PART 3

IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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]

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.

52.203-7 Anti-Kickback Procedures.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 3.502-3, insert the following clause: ANTI-KICKBACK PROCEDURES ~~(OCT 1988)~~ * * * * * (c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships. * * * * * (5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract. (End of clause)	As prescribed in 3.502-3, insert the following clause: ANTI-KICKBACK PROCEDURES **(JUN 1995)** * * * * * (c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships. * * * * * (5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract **which exceed $100,000.** (End of clause) [FAC 90-29]

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. (End of clause)	* * * * * * (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] ***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

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]

PART 8

REQUIRED SOURCES OF SUPPLIES AND SERVICES

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

Other sections where the name of the List of Parties Excluded from Federal Procurement and Nonprocurement Programs was changed:

52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 9.409(b), insert the following clause: PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT ~~(NOV 1992)~~ (a) The Government suspends or debars Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of ~~the small purchase limitation at FAR 13.000~~ with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. (b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed ~~the small purchase limitation at FAR 13.000~~**,** to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government. * * * * * (End of clause)	As prescribed in 9.409(b), insert the following clause: PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT **(JUN 1995)** (a) The Government suspends or debars Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of **$25,000** with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. (b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed **$25,000** ~~the small purchase limitation at FAR 13.000,~~ to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government. * * * * * (End of clause)

PART 11

DESCRIBING AGENCY NEEDS

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]

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

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)

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

13.111 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.

13.105 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.

PART 14

SEALED BIDDING

52.214-9 Failure to Submit Bid.

FAR as of FAC 90-25	*FAR as revised*
FAILURE TO SUBMIT BID ~~(APR 1984)~~ 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. (End of provision)	FAILURE TO SUBMIT BID (**JUL 1995**) 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] (End of provision)

52.214-26 Audit and Records—Sealed Bidding.

FAR as of FAC 90-25	*FAR as revised*
AUDIT AND RECORDS--SEALED BIDDING (~~APR 1985~~)	AUDIT AND RECORDS--SEALED BIDDING (**OCT 1995**) **(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 Government~~ shall have the same rights.	(c) *Comptroller General.* In the case of pricing any modification, the Comptroller General of the United States, or an **authorized** representative, shall have the same rights **as specified in paragraph (b) of this clause**.
(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**. [FAC 90-31]
(End of clause)	(End of clause)

52.214-5 Submission of Bids.

FAR as of FAC 90-25	*FAR as revised*
SUBMISSION OF BIDS (~~DEC 1989~~)	SUBMISSION OF BIDS (**JUL 1995**)
* * * *	* * * *
	(d) 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]

52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.

FAR as of FAC 90-25	*FAR as revised*
LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (~~DEC 1989~~) (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) * * * *	LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (**JUL 1995**) (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) * * * *; 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.** * * * * [FAC 90-29]

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*
LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP SEALED BIDDING (~~DEC 1989~~) (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) * * * *	LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP SEALED BIDDING (**JUL 1995**) (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) * * * * **(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** * * * * [FAC 90-29]

52.214-32 Late Submissions, Modifications, and Withdrawals of Bids (Overseas).

FAR as of FAC 90-25	*FAR as revised*
LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (OVERSEAS) (~~DEC 1989~~) (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. * * * *	LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (OVERSEAS) (**JUL 1995**) (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*
LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP SEALED BIDDING (OVERSEAS) (~~DEC 1989~~) (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) * * * * (2) Is the only technical proposal received. * * * *	LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP SEALED BIDDING (OVERSEAS) (**JUL 1995**) (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) * * * * (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]

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~~) (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—~~ ~~(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.~~ * * * * *	As prescribed in 14.201-7(b), insert the following clause: PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING **(OCT 1995)** (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.** * * * * *
(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. (End of clause) [FAC 90-32]

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 ~~(DEC 1994)~~ (a) * * * * * (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~~	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)** (a) * * * * * (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**

~~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~~

~~(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)

of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification**s** 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.**

* * * * *

(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).

