation (SF's 1411, 1412).**~~

FAR as of FAC 90-25	*FAR as revised*
The following standard forms are prescribed for use in connection with requirements for obtaining cost or pricing data from offerors or contractors, as specified in 15.804:	The following standard forms are prescribed for use in connection with requirements for obtaining cost or pricing data **or information other than cost or pricing data** from offerors or contractors, as specified in 15.804:
(a) *SF 1411 ~~(REV. 7/87)~~, Contract Pricing Proposal Cover Sheet.* (See 15.804-6(b).)	(a) SF 1411 **(REV. OCT./95),** *Contract Pricing Proposal Cover Shee**t (Cost or Pricing Data Required).*** (See 15.804-6(b)**(1)**.) **SF 1411 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the loose-leaf edition of the FAR.**
(b)~~ *SF 1412 (10/83), Claim for Exemption from Submission of Certified Cost or Pricing Data*. (See 15.804-3(e).)~~	(b) **SF 1448 (OCT/95), *Proposal Cover Sheet (Cost or Pricing Data Not Required).* (See 15.804-6(b)(2).) SF 1448 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the loose-leaf edition of the FAR.**

53.219 Small business programs. [FAC 90-32, CASE 94-780]

FAR as of FAC 90-25	*FAR as revised*
~~**53.219 Small business and small disadvantaged business concerns.**~~	
The following standard forms are prescribed for use in reporting ~~small business~~ subcontracting data, as specified in Part 19:	The following standard forms are prescribed for use in reporting **small, small disadvantaged and women-owned small business** subcontracting data, as specified in Part 19:
(a) *SF 294 (~~REV. 1/90~~), Subcontracting Report for Individual Contracts.* (See 19.704(a)(5).)	(a) *SF 294 (**REV OCT 1995**), Subcontracting Report for Individual Contracts*. (See 19.704(a)(5).)
(b) *SF 295 (~~REV. 1/90~~), Summary Subcontract Report.* (See 19.704(a)(5).) SF 295 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.	(b) *SF 295 (**REV OCT 1995**), Summary Subcontract Report*. (See 19.704(a)(5).) SF 295 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the loose-leaf edition of the FAR.

53.301-294 Subcontracting Report for Individual Contracts. [FAC 90-32, CASE 94-780]

[Insert SF 294 here]

53.301-295 Summary Subcontract Report. [FAC 90-32, CASE 94-780]

[Insert SF 295 here]

Note to Printer: Please reduce each 8 1/2 x 11 Standard Form 294 and 295 to fit on a single FR page under the section headings given above.

53.301-1449 (OCT 1995), Solicitation/Contract/Order for Commercial Items [FAC 90-32, CASE 94-790]

35a. Part 52 is amended by removing the derivation lines following all “(End of provision)” or “(End of clause)” parentheticals and Alternates.