(End of clause)

[FAC 90-32]

PART 15

CONTRACTING BY NEGOTIATION

~~(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]

52.215-1 [Reserved]

52.215-2 Audit and Records—Negotiation.

FAR as of FAC 90-25	*FAR as revised*
AUDIT—NEGOTIATION (~~FEB 1993~~)	AUDIT **AND RECORDS—**NEGOTIATION (OCT 1995)
	(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 cost*s. 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, 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~~.	(c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with **any** pricing **action relating to** this contract, the Contracting Officer, or **an authorized** representative of the Contracting Officer, **in order** to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to— (1) The proposal for the contract, subcontract, or modification; (2) The discussions conducted on the proposal(s), including those related to negotiating; (3) Pricing of the contract, subcontract, or modification; or (4) Performance of the contract, subcontract or modification.
	(d) *Comptroller General*—(1) The Comptroller General of the United States, or an authorized representative, shall have

access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(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 precribed in 15.106-1(c), delete paragraph (d) of the basic clause and redesignate the remaining paragraphs accordingly**. [FAC 90-31]

52.215-43 Audit—Commercial Items. [FAC 90-32]

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)

52.215-9 Submission of Offers.

FAR as of FAC 90-25	*FAR as revised*
SUBMISSION OF OFFERS (~~DEC 1989~~)	SUBMISSION OF OFFERS (**JUL 1995**)
* * * * *	* * * * *
(~~d~~) * * * * *	**(d) Offers submitted by electronic comerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.**
	(e) * * * * * [FAC 90-29]

52.215-15 Failure to Submit Offer.

FAR as of FAC 90-25	*FAR as revised*
FAILURE TO SUBMIT OFFER (~~APR 1984~~)	FAILURE TO SUBMIT OFFER (**JUL 1995**)
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]

52.215-16 Contract Award.

FAR as of FAC 90-25	*FAR as revised*
CONTRACT AWARD (~~JUL 1990~~)	CONTRACT AWARD (OCT 1995)
* * * *	* * * *
(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.
* * * *	* * * *
Alternate II (~~NOV 1992~~). As prescribed in 15.407(d)(4)(~~iii~~), substitute the following paragraph (c) for paragraph (c) of the basic provision:	*Alternate II* **(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. 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.	(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. [FAC 90-31]

52.215-10 Late Submissions, Modifications, and Withdrawals of Proposals.

FAR as of FAC 90-25	*FAR as revised*
LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS (~~DEC 1989~~)	LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS (**JUL 1995**)
(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~~) Is the only proposal received.	**(4) Was transmitted through an eletronic 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**
* * * *	(**5**) Is the only proposal received.
	* * * * * [FAC 90-29]

52.215-36 Late Submissions, Modifications, and Withdrawals of Proposals (Overseas).

FAR as of FAC 90-25	*FAR as revised*
LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS (OVERSEAS) (~~DEC 1989~~) (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. * * * * *	LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS (OVERSEAS) (**JUL 1995**) (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** (**3**) Is the only proposal received. [FAC 90-29] * * * * *

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~~) * * * * * (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)	As prescribed in 15.804-8(a), insert the following clause: PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (**OCT 1995**) * * * * * (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) 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) [FAC 90-32]

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:	As prescribed in 15.804-8(b), insert the following clause:
PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS (~~NOV 1994~~)	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS (**OCT 1995**)
(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~~ ~~(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.**
* * * * *	* * * * *
(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—	(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—
* * * * *	* * * * *
(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.	(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.
(End of clause)	(End of clause)
	[FAC 90-32]

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—~~ ~~(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**) (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.** * * * * * (End of clause) [FAC 90-32]

52.215-25 Subcontractor Cost or Pricing Data— Modifications.

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)~~ * * * * * (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.~~	As prescribed in 15.804-8(d), insert the following clause: SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS **(OCT 1995)** * * * * * (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.**

* * * * *

(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)

* * * * *

(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.

(End of clause)

[FAC 90-32]

52.215-41 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data. [FAC 90-32]

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]

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.)*

52.215-16 Contract Award. [FAC 90-31]

FAR as of FAC 90-25	*FAR as revised*
CONTRACT AWARD (~~JUL 1990~~)	CONTRACT AWARD (**OCT 1995**)
* * * *	**(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. [FAC 90-32]

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 15.812-2, insert the following clause:	As prescribed in 15.812-2, insert the following clause:
INTEGRITY OF UNIT PRICES (~~APR 1991~~)	INTEGRITY OF UNIT PRICES (**OCT 1995**),
* * * * *	* * * * *
(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.
* * * * *	* * * * *

PART 16

TYPES OF CONTRACTS

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)**
(a) The Contractor warrants that the unit price stated in the Schedule for _____ [*offeror insert Schedule line item 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 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.	(a) The Contractor warrants that the unit price stated in the Schedule for _____ [*offeror insert Schedule line item 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 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.
* * * * *	* * * * *
(End of clause)	(End of clause) [FAC 90-32]

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**)
(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	(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. * * * * * (End of clause)	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. * * * * * (End of clause) [FAC 90-32]

52.216-5 Price Redetermination—Prospective.

FAR as of FAC 90-25	*FAR as revised*
* * * * * PRICE REDETERMINATION—PROSPECTIVE (~~APR 1984~~) * * * * * (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) * * * * * (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); * * * * * (End of clause)	* * * * * PRICE REDETERMINATION—PROSPECTIVE (**OCT 1995**) * * * * * (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) * * * * * (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; * * * * * (End of clause) [FAC 90-32]

52.216-6 Price Redetermination—Retroactive.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 16.206-4, ~~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~~:	As prescribed in 16.206-4, insert the following clause:
PRICE REDETERMINATION—RETROACTIVE ~~(APR 1984)~~	PRICE REDETERMINATION—RETROACTIVE **(OCT 1995)**
* * * * * (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	* * * * * (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;

(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

* * * * *

(End of clause)

contract, the Contractor shall submit—

(i) Proposed prices;

(ii) A statement 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, of all costs incurred in performing the contract; and

* * * * *

(End of clause)

[FAC 90-32]

52.216-18 Ordering.

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~~:	As prescribed in 16.506(a), insert the following clause:
ORDERING (~~APR 1984~~)	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.	(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)	(End of clause) [FAC 90-33]

52.216-19 Order Limitations.

~~**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: ORDER LIMITATIONS (**OCT 1995**) * * * * * (End of clause) [FAC 90-33]

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: DEFINITE QUANTITY (**OCT 1995**) * * * * * (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] * * * * * (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:
REQUIREMENTS (~~APR 1984~~)	REQUIREMENTS (**OCT 1995**)
* * * * *	* * * * *
	[FAC 90-32 & 33]
(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.	(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] * * * * *
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.	*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.
~~(R 7-1102.2(b)(4) 1966 OCT)~~	[FAC 90-32 & 33]
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:	*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:
* * * * *	* * * * *
~~(R 7-1102.2(b) 1966 OCT)~~	[FAC 90-32 & 33]

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~~:	As prescribed in 16.506(e), insert the following clause:
INDEFINITE QUANTITY (~~APR 1984~~)	INDEFINITE QUANTITY (**OCT 1995**)
* * * * *	* * * * *
(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]
* * * * *	* * * * *
(End of clause)	(End of clause)
~~(R 7-1102.3(b) 1965 AUG)~~	

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.~~	As prescribed in 16.603-4(b)(3), insert the following clause:
CONTRACT DEFINITIZATION (APR 1984)	CONTRACT DEFINITIZATION (APR 1984)
* * * * *	* * * * *
(End of clause)	(End of clause)
~~(R 7-802.5(a) 1969 DEC)~~	
Alternate I (APR 1984). * * * * *	*Alternate I* (APR 1984). * * * * *
~~(R 7-802.5(b) 1969 DEC)~~	[FAC 90-32]

52.216-27 Single or Multiple Awards. [FAC 90-33]

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]

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 19

SMALL BUSINESS PROGRAMS

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: SMALL BUSINESS ~~CONCERN~~ REPRESENTATION ~~(FEB 1995)~~	As prescribed in 19.304(a), insert the following provision: SMALL BUSINESS **PROGRAM** REPRESENTATION**S** **(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 business controlled by members of an econom-

	ically 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, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of~~	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 production (by the bidder or the first-tier**

~~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.~~

~~(c) *Qualified groups*. The offeror shall presume that socially and economically~~

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)

~~disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other individuals found to be qualified by SBA under 13 CFR 124. The offeror shall presume that socially and economically disadvantaged entities also 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 labor surplus area at the time of performance, the~~	(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, the Trust Territory of the Pacific Islands, or 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)

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.~~

District of Columbia. However, this requirement does not apply in connection with construction or service contracts. [FAC 90-32]

(End of 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]

52.219-8 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	(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

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. * * * * *	**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

52.220 ------ [Reserved]

PART 22

APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.

FAR as of FAC 90-25	*FAR as revised*
As prescribed in 22.305, insert the following clause: CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION ~~(MAR 1986)~~ * * * * * (e) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause. (End of clause)	As prescribed in 22.305, insert the following clause: CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION **(JUN 1995)** * * * * * (e) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts**, exceeding $100,000,** the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause. (End of clause)

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:	As prescribed in 22.1006(e)(1), insert the following clause:
EXEMPTION FROM APPLICATION OF SERVICE CONTRACT ACT PROVISIONS ~~(MAY 1989)~~	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)**
(a) The following certification shall be checked: CERTIFICATION	(a) The following certification shall be checked: CERTIFICATION
The offeror certifies ☐ /does not certify ☐ that:	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 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)~~ * * * * * * * * * *	**(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 "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)	(End of clause)
	[FAC 90-32]

PART 28

BONDS AND INSURANCE

52.228-12 Prospective Subcontractor Requests for Bonds. [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 32

CONTRACT FINANCING

52.232-29 Terms for Financing of Purchases of Commercial Items.

As prescribed in 32.206(b)(2), insert the following clause:

TERMS FOR FINANCING OF PURCHASES OF COMMERCIAL ITEMS (OCT 1995)

(a) ***Contractor entitlement to financing payments.*** **The contractor may request, and the Government shall pay, a contract financing payment as specified elsewhere in this contract when: the payment requested is properly due in accordance with this contract; the supplies deliverable or 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.
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.
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.
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

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**) * * * * *
(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.	(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 **$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.
(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.	(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.
(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 * * * * *	(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 * * * * *
(e) For Contractor claims of ~~$50,000~~ or less, the Contracting Officer must, if requested in writing by	(e) For Contractor claims of **$100,000** or less, the Contracting Officer must, if requested in writing

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. * * * * *	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. * * * * *
(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. * * * * *	(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]

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**) * * * * *
(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] (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~~) (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— * * * * *	As prescribed in 33.106(b), insert the following clause: PROTEST AFTER AWARD (**OCT 1995**) (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— * * * * * **(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]

PART 37

SERVICE CONTRACTING

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.

PART 42

CONTRACT ADMINISTRATION

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)

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.

PART 52.242-14 THROUGH PART 52.242-17

[Redesignated from 52.212-12 through 52.212-15 by FAC 90-32 with updated references]

PART 44

SUBCONTRACTING POLICIES AND PROCEDURES

52.244-6 Subcontracts for Commercial Items and Commercial Components [FAC 90-32]

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 46

QUALITY ASSURANCE

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]

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 clause:~~	*Alternate I* **[RESERVED]**
~~(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—~~	* * * * * [FAC 90-32]
~~(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]**
~~(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—~~	* * * * * [FAC 90-32]
~~(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)~~	
* * * * *